

**CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH**

**Original Application No.21/400/2019**

**Hyderabad, this the 30<sup>th</sup> day of January, 2020**



***Hon'ble Mr. B.V. Sudhakar, Member (Admn.)***

K.P. Johnny, S/o. K.O. Pylan,  
Aged about 69 years, Occ: Retired Chief Engineer,  
R/o. House No. 109, 10-2-273, Keerthy Sudarshan Apts,  
West Marredpally, Secunderabad – 500026.

... Applicant

(By Advocate Mr. M.C. Jacob)

Vs.

1. Union of India,  
Represented by the General Manager,  
South Central Railway,  
Rail Nilayam, Secunderabad.
2. The Principal Chief Personnel officer,  
South Central Railway, Rail Nilayam,  
Secunderabad.
3. The Principal Chief Medical Director,  
South Central Railway, Secunderabad Division,  
Sanchalan Bhavan, Secunderabad.
4. The Medical Director,  
Central Hospital, Lallaguda,  
Secunderabad.

... Respondents

(By Advocates: Mrs. Vijaya Sagi, SC for Railways)

**ORDER (ORAL)**  
**{As per B.V. Sudhakar, Member (Admn.)}**

2. The OA is filed challenging the action of the respondents in reimbursing Rs.94,506/- instead of Rs.4,05,000/-, which was claimed by the applicant for getting himself treated at a referral hospital.



3. Brief facts of the case are that the applicant retired on superannuation on 30.04.2009 as Chief Engineer in the respondents' organization. At the time of retirement, applicant joined the Retired Employees Liberalised Health Scheme (RELHS) introduced by the Railway Board by paying the contribution fixed. The scheme provides medical facility to retired employees on par with working employees. Applicant appeared before the 4<sup>th</sup> respondent hospital on 12.08.2018 and after due examination, he was referred to Apollo Hospital, which diagnosed that the applicant is having lung cancer and submitted a report to the 4<sup>th</sup> respondent. The 4<sup>th</sup> respondent vide proceedings dated 21.08.2018 referred the applicant to Apollo Hospital for evaluation and management of the cancer including inpatient service. Applicant got admitted in the hospital on 22.08.2018 and the hospital recommended Tomotherapy treatment to the applicant by letter dt. 27.08.2018 ruling out surgery, with an estimated cost of Rs.4,05,000/-. When approached, 4<sup>th</sup> respondent did not permit the treatment as Tomotherapy was not a part of the MOU entered into with the said hospital. However, in view of the precarious health of the applicant,

he paid Rs.4,05,000/- for continuing the treatment. Accordingly, Apollo Hospital commenced treatment on 03.09.2018 and completed it by 17.09.2018. Applicant submitted the claim on 01.10.2018 to the 4<sup>th</sup> respondent enclosing all the documents. By proceedings dated 21.12.2018, 2<sup>nd</sup> respondent sanctioned payment of Rs.94,506/- towards medical expenses incurred. Aggrieved by the above payment, applicant made an appeal to the 3<sup>rd</sup> respondent on 05.1.2019, but so far, no action has been taken. Consequently, the OA is filed.



4. The contentions of the applicant are that the bill was partly allowed without stating reasons. Applicant was treated by Apollo Hospital only on being referred by the respondents. The treatment had to be taken in emergent circumstances.

5. Respondents in the reply statement stated that the applicant was referred to Apollo Hospital on 12.08.2018 and after treatment, he has claimed an amount of Rs.4,05,000/- towards medical expenses. It is a fact that the applicant sought permission of the 4<sup>th</sup> respondent to get treatment using Tomotherapy, but, since the said treatment was not in the approved list of MOU with Apollo Hospital, the same was not granted. However, applicant was advised to go for treatment in another MOU Hospital. Applicant continued treatment in Apollo Hospital despite being advised to go to another hospital. On submission of the medical claim for Rs.4,05,000/-, the bill was passed only to the extent of Rs.94,506/- as per CGHS rates. The claim has



been rejected since the applicant had not gone to another listed hospital as advised. Railway Board has delegated powers vide letter dated 11.09.2013 to the General Managers, Divisional Railway Managers and Additional General Manager to sanction medical reimbursement for treatment taken in non-recognized private hospitals and without any limit for Government Hospitals including autonomous body hospitals in emergency. Applicant was sent for treatment to MOU hospital for CA Lung Stage IV. However, Apollo Hospital vide letter dated 27.08.2018 remarked as Carcinoma Rt. Lung Stage II and the case was discussed in Multi disciplinary Tumor Board and since the applicant condition was not fit for surgery, he was advised Stereotactic Body Radiation Therapy (for short "SBRT") to Lung lesions with Tomotherapy. Respondents reiterate that SBRT to Lung lesions with Tomotherapy cannot be approved since it does not figure in the MOU with Apollo Hospital. However, applicant was verbally counselled by MD/ LGD that he has the option to take treatment on his own and claim reimbursement. After treatment, the bill submitted by the applicant was processed and an amount eligible to be approved as per CGHS rates was paid.

6. Heard both the counsel and perused the pleadings on record.

7 (I) Applicant got treated at Apollo Hospital on being referred to by the respondents for Lung Cancer. As the applicant was unfit for surgery, Apollo Hospital advised SBRT to Right Lung with

Tomotherapy, vide letter dated 27.08.2018. Applicant represented to the respondents on 20.09.2018/01.10.2018 stating that Apollo Hospital has recommended the said treatment since it was essential to save his life. However, as the respondents indicated that the proposed treatment is not in the approved list of MOU with Apollo Hospital, applicant took the treatment by paying the cost of treatment. Respondents have sanctioned Rs.94560/- against the claim of Rs.405000/- made by the applicant vide letter dt.21.12.2018. The General Manager in the respondents organization has been delegated with full powers to clear the medical bill to a certain extent in case the patient is referred to non-recognized private hospitals and without any limit for Government Hospitals including autonomous body hospitals in emergency.



(II) In the background of above facts, the case needs to be analysed in depth. It is not disputed that the applicant got treated for Lung Cancer in Apollo Hospital based on the reference made by the 4<sup>th</sup> respondent Hospital. Against the Medical Bill raised by the Apollo Hospital for Rs.40500/-, the respondents have granted Rs.94,506/- on the ground that the MOU entered by the respondents with Apollo Hospital does not include the treatment given to the applicant. At this juncture, it needs to be emphasized that cancer is a fatal disease. Complications that arise with such a disease are unpredictable and are life threatening. To save his life, applicant, though was advised to go to another hospital, preferred to get treated at Apollo Hospital.

Treatment given to the applicant was Stereotactic body radiation therapy to Right Lung with Tomo Helical technique on Tomotherapy Machine with daily on board image guidance, as indicated in the discharge summary given by the Apollo Hospitals dt. 17.09.2018, filed as material at Page 14 of the OA. I have also perused the MOU (Treatment procedure/ investigations with its cost), filed along with the reply statement, which contain the treatment procedure of Tomotherapy. However, there is no mention about the type of treatment given to the applicant.



III. The facility of medical reimbursement extended to the employees is primarily a welfare measure. Primary objective is to ensure that health of the employees is taken care of. Particularly when it comes to a disease like cancer, Government comes to the rescue of the employee to save his life. More than the Rule, life is precious. The approach in dealing with such issues has to be humane. If a Government servant suffers an ailment and requires treatment in an approved hospital, it is the duty of the State to bear the expenditure incurred by the Government servant for such treatment. Indeed, Government has a constitutional obligation to provide life saving health facilities. *Defacto*, self-preservation of one's life is the necessary concomitant of the right to life enshrined in Article 21 of the Constitution. Being on the subject of preserving life, remarks made by the Hon'ble Supreme Court in *State of Karnataka v. R. Vivekananda Swamy*, (2008) 5 SCC 328, are profound and thought provoking,

which are reproduced hereunder, for us all to ponder as to the approach one has to adopt on an issue where the life of an individual is at stake, as under:-



*“20. Law operating in this field, as is propounded by courts from time to time and relevant for our purpose, may now be taken note of.*

*21. In Surjit Singh v. State of Punjab, this Court in a case where the appellant therein while in England fell ill and being an emergency case was admitted in Dudley Road Hospital, Birmingham. After proper medical diagnosis he was suggested treatment at a named alternate place. He was admitted and undergone bypass surgery in Humana Hospital, Wellington, London. He claimed reimbursement for the amount spent by him. In the peculiar facts of that case it was held:*

*“11. It is otherwise important to bear in mind that self-preservation of one’s life is the necessary concomitant of the right to life enshrined in Article 21 of the Constitution of India, fundamental in nature, sacred, precious and inviolable. The importance and validity of the duty and right to self-preservation has a species in the right of self-defence in criminal law. Centuries ago thinkers of this great land conceived of such right and recognised it. Attention can usefully be drawn to Verses 17, 18, 20 and 22 in Chapter 16 of Garuda Purana (a dialogue suggested between the Divine and Garuda, the bird): in the words of the Divine:*

*17. Vinaa dehena kasyaapi canpurushaartho na vidyate*

*Tasmaaddeham dhanam rakshetpunyakarmaani  
saadhayet*

*Without the body how can one obtain the objects of human life? Therefore protecting the body which is the wealth, one should perform the deeds of merit.*

\* \* \*

*18. Rakshayetsarvadaatmaanamaatmaa sarvasya  
bhaajanam*

*Rakshane yatnamaatishthejje vanbhaadraani pashyati*



*One should protect his body which is responsible for everything. He who protects himself by all efforts, will see many auspicious occasions in life.*

\* \* \*

20. *Sharirarakshanopaayaah kriyante sarvadaa budhaih*

*Necchanti cha punastyaagamapi kushthaadiroginah*

*The wise always undertake the protective measures for the body. Even the persons suffering from leprosy and other diseases do not wish to get rid of the body.*

\* \* \*

22. *Aatmaiva yadi naatmaanamahitebhyo nivaarayet  
Konsyo hitakarastasmaadaatmaanam taarayishyati*

*If one does not prevent what is unpleasant to himself, who else will do it? Therefore one should do what is good to himself.”*

\* \* \*

Thus, without the body, the applicant contribution to the society would be a big question mark, more so, when Government as a policy decided to take care of the health of its employees.

IV. Further, law is well settled in regard to reimbursement of medical expenses incurred by an employee, if it is found to be genuine in a catena of judgments of the superior judicial forums. In the instant case, the applicant was referred to Apollo Hospital for Lung Cancer and the said Hospital has informed that the applicant has to be treated by SRBT to Lung Lesions with Tomotherapy instead of surgery considering his health condition. The respondents did state that such a treatment is not available in the MOU, but to save his life, applicant had to necessarily go for the treatment under question. He did so and





submitted the bill for Rs.405000/-. The claim is genuine and the respondents are fully aware of the same. Law clearly states that such a treatment has to be reimbursed in order to save the life of the employee. Tribunal relies on the following judgments, to affirm the aforesaid assertion:



(a) Hon'ble Supreme Court observations in Shiva Kant Jha Vs. Union of India in Writ Petition (Civil) No.694 of 2015 are relevant and applicable to the present case. The observations are as under:

*"It is a settled legal position that the Government employee during his life time or after his retirement is entitled to get the benefit of the medical facilities and no fetters can be placed on his rights. It is acceptable to common sense, that ultimate decision as to how a patient should be treated vests only with the Doctor, who is well versed and expert both on academic qualification and experience gained. Very little scope is left to the patient or his relative to decide as to the manner in which the ailment should be treated. Specialty Hospitals are established for treatment of specified ailments and services of Doctors specialized in a discipline are availed by patients only to ensure proper, required and safe treatment. Can it be said that taking treatment in Specialty Hospital by itself would deprive a person to claim reimbursement solely on the ground that the said Hospital is not included in the Government Order. The right to medical claim cannot be denied merely because the name of the hospital is not included in the Government Order. The real test must be the factum of treatment. Before any medical claim is honoured, the authorities are bound to ensure as to whether the claimant had actually taken treatment and the factum of treatment is supported by records duly certified by Doctors/Hospitals concerned. Once, it is established, the claim cannot be denied on technical grounds. Clearly, in the present case, by taking a very inhuman approach, the officials of the CGHS have denied the grant of medical reimbursement in full to the petitioner forcing him to approach this Court.*

Xxxx    xxxx  
xxxx    xxxx

*Moreover, the law does not require that prior permission has to be taken in such situation where the survival of the person is the prime consideration."*



Telescoping the legal principle laid down by the Hon'ble Apex Court to the case on hand, it is crystal clear that the factom of treatment is undeniable and it being so, the claim in full cannot be rejected on technical grounds. The survival of the applicant was of paramount importance than approaching the respondents once again to allow to take the treatment.

(b) Further, Hon'ble Supreme Court in S. Jagannath Vs. Union of India, reported in 1997 (2) SCC 87, has held that:

*“If the Government servant has suffered an ailment which requires treatment at a specialised 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.”*

Once again, in terms of the directives of the Hon'ble Supreme Court as referred to above, the applicant was referred to by the respondents to Apollo Hospital for lung cancer and after going treatment, it is the duty of the respondents to bear the expenditure incurred by the applicant. One should not miss the fact that cancer is life threatening and treatment has to be time related. With respondents rescinding his request, driven to the corner, applicant got himself treated to avoid any avoidable catastrophe.

(c) The Hon'ble Supreme Court in the State of Punjab & Ors. v. Mohinder Singh Chawla and Ors., (1997) 2 SCC 83, has observed that right to health is an integral part of the right to life and therefore, if a Government employee has undergone specialized treatment, the same must be reimbursed by the State.

(d) Coming to the case of the applicant, Apollo Hospital is in the approved list. Respondents did refer the applicant to the said hospital.



The health condition was serious as was repeatedly emphasised by the learned counsel for the applicant, requiring immediate attention. The treatment taken was a specialized treatment, which is in the know of the respondents.

(e) Finally, the letter dt.21.12.2018 sanctioning only a part of the medical claim made does not indicate reasons as to why the total amount could not be paid. Any administrative order, which has adverse civil consequences has to be reasoned one, as per the Hon'ble Supreme Court verdict in *Vice Chancellor, Banaras Hindu University Vs. Shrikant, 2006 (11) SCC 42*. Even the appeal made by the applicant on 05.01.2019 still remains undisposed, though nearly an year has lapsed. Respondents need to note the above while dealing with sensitive issues of the employees.

(f) Therefore, in view of the aforesaid, the law is in favour of the applicant. Resultantly, respondents are directed to consider paying the balance amount of Rs.3,10,494/- due to the applicant towards medical reimbursement as per bill dt. 28.08.2018 issued by Apollo Hospital.

(g) Time allowed is three months from the date of receipt of this order.



(h) The OA is accordingly allowed, with no order as to costs.

**(B.V. SUDHAKAR )**  
**MEMBER (ADMN.)**

/evr/