

Kripa Shankar Tiwari Vs Union Of India & Others

Court: Central Administrative Tribunal - Allahabad Bench, Allahabad

Date of Decision: Jan. 9, 2025

Acts Referred: Administrative Tribunals Act, 1985 " Section 19

Hon'ble Judges: Mohan Pyare, Member (A)

Bench: Single Bench

Advocate: Pradeep Kumar Dubey

Final Decision: Allowed

Judgement

Mohan Pyare, Member (A)

1. Present Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:

A) That the respondents be directed to sanction and make payment of amount of Rs.1,24,557/- of medical expenses alongwith 12%

interest per annum within the specified period.

B) That any other and further relief which this Hon'ble Tribunal may deem fit and proper be also awarded to the applicant.

E) Cost of proceeding be awarded to the applicant.

2. Brief facts of the case are that the applicant was a regular employee of the department and retired from the post of Telephone Technician

(Mechanic) from the office of Assistant General Manager (OP), BSNL, Mirzapur. The applicant fell ill he took treatment at City Hospital, Mirzapur

and when his health condition deteriorated, his family members got him admitted in Saraswati Heart Care Hospital, Allahabad. Thereafter, the

applicant also submitted an application through a messenger before the Assistant General Manager (OA), Mirzapur intimating him about his admission

in the aforesaid Hospital and requesting him to make a verification of the fact through a visit from any officer/employee of the department. The Sub

Divisional Engineer, Mirzapur made the visit and submitted his report dated 09.12.2020 verifying the fact to be true. However, later when the

respondents did not reimburse the medical bill of the applicant and his grievances were not redressed, he submitted an application before the office of

the Hon'ble Prime Minister on 12.01.2023 after which the applicant received a letter dated 08.02.2023 from the office of Assistant General

Manager (OP), Mirzapur whereby the sanction and release of medical claim of the applicant was denied.

3. I have heard learned counsel for the parties.

4. Submission of learned counsel for the applicant is that the respondents have illegally denied the rightful claim of the applicant and have not

reimbursed his medical bills even though they have verified his admission to the Saraswati Heart Care Hospital, Allahabad through a visit by an

officer.

5. Submission of learned counsel for the respondents is that as per extent rules for BSNL Employee/retired employee Medical reimbursement

Scheme- "In all cases involving hospitalization of two or more than two days, designated officer of BSNL shall visit the hospital and give

a certificate as per enclosed format. The certificate shall be attached to the claim while forwarding the same to C.G.M's officer for

approval and as per para 7 of CGMT Guideline dated 07.02.2018 and para 15 of BSNL Employees Medical Reimbursement Scheme,

Instructions for operation of Scheme - "All claims for reimbursement should be submitted latest by six months from the completion of

treatment. Claims submitted beyond this period are liable to be rejected."

6. Learned counsel for the respondents argues that both the City Hospital, Mirzapur and Saraswati Heart Care Hospital, Allahabad are not

empanelled with BSNL, Allahabad. The applicant's treatment period was 28.11.2020 to 05.12.2020 but the applicant did not submit his bill within

six months attaching all the relevant vouchers/ receipts in support of his claim. He submitted his bill on 26.11.2021 after a total of eleven months delay

which is not tenable and liable to be dismissed.

7. In his rejoinder, learned counsel for the applicant has argued that the applicant had informed the concerned competent authority timely and properly

and the bills for expenses of the treatment i.e. Rs.102500/- was submitted to the concerned office timely but the same has not been released so far

though the applicant regularly approached the concerned authority several times. He states that a person who is in a dying stage will be taken to any

nearest and well known hospital for better treatment and no government employee should be subject to limitations in getting the benefits of medical

facilities. He contends that for about 10 months the applicant was in serious condition and very weak. He was on bed rest and after recovery he

submitted the relevant vouchers/ receipts of the payments, and as such there is no delay and no rule position has been violated.

8. Learned counsel for the applicant has also relied on the judgement of the Hon'ble Apex Court in the case of Shiva Kant Jha Vs. UOI (Writ

Petition (Civil) No.694 of 2015 reported as 2018(3) SLR 328 (S.C.)and the judgment of this Tribunal in O.A. No. 68 of 2017 (Gulab Singh vs

BSNL) decided on 29.08.2024. The relevant portion of the aforesaid judgement of this Tribunal which has also quoted the judgement of the

Hon'ble Apex Court in the case of Shiva Kant Jha (supra) among others is reproduced below:

“10. The said Scheme of BSNL has already been dealt by the Jammu and Kashmir High Court in case of Bimla Ji Bhat & Ors Vs Union of

India & Ors. vide its judgment dated 28.09.2022 after considering the judgment of Apex Court in case of Shiv Kant Jha Vs. Union of India,

reported in 2018 (3) SLR 328 (SC) has held as under:-

14. A Scheme has been formulated for medical policy for the BSNL employees known as “BSNL Employees Medical Reimbursement

Policy” which has come into force on 24.02.2003 and Clause 1.5 of the aforesaid Scheme specifically provides that all serving and retired

employees of BSNL including deputationists would be eligible under this Scheme. Clause 1.5 is reproduced as under:-

“All serving and retired employees of BSNL including deputationists will be eligible for this scheme. However, the employees in order to

avail of this scheme have to opt for this scheme whereby they will not be allowed the facility under CGHS Scheme. The employees opting for

this scheme, can avail of Domiciliary treatment either from P&T dispensaries or from any Registered Medical Practitioners (RMPs)

depending on their option to be exercised while registering for this scheme. The employees opting for this scheme will be eligible for Indoor

treatment as per this scheme.”

15. From a bare perusal of the aforesaid Scheme, it is emphatically clear that by virtue of clause 2.2.0, an employee (including retired

employee) and his/her dependants shall be entitled to reimbursement of expenses at the approved rates at all hospitals recognized from time

to time by the management. For facility of reference, clause 2.2.0 is reproduced as under:

“An employee (including retired employee) and his/her dependants shall be entitled to the reimbursement of expenses at the approved

rates at all hospitals recognized from time to time by the management. Till such time as approved rates in recognized hospitals are not

notified by BSNL management, the reimbursement will be as per actual expenses basis. Entitlement under this clause will be separate and

distinct from the ceiling amount prescribed in para 2.1.0 and 2.1.1 under domiciliary/outdoor treatment. All expenditure incurred in

connection with the treatment will be reimbursable subject to a limit on the room rent which will be as per Annexure-I

16. The aforesaid Scheme also provides for recognized hospitals/nursing homes and clause 2.2.2 provides that in emergency cases, the

concerned Director of BSNL Board for C.O. employees. Clauses 2.2.2. and 2.2.3 are reproduced as under:-

In emergency cases, the reimbursement will be allowed for treatment in non-recognised hospital with the approval of CGM for field office

recognized hospital to be notified by CGM/BSNL C.O.

Working Employees may be allowed advance towards expenses on hospitalization where long duration treatment or major operation

Central Government

made in prescribed proforma supported by necessary bills, vouchers, certificates and prescriptions etc. and shall be subject to the

18. Thus, from a bare perusal of the aforesaid Scheme, it transpires that the respondents were under legal obligation qua the petitioners to

Scheme which has come into force w.e.f. 24.02.2003.

regulations are not required to be followed just in a mechanical manner so as to frustrate the very purpose of the Scheme. Each case has to

of the self preservation is a part of right of life as envisaged under Article 21 of the Constitution of India and in the present case, the

petitioners are held entitled for medical reimbursement of their expenses.

20. The Apex Court, in its recent decision in the case of Shiv Kant Jha Vs. Union of India reported as 2018(3) SLR 328 (S.C.) has observed

as under:-

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.

21. Even the Apex Court has been so liberal in medical reimbursement case and held that the employee could not be denied reimbursement

solely on that ground in case an employee had taken treatment in speciality hospital by itself which was not at all recognized or approved

by the State or not included in the Government order.

22. It also goes without saying that the amount of medical reimbursement is constitutional obligation towards sufferer which is a beneficial

legislation in a welfare State for its employees, therefore, the rules and instructions formulated should be construed liberally in favour of

the employees for granting them the relief rather than to adopt the wooden attitude to deprive the person of his/her dues.

23. Thus, there is no denial of the fact that under Article 21 of the Constitution of India provides for an obligation to bear the medical

expenses of its employees while in service and also after having retired. The respondents on receipt of the aforesaid bills and various

representations from time to time cannot deny to process the claim of the petitioners and the long delay in such like matters cannot be

condoned on the part of the respondents.

24. Thus, in the light of the law laid down by the Hon'ble Supreme Court coupled with the BSNL Employees Medical Reimbursement

Scheme, the respondents are under legal obligation to process the medical bills of the petitioners expeditiously and disburse the same.

11. Further, the genuineness of bill was also verified by the respondent from Fortis Hospital and there is no dispute with regard to

genuineness of the same. The case of the applicant is squarely covered by the aforesaid Judgment delivered by the Apex Court as well as

High Court of Jammu & Kashmir.

12. Further, similar issue fell for consideration before this Tribunal in Original Application No.1097/2016 (Brahmanand Gupta Vs.

Chairman and Managing Director, BSNL & Ors.), wherein it has been held as under:-

11. Considering the facts that the applicant had informed the Competent Authority about his hospitalization in non empanelled hospital and

the respondents did not object to his request, the respondents are directed to consider to accord ex-post facto permission to undertake the

treatment from empanelled Hospital in emergency conditions and they are also directed to reimburse the bills submitted by the applicant as

per the C.G.H.S. rates admissible to the applicant, if he undertakes his treatment in an empanelled Hospital within a period of two months

from the date of receipt of copy of this order.

13. In view of above discussion, this Court is of the considered opinion that impugned orders dated 19.10.2016, 10.11.2016 and

02.06.2015 are not tenable in the eyes of law and same are hereby quashed and set aside. Resultantly, instant Original Application stands

allowed.

14. Accordingly, the respondents are directed to consider the claim of the applicant for medical reimbursement for the amount in question

for the treatment taken at Fortis Hospital and reimburse the same, within a period of two months from the date of receipt of a certified copy

of this order.

9. Per contra, learned counsel for the respondents have submitted in the supplementary counter reply that the rejection of claim of the applicant is

based on delay and incomplete claim form. Certificate/ visit report is only for authentication/verification of patient during treatment. Sanction and

payment of medical expenses is possible when "The claim form shall be supported by the copies of prescription along with original

vouchers (in duplicate) towards the expenses incurred. He further states that as per existing rules and circular Saraswati Heart Care Hospital,

Allahabad is not empanelled with BSNL, Allahabad, so the claim should be submitted within the time period of approval of GM BA Office, Varanasi

& also CGM office Lucknow for reimbursement Scheme of Non empanelled office.

10. I have considered the rival contentions of learned counsel for the parties and perused the entire documents on record.

11. In view of the case laws relied upon by the applicant as quoted above in para 8, it is amply clear that the respondents cannot deny the

reimbursement of medical claim of the applicant on the ground that he did not get treatment in an empanelled hospital. The applicant had also informed

about his treatment to the concerned authority amongst the respondents and was admitted to the said non-empanelled hospital in an emergency

condition. The bills to this effect have also been submitted by the applicant to the respondents. The sole ground that the claim has been belatedly

submitted i.e. not within six months but after about 11 months and that the Form is also incomplete is not a compelling reason to deny the

reimbursement of the medical claim in the circumstances stated by the applicant. The word "liable to be rejected" does not mean that it must

be rejected. Para 15 of BSNL Employees Medical Reimbursement Scheme "Instructions for operation of Scheme states that claims submitted

beyond this (six months) period are "liable to be rejected. In case the delay is not deliberate, there is no hard and fast rule that even in the face

of such a condition when the claimant is bedridden and not in a state of approaching the department, he should be denied his right of medical

reimbursement specially when the delay is only of about five months after the expiry of the prescribed six months time period (The applicant's

treatment period was 28.11.2020 to 05.12.2020 and he submitted his bill on 26.11.2021).

12. Taking into account the aforesaid facts, discussion and the case laws relied upon by the applicant, the O.A. is allowed and the respondents are

directed to take a considerate approach and without taking any objection to the delay of nearly five months in submitting the bills, the respondents

should process the medical claim of the applicant by calling for the requisite documents which the applicant is directed to supply in a complete format

subject to which the payments shall be made. The said exercise should be completed within a period of three months from the date of receipt of a

certified copy of this order.

13. All associated M.A.s also stand disposed of. No costs.