

**HIGH COURT OF JAMMU AND KASHMIR AND LADAKH
AT JAMMU**

OWP No. 1726/2015
IA Nos. 01/2015 & 01/2018

Reserved on:- 14.09.2022
Pronounced on:- 28.09.2022.

Bimla Ji Bhat and others

....Petitioner/Appellant(s)

Through :- Mr. C.M. Koul, Sr. Advocate with
Mr. A.R. Bhat, Advocate

V/s

Union of India and others

....Respondent(s)

Through :- Ms. Pallavi Sharma, Assisting counsel vice
Mr. Ravinder Gupta, Advocate

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT

01. The present writ petition has been filed by the petitioners seeking a writ in the nature of mandamus commanding upon the respondents to settle down their medical claims (medical reimbursement) in respect of the treatment provided to the deceased-husband of petitioner No. 1 and father of petitioner Nos. 2 to 4. Besides this, they are also seeking relief of compassionate employment to any of the legal heirs of the deceased-Shri Maharaj Krishan Bhat.
02. The present writ petition has been preferred by the legal representatives of Sh. Maharaj Krishan Bhat, who was working as a Telephone Mechanic in the Bharat Sanchar Nigam Limited (BSNL) at Kupwara, Kashmir.
03. It has been averred in the writ petition that Sh. Maharaj Krishan Bhat was the husband of the petitioner No. 1 and the father of petitioner Nos. 2 to 4

The case of the petitioner is that in the month of October, 2009 when the deceased was performing his duties in Kupwara, Kashmir he got seriously ill and was shifted to Government Medical College Hospital, Jammu. Since his health condition continued to deteriorate, he was shifted to Apollo Hospital, New Delhi in the Emergency Wing where doctors attended him and he was advised certain tests to be carried out. Further stand of the petitioners is that on the basis of all those tests conducted on him, the deceased was diagnosed as suffering from blood cancer. It is stated by the petitioners that since the family of the deceased did not have enough resources to get him treated in the Apollo Hospital at New Delhi, he came to be shifted to the All India Institute of Medical Sciences, New Delhi (AIIMS) in a serious condition where he came to be admitted in the Emergency Wing. Later on, the deceased came to be referred to the Oncology Department of the Institute where the response of the doctors towards the deceased was not good, as such, finding no alternative the deceased was shifted back to Apollo Hospital, New Delhi for Chemotherapy.

04. It is averred in the petition that the petitioners have filed various representations before the respondent Department from time to time for providing them the medical claims (medical reimbursement) of the deceased with all the details i.e. medical diagnosis, medical bills, etc and also prayed for compassionate appointment of any of the family members of the deceased. Further stand of the petitioners is that they have also filed representation before the Minister for Communication and Information Technology and also to the General Manager, Bharat Sanchar Nigam Limited (BSNL), J&K Circle, Jammu, which were not accorded

consideration and as such, the petitioners were left with no other option but to file the present writ petition.

05. Per contra, response has been filed by respondent Nos. 2 to 4 in which respondents have taken a stand that as per the Policy guidelines regarding Compassionate Appointment, there should be 55 or more net points for consideration by the Corporate Office High Power Committee for compassionate grounds but the petitioners scored 31 points only, as such, they are to be treated as non-indigent and their case needs no consideration and rejected.
06. The respondents have further submitted that as per the communication received from DE NTR, Srinagar vide No. E-4/Staff/DE/SKC/2017-18 dated 04.12.2017, no medical bills have been received in the said office from the petitioners. It is the specific stand of the respondents that no receipt of medical bills having submitted has been even found enclosed with writ petition also, as such, no action could have been taken by the respondents.
07. Further stand of the respondents is that on receipt of representation, which has been annexed as Annexure-D with the writ petition, their case for compassionate appointment was processed but none of them were found suitable/entitled for compassionate appointment in view of the fact that as per the Policy guidelines regarding Compassionate Ground Appointments, there should be 55 or more net points for consideration by the Corporate Office High Power Committee for compassionate grounds, but the petitioners scored 31 points only, as such, they are to be treated as non-indigent and their case needs no consideration and rejected. It is further stated that insofar as the claim of petitioner No. 4-Rekha Devi is

- concerned, since she is married and is not dependent family member of the deceased employee, her case was rejected on that ground also.
08. In the light of the categoric stand taken by the respondents, the petitioners have confined their relief only with regard to the medical reimbursement. Learned counsel for the petitioners submits that he has personally handed over the medical bills to learned counsel for the respondents in the open Court and this Court vide order dated 11.04.2022 granted time to learned counsel for the respondents to consider the claim of the petitioners and also for filing the status of the said bills.
09. Since the petitioners have not pressed their relief for compassionate appointment, so the present petition is adjudicated only insofar as the medical reimbursement claim is concerned.
10. The respondents have also filed a compliance report in terms of the order dated 05.02.2020 wherein a specific stand has been taken that in pursuance to the direction dated 05.02.2020, the Division Engineer Admin O/o DGM Mtce NTR, BSNL Jammu issued a communication to the Director Apollo Hospital, New Delhi vide letter No. DGMM-JK/ A-72/2019-20/32 dated 25.02.2020, for providing the date of admission and date of discharge of deceased Sh. M.K Bhat for treatment from the said hospital. It is respectfully submitted that even the then Accounts Officer, office of AGMM, NTR, 2nd Floor, Telephone Exchange Building Master Tara Singh Nagar, Jalandhar, namely, Sardar Sarabjeet Singh Dua has also visited the aforesaid Hospital on 27.02.2020 and after great & hectic efforts was able to meet an official of the Hospital and enquired from him about the record of the deceased namely Sh. M.K Bhat with respect to the date of admission and date of discharge from the Hospital of the deceased

Sh. M.K. Bhat, who in turn expressed his inability to give details in this regard because the case was very old and he gave two telephone numbers with the stamp affixed of Indraprastha Apollo Hospital, New Delhi, for further enquiry of two officials namely Sh. H.N Jha Mobile No. 9958290218 and Sh. Gagan Mobile No. 9958290221. Para- 4 and 5 of the aforesaid compliance report are also reproduced as under:-

“4. It is respectfully submitted that on enquiry from those officials of the hospital it came to know that they are posted as AGMs and both of them telephonically informed the respondent No.4 that the concerned person is one Sh. Surinder Singh who is AGM (billing) having Contact. No. 9958290459. After great efforts it was informed by the said AGM (billing) that since the case is very old and their software has also been changed, therefore, they are unable to trace, the date of admission and date of discharge of Late. Sh. M.K Bhat. On being apprised that the said information is required in respectful compliance to the Order dated 05.02.2020 and accordingly he was requested to provide the aforesaid information in black and white/ in the shape of Certificate. It is respectfully submitted where upon the said official of the Hospital sought some time to trace the record regarding the date of admission and date of discharge of the deceased but nothing has been received for more than one week. When nothing was heard from the end of hospital authorities for a considerable period of time with regard to the issuance of certificate in terms of Hon'ble High Court Order, the then account officer i.e. respondent No. 4, again requested the said official of the hospital and on the request of the said official on 13.03.2020 had even sent email from his official address to the said official as well as to another official of the hospital on the following email address surender_s@apollohospitaldelhi.com and hriday_n@apollohospitaldelhi.com. It is respectfully submitted that the then Accounts Officer i.e., Respondent No. 4 even sent whats app message to the said Sh. Surinder Singh requesting for the cooperation.

5. That despite all out efforts made by the respondents as stated hereinabove nothing has been heard from the Hospital authorities till date. Since no record of the deceased regarding date of admission and date of discharge has been made available by the Hospital authorities, therefore, the petitioners

may be directed to place on record the same for the just disposal of the writ petition.”

11. It is admitted position that the husband of petitioner No. 1 has undergone the treatment for blood cancer from Apollo Hospital as is evident from the medical bills annexed with the writ petition as also the remaining bills which were handed over by learned counsel for the petitioners to the counsel for the respondents in open Court.
12. It has been submitted by learned counsel for the petitioners that few of the medical bills must have been missing keeping in view the fact that the age of the widow as she may not have kept all the medical bills.
13. Learned counsel for the petitioners submits that whatever bills were lying with petitioner No. 1, the same had been submitted to learned counsel for the respondents for processing but till date the respondents, inspite of various representations from time to time, have not accorded consideration to the medical reimbursement claim of the petitioners.
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 BNSL 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”

Annexure-I

Entitlement of Room/Bed for Indoor Treatment

<i>S. No.</i>	<i>EMPLOYEES GROUP*</i>	<i>ELIGIBILITY</i>
<i>1.</i>	<i>Group D</i>	<i>General Ward</i>
<i>2.</i>	<i>Group C</i>	<i>Semi-Pvt. Ward</i>
<i>3.</i>	<i>Grp B & Grp A (upto STS)</i>	<i>Pvt. Ward (Non A.C.)</i>
<i>4.</i>	<i>Grp A JAG and above</i>	<i>Pvt. Ward with A.C.</i>
<i>5.</i>	<i>CMD & Board Directors (Full Time)</i>	<i>Deluxe room with A.C.</i>

16. The aforesaid Scheme also provides for recognized hospitals/nursing homes and clause 2.2.2 provides that in emergency cases, the reimbursement would be allowed for treatment in non-recognized hospital with the approval of CGM for field office employees and concerned Director of BSNL Board for C.O. employees. Clauses 2.2.2. and 2.2.3 are reproduced as under:-

2.2.2 Treatment in non-recognised hospitals:

In emergency cases, the reimbursement will be allowed for treatment in non-recognised hospital with the approval of CGM for field office employees and concerned Director of BSNL Board for C.O. employees. The amount will be restricted to rates applicable for a particular recognized hospital to be notified by CGM/BSNL C.O.

2.2.3 Advance for medical treatment in hospital:

Working Employees may be allowed advance towards expenses on hospitalization where long duration treatment or major operation becomes necessary. Advance shall be paid to the employees, based on estimates to be obtained from the hospitals as per CGHS scheme of Central Government.

17. Clause 3.0 deals with the procedure for reimbursement of claim which inter alia provides that all claims of medical expenses shall be made in prescribed proforma supported by necessary bills, vouchers, certificates and prescriptions etc. and shall be subject to the procedure laid down by the management from time to time.
18. Thus, from a bare perusal of the aforesaid Scheme, it transpires that the respondents were under legal obligation qua the petitioners to consider their claim for reimbursement of expenses at the approved rates in conformity with the aforesaid BSNL Medical Reimbursement Scheme which has come into force w.e.f. 24.02.2003.
19. While according consideration to the case of the petitioners, the respondents have to keep in mind that the technicality of the rules and 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 be examined on its own facts before taking any final decision. It goes without saying that to preserve health and medical aid in furtherance 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.
25. Accordingly, the present writ petition is allowed and the respondents are directed to process the medical bills of the deceased and release the same in favour of the petitioners within a period of two months from the date the copy of this order is served upon respondents in respect of which all the bills required have already been submitted by the petitioners besides completing all the medical formalities.
26. In view of the above, the present petition is disposed of along with connected application(s).

(Wasim Sadiq Nargal)
Judge

Jammu:
28.09.2022
Angita

Whether the order is speaking : Yes/No
Whether the order is reportable : Yes/No