43

Central Administrative Tribunal
Principal Bench, New Delhi.

OA-2259/2002
MA-1490/2004

New Delhi this the 6th day of April, 2005.

Hon'ble Shri Shanker Raju, Member(J)

Shri P.C. Rajpal,
Ex-Chief Ticket Inspector,
Northern Railway, New Delhi.
Presently R/o 225 Pocket-E,
Mayur Vihar, Delhi. ....
Applicant

(through Sh. M.L. Chawla, proxy for Sh. B.S. Mainee, Advocate)

Versus

1. The Secretary – Railway Board,
   Ministry of Railways,
   Rail Bhawan,
   New Delhi.

2. The General Manager,
   Northern Railway,
   Baroda House,
   New Delhi.

3. The Chief Medical Director,
   Northern Railway,
   Headquarters,
   Baroda House,
   New Delhi. .... Respondents

(through Sh. Rajender Khatter, Advocate)

O R D E R

Heard the learned counsel.

2. Applicant claims reimbursement of balance amount of Rs. 1,00,896/- of his medical claim with interest.

3. Applicant, a retiree from Railways suffered a heart attack and was admitted in emergency to Escorts Heart Institute. An essentiality

44

certificate was issued. Angiography and Angioplasty were conducted. He accordingly informed the Chief Medical Director of the circumstances in which applicant was admitted to Escorts Heart Institute and submitted his claim for medical reimbursement. A cheque of Rs. 90,638/- was issued to the applicant. When represented for remaining amount, finding no response, the present OA has been filed.

4. Learned counsel states that the applicant has been treated as a pensioner in emergency situation. As such, he is entitled to full reimbursement.

5. On the other hand, respondents' counsel Shri Rajender Khatter vehemently opposed the contentions and by referring to Railway Board's letter dated 23.11.2000 stated that in case of retiree, reimbursement is restricted to the rate of AIIMS and as the applicant has already been paid an admissible amount of Rs.90,638/-, rest of the amount is not sustainable.

6. I have carefully considered the rival contentions of the parties and perused the material placed on record.

7. An order passed in OA-966/2004 (***Pramod Kumar Vs. U.O.I. & Ors)*** in a similar situation by holding, as follows, full reimbursement has been allowed:-

> "The above discussion now brings me to Railway Board's letter dated 23.11.2000, where the following decision has been taken:
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> Sub: Reimbursement of medical expenses incurred on treatment taken by Railway beneficiaries in private Hospitals.
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> Instances have come to Board's notice where Railway beneficiaries (both serving and retired) had taken treatment in Private Hospitals, without being referred by AMA, in the Hospitals of their own choice. It is observed that Zonal Railways in almost all cases recommend the same amount for approval by Board

which is charged by the Private Hospitals and claimed by the beneficiaries. This kind of recommendations of the Zonal Railways lead to court cases when such recommended amounts are not agreed to by Board. In such cases, it is presumed by the claimants that such amounts, as are recommended by the Zonal Railways, where actually reimbursable to them. As a matter of fact, such claims are to be scrutinized by the Zonal Railways with a view to their admissibility and should recommend only the amount that would have been charged by Government Hospitals/Railway Hospitals from non-railway patients or the expenditure of Railway recognized Hospital in such non-referred cases depending on merits of clinical compulsion. However, the clinical features compelling the patients/such beneficiaries should invariably be indicated in the detail report of the CMDs so that there is no scope for the beneficiary to have wrong notions about the admissibility of the amount spent by them and presume the same to be reimbursable. Thus, it requires to be verified and scrutinized as per extant rules before forwarding such non-refereed cases for consideration by Board. It is desired that the rates of Government Hospital/non Railway hospital for treatment in Railway Hospital/Railway recognized Hospital should be accompanied for early disposal of the case. Breakup of expenditure should also be clearly indicated. This will help better appreciations of the claims and avoid further litigation.

Please acknowledge the receipt."

The above Railway Board's decision only lays down that the scrutinization of claims of persons where railway servants have taken treatment in private recognized hospital the criteria would be the reimbursement of the amount which could have been incurred on treatment at Government hospital or what could have been charged by the Railway Hospital from non-Railway patients. The aforesaid decision, though a policy decision, has not over-ridden the decision dated 10.9.99, which is in vogue and in that event if the treatment is taken in a Government recognized hospital full reimbursement is to be accorded.

In **Ram Lubhaya Bagga** (supra) though a decision by a three-Judge Bench of the Apex Court has dealt with as a ratio decidendi the policy of Punjab Government promulgated on 13.2.95 where the decision was to reimburse as per the AIIMS rates, while adverting to the financial resources the following observations have been made:

"29. No State of any country can have unlimited resources to spend on any of its projects. That is

why it only approves its projects to the extent it is feasible. The same holds good for providing medical facilities to its citizens including its employees. Provision of facilities cannot be unlimited. It has to be to the extent finances permit. If no scale or rate is fixed then in case private clinics or hospitals increase their rate to exorbitant scales, the State would be bound to reimburse the same. Hence we come to the conclusion that principle of fixation of rate and scale under this new policy is justified and cannot be held to be violative of Article 21 or Article 47 of the Constitution of India."

A ratio decidendi of a decision is to be derived not only from reading the head notes or concluding part but also from the cumulative reading of the facts and circumstances, issue in question, adjudication and conclusion thereon. I am fortified in my conclusion by a decision of the Apex Court in **Islamic Academy of Education v. State of Karnataka**, 2003 (6) SCC 697. In **Ram Lubhaya Bagga** (supra) with a particular reference to the policy of Government of Punjab restricting the treatment to AIIMS rates what has been held is that Government has to limit the facilities to citizens and if no scale or rate is fixed in private clinics or hospitals they would be charging exorbitant scales and the State would be bound to reimburse the same. As such the decision has not laid down any proposition of law keeping in view the Railway Board's letter dated 10.9.1999 which has not been considered, the decision cannot be treated as a general proposition of law on admissibility of full expenses in the case of Railway servant, as the Apex Court had no occasion to go into the vires of the policy laid down by the Railways. As such the decision is distinguishable and would not apply to the facts and circumstances of the case.

The decision in **Surjit Singh** (supra) also meets the same fate.

In so far as the contention raised by respondents as to the policy decision of the Government is concerned, in **Balco's** case (supra) as well as in **P.U. Joshi v. Accountant General**, 2003 (1) SCSLJ 237 in a judicial review a policy decision of the Government would be amenable for interference if it is malafide or is an infraction of principles of equality enshrined under Article 14 of the Constitution of India. In the above backdrop when there is no laid down guidelines to reimburse a railway servant of his medical expenses as per AIIMS rates the same cannot be thrust on railway servant and rather Rule 616 of IREC-I which has been shaped as a statutory rule allows full reimbursement

47

without any reference to AIIMS rates cannot be overridden by a Railway Board's circular of 2000. The circular issued is a policy decision in 1999 ibid supplements the aforesaid rules and has to prevail.

Another aspect of the matter is the decision in **Nirupam Pahwa** (supra). It is trite law that if a decision of the coordinate Bench does not take into consideration the statutory provisions or is decided in ignorance of it, same has no precedent value and would be a decision per incuriam. I am fortified in my view by the decision of the Apex Court in **Furest Day Lawson Ltd. v. Zindal Export,** (2001) 6 SCC 356. The decision in **Nirupam Pahwa** (supra) by a coordinate Bench has neither taken note of guidelines of 1999, as such the same would not be a binding precedent. Moreover, it is trite law that in the event a decision of the higher Court is available the same impliedly overrules the decision of the coordinate Bench and in that event there would be no violation of the doctrine of precedent by following the decision of the higher coram.

In **Milap Singh** (supra) High Court of Delhi after meticulously going into all the points raised allowed full re-imbursement to the concerned.

Recently the High Court of Delhi in **J.K. Saxena** (supra) while referring to the decision of Division Bench observed as under:

> "4. Reference may be invited to the decision of this Bench in V.K. Gupta v. Union of Inia reported at 97 (2002) Delhi Law Times 337 and a decision of the Division Bench in Sqn. Commander Randeep Kumar Rana Vs. Union of India (WP(C) No.2464/2003). The Division Bench in the above cited case had, while dealing with the amount charged in excess than the package rate, held as under:-
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> 'Now we come to the plea which has been taken by the respondent in the counter affidavit. It has been contended in para 11 of counter affidavit that it is the duty of the citizens to see and ensure that such recognized hospital do not charge excess of the package rates. How a citizen can ensure that a hospital does not charge over and above the package rate? The power to lay down guidelines is with the respondent. A citizen is a mere spectator to what State authority do and decide. If the hospital has charged over and above the package rate, the respondent is under an obligation to pay such charges as the petitioner has incurred over package rates at the

applicant was working was a non-Gazetted grade in the Railway and in view of the judgment of the Hon'ble Supreme court dated 20.04.1993. It was observed that the issuing passes/PTO was within the prerogative of Ministry of Railway/Railway Board and he facilities provided to the Railway employees would be subject to the policy guidelines laid down by the department. The judgment does not throw light on the question which requires determination in the present case. Counsel for respondent next cited H.C. Bhandari vs Union of India OA-1023/2003 decided on 20/07/2004. It was a case where the respondents were directed to consider the case of the reimbursement of medical expenses of Railway employee taken at Escorts Hosptial at the rate prescribed at AIIM in light of the judgment of the Hon'ble Supreme Court referred to. The judgment also come to the rescue of the respondent in this case because of its own distinguishing features. Firstly, in the present case reference has already been made to the AIIMS for treatment of the patient, secondly, the treatment was taken at a recognized hospital, thirdly, the treatment was taken at an emergency. Counsel for respondents had himself suggested that the reimbursement of the claim may be restricted to the rates prescribed at AIIMS. The Apollo Hospital was a recognized hospital and expenses for treatment undertaken there could have been reimbursed as per rule had the patient been referred to that hospital. The Central Railway Hospital had, in fact, referred the patient to the AIIMS where on account of non-availability of bed she could not be given emergency treatment. To save her life the patient was admitted in the Apollo Hospital which was nearest to the place where the need of emergency treatment arose. It was also a recognized hospital.

For the reasons stated above, the rejection of the claim of the applicant for treatment by the order impugned in this case is not sustainable. It is, accordingly, set aside. It is directed that the respondents shall give reimbursement to all the expenditure incurred by the applicant on the emergency treatment of his mother Smt. Bilquis Fatima taken at Apollo Hospital at the same rate at which it would have reimbursed the medical claim had the treatment been taken by the patient on referral to the said Apollo Hospital by the Central Hospital of the Railways. In the circumstance, the parties are left to bear their own costs."

first instance and if in law State can recover from the hospital concerned, they may do so but they cannot deny their liability to pay the Government employee, who is entitled for medical reimbursement.'

In view of the foregoing dictum, as laid down by the Division Bench, petitioner is entitled to reimbursement of the full amount. A writ of mandamus shall issue to the respondent to pay the balance amount of Rs.36,000/- to the petitioner within six weeks from today. In case, payment is not made, petitioner would also be entitled to interest @ 9% per annum on the aforesaid amount in future."

If one has regard to the above the Division Bench decision of the High Court of Delhi is binding on me and as per it if the hospital has charged more than the package rate it is for the State to recover it from the hospital but does not deny the right of the government servant to get the actual expenses reimbursed.

Recently the Principle Bench of this Tribunal in OA-131/2002 (supra) decided on 22.12.2004 made the following observations:

"20. Counsel for respondents has also relied upon M.L. Kamra v. Lt. Governor & others III-2003 AISLJ 304 where reimbursement claim of a State Government employee, for taking treatment at Apollo hospital, was declined by the Court. However, it is not the case of the applicant because it was the case of the employee who has gone to the hospital of his own choice and Hon'ble Supreme Court had allowed the reimbursement of the claim made by the employee. Counsel of the respondents also cited Nirupam Pahwa vs. Union of India and others in OA-2516/2002 decided on 14.7.2003 where the Railways had restricted the reimbursement of the medical claim to the Railway employee to the rates prescribed at the Government hospital for such treatment. The OA was dismissed by the Tribunal. It was held that the applicant had chosen the private hospital for treatment of his wife since he wanted her to be treated by certain doctors who are working for the private hospital chosen by the applicant. It is not a case of emergency treatment. In Northern Railway Section Officer/Assistant Audit Officers Association versus Union of India and others OA-3309/2001 decided by the Principal Bench on 31.03.2004 wherein the facility of Class-A Pass availed by them as Gazetted Officers had been withdrawn since the grade in which the

The Courts are not precluded from taking a pragmatic view of the situation being a Welfare State the Medical Attendance Rules and re-imbursement of medical expenses is a beneficial legislation to protect the life of a government servant and it is the duty of the Government to provide necessary infrastructure. It is very unfortunate that except AIIMS no other hospital of the Government is well equipped to meet the exigencies and to facilitate the object of Article 21 in protecting the life of the government servants and their families. It is high time for the Government to think over it and to provide such an infrastructure to these hospitals by upgrading them to bring at par with other private specialized hospitals. The basic object for recognition of private hospitals was the same. The government servant or his family members when taken seriously ill with all logic and rational and as a normal human tendency seeks the best of the treatment which is available at private hospitals recognized by the Government. On approaching these Institutions it is expected by the government servant that the medical treatment tendered and expenses incurred would be reimbursable within the package rate as specified by the Government. If the hospital charges more there is no attribution to it by the concerned government servant who is helpless and constrained in order to save himself and the members of his family from the verge of death. Bargain arrived at by the private recognized hospitals is not only inhuman but also victimization of government servant as the very condition of their recognition in case a government servant approaches them for treatment is to charge from the Government directly the medical expenses at the package rate. Exceeding the aforesaid amount is neither justifiable nor reasonable. With the limited sources and monthly contribution to the medical scheme even if the state limit finances to the project of health, yet it does not absolve them from strict adherence to the package rates and directives from time to time to the concerned hospitals. I earnestly hope that the Ministry of Health and Family Welfare would ponder over this and take appropriate measures without any fault of the government servant on equitable principles and legitimate expectation he cannot be deprived of the actual reimbursement of the amount incurred on the treatment in an emergency, though charged excess by the hospital. There are ways and means and resources with the Government to recover the aforesaid amount or to take appropriate measures against the erring Institutions. In that event, law shall take its own course.

I am satisfied that rejection of request for full reimbursement of medical expenses to applicant is neither legal nor justifiable.

21. In this view of the matter, applicant is entitled to full reimbursement of his medical claim. Accordingly, OA is partly allowed. Respondents are directed to reimburse to the applicant balance amount of Rs. 1,00,896/- within two months from the date of receipt of a copy of this order but without any interest. No costs.

S. Raju

(Shanker Raju)
Member(J)

/vv/