

**Central Administrative Tribunal
Principal Bench, New Delhi**

T.A.No.606/2009

Thursday, this the 2nd day of April 2009

Hon ble Shri Shanker Raju, Member (J)
Hon ble Dr. Veena Chhotray, Member (A)

Veena Bhatia
W/o Shri Kamal Bhatia
R/o A-202 Som Apartments
Plot 24, Sector-6, Dwarka
New Delhi-75
(By Advocate: Ms. Jayshree Satpute)

..Applicant

Versus

1. The Chairman & Secretary
Telecom Commission
Department of Telecommunication
R.No.210, Sanchar Bhavan
20 Ashoka Road, New Delhi
2. The Executive Director
Centre for Development of Telematics
Mandi Road, Mehrauli
Delhi-30
3. The Board Members
Centre for Development of Telematics
Mandi Road, Mehrauli
Delhi-30
(By Advocate: Shri Ajay Bhatnagar)

..Respondents

O R D E R (ORAL)

Shri Shanker Raju:

Heard the learned counsel for the parties.

2. The present is a case of medical reimbursement by applicant on account of the treatment incurred in the context of a pregnancy test advised by Dr. M. Kochhar, Senior Consultant, Obstetrics & Gynaecology.

3. Applicant, working with the respondents at the age of 38, delivered a child on 17.9.2004 prematurely at a stage where 35 weeks were passed. The Doctor concerned has observed the case of an emergency because of bleeding P.V. A male baby was delivered with

a weight of 2.445 kg. The tubes and ovary were found normal and the stitches were removed. Another certificate by Doctor certifies that applicant's LSCS was done at 35 weeks because of foetal distress and antepartum haemorrhage. The normal delivery was not advised otherwise baby would have died and mother would have had excessive haemorrhage.

4. In the above backdrop, applicant sought certain information from the respondents under RTI, which were delivered by the respondents and has been annexed by the applicant at Annexure A-19, wherein it is averred that the reimbursement of maternity medical expenses beyond entitlement were generally done on the basis of available balance for the current year and after due deliberation, Board accords medical reimbursement to over and above the limit only in emergency cases, like heart attacks, diseases, like renal failure (leading to kidney transplant etc.). It was also supplied as an information that since the policy has been changed, other women employees have also not been allowed medical reimbursement for maternity cases beyond overall entitlements. This order was subjected to an appeal under RTI Act 2005 by an appeal dated 24.7.2007. In pursuance thereof, the respondents addresses a letter to the applicant on 16.4.2008 wherein reiterating their earlier stand, it was intimated that the medical reimbursement beyond entitlement was not allowed after the new medical policy came into effect as it was observed that allowing the same to any particular case would have far reaching implications on other similar cases, which were denied. It was also decided not to reopen the case on similar reasons as per the new policy.

5. In the above backdrop, learned counsel would contend that the Doctor Sudha Jolly at C-DOT, in her certificate issued, clearly acknowledged on the basis of certificates issued by Dr. M. Kochhar that applicant was diagnosed as a case of elderly primipara with placenta anterior and low-lying and on account of which, an emergency LSCS was done on 17.9.2004. It is stated that that being the case of emergency, which could not be restricted as a genetic term to the cited examples by the respondents, any medical emergency would include an emergency within the meaning of the Medical Reimbursement Rules. As such rejection of her claim for medical reimbursement of expenses incurred is not in consonance with law.

6. Learned counsel would also contend that a similar employee Ms. Jaya was allowed the similar benefits in the past, which have not been extended to the applicant, constituting invidious discrimination.

7. On the other hand, learned counsel for respondents vehemently opposed the contentions. Along with the reply, Medical Reimbursement Rules have been appended, according to which only in exceptional circumstances, expenditure incurred in excess of the limit would be suitably reimbursed to the officer.

8. Learned counsel would also contend that the case of Ms. Jaya, which has been cited by the applicant, was different, as she suffered from different ailments, like surgery of malignant tumor and in case of emergency only her claim for medical reimbursement was allowed. It is also stated that the emergency includes open heart surgery, serious accidents while on official tours, accidents leading to surgery, surgery of malignant tumor, renal failure, etc. Apart from it, applicant, who delivered a healthy male baby by caesarean operation in 35 weeks with a healthy child and all other hormones remained normal, could not be treated a case of medical emergency. In such an event, what has been paid to the applicant is as per the rules and guidelines.

9. Learned counsel for respondents would also contend that there is no certification by the Doctor as to the case of the applicant being an exceptional. As such the CWP, which has been transferred to this Tribunal as TA, filed by the applicant is liable to be dismissed.

10. We have carefully considered the rival contentions of the parties and perused the records.

11. Medical reimbursement to a government employee is not a charity by the Government. It is on the basis when one contributes through his salary and medical policies, he / she is entitled for medical reimbursement. However, it cannot be claimed as a right in the context of financial burden on the Government but when a laid down policy is there, which envisages grant of medical reimbursement to the employee in emergency, then the authority, which is competent to certify such an emergency, cannot be a departmental authority. It is only an expert in the field, which is competent and has jurisdiction to certify whether the treatment incurred was in a state of emergency or not.

12. In the light of above, in the case of applicant, who was 39 years of age when she underwent LSCS in 35 weeks of her pregnancy in the circumstances and a situation where due to heavy bleeding the normal delivery was not possible and could have entailed death of the baby, an emergency LSCS was done. This was duly certified by Dr. M. Kochhar, Senior Consultant, Obstetrics & Gynaecology, who is specialist in endoscopy and infertility. Subsequently, the said Doctor has certified to this effect that the LSCS done in case of the applicant in preference to normal delivery would have had saved the child, who could have died and the applicant would have also suffered excessive haemorrhage. When these reports have been confronted with C-DOT specialist Dr. Sudha Jolly, she certified that the applicant was diagnosed as a case of elderly primipara with placenta anterior and low-lying, which is sufficient to hold that the procedure underwent on 17.9.2004 was in emergency.

13. According to Medical Reimbursement Rules of C-DOT, medical reimbursement over and above the limit is to be made only in exceptional circumstances. We do not find such exceptional circumstances being defined under the Rules. Restricting this medical emergency to only her on account of failure of kidney, failure of tumor, etc. in the context of intricacy and complicated procedure involved, would not be a logical and rationale conclusion of the respondents. An emergency in medical science is to be viewed with a resultant damage to the person, who is undergoing treatment. The certificate issued to the applicant certainly certifies and reiterated by C-DOT Doctor that had this LSCS not been done in case of the applicant, not only the child would have died but also the mother would have had excessive haemorrhage, which is in common parlance by applying the test of a common reasonable prudent man, is fatal to human life. In such circumstances, denial of medical reimbursement cannot be countenanced in law.

14. Resultantly, TA is allowed. Respondents are directed to reimburse to the applicant, treating her case as an emergency one, the expenses incurred by her on pregnancy and LSCS within a period of two months from the date of receipt of a copy of this order. No costs.

(Dr. Veena Chhotray)
Member (A)

(Shanker Raju)
Member (J)

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