

✓

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

O.A. NO.2516/2002

This the 14<sup>th</sup> day of July, 2003

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

Nirupam Pahwa S/O H.R.Pahwa,  
Working as Coaching Clerk, Reservation,  
Northern Railway,  
R/O B-1/38 Sector 18, Rohini,  
Delhi-110085.

... Applicant

( By Shri S.K.Sawhney, Advocate )

-versus-

1. Union of India through  
Secretary, Railway Board,  
Rail Bhawan,  
New Delhi-110001.
2. General Manager, Northern Railway,  
Headquarters Office Baroda House,  
New Delhi.
3. Divisional Railway Manager,  
Northern Railway, DRM Office,  
State Entry Road, New Delhi.
4. Chief Medical Superintendent,  
Northern Railway,  
Delhi Main Hospital.
5. Commercial Inspector (Planning),  
Divisional Railway Manager,  
Northern Railway, DRM Office,  
State Entry road,  
New Delhi.

... Respondents

( By Shri Rajinder Khatter, Advocate )

O R D E R

Applicant through this OA has challenged the  
following :

- (1) Annexure A-1 dated 20.3.2002 whereby a sum of -  
Rs.75,775/- has been paid by way of reimbursement  
of medical expenses incurred on his wife against a  
claim of Rs.1,83,461.05.

✓

(2) Annexure A-2 dated 27.3.2001 whereby full medical claim was denied on the ground that applicant had by-passed the Railway Hospital for purposes of getting treatment of his wife.

(3) Annexure A-3 dated 8.6.2001 whereby applicant's medical claim was regretted on certain grounds.

2. The learned counsel of applicant stated that applicant's wife had received initial treatment for T.B. between 10.2.1995 and 26.5.1997 at Delhi Main Northern Railway Hospital. As the condition of applicant's wife was deteriorating, Prof. J.S.Guleria of All India Medical Sciences (AIIMS), New Delhi was consulted on 4.6.1997 and the treatment recommended by him was repeated by the Central Hospital, Northern Railway, New Delhi during the period 6.10.1997 and 7.1.1998. Prof. Guleria, after his retirement from AIIMS started working at Sitaram Bhartiya Institute of Science and Research (SBISR). On 20.5.1998 applicant's wife is stated to have been taken to Prof. Guleria at SBISR in emergency. She was diagnosed to be suffering from Tubercular Meningitis. She was discharged from SBISR on 22.5.1998. Her condition deteriorated and she was re-admitted in SBISR from 23.5.1998 to 24.5.1998. SBISR referred applicant's wife to VIMHANS for VP Shunt Surgery. She remained admitted in VIMHANS from 24.6.1998 to 17.7.1998 under the treatment of Prof. A.K.Banerjee who had retired from AIIMS. The patient was re-admitted to SBISR in coma from 17.7.1998 to 25.7.1998 as referred by Prof. Banerjee. She was referred to VIMHANS by Prof. Guleria where she

was re-admitted from 25.7.1998 to 27.7.1998. She died on 27.7.1998. Applicant submitted claim for reimbursement of medical expenses at SBISR and VIMHANS. According to the learned counsel of applicant, CMI/Planning DRM's Office kept the file with them from 8.2.1999 to 3.3.2000 and then forwarded the bill to CMS/Delhi Main Hospital on 18.8.2000. The claim is stated to have been recommended by CMS/Delhi Main Hospital on 8.1.2001. OS/Medical was asked to work out the amount of reimbursement after deducting the amount not due. OS on 14.2.2001 worked out that an amount of Rs.1,78,303/- was admissible against a total claim of Rs.1,83,461.05. Divisional Accounts also vetted the proposal for sanction of Rs.1,78,303/- on 27.2.2001. However, the claim was rejected by CMD on the ground that applicant had by-passed the Railway Hospital. In appeal made to the General Manager, the claim was rejected on 11.4.2001. CMD also rejected the appeal on 8.6.2001. Ultimately, on 20.3.2002 an amount of Rs.75,775/- only was sanctioned.

3. The learned counsel of applicant has raised the following contentions in support of applicant's claim :

(1) Medical attendance and treatment rules envisaged in Indian Railway Establishment Code (IREC) Vol.-I (1985- edition) are applicable to the case in hand, particularly paragraph 616 is applicable which is reproduced below :

"616. Charges for services rendered in connection with medical attendance on, or treatment of, a member of a railway servant's family at a hospital other than a railway hospital should be paid by the railway servant.

to the hospital authorities. The Railway Administration will reimburse the cost of medical attendance or treatment on the production of hospital bills countersigned by the authorised medical attendant."

The learned counsel stated that when treatment has been received at a hospital other than a railway hospital, entire expenses have to be reimbursed when the related bills have been countersigned by the authorised medical attendant, as in the present case.

(2) In the railway records while OS/Medical had calculated the admissibility of a claim of Rs.1,78,303/- against a total claim of Rs.1,83,461.05 and the Divisional Accounts also vetted the proposal, CMD, General Manager and the Railway Board did not have any grounds to reject or reduce the claim.

(3) While applicant had submitted the claim on 18.1.1999, not only that the entire claim should have been reimbursed, applicant is also entitled to interest at the rate of 18% per annum from 18.1.1999 when he made the initial application for reimbursement.

4. The learned-counsel of applicant relied on the following in support of his arguments :

- (1) N.B.Rao-- thru-- LRs ---- v-- Union-- of - India : Administrative Tribunal Judgments 1995 (2) 542 (CAT, Bombay);
- (2) Smt-- Gauri- Sengupta v-- State- of- Assam- : Administrative Total Judgments 2000 (1) 582 (Guwahati High Court);

(3) R.P.Mehta v. Union of India : Administrative Total Judgments 2002 (1) 264 (CAT, Chandigarh);

(4) K.P.Damodaran v. Joint Director, CGHS & Ors. : Administrative Total Judgments 2002 (2) 446 (CAT, Ernakulam);

(5) Dholan Lilaram Lulla v. Union of India : 2003 (1) SLJ 6 (CAT, Mumbai); and

(6) S.R.Jha v. Union of India : Administrative Total Judgments 2003 (2) 168 (CAT, New Delhi).

5. The learned counsel of respondents contended that when applicant has accepted a payment of Rs.75,775/- against a claim of Rs.1,83,561.05 on the basis of rates applicable for treatment in Government approved hospitals, without protest, he has acquiesced to the sanctioned amount as a full and final settlement against the claim. Moreover, applicant did not submit any representation against Annexure A-1 dated 20.3.2002. The learned counsel further stated that while applicant's wife was receiving treatment at the railway hospital for the disease of Tubercular Meningitis, at some stage she was shifted to a private hospital. She could easily have been shifted back at any stage to a railway hospital but applicant chose to treat his wife at a private hospital for over two months. Referring to rules 647(2) and 648 of the Indian Railway Medical Manual Vol.-I (2000 edition), the learned counsel maintained that a patient can be taken for treatment to a recognised hospital without the consent of the authorised medical officer, but in terms of rule 648 when treatment is required in an emergency in a recognised hospital without prior consultation with the authorised medical officer, reimbursement of the expenses incurred is possible to the extent otherwise admissible. The learned counsel stated

Vb

that in the present case applicant has been sanctioned an amount as per rules. The learned counsel has also relied on the following :

- (1) M.L.Kamra v. Lt. governor & Ors. : 2003 (1) SLJ 304 (High Court, Delhi);
- (2) State of Punjab & Ors. v. Ram Lubhaya Bagga etc.: JT 1998 (2) SC 136; and
- (3) Ram Dev Singh & Ors. v. Union of India : Administrative Total Judgments 2003 (2) 19 (Full Bench, CAT/Chandigarh).

6. In the case of N.B.Rao (supra) it was held that in a case of grave emergency, a patient can be taken to a hospital to which he would have had easy access without prior sanction/consultation of the authorised medical attendant and in a case of grave emergency such as heart attack, the patient cannot be tied down to observations of technical rules. In the case of Smt. Gauri Sengupta (supra) the Guwahati High Court held that denial of reimbursement of medical expenses in an emergency on the ground that the petitioner got the treatment in a private nursing home not recognised by the Government, is not justified. In R.P.Mehta (supra) the Chandigarh Bench of the Tribunal held that administrative orders cannot be issued contrary to the statutory rules and if they are issued against specific provisions of the rules, they cannot sustain in the eyes of law and have to be quashed. A Central Government employee is entitled to full reimbursement of expenditure on medical attendance and medical treatment. Government can only restrict/limit the expenditure on treatment which has to be reimbursed on certain medical facilities/appliances which are not

covered under the terms "medical attendance" or "medical treatment". In K.P.Damodaran (supra) the Ernakulam Bench of the Tribunal held in the case of a patient taken to a private unrecognised hospital in emergency denial of reimbursement of medical expenses was not justified. Dholan Lilaram Lulla (supra) was taken for treatment to Hinduja Hospital when he suffered a serious heart attack. In this case, he was allowed medical reimbursement to the extent of rates as in Bombay Hospital which is a panel hospital. When Shri S.R.Jha (supra) suffered from severe heart pain he was rushed to Sir Ganga Ram Hospital where angiography followed by angioplasty was conducted. Shri Jha, a railway servant, was allowed reimbursement of the expenses.

7. The refrain of the cases cited by the learned counsel of applicant is that in an emergency a patient can be rushed to an unrecognised private hospital and reimbursement of medical expenses cannot be denied. He has also emphasised the ratio in the case of R.P.Mehta (supra) that administrative orders/instructions cannot supersede the rules. He submitted that applicant is entitled to full reimbursement of the medical expenses incurred on his wife in private hospitals where she was taken in an emergency. He also insisted that applicant should be paid interest on the amount which has yet not been paid.

8. On the other hand, the emphasis in the citations of the learned counsel of respondents is that while applicant could have got his wife treated at the

main railway hospital or even recognised hospitals, he chose to take the patient to private hospitals where the patient kept receiving treatment for over two months. Thus, it cannot be said that the patient had been taken to a nearby private hospital in an emergency. In any case she could have been shifted back to the railway hospital or some other recognised Government/private hospital. The import of the citations made by the learned counsel of respondents is that although the right to life may be sacrosanct, the State has a right to frame rules and policy for medical reimbursement for treatment at various hospitals and restraints can be put on such medical expenses. It has also been held in the case of **Ram Dev Singh (supra)** that medical attendance rules are not ultra vires of the provisions of the Constitution.

9. The learned counsel of applicant has contended that in terms of paragraph 616 of the IREC Vol.-I, medical attendance or treatment expenses incurred at any hospital are reimbursable when the bills are countersigned by the authorised medical attendant. The contention of the learned counsel is outright misleading when definition of "hospital", is taken into consideration. Paragraph 603(2) defines "hospital" as follows :

"(2) "Hospital" includes a Government hospital, Cantonment hospital or a hospital maintained by a local authority and any other hospital with which arrangements have been made by the Government for the treatment of Government servants."

Now, applicant had admitted his wife for treatment at SBISR and VIMHANS. These two institutions do not fall within the description of "hospital" under paragraph

16

603(2) ibid. The Indian Railway Medical Manual which has been relied upon by respondents is not found to be repugnant to the provisions of the Constitution or any other rules. Even if the Medical Manual is taken to be a compendium of instructions issued by the Railway Board from time to time, it has not been established on behalf of applicant that these are against any rules. In this view of the matter, their application to reimbursement of medical expenses as in the present case cannot be faulted. Instructions contained in paragraph 648 of the IREC have been followed by respondents. I have gone through the entire record of the railway authorities in which the claim of applicant has been dealt with. The railway authorities have been very considerate in reviewing their orders at the level of different authorities in order to consider the claim made by applicant. Just because the OS/Medical and the Divisional Accounts had recommended that a sum of Rs.1,78,303/- was admissible out of a total claim of Rs.1,83,461.05, it does not mean that it has to be sanctioned by the competent authorities in toto without further examining the claim. Railway Board after obtaining full details relating to the claim of applicant have finally approved of a claim to the extent of Rs.75,775/- which is equivalent to the rates as applicable to Government hospitals.

10. It could not be established that applicant's case had been referred to SBISR or VIMHANS. Applicant had consulted Prof. Guleria and then taken the patient to SBISR and VIMHANS on his own without involving the

W

railway hospital authorities. The patient remained in these private hospitals for over two months. It cannot be said that the patient had to be taken to these hospitals in emergency and could not have been moved back to the railway hospital or recognised hospitals. Ratios in the case of M.L.Kamra and Ram Dev Singh and Ram Lubhaya Bagga (supra) are squarely applicable to the facts of the present case. The rules that have been made applicable in the case of applicant are neither ultra vires of the provisions of the Constitution nor in contravention of paragraph 616 of IREC, Vol.-I. Despite the patient having been taken to private hospitals without reference from the railway hospital, the authorities have sanctioned reimbursement of applicant's claim to the extent admissible in Government hospitals in terms of rules contained in the Indian Railway Medical Manual. Not only that the learned counsel of applicant tried to mislead on interpretation of paragraph 616 of the IREC Vol.-I, the cases cited by the learned counsel do not come to the assistance of applicant as it has not been established that the patient had been taken in emergency to the private hospitals and had to be continued in the private hospitals on an emergent basis. The patient's case could certainly have been treated at the main railway hospital or even referred to certain other recognised hospitals. Applicant seems to have chosen the private hospitals for treatment of his wife as he wanted her to be treated by certain doctors who were working for the private hospitals chosen by applicant for treatment of his wife.

W

11. In the facts and circumstances of the case and having regard to the discussion made above finding no merit, this OA is dismissed. No costs.

V.K. Majotra

( V. K. Majotra )  
Member (A)

/as/