



2024:DHC:3-DB



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 13.12.2023

Judgment delivered on: 03.01.2024

+ W.P.(C) 2823/2016
JASBIR SINGH

..... Petitioner

Through: Mr. A.P.A. Ahluwalia, Sr. Advocate
with Mr. S. S. Ahluwalia and
Mr. Mohit Bangwal, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Sushil Raaja, SPC for UOI.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

ANOOP KUMAR MENDIRATTA, J.

1. The challenge in this petition is to an order dated August 27, 2015 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter, referred to as the 'Tribunal') in OA No. 2187/2014, whereby the OA preferred by the petitioner for reimbursement of medical expenditure incurred for treatment of his late mother Sujan Kaur, in a non-empanelled hospital at Gurgaon was disposed of in terms of directions in paragraph 15 as under:

"15. In view of the aforesaid discussion, I dispose of the OA directing the Director General, Railway Health Services i.e. respondent No.2, to consider the said appeal filed by the applicant, in the light of the medial papers already submitted by him as well as the Railway Board circular dated 31.01.2007 and pass necessary order relating to the claim of the applicant for reimbursement of the medical expenses incurred for treatment of his mother for the periods from 23.11.2012 to 02.12.2012 and from 22.12.2012 to 30.12.2012. The said exercise is directed to be



completed within a period of two months from the date of receipt of a copy of this order. The claim for balance amount towards the reimbursement of medical expenses for the period from 05.10.2012 to 26.10.2012, however stands rejected.”

2. In brief, the father of the petitioner was working with the Railways and retired on May 31, 1985. On demise of father of the petitioner on January 20, 1995, his mother Sujan Kaur was receiving family pension and also entitled to avail medical facilities being a family pensioner.

On October 05, 2012, Sujan Kaur was admitted in emergency in Neurosurgery Unit of Paras Hospital, Gurgaon and was operated for “*Left parieto occipital horse shoe shaped craniotomy and evacuation of Intracerebral Hematoma*” on October 06, 2012. An intimation was forwarded by the petitioner to competent authority on October 08, 2012 regarding the treatment of his mother in emergency, who was finally discharged on October 26, 2012. A claim for reimbursement of medical expenses of Rs.3,21,574/- was accordingly made by the petitioner, on behalf of his mother.

3. Sujan Kaur again developed some complications and was admitted in emergency in ICU in Paras Hospital on November 23, 2012 and was diagnosed as case of “*Urosepsis and Pneumonitis*”. She was thereafter discharged on December 02, 2012. Reimbursement Bill for Rs.1,75,814/- was thereafter raised with respondents.

4. Unfortunately, Sujan Kaur had to be again admitted at Paras Hospital on December 22, 2012 and was diagnosed with “*Septicemia with UTI and Hypernatremia and Shock*” and expired on December 30, 2012 during the course of treatment. A bill for reimbursement of medical expenditure of Rs.2,14,579/- was further raised by the petitioner.



5. In nutshell, petitioner claims reimbursement of medical expenditure for Rs.7,11,967/-(Rs.3,21,574/-+Rs.1,75,814/-+Rs.2,14,579/-) incurred by him for the treatment of his mother Sujan Kaur in emergent condition. However, only an amount of Rs.45,643/- was reimbursed by the Chief Medical Director/respondent vide order dated June 04, 2013, out of the medical bill of Rs.3,21,574/- in respect of first treatment received in between October 05, 2012 and October 26, 2012 and the balance amount of Rs.2,75,931/- was rejected. Similarly, in respect of remaining two claims, for admission in the hospital from November 23, 2012 to December 02, 2012 and December 22, 2012 to December 30, 2012, the claim was rejected by the respondents on the sole reason that emergency is not justified as per Railway Board circular dated January 31, 2007. The same was reiterated vide order dated September 26, 2013.

6. Aggrieved against the rejection of medical claims, the petitioner preferred O.A. No. 2187/2014 before the Tribunal, which was disposed of by the Tribunal vide order dated August 27, 2015 for considering the representation filed by the petitioner in the light of medical documents already submitted as well as circular dated January 31, 2007 for reimbursement of medical expenses incurred for the treatment of his mother for the period from November 23, 2012 to December 02, 2012 and December 22, 2012 to December 30, 2012, within two months. However, the claim for balance amount towards the reimbursement of medical expenses for the period of October 05, 2012 to October 26, 2012 was rejected.

7. It has been clarified on behalf of the petitioner that against the medical claim for Rs. 1,75,814/- for the period from November 23, 2012 to December 02, 2012 and Rs. 2,14,579/- from December 22, 2012 to



December 30, 2012, against which, an amount of Rs. 1,77,741/- has been received from the respondents vide cheque dated December 09, 2015, without giving the details as to the payments, which have been accepted or rejected in terms of medical bills.

8. Aggrieved against the impugned order dated August 27, 2015, the present writ petition has been preferred.

Learned counsel for the petitioner assails the impugned order passed by the Tribunal and submits that despite clear depiction of treatment being obtained in emergency by the mother of the petitioner, the respondents restricted the first reimbursement bill and declined the reimbursement of other two bills.

It is pointed out that admission on all the three occasions took place in continuity over a period of two months in emergency, to the nearest hospital, and in case, the normal procedure would have been followed, the same would have been initially fatal. Sujana Kaur is stated to have expired on December 30, 2012, while undertaking the treatment during the third admission at hospital.

9. On the other hand, the order passed by the Tribunal is supported by learned counsel for the respondent and the stand taken before the Tribunal is reiterated. It is also urged that the mother of the petitioner could not have been taken for treatment to non-empanelled hospital contrary to circular/policy dated January 31, 2007 and there was no emergency during second and third admission. It is contended that reimbursement in such a case may open flood gates for similar cases since treatment in private hospital is not recognised by the Railway Authorities except as an exception as spelt out in circular dated January 31, 2007, issued by Railway Board.



Reimbursement of Rs. 45,643/- for admission for the period from October 05, 2012 to October 26, 2012 is stated to have been made based on CGHS Rate List.

10. We have given considered thought to the contentions raised.

A bare perusal of circular dated January 31, 2007 issued by the Railway Board, Ministry of Railways, Govt. of India, relating to 'reimbursement of medical expenses - procedure for disposal' reflects that the same was brought for bringing in objectivity, consistency and transparency in disposal of reimbursement of cases, wherein the treatment has been taken in emergency without consultation with the Authorized Medical Attendant. The circular takes note of the establishment of railway hospitals, railway health units and empanelment of 115 private hospitals to provide necessary medical treatment to Railway beneficiaries and lists out the procedure to be followed for the purpose of seeking medical treatment. It highlights that in exceptional situation, CMDs of Zonal Railways can obtain special permission from Railway Board for treatment in any private hospital on case to case basis. Hence, there is no scope available for any railway beneficiary to go to any private hospital himself/herself or through dependents or their own violation except in case of real emergency situation.

11. At this stage, observations of this Court in *Union of India v. Joginder Singh, W.P.(C) 10684/2022* decided on May 10, 2023 may be beneficially noticed:

"12. The medical claim for treatment undertaken in emergency should not be denied for reimbursement merely because the hospital is not empanelled. The test remains whether the claimant had actually undertaken the treatment in emergent condition as advised and if the same is supported by record. Preservation of human life is of paramount importance. The State is under an obligation to ensure



timely medical treatment to a person in need of such treatment and a negation of the same would be a violation of Article 21 of the Constitution of India. Administrative action should be just on test of fair play and reasonableness. Accordingly, keeping into consideration the constitutional values, the executive instructions need to be applied than rejecting the claim on technical ground of undertaking treatment in a non-empanelled hospital, since the CGHS/State is responsible to ensure proper medical treatment in an emergent condition and further cannot escape the liability, if the treatment undertaken is genuine. Any denial of claim by the authorities in such cases only adds to the misery of the Government servant by further forcing him to resort to Court of law.

*Observations of the Hon'ble Apex Court in **Shiva Kant Jha** (supra), as reflected in paras 17, 18 & 19 may also be beneficially reproduced:-*

"17. It is a settled legal position that the Government employee during his life time or after his retirement is entitled to get the benefit of the medical facilities and no fetters can be placed on his rights. It is acceptable to common sense, that ultimate decision as to how a patient should be treated vests only with the Doctor, who is well versed and expert both on academic qualification and experience gained. Very little scope is left to the patient or his relative to decide as to the manner in which the ailment should be treated. Speciality Hospitals are established for treatment of specified ailments and services of Doctors specialized in a discipline are availed by patients only to ensure proper, required and safe treatment. Can it be said that taking treatment in Speciality Hospital by itself would deprive a person to claim reimbursement solely on the ground that the said Hospital is not included in the Government Order. The right to medical claim cannot be denied merely because the name of the hospital is not included in the Government Order. The real test must be the factum of treatment. Before any medical claim is honoured, the authorities are bound to ensure as to whether the claimant had actually taken treatment and the factum of treatment is supported by records duly certified by Doctors/Hospitals concerned. Once, it is established, the claim cannot be denied on technical grounds. Clearly, in the present case, by taking a very inhuman approach, the officials of the CGHS have denied the grant of medical reimbursement in full to the petitioner forcing him to approach this Court.

18. This is hardly a satisfactory state of affairs. The relevant authorities are required to be more responsive and cannot in a



mechanical manner deprive an employee of his legitimate reimbursement. The Central Government Health Scheme (CGHS) was propounded with a purpose of providing health facility scheme to the central government employees so that they are not left without medical care after retirement. It was in furtherance of the object of a welfare State, which must provide for such medical care that the scheme was brought in force. In the facts of the present case, it cannot be denied that the writ petitioner was admitted in the above said hospitals in emergency conditions. Moreover, the law does not require that prior permission has to be taken in such situation where the survival of the person is the prime consideration. The doctors did his operation and had implanted CRT-D device and have done so as one essential and timely. Though it is the claim of the respondent-State that the rates were exorbitant whereas the rates charged for such facility shall be only at the CGHS rates and that too after following a proper procedure given in the Circulars issued on time to time by the Ministry concerned, it also cannot be denied that the petitioner was taken to hospital under emergency conditions for survival of his life which requirement was above the sanctions and treatment in empanelled hospitals.

19. In the present view of the matter, we are of the considered opinion that the CGHS is responsible for taking care of healthcare needs and well being of the central government employees and pensioners. In the facts and circumstances of the case, we are of opinion that the treatment of the petitioner in non-empanelled hospital was genuine because there was no option left with him at the relevant time. We, therefore, direct the respondent-State to pay the balance amount of Rs. 4,99,555/- to the writ petitioner. We also make it clear that the said decision is confined to this case only.”

13. It needs to be kept in perspective that patient has a little scope to decide the nature of treatment and merely looks forward to an expert guidance/treatment for relieving him from immense pain and suffering. The patient in distress is not in a position to go against the specialist medical advice for surgery in emergency.”

12. Reverting back to the facts, it may be noticed that the mother of the petitioner was entitled to medical facilities being a family pensioner of her deceased husband. Admittedly, the circular dated January 31, 2007 carves out an exception for taking medical treatment in emergent condition in non-empanelled hospitals. As per the essentiality/emergency certificate dated



October 26, 2012 provided by Paras Hospital, Mrs. Sujan Kaur aged about 84 years was admitted in emergency with history of fall from bed at about 02:30 PM on October 05, 2012 and had developed loss of consciousness followed by altered sensorium. She was admitted in Neurosurgery Unit as a case of “*Left parieto occipital spontaneous bleed with thalamic involvement with mass effect with midline shift*”.

The emergency certificate for admission on October 05, 2012 has not been disputed by respondents, yet only a part reimbursement of sum of Rs.45,643/- has been made without logical reasons. There is nothing on record to indicate if the treatment undertaken/availed at Paras Hospital was not required by the patient. The petitioner had no other option in view of critical condition of his mother to rush to the nearest hospital closest to the residence.

In the facts and circumstances, we do not find any logical reasons for restricting the reimbursement since the same was undertaken due to emergent medical condition.

13. The other two bills for medical reimbursement with reference to admission subsequently on November 23, 2012 to December 02, 2012 and December 22, 2012 to December 30, 2012 were restricted on the ground that emergency has not been established.

14. Once it has been established on record that the treatment undertaken in the first instance for admission from October 05, 2012 to October 26, 2012 was utmost necessary in an emergency condition, the readmission of Mrs. Sujan Kaur at Paras Hospital from November 23, 2012 to December 02, 2012 and December 22, 2012 to December 30, 2012 needs to be seen in the aforesaid perspective. It also cannot be ignored that Mrs. Sujan Kaur while



undertaking the treatment on December 22, 2012 finally expired on December 30, 2012 in the hospital itself.

The emergency certificate for admission for the period from November 23, 2012 to December 02, 2012 clearly reflects that mother of the petitioner was admitted in emergency with diagnosis of “*Urosepsis and Pneumonitis*”. Further, the emergency certificate for admission pertaining to December 22, 2012 to December 30, 2012 reflects admission in emergency with diagnosis of “*Septicemia with UTI and Hypernatremia and Shock*”.

15. We are of considered view that caution needs to be applied when rejecting bills of geriatric patients. The respondents were oblivious to the fact that after discharge from neurosurgical treatment on October 26, 2012 despite optimal surgical procedure, the functional outcome at an advanced stage may be minimal. The outcome in terms of quality of life in older patients is variable. Also, condition on presentation in patients at advanced stage of 84 years is a vital feature which can be only appropriately assessed at the time of admission by the Consulting Specialist and the condition cannot be compared with patients aged about 60-70 years. Even the patients with critical symptoms at an advanced stage may have to be conservatively managed as per advice of the treating Physician.

The condition of Late Sujan Kaur can be clearly gauged from the nature of treatment undertaken after admission in neurosurgery department on October 05, 2012. At advanced stages, it is practically not feasible, at times, in emergent situation to shift the patient at a distantly situated empanelled hospital or follow the procedure of seeking permission through AMA. Any delay can be life threatening as well as detrimental to the patient. Insistence as pleaded by the respondents for strictly following the



medical procedure in such conditions appears to be a hyper technical approach.

16. The respondents are expected to be compassionate and give a sympathetic consideration while considering the claim for medical reimbursement, in order to mitigate the financial hardships, rather than aggravate the situation by rejecting/restricting the claims. It needs no reiteration that right to health is integral to right to life and the authorities are under an obligation to provide full reimbursement for medical facilities availed in emergency.

17. Unfortunately, the respondents merely proceeded to deny the 'reimbursement claim' without any clinching evidence to conclude that emergency admission was not required at the nearest hospital despite clear depiction in 'emergency certificates' given by Paras Hospital for the subsequent admissions. The treating doctors/physicians/specialists are best in position to assess whether the emergent treatment is required in order to save the life of the patient. In view of above, presumption drawn by the respondents that the treatment was not in an emergent condition is unjustified in the facts and circumstances of this case. The respondents, as such, could not have denied the medical reimbursement claim for subsequent admissions or restrict the claim in respect of first admission in October, 2012.

For the foregoing reasons, the order passed by the Tribunal restricting the claim in respect of first medical reimbursement and order passed by the respondents denying the complete medical reimbursement for subsequent admissions is set aside.

18. It is unfortunate that the petitioner has been made to run from pillar to



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post for the purpose of reimbursement of medical expenses on account of treatment of his deceased mother and has been contesting the petition for over a decade. In the facts and circumstances, respondents are directed to reimburse the medical claims preferred by the petitioner, after deducting the amount already paid, along with simple interest @ 7% per annum.

Writ petition is accordingly allowed. No order as to costs. Pending applications, if any, also stand disposed of.

(ANOOP KUMAR MENDIRATTA)
JUDGE

(V. KAMESWAR RAO)
JUDGE

JANUARY 03, 2024/R/sd