

Central Adminisrative Tribunal
Principal Bench

O.A.No.1682/2001

Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 27th day of May, 2003

L.P.Sharma
s/o Late Shri Shiv Dayal Singh
r/o 347 Ward No.4
Mehrauli, New Delhi-110 030. Applicant

(By Advocate: Sh. M.L.Chawla)

Vs.

1. Union of India through
General Manager
Northern Railway
Baroda House
New Delhi.
2. Railway Board
through its Secretary
(Health)
Railway Bhawan
New Delhi.
3. Chief Personnel Officer
Headquarters Office
Northern Railway
Baroda House
New Delhi. .. Respondents

(By Advocate: Sh. Bimal Rathi)

O R D E R

By Shri Shanker Raju, M(J):

Applicant impugns respondents order dated 1.11.2000 whereby his claim, for balance amount of Rs.36,188.10 has been disallowed. He has quashment of the this order with direction to release the aforesaid amount in his favour along with 18% interest.

2. Applicant, who retired as an Office Superintendent on 31.1.1994, is a member of RELHS. Subsequently, on promulgation of REL Health Scheme, he opted for the same. Applicant suffered with a severe heart attack on 18.1.1997 and in emergency to save his life, he was rushed to nearby Batra Hospital.

3. The aforesaid hospital has been recognised w.e.f. 8.9.1996. Doctors of Batra Hospital, in their Essentiality Certificate, observed that applicant's condition was very critical and reference to Northern Railway, Central Hospital was not considered necessary as the delay in treatment, would have been dangerous to his life.

4. The total amount of Rs.61488.10 was incurred towards medical treatment by applicant. He preferred a claim to the respondents for medical reimbursement of this amount.

5. Being aggrieved with non-accord of the full reimbursement of the medical expenses, filed OA 1247/99 which was disposed of on 10.2.2000 with direction to respondents to consider the payment of amount claimed by applicant as medical reimbursement.

6. Respondents, in pursuance, released Rs.25300/- without assigning any details as to the calculation whereas the balance amount of Rs.36,188.10 remained outstanding for which a representation and legal notice was sent to the respondents but for a reply. It necessitated the applicant to file another OA 1825/2000 which was disposed of by an order 29.9.2000 with direction to pass a reasoned speaking order in accordance with law.

7. Respondents passed the impugned order taking a stand that in absence of any referral the applicant is not entitled for any reimbursement as per

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the extant policy of Railway Board but taking a sympathetic view, on the premises that had the treatment been taken by the applicant in a Government hospital, 50% of the cost towards medical expenses were reimbursement to the tune of Rs.25300/-, giving rise to the present OA.

8. Shri M.L.Chawla learned counsel for applicant, contended that Circular of Railway Board dated 16.12.1998, which restricts medical reimbursement to 50% in case of retired employees stood supersede by further instructions and relying upon the decision of this Court in Bhagwan Singh v. Union of India & Others, ATJ 2002(1) 227, it is contended that as Batra Hospital is a recognised Hospital, denial of reimbursement of non-referral, a technical plea, is not sustainable. Moreover, placing reliance on a decision of the Apex Court in State of Punjab v. Mohinder Singh Chawla, JT 1997(1) SC 416 as well as Surjit Singh v. State of Punjab, 1996(2) SC 226, it is contended that it is the obligation of the Government to provide medical facilities as right to provide health is an integral part of the life and if the Government servant was suffering from an ailment which requires treatment in specialised approved hospital, it is the duty of the State to bear such expenditure.

9. Moreover, relying on Railway Board's letter dated 17.5.1999, issued under the REL Health Scheme, it is contended that pensioners of the aforesaid Scheme are to be provided full medical facilities as admissible to the serving employees in

-21-
21

respect of medical treatment, in Government or recognised or non-recognised hospital and the medical reimbursement would be made on the premises that if the treatment had been taken in a Government hospital the same expenditure would have been incurred. According to him, the aforesaid instructions is superseded Board's letter dated issued in 1988.

10. On the other hand, Shri Bimal Rathi appearing as a proxy counsel of Shri Rajeev Bansal, learned counsel for respondents, contested the OA, by referring to the reply, contended that as applicant has taken treatment at Batra Hospital without any referral from the Railway Hospital, in the light of the Railway Board's letter dated 28.9.1988 taking compassionate and sympathetic view, 50% of the expenses are sanctioned had the applicant been referred to the Government hospital. However, on preliminary objection, res-judicata is invoked.

11. It is further stated that applicant being a member of RELHS, applicant had not revalidated his card. As the applicant got PTCA Coronary Stent fixed at Rs.43,600 and Package charges for the same is Rs.7000/- as per the AIIMS rate as well as total expenditure of Rs.50,600/- would have been payable had the treatment taken in the Government hospital and since the treatment was taken in the private hospital (Batra Hospital) but as a special case, 50% amount has been sanctioned to applicant.

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

13. By an order passed on 3.12.1999, in terms of instructions, Railway Board has accorded the approval for reimbursement of medical expenses to applicant. However, later on resorting to 1988 of Board's letter, 50% reimbursement has been allowed. As applicant was a member of RELHS, as per Board's letter dated 17.5.1996, in supersession to the earlier Board's letter, full medical facilities are admissible to the pensioners of this Scheme as admissible to serving employees.

14. In so far as the non-referral is concerned, as held in the case of Bhagwan Singh's case supra, non-referral is not an impediment for grant of medical reimbursement as, in emergency, applicant had taken treatment to save his life which is paramount in the light of the decision of the Apex Court in Surjit Singh and Chawla's cases supra. An Essentiality Certificate issued by the Batra Hospital which has been recognised by the Government and approval for the purpose of medical reimbursement, establishes the same. In terms of the circular dated 17.5.1999 as the serving employees, on similar treatment, would have been allowed full medical facilities and this has not been denied by the respondents as they had come to a figure of Rs.50,600/- over such expenses for similar treatment as per AIIMS more than 50% of the medical reimbursement cannot be countenanced by any stretch of imagination. Revalidation would not be a justifiable

4

ground to deny the medical reimbursement. As it is a duty of the State to provide health facilities to its employees, denial of the same to the applicant and the fact that medical facilities are to be provided by the respondents they cannot escape from their own responsibility of accord medical facilities including the medical reimbursement to the pensioners of RELHS. However in 2001, Railway Board issued letter under RELHS, 1997 where it is held that the medical reimbursement would be allowed on the premises that had the treatment been taken in the Government hospital, the expenses would have been admissible.

15. In the result, for the foregoing reasons, stand taken by the respondents is contrary to law, OA is partly allowed. Impugned order is quashed and set-aside. Respondents are directed to reconsider the claim of applicant for reimbursement of the balance amount incurred by the applicant on his treatment, within a period of two months from the date of receipt of a copy of this order. If the applicant is found entitled, be paid the amount along with a simple interest at the rate of 10% from the due date till the same is actually paid. No costs.

S. Raju
(Shanker Raju)
Member(J)

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