

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/00054/2017

ORDER RESERVED ON 20.10.2020

DATE OF ORDER: 27.11.2020

CORAM:

HON'BLE SHRI SURESH KUMAR MONGA, MEMBER (J)

HON'BLE SHRI RAKESH KUMAR GUPTA, MEMBER (A)

Shri Tajahmed M. Khairati,
S/o Modinsab Khairati,
Age: 86 years
Occ: Retired Canteen Server,
R/o: H. No. 38/1, Near Masjid,
Ganesh Peth, Hubli 580 020

....Applicant

(By Advocate Shri P.A. Kulkarni)

Vs.

1. Union of India,
Represented by its General Manager,
South Western Railway,
Hubballi 580 020

2. Medical Director,
Central Hospital,
South Western Railway,
Hubli 580 020

.....Respondents

(By Shri J. Bhaskar Reddy, Railway Standing Counsel)

ORDER**PER: SURESH KUMAR MONGA, MEMBER (J)**

Pleaded case of the applicant herein is that he had been working as a Canteen Server in the Railway's workshop at Hubli. He retired from services on 30.06.1987. He claims that he is entitled to medical reimbursement under RELHS No. 525/95 for himself and his wife. It has been averred that his wife Smt. Modin Bi Khairati was suffering from severe ortho problem. She was admitted to Central Hospital, South Western Railway, Hubli on 25.03.2015 with complaint of a severe pain in the hip which was unbearable. She was advised to undergo revision surgery for the pain and she remained admitted in the hospital from 25.03.2015 to 11.04.2015. However, Dr. Mohan Tukadi, who had advised revision surgery, discharged her without conducting the surgery.

2. On 13.06.2015, the applicant's wife travelled to Bangalore to attend a family function where she was staying with her relatives at KSRP Police Quarters, Koramangala. When she was at Bangalore, she developed a severe pain in the hip and was immediately taken to Fortis Hospital on 15.06.2015 as the said hospital was about 2 kms away from the place where she was staying at Bangalore. The relatives of the applicant were not aware of the Railway Hospital facilities which is about 13 kms away from Koramangala. The doctors who attended the applicant's wife advised immediate surgery for hip replacement as she was suffering from an unbearable pain and the situation emerged was considered to be an emergency. Accordingly, she was operated upon by the doctors at Fortis

Hospital, Bangalore. She was discharged on 24.06.2015. An expenditure of Rs. 3,97,089/- was incurred towards the surgery of applicant's wife conducted at Fortis Hospital, Bangalore. The claim for medical reimbursement submitted by the applicant on 14.08.2015 has been declined by the respondents vide letter dated 23.06.2016 (Annexure-A1). Aggrieved by the said action of the respondents, the applicant has invoked the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

3. The respondents by way of filing a joint reply have joined the defence and opposed the prayer made in the Original Application. It has been averred that the applicant's wife was admitted to Central Railway Hospital, Hubli with a complaint of pain for the last 2 months. She remained admitted in the said hospital from 25.03.2015 to 11.04.2015. On discharge, she was prescribed certain medicines and she was never advised any revision surgery for the pain. The applicant having opted for RELHS was entitled for inpatient treatment of his wife. It has further been averred that the fact stated by the applicant with regard to treatment of his wife and her travel to Bengaluru are not within the knowledge of Respondent No. 2. The Respondent No. 2, in grant of claim for reimbursement of medical expenditure, is bound by the procedure laid down by the Railway Board. The certificate issued by the Fortis Hospital at the time of applicant's wife's admission does not indicate that she was admitted either in emergency or in the ICU. It has further been averred that the applicant's wife was not admitted to Fortis Hospital in emergent condition. The applicant should have

informed the nearest Railway Hospital and the respondent authorities would have taken steps to get the surgery done at reasonable government rates. Whereas, the rates charged by Fortis hospital are very high and are objectionable being in violation of Railway Board's guidelines. It has further been stated that in Bengaluru, the respondents have empanelled hospitals like Apollo hospital and St. John Hospital for providing cashless treatment. The rates charged for surgery of applicant's wife would have costed five times less than what is claimed by the applicant as per Annexure-A5. It has further been averred that recognized/empanelled hospital at Bengaluru charges according to the CGHS rates as agreed upon between the hospital and 2nd respondent. With all these assertions, the respondents have prayed for dismissal of the Original Application.

4. Earlier the matter was heard by this Tribunal on 21.08.2018 and the Original Application was dismissed. However, feeling aggrieved by the said order, the applicant preferred Writ Petition No. 107299/2018 (S-CAT) before the Hon'ble High Court of Karnataka at Dharwad. The Hon'ble High Court, while setting aside the order dated 21.08.2018 passed by this Tribunal, vide its order dated 12.11.2019 remitted back the matter to decide it afresh and accordingly we have heard learned counsels for both the parties.

5. Shri P.A. Kulkarni, learned counsel representing the applicant, while drawing our attention towards the discharge summary (Annexure-A4) and the emergency certification (Annexure-A6) submitted that the applicant's wife was admitted in Fortis Hospital, Bangalore in an emergent condition and, therefore, the order dated 23.06.2016, vide which the applicant's claim

for medical reimbursement has been declined, cannot be sustained being illegal and arbitrary. Learned counsel further submitted that the applicant's wife has availed the specialized treatment to save her life and, therefore, in view of the principles laid down by the Hon'ble Supreme Court in **Shiva Kant Jha Vs. Union of India** 2018 (2) SCT 529, the applicant's claim for medical reimbursement cannot be declined.

6. Per contra, Shri Bhaskar Reddy, learned counsel representing the respondents, submitted that the applicant's claim for medical reimbursement is totally contrary to Railway Board's guidelines as his wife did not take the treatment from Fortis Hospital, Bangalore in an emergent condition. Learned counsel further submitted that in Bangalore she could have been taken to Railway Hospital or to Railway's empanelled hospitals like Apollo Hospital or St. John Hospital which are providing cashless treatment to Railway's employees. The applicant's claim for medical reimbursement being contrary to Railway Board's guidelines has been rightly declined and, therefore, the OA deserves to be dismissed.

7. Considered the rival contentions of learned counsels for the parties and perused the record.

8. Admittedly, the applicant's wife had complained a severe ortho related pain and she remained admitted in the Central Hospital, South Western Railway, Hubli from 25.03.2015 to 11.04.2015 where initially Dr. Mohan Tukadi advised a revision surgery but still she was discharged without conducting the said surgery. The attending doctor in his wisdom had taken

the said decision. But when the applicant's wife travelled to Bangalore to attend a family function, she again suffered from a severe pain and according to discharge summary issued by the attending doctors at Fortis Hospital, Bangalore, it reveals, that she was admitted in the said hospital with complaint of right hip pain and inability to bear at on right lower limb. A perusal of emergency certification (Annexure A6) issued by the Fortis Hospital, Bangalore further divulges that had the applicant's wife not been treated at the early convenience, it would have been detrimental to her life and would also have jeopardised her life. Even a description of emergency medicines administered to applicant's wife by the doctors at Fortis Hospital has also been given in the said emergency certification (Annexure A6).

9. In this view of the matter, in our considered opinion, the respondents have seriously erred while taking a view that the treatment taken by the applicant's wife was not in an emergent condition. It appears that the order (Annexure A1) has been issued by the respondents while keeping themselves oblivious about the discharge summary and the emergency certification issued by the doctors at Fortis Hospital, Bangalore.

10. We cannot ignore the fact that the applicant, where she was staying in Bangalore, the Fortis Hospital was available just at a distance of 2 kms only. The relatives, who attended her in the situation of such a severe pain, took her to the nearest hospital available in the city having the specialization to treat her. In such a situation, to say, that firstly the applicant's wife should have been taken to Railway Hospital (13 kms away) and then to seek a

specialized treatment in Apollo Hospital or St. John Hospital at Bangalore, is beyond comprehension of even an ordinary prudent man.

11. In the case of **Shiva Kant Jha** (*supra*), the Hon'ble Supreme Court has held that a government employee during his lifetime or after his retirement is entitled to get the benefit of the medical facilities and no fetters can be placed on his rights. While noticing the fact that the multi-speciality hospitals are established for treatment of specified ailments and services of doctors specialized in a discipline are availed by patients only to ensure proper and safe treatment, the Hon'ble Supreme Court has further held that the right to medical claim cannot be denied merely because the name of the hospital is not included in Government Order. The authorities are only required to ensure as to whether the claimant has actually taken the treatment and the factum of said treatment is supported by records duly certified by the doctors/hospital concerned.

12. In the case in hand, the treatment taken by the applicant's wife in Fortis Hospital, Bangalore is not in dispute as the same is supported by records duly certified by the doctors of said hospital. Thus, in our considered view, the applicant cannot be denied the reimbursement of medical bills towards expenditure incurred on his wife's treatment at Fortis hospital, Bangalore.

13. It is not a case that the Railway employees or retirees cannot take treatment from the hospitals other than the Railway hospitals. It has come up on record that the South Western Railway, Hubli has empanelled the

Apollo Hospital and St. John Hospital at Bangalore for specialized treatments and the employees and retirees can claim the reimbursement of their medical bills at CGHS rates.

14. While keeping in view the principles laid down by the Hon'ble Supreme Court in **Shiva Kant Jha** (*supra*) and the discharge summary (Annexure A4) with emergency certification (Annexure A6), we are of the firm view that the ends of justice will be met if a direction is issued to the respondents to reimburse the medical bills of applicant's wife's treatment at CGHS rates.

15. Accordingly, the Original Application is allowed. The order dated 23.06.2016 (Annexure A1) is hereby quashed and set aside. The respondents are directed to reimburse the applicant's medical bills towards the expenditure incurred on his wife's treatment at Fortis Hospital, Bangalore at CGHS rates. The whole exercise to process the applicant's case for reimbursement of said medical bills shall be undertaken within a period of 2 months from the date of receipt of a certified copy of this order.

16. Ordered accordingly. However, there shall be no orders so as to costs.

(RAKESH KUMAR GUPTA)
MEMBER (A)

(SURESH KUMAR MONGA)
MEMBER (J)

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