

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA 978/2002

New Delhi, this the 29<sup>th</sup> day of January, 2003

Hon'ble Sh. Shanker Raju, Member (J)

Sh. S.R.Jha  
Retired Chief Draughtsman (Mech)  
Northern Railway, Baroda House  
New Delhi.

...Applicant  
(By Advocate Sh. B.S.Mainee)

(12)

V E R S U S

1. The Union of India through  
The Director General  
Health Services  
Ministry of Railways, Rail Bhawan  
New Delhi.
2. The Chief Medical Director  
Northern Railway, Baroda House,  
New Delhi.
3. Medical Director  
Northern Railway  
Central Hospital  
Paharganj, New Delhi.

...Respondents

(By Advocate Sh. Rajender Khatter)

O R D E R

By Hon'ble Sh. Shanker Raju, Member (J)

Applicant impugns respondents order dated 1-8-2001 and 22-11-2001 wherein his claim for reimbursement of medical expenses has been scaled down to Rs. 1,33,866/- from Rs. 1,87,349.75/-. He claims balance amount of, Rs. 53,484/- along with 18 % interest.

2. Applicant has retired as Chief Draughtsman on 31-10-1991 and joined Retired Employees Liberalized Health Scheme (here in after referred to as RELHS).

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3. On 3-9-2000 while attending a family function, due to severe heart pain, applicant was rushed to the casualty department of nearby Sir Ganga Ram Hospital. He was admitted in ICCU on the advice of Cardiologist and Angiography was conducted on 4-9-2000. As per report severe blockade was found in the arteries and immediately Angioplasty was performed on 6-9-2000.

(13)

4. Applicant after discharge from the Hospital submitted representation to the respondents alongwith proforma having details of treatment taken and expanses incurred as claim. He further furnished breakup of Rs. 95,000/- as charges for Angioplasty to the Sr. D.M.O. On query of the respondents lateron a breakup of expanses and charges for the treatment has been furnished to the applicant by the Hospital authorities. By an order dated 1-8-2001 against a claim of Rs. 187,349.75/-, a sum of Rs. 133,866/- was recommended. Applicant preferred a representation which was rejected on 22-11-2001 giving rise to the present OA.

5. Learned counsel of the applicant Sh. B.S. Mainee by referring to respondents' own policy laid down through Board's letter dated 23-11-2000 contended that even non-referral cases where the patients have been admitted in emergency as the present case, the claims are admissible and to be recommended on the basis that amount that would have been charged by Govt. Hospital/Railway Hospital from non railway patients or the expenditure of railway recognized hospital in such non-referral cases is to

be allowed. In his rejoinder, applicant has demonstrated that Batra Hospital as well as Apollo Hospital which are recognized by the respondents for a similar surgery, the charges would have been more than what has been claimed by the applicant as such his claim is to be reimbursed in full.

(14)

6. Sh. B.S. Maine, learned counsel relying upon the decision of the Hon'ble High Court of Delhi in CWP 4305/2001 in V.K. Gupta Vs. UOI & Anr. decided on 5-4-2002 contended that therein full reimbursement has been allowed to the petitioner.

7. Moreover placing reliance on a decision of the Co-ordinate Bench of the Tribunal in OA 1272/2000 decided on 10-5-2001 in K.P. Owdhbal Vs. UOI & Ors., full reimbursement was allowed. Sh. Maine also relied on the decision of this Court in OA 2350/2001 in R.S. Oberoi Vs. UOI & Ors. decided on 18-3-2002 to propagate his plea.

8. Sh. Maine also drawn my attention to Railway Board's letter dated 23-10-97 where it has been decided that under the RELHS, full medical facilities as admissible to serving employees under the Railway Medical Attendant Rules is to be accorded and on this strength it is stated that the applicant is entitled for the remaining amount.

9. Sh. Rajender Khatter, learned counsel for the respondents vehemently opposed the contentions and stated that firstly the case of the applicant was non-referral and he has taken treatment from Sir Ganga

Ram Hospital which is not recognized for cardiac surgery. Under RELH Scheme, the maximum amount to be reimbursed is restricted to Rs. 1,00,000/- but as a matter of indulgence and taking a sympathetic view more amount has been reimbursed to the applicant.

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10. It is further stated that in non-referral cases as per policy decision dated 23-11-2000, amount that would have been charged by Govt. Hospital should be reimbursed and accordingly the rates at which AIIMS had charged for the similar surgery has already been made admissible to the applicant.

11. While distinguishing the decision cited by the applicant it is stated that those cases were not non-referral and the treatment was taken in recognized hospitals as such the same would not apply to the case of the applicant.

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

13. Denial of full reimbursement of the medical expanses to the applicant incurred on his treatment taken in emergency cannot be countenanced and is not legally sustainable.

14. No doubt after retirement, the applicant has subscribed to RELH Scheme but having decided by the Railway Board to treat the applicant under this Scheme to be provided full medical facilities as admissible to serving employees under the Railway

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Medical Attendant Rules of their letter dated 23-10-1997, these employees have been made entitled for the benefits at par with the serving employees and the contention that claim is restricted for cardiac surgery to 1,00,000/- is unfounded and cannot be entertained.

(16)

15. In so far as the plea that applicant's case was non-referral as such he cannot be accorded full medical reimbursement is concerned, even in non-referral cases where the patients are admitted in emergency, the medical reimbursement cannot be denied. From the facts and circumstances of the present case when the applicant had suddenly developed severe heart pain, he was admitted to ICCU in the nearest hospital i.e. Sir Ganga Ram Hospital and was immediately subjected to the Angiography on 4-9-2000 and operated (Angioplasty) on 6-9-2000, clearly shows that the case of the applicant was of emergency and had this Angioplasty not conducted due to the severe blockade in arteries, the applicant would have lost his life.

15. In so far as restricting the claim of the applicant for medical reimbursement on the ground that Sir Ganga Ram Hospital is not recognized for cardiac surgery and what ever has been admissible as per the treatment in AIIMS, the claim is in accordance with rules is concerned, the respondents own policy decision taken through letter dated 23-11-2000 is reproduced :-

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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, were 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-referred 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 appreciation of the claims and avoid further litigation.

16. If one has regard to the aforesaid

Railway Circular what has been made admissible is the expenditure of the railway recognized hospital in non-referral cases. If the same treatment has been undertaken in recognised hospitals like Batra Hospital

and Apollo Hospital, which is not disputed as per the Certificate issued by the Hospital and proforma schedule of charges an expenditure of Rs. 2,00,400/- would have been incurred in Batra Hospital and a sum of Rs. 2,37,500/- in Apollo whereas the sum has been Rs. 1,83,457 in Sir Ganga Ram Hospital. As such the claim of the applicant for medical reimbursement is for more less than what has been admissible in recognized hospital. If the railway would have incurred the same as per their own Circular.

(18)

17. Moreover the contention of the respondents that the decision cited would not be applicable as the applicant's case firstly was non-referral and had taken treatment in a non-recognized hospital, cannot be countenanced as the same is permissible under the instructions *ibid*.

18. Hon'ble Delhi High Court in almost similar circumstances while dealing with the claim of the petitioner who was employed in Delhi High Court and covered by CGHS in *V.K.Gupta Vs. UOI & Anr.* (supra) observed as follows :-

"7. The cost of medical treatment has been rising over a period of time and respondents cannot deny the actual reimbursement from a Hospital recognised by them for treatment on the basis of applying the rates as per the previous Memorandum which were intended for a period of two years and were subject to revision. Reference is also invited to a decision of a Coordinate Bench of this Court in Civil Writ No.5317/1999 titled M.G.Mahindru vs. Union of India and another decided on 18.12.2000 wherein the learned Single Bench relying on the decisions of Narendra Pal Singh vs. Union of India and others 79(1999) DLT 358 as well as State of Punjab & Others vs. Mohinder Singh Chawla etc. JT 1997(1) SC

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416 directed reimbursement of the full expenses incurred. In the instant case, it is not in dispute that the said facility or treatment was not available at CGHS or RML Hospital and the petitioner was referred after due permission to a speciality hospital duly recognised by the respondents. The respondents cannot, therefore, deny full reimbursement to the petitioner by placing reliance on an earlier memorandum of 1996 wherein the rates given were applicable and intended for a period of two years on the ground that the said rates have not been revised.

8. The Supreme Court had duly noted in State of Punjab and others vs. Mohinder Singh Chawla etc. (supra) that the right to health is integral to right of life. Government has constitutional obligation to provide the health facilities. If the Government servant has suffered an ailment which requires treatment at a specialized approved hospital and on reference whereat the Government servant had undergone such treatment therein, it is but the duty of the State to bear the expenditure incurred by the Government servant. Expenditure, thus, incurred requires to be reimbursed by the State to the employee.

9. Reference may also be usefully invited to the last Office Memorandum bearing F.No.Rec-24/2001/JD(M)/ CGHS/DELHI/CGHS(P) Government of India, Ministry of Health & Family Welfare dated 7.9.2001. The said circular reconsidered the question of recognition of private hospitals, diagnostic centres under CGHS scheme for specialized treatment as well as fixing of package ceiling rates. The salient term as per this Memorandum is that the recognised hospital is obliged not to charge more than the package rates from the beneficiary.

10. The only submission by learned counsel for respondent Ms. Pinky Anand was that the respondents had reimbursed the rates as per the circular of 1996 and in all other cases reimbursement had only been done when ordered by the Court. This is hardly a satisfactory state of affairs. Respondents are required to be more responsive and cannot in a mechanical manner deprive an employee of his legitimate reimbursement, especially on account of their own failure in not revising the rates. In view of the foregoing discussion and the judicial pronouncements as noted above, the petitioner is entitled to full reimbursement of the expenses incurred at the Escorts Heart Institute & Research Centre, New Delhi where he was duly referred for specialized treatment by the

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respondents after according permission. Escorts Heart Institute & Research Centre being a recognised hospital for this purpose, the petitioner is entitled to be reimbursed the actual expenses, as incurred. A writ of mandamus shall issue to the respondents who shall pay Rs.70,115.85 to the petitioner within four weeks from today, together with costs assessed at Rs.1,500/-."

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19. If one has regard to the aforesaid ratio, I am of the considered view that the applicant is legally entitled to full reimbursement of the expanses incurred at Sir Ganga Ram Hospital which is in tune with Railway Board's letter dated 23-11-2000.

20. In the result for the forgoing reasons, OA is allowed. Impugned orders dated 1-8-2001 and 22-11-2001 are quashed and set aside. Respondents are directed to reimburse to the applicant a balance amount of Rs. 53,484/- along with simple interest @ 12 % till date of actual payment within two months from the date of receipt of a copy of this order. No costs.

*S. Raju*  
(Shanker Raju)  
Member (J)

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