Neutral Citation Number: 2023:DHC:3138-DB

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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 20.04.2023
Judgment delivered on:10.05.2023

\+ W.P.(C) 10684/2022 & CM APPL. 31035/2022

UNION OF INDIA & ANR. ..... Petitioners

Through: Mr. Syed Abdul Haseeb, Senior Panel Counsel for UOI.

versus

SHRI. JOGINDER SINGH ..... Respondent

Through: Mr. Padma Kumar S and Ms. Thithiksha Padmam, Advocates.

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 September 03, 2021 passed by the Central Administrative Tribunal (hereinafter referred to as the 'Tribunal') in O.A. No.4664/2018 whereby the petitioners were directed to reimburse the respondent, the balance amount against his claim for the expenditure of Rs.2,60,000/- incurred by him on medical treatment at Rancan Gamma Knife Centre-VIMHANS Hospital, Nehru Nagar, Delhi after adjusting the amount of Rs.31,556/- already paid to the respondent.

2. In brief, as per the facts noticed in O.A. No.4664/2018, the respondent retired as Senior Carpenter on March 30, 2016 and is a pensioner availing

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the CGHS facility. On November 03, 2017, respondent fell unconscious and was taken to Mata Chanan Devi Hospital, Janak Puri, Delhi wherein he was examined in the Neurology Department and advised further treatment at Rancan Gamma Knife Centre-VIMHANS Hospital, Nehru Nagar, Delhi specializing in Neurosurgery cases. The wife of the respondent accordingly took him in emergency to VIMHANS Hospital wherein respondent underwent a surgery on November 04, 2017 and was discharged on November 05, 2017.

3. Respondent thereafter submitted the medical bills amounting to Rs.2,60,000/- as raised by VIMHANS, for reimbursement on November 14, 2017 along with the emergency certificate at CGHS Dispensary, Rajouri Garden. However, respondent was reimbursed only an amount of Rs.31,556/- against the claim for Rs.2,60,000/-.

4. Aggrieved by the rejection of his claim, vide letter dated October 16, 2018, respondent preferred O.A. No.4664/2018 before the Tribunal.

5. The claim of the respondent was opposed by the petitioners herein and it was submitted before the Tribunal that emergency certificate was not submitted by the respondent from Mata Chanan Devi Hospital, wherein he took the treatment on November 03, 2017. The case of the respondent was also examined by the Standing Technical Committee on October 10, 2018 which did not find justification in the treatment availed by respondent, as it was not a case of medical emergency and the treatment is stated to be available in several Government hospitals at lower price.

6. Considering the records of treatment at VIMHANS, the Tribunal

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observed that there is no reason to refute the emergency as indicated in the certificate issued by VIMHANS and the fact that the respondent was operated on November 04, 2017 makes it clear that this was a medical emergency. Further, relying upon the judgments passed by Hon'ble Supreme Court in ***Shiva Kant Jha Vs. Union of India,*** (2018) 16 SCC 187 and ***Basant Dabas Vs. Government of India & Others,*** W.P. (C) No.9849/2015 decided on July 31, 2019 by High Court of Delhi, the O.A. preferred on behalf of the respondent was allowed and the impugned order dated October 16, 2018 rejecting the claim of the respondent was set aside.

7. Learned counsel for the petitioners assails the impugned order passed by the Tribunal on the ground that there was no emergency prescription from Mata Chanan Devi Hospital dated November 03, 2017 and the prescription dated November 03, 2017 from VIMHANS stated that the patient complained of Severe Rt V1V2 Trigeminal Neuralgic since last four months and is conscious/awake/oriented. It is contended that the case of the respondent was placed before the Standing Technical Committee for full reimbursement on October 10, 2018 and as per the opinion of experts, the condition of the respondent was not a case of emergency. Further, treatment for the same is available at many Government hospitals at lower price. It is contended that the treatment was undertaken by the respondent at VIMHANS, a non empanelled hospital at his own choice and as per the policy and Standing OMs, the respondent is not entitled to reimbursement as it may open flood gates for similar cases. Reliance is also placed upon a subsequent report of the Standing Technical Committee dated October 13, 2022 which observes as under:-

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> *"The committee members reviewed the case file provided in detail. The committee unanimously observed that the patient was suffering from Trigeminal neuralgia which is not an emergency to be treated by Gamma knife."*

8. On the other hand, the order passed by the Tribunal is supported by the learned counsel for the respondent. It is urged that in the initial report dated October 10, 2018 of the experts relied by the petitioners, the claim was stated to be not justified on the ground that the condition is not an emergency and the treatment is usually available at many Government hospitals at much lower price but the said report was signed only by two experts instead of four experts who were called for attending the meeting. It is contended that only in a recent subsequent meeting dated October 13, 2022 the opinion has been further improved by Technical Committee without giving any reasons for differing with the opinion of the treating Neurosurgeon at VIMHANS, who was in the best position to take the call for treatment/surgery at the relevant time of admission in emergency.

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

Respondent is a retired pensioner, who was merely employed as a Senior Carpenter with the Central Government. On November 03, 2017, he was initially taken to Mata Chanan Devi Hospital, Janak Puri, Delhi since he fell unconscious and was duly examined. Further, as advised at Mata Chanan Devi Hospital, respondent was taken by his wife for treatment to Rancan Gamma Knife Centre-VIMHANS Hospital, Nehru Nagar, Delhi which specializes in Neurosurgery and underwent surgery on November 04, 2017.

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10. It may be noticed that "Trigeminal Neuralgia" is a chronic pain condition affecting the trigeminal nerve in the face which carries the sensation from the face to the brain. The symptoms of the disease range from mild to severe facial pain often triggered by chewing, speaking or brushing of teeth. The treatment available to alleviate the debilitating pain may be with combination of medication, surgery and complementary therapies. Generally, if a patient does not respond to the medication or condition worsens over a period of time, surgical option may have to be preferred, which includes stereotactic radiation surgery using gamma knife and cyber knife.

11. It is pertinent to note that prescription dated November 03, 2017 issued by Dr. Jayant Misra, MS M Ch. Consultant Neurosurgeon, Rancan Gamma Knife Centre reflects that 'the respondent was advised Gamma Knife Radiosurgery as emergency treatment' apart from other treatment as advised therein. Merely because the respondent was conscious, awake and oriented at time of admission at VIMHANS cannot lead to an inference that his claim of being admitted in emergency, is false. It may further be noticed that an emergency treatment certificate was again issued on October 18, 2018 by Dr. Jayant Misra certifying that the respondent was admitted on November 04, 2017 after OPD consultation on November 03, 2017 on emergency basis for his severe 'Right Sided V1V2 Region Trigeminal Neuralgia.' The certificate also reflects that the respondent was unable to eat/drink/sleep/wipe his face/speak at the time of admission on November 04, 2017. In the facts and circumstances, there existed continued emergent condition for undertaking the treatment by respondent at VIMHANS, as

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advised at Mata Chanan Devi Hospital. Merely because the respondent was suffering from the 'Right Sided V1V2 Region Trigeminal Neuralgic' for past four months, does not lead to an inference that the medical condition did not require emergent treatment, which was undertaken as a last resort by the respondent as advised.

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

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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

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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.

Even assuming that in emergency, gamma knife surgery may not render an immediate relief as contended by learned counsel for the petitioners, but it is an established alternative medical treatment for trigeminal neuralgia as per literature. There may be a difference of opinion

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on the line of treatment to be adopted by the experts but only the treating physician/surgeon appears to be the best placed to adopt the right course of treatment in an emergent situation.

Keeping in view the emergency certificate and the treatment papers filed by the respondent, it cannot be said that the treatment was not taken in an emergent condition or the respondent should have deferred the immediate surgery by gamma knife, as advised by the Specialist.

For the foregoing reasons, we agree with the reasons and findings of the Tribunal. The writ petition is accordingly dismissed. No order as to costs. Pending application, if any, also stands disposed of.

(ANOOP KUMAR MENDIRATTA)
JUDGE

(V. KAMESWAR RAO)
JUDGE

MAY 10, 2023*/A/sd*