

SUPREME COURT OF INDIA

Shiva Kant Jha

Vs.

Union of India

WP(Civil)No.694 of 2015

(R.K.Agrawal and Ashok Bhushan,JJ.,)

13.04.2018

JUDGMENT

R.K. Agrawal,J.,

1. The jurisdiction of this Court has been invoked by the petitioner herein by filing this writ petition against the alleged unfair treatment meted out to several retired government servants in their old age and their state of affairs pertaining to reimbursement of medical claims under the Central Government Health Scheme (CGHS).

2. Brief facts:

(a) The petitioner herein is a CGHS beneficiary (retired pensioner) having a CGHS Card valid for whole life for medical treatment in Private Ward. The petitioner herein submitted two sets of his Medical bills under the Central Government Health Scheme (CGHS) for reimbursement on account of his treatment done in November, 2013 in the Fortis Escorts Hospital, New Delhi for Rs. 9,86,343/- for his cardiac ailments involving the implant of CRT-D device and two sets of bill amounting to Rs. 3,98,097/- for his treatment at Jaslok Hospital, Mumbai for cerebral stroke and paralytic attack.

(b) The petitioner herein submitted the first Bill on 02.01.2014 and the second Bill (two) on 19.07.2014 to the authority concerned. The first Bill was considered by the Technical Standing Committee in May 2014 and the claim was rejected without informing him of the reasons for rejection. The case was again considered by the Standing Committee on 10.07.2014 and was rejected on the ground that CRT-D implant was not required. Aggrieved of the above, the petitioner herein filed a representation before the Secretary, Ministry of Health & Family Welfare. The said representation was again considered by the Standing Committee on 15.01.2015 and was rejected for the reason that "Prior approval for such device implant was not sought". Again, in fourth attempt, the petitioner herein approached the Director General of the CGHS. After presenting the memorial to the Director General of the

CGHS, the government credited an amount of Rs. 4,90,000/- in the petitioner's Bank Account, however, he was never heard on any point nor any speaking order was ever communicated to him.

(c) In the second set of Bills of the Jaslok Hospital, the petitioner's claim was curtailed to the tune of Rs. 94,885/-, being just one-fourth of the claim and no opportunity of being heard was granted to the petitioner. Thus, the petitioner herein was denied an amount of Rs. 4,96,343/- from the first claim and Rs. 3,03,212/- from the second set of claim. In other way, out of the total bills amounting to Rs. 13,84,440/-, the petitioner herein was paid Rs. 5,84,885/-, meaning thereby, the petitioner herein was denied Rs. 7,99,555/-. To both the hospitals, the petitioner had to pay out of his personal resources. However, this Court, vide order dated 01.02.2016, directed the respondent-State to pay a sum of Rs. 3,00,000/- to the petitioner as an interim relief.

(d) Aggrieved by the decision of the CGHS in not allowing the medical bills in full, the petitioner herein has filed this writ petition under Article 32 of the Constitution of India claiming that he being in late 70s of his age, needs money to meet the needs for his survival.

3. Heard the petitioner-in person and Ms. Binu Tamta, learned counsel for the respondent-State.

Rival contentions:

4. The petitioner in person contended before this Court that over several years, several retired government servants, in their old age, have suffered and even died due to unfair treatment meted out to them by the CGHS and its controlling Ministry, the Ministry of Health and Family Welfare, in discharge of their duties. The petitioner contended that the impugned CAG's Report with regard to "Reimbursement of Medical Claims to the Pensioners under CGHS" have also expressed the indifference against the pensioners. He further contended that every 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. The petitioner in-person finally contended that this Court may exercise its jurisdiction under Articles 32 and 142 of the Constitution so that the fundamental rights of the petitioner under Articles 14 and 21 are protected and promoted by reimbursing his medical expenditure already incurred by him under genuine emergency and also to frame some guidelines for effective implementation of the claims of the pensioners under the CGHS.

5. Per contra, learned counsel for the respondent while refuting the claim of the petitioner submitted that the case of the petitioner has been dealt with in accordance with the Circulars and Office Memorandums issued by the Ministry of Health & Family Welfare from time to time. Learned counsel further submitted that the petitioner cannot be given any special treatment beyond the terms of the circulars which would amount to violation thereof and would lead to arbitrariness and discrimination qua a large number of such like beneficiaries.

6. Learned counsel for the respondent further contended that the government has empanelled several hospitals under the CGHS and the petitioner did not approach the empanelled hospital during medical emergency and he was charged by the hospital as per their own rates 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 concerned Ministry. Further, the CGHS has a complete set of rules and guidelines to be followed in each case and if the petitioner is compensated beyond the policy, it would have large scale ramifications. Learned counsel for the respondent-State finally submitted that the petition is devoid of merits and is liable to be dismissed. Discussion :-

7. Union of India-the respondent herein, while complying with the order passed by this Court dated 11.04.2016 filed an affidavit describing the in-house procedure to be followed in dealing with the claims under CGHS, the remedy/appeal available in dealing with the claims and also the nature of claims pending in respect of card holders. The detailed procedure which is followed for the purpose of medical reimbursement claims of CGHS beneficiaries have been set out in Circular dated 14.11.2011 and further supplemented by the instructions dated 11.12.2012. The steps provided in the said procedure are given hereinbelow:-

Procedure for Medical Reimbursement Claim (MRC) in Central Government Health Scheme (CGHS)

(a) The patient or beneficiary has to approach the in-charge of the wellness centre where he/she is registered.

(b) That after getting all the documents required for MRC from the beneficiary, CMO in-charge submits the same online to CMO (R&H) of the respective Zonal Office and also send one hard copy through official dak to the respective Zonal Office CMO (R&H) who process the MRC as per CGHS rates.

(c) The CMO (R&H) processes the MRC as per CGHS Rates. If CGHS rates are not available, reimbursement is considered at AIIMS rates. And if AIIMS rates are also not available, the reimbursement is made as per actual rates.

(d) The CMO (R&H) gets the approval of Additional Director (AD) of the respective Zonal Office for the MRC. Then approved amount of MRC is sent as bill to the Pay & Accounts Office (PAO) CGHS Rajinder Nagar.

(e) Pay & Accounts Office credits the approved amount of MRC in the account of beneficiary through Electronic Clearing System (ECS). The procedure of appeal/remedy in CGHS regarding MRC is given hereunder:-

(a) If the beneficiary is not satisfied with the claim, he can request in writing to the Competent Authority in CGHS. The request is then forwarded to the higher authority by the respective Zonal Office for consideration.

(b) If the higher authority considers it necessary to have the opinion of the specialist of concerned speciality, a Special Technical Committee (STC) meeting is held.

(c) On the basis of the recommendation of the Special Technical Committee, the approval of the competent authority is taken and the approved amount is paid to the beneficiary by PAO.

8. Union of India, by filing an affidavit before this Court, submitted that most of the claims are reimbursed only through the CGHS sources as per the package rates of CGHS. However, there are few such cases received occasionally where reimbursement is done from two sources i.e. from CGHS and from the insurance companies. Such claims are first processed by insurance companies and then by the CGHS. The claim of CGHS is reimbursed as per the Office Memorandum dated 19.02.2009. It is further submitted that no such cases involving reimbursement from two sources is pending in CGHS.

9. Further, the writ petitioner was admitted in emergency condition with complaint of breathlessness on 11.11.2013 in Fortis Escorts Health Institute, which was a non-empanelled hospital at the relevant time. He underwent angiography on 12.11.2013 which revealed dif-fused disease in left anterior descending coronary artery 50-60%. He had been implanted the CRT-D device (Combo) as part of cardiac resynchronization therapy (CRT) on 12.11.2013. The hospital charged an amount of Rs. 11,56,293/- for the said treatment, out of which, an amount of Rs. 10,70,000/- was for the cost of the unlisted cardiac implant (CRT-D) and an amount of Rs. 3,19,950/- was paid by the Insurance company directly to the hospital.

10. A Special Technical Committee meeting was held on 29.04.2014 to consider the case of the petitioner. However, on examining the same, the Committee did not find any justification for the implant of CRT-D device of the petitioner. On a further request by the petitioner, the Special Technical Committee again did not find any justification for the implant of CRT-D device on 10.07.2014. On a request for reconsideration by the petitioner, on 15.01.2015, the case of the petitioner was again reconsidered by the Special Technical Committee which denied the claim of CRT-D.

11. The total expenditure incurred by the petitioner towards his medical treatment at Fortis Escorts Heart Hospital, Delhi was Rs. 9,86,343/- and at Jaslok Hospital, Mumbai was Rs. 3,98,097/-, hence, the total amount claimed by the petitioner was Rs. 13,84,440/-. Though the Special Technical Committee did not find the implant justified, the competent authority, keeping in view the emergency nature of the case of the petitioner, approved the reimbursement of implant as per AIIMs rate. Therefore, out of the total amount i.e., Rs. 13,84,440/-, an amount of Rs. 4,90,000/- was paid to the petitioner on the direction of the authority and Rs. 94,885/- for the treatment at Jaslok Hospital. As per this Court's direction dated 01.02.2016, a sum of Rs. 3,00,000/- has also been paid by the respondent. Hence, a sum of Rs. 4,99,555/- is the claim of the petitioner in the present writ petition.

12. With a view to provide the medical facility to the retired/serving CGHS beneficiaries, the government has empanelled a large number of hospitals on CGHS panel, however, the rates charged for such facility shall be only at the CGHS rates and, hence, the same are paid as per the procedure. Though the respondent-State has pleaded that the CGHS has to deal with large number of such retired beneficiaries and if the petitioner is compensated beyond the policy, it would have large scale ramification as none would follow the procedure to approach the empanelled hospitals and would rather choose private hospital as per their own free will. It cannot be ignored that such private hospitals raise exorbitant bills subjecting the patient to various tests, procedures and treatment which may not be necessary at all times.

13. 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.

14. 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 concerned Ministry, 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.

15. 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.

16. Further, with regard to the slow and tardy pace of disposal of MRC by the CGHS in case of pensioner beneficiaries and the unnecessary harassment meted out to pensioners who are senior citizens, affecting them mentally, physically and financially, we are of the opinion that all such claims shall be attended by a Secretary level High Powered Committee in the concerned Ministry which shall meet every month for quick disposal of such cases. We, hereby, direct the concerned Ministry to device a Committee for grievance redressal of the retired pensioners consisting of Special Directorate General, Directorate General, 2 (two) Additional Directors and 1 (one) Specialist in the field which shall ensure timely and hassle free disposal of the claims within a period of 7 (seven) days. We further direct the concerned Ministry to take steps to form the Committee as expeditiously as possible. Further, the above exercise would be futile if the delay occasioned at the very initial stage, i.e., after submitting the relevant claim papers to the CMO-I/C, therefore, we are of the opinion that there shall be a timeframe for finalization and disbursement of the claim amounts of pensioners. In this view, we are of the opinion that after submitting the relevant papers for claim by a pensioner, the same shall be reimbursed within a period of 1 (one) month.

17. In view of the foregoing discussion, we dispose of the petition filed by the writ petitioner with the above terms.