

Central Administrative Tribunal
Principal Bench

O.A.No.945/2002

Hon^{ble} Shri Shanker Raju, Member(J)

New Delhi, this the 19th day of February, 2003

Sunil Kumar Jana
s/o late Shri Kalipada Jana
r/o Qr. No.22C, Northern Railway
Colony, Tughlakabad
Delhi. ... Applicant

(By Advocate: Sh. R.K.Shukla)

Vs.

1. Union of India through
General Manager
Baroda House
New Delhi.
2. The Chief Medical Superintendent
Divisional Hospital Northern Railway
S.P.Mukherjee Marg
Delhi - 110 006. ... Respondents

(By Advocate: Sh. Rajinder Khatter)

O R D E R(Oral)

By Shri Shanker Raju, M(J):

Applicant impugns respondents' order dated 10/11.4.2001 where his request for medical reimbursement incurred towards the treatment of his wife has been rejected. Applicant has sought quashment of the same with direction to respondents to consider his claim for reimbursement of medical expenses.

2. Applicant is a Railway employee. Wife of applicant had been treated as an out patient had been referred to All India Institute of Medical Sciences (in short as "AIIMS") where she was getting treatment and lastly visited the hospital on 22.7.1999.

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(11)

3. Wife of applicant was suffering from Tuberculosis of D5-6 vertebra. On 30.8.1999, as an emergency, on account of paralysis of both her legs and chest complications and also retention of urine, applicant was admitted to the nearest Appollo Hospital, where she had been taken treatment as an emergency case and undergone MRI Scan immediately on the next date, i.e., 31.8.1999 and an operation was performed of her chest and spine, and on satisfactory progress she was discharged on 15.9.1999.

4. Applicant preferred his claim for medical reimbursement at the tune of Rs. 1,50,966/- which was forwarded to the General Manager by the Association. On an objection that the case should have been routed through Delhi Division, another proforma was filled up and submitted through proper channel on attaching the essential certificate as well as certificate of discharge along with summary sheet issued by the Appollo Hospital.

5. Claim of applicant was turned down by an order dated 11.4.2001 on the ground that the same has been found unsatisfactory without specifying any reasons. Applicant thereafter preferred a mercy petition which is still to be responded to by respondents.

6. Shri R.K.Shukla, learned counsel appearing on behalf of applicant contended that Appollo Hospital is a recognised hospital and approved by the Government of India under CGHS Scheme for taking treatment for Railway servants. The rejection of

applicant for medical reimbursement is a mechanical one which shows non-application of mind. No reasons have been assigned as to why his claim has been rejected. He places reliance on a decision of Principal Bench in Shri R.S.Sharma v. Union of India & Others, 1997(2) ATJ 205 as well as Shri Bhagwan Singh v. Union of India & Others, 2002(1) ATJ 226 wherein it has been held that claim for reimbursement of medical expenses cannot be disallowed only on the ground of non-referral case.

7. However, relying upon Rule 643 of Indian Railway Medical Manual, it is stated that applicant is legally entitled to get medical expenses and in peculiar circumstances, when the emergency has been certified by the Appollo Hospital, the case of applicant should have been allowed for medical expenses and is permissible under the Rules.

8. On the other hand, Shri Rajinder Khatter, learned counsel appearing on behalf of respondents strongly rebutted the contentions and took a preliminary objection of non-exhausting of remedy under Section 20 of the Administrative Tribunals Act, 1985 and stated that although they have not received any mercy petition and if at all the same has been filed, applicant should have been waited for the outcome of the same.

9. On merits, it is stated that applicant was known the case of Tuberculosis and had lastly visited the hospital on 22.7.1999, as an out patient it is not clear that she had taken the opinion of Orthopedic

Surgeon at AIIMS and denies that wife of applicant was admitted in Appollo Hospital in emergency. It is further stated that even after discharge from Appollo Hospital, no information of illness was given to the authorised medical attendant.

10. However, on the ground of non-referral case to Appollo Hospital, and the fact that applicant could have been operated at AIIMS where treatment has been taken as such he defended the order, respondents have denied the medical reimbursement to applicant.

11. I have carefully considered the rival contentions of parties and perused the material on record. It is not disputed that applicant had been suffering from Tuberculosis and was getting treatment at AIIMS. However, on 30.8.1999, due to sudden paralysis of both legs and chest complications and retention of urine and the fact that applicant was residing at Tughlakabad from where AIIMS hospital was too far, and in emergency condition of sudden, took his wife to Appollo Hospital which is a recognised and is on the panel of Railways. The emergency in the case is also apparent from the fact that an MRI Scan was done on the same to save her life, an emergency operation was carried out which was performed on 31.8.1999. Essential certificate as well as the certificate issued by Senior Consultant Orthopaedic Surgeon confirms the fact of emergency and cannot be disputed. As such, it is not open to the respondents to aver that applicant was only suffering from Tuberculosis and could have visited the AIIMS.

12. Moreover, as held by the Apex Court in Surjit Singh V. State of Punjab and Others, JT 1996(2) SC 28, and also Pt. Parmanand Katara v. Union of India & Othrs., AIR 1989 SC 2039 preservation of human life is of paramount importance and if it is lasted, the status-quo ante cannot be restored as resurrection is beyond the capacity of man. Moreover, as per Railway Medical Mannual ibid and also the guide-lines issued from time to time, Railway servant in case of emergency even without non-referral by the Railway Hospital is entitled to be reimbursed the medical expenses incurred in case of emergency.

13. Having regard to the ratio laid down by Apex Court as well as by the decision of Co-ordinate Bench, the claim of applicant has been rejected without a speaking order showing non-application of mind and on this count alone, the same cannot be sustained. Respondents should have taken a note of emergency treatment incurred as well as certificate issued by the Appollo Hospital they should have acted in accordance with their Rules and guide-lines.

14. In the result, for the foregoing reasons, OA is partly allowed. Impugned order dated 10/11.4.2001 is quashed and set aside. Respondents are directed to reconsider the claim of applicant for medical reimbursement without being influenced on a referral and dispose of the same 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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Jus MAs - FOT/CSO