

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 29/11 day of Nov. 2005.

Original Application No. 1675 of 2004.

Hon'ble Mr. K.B.S. Rajan, Member (J)

K.C. Mathur, Ex Head Cashier,
N.E. Railway, Izatnagar, Bareilly,
B-174/1 Rajendra Nagar, Bareilly (UP).

.....Applicant

By Adv: Sri R.C. Pathak

V E R S U S

1. Union of India through the General Manager,
N.E. Railway, H.Q. Gorakhpur. (UP).
2. The Chief Medical Director, N.E. Rly., H.Q.
Gorakhpur.
3. The Chief Medical Superintendent,
N.E. Railway, Izatnagar, Bareilly

.....Respondents.

By Adv: Sri K.P. Singh

O R D E R

Truncation in the medical claim is the challenge in this case. Reason for such depletion in the amount sanctioned is stated to be that the applicant did not consult the Authorized Medical Officer before having the treatment of applicant's wife obtained from a private hospital. The contention of the applicant is that provision exists for consideration under such circumstances, vide clause 648 of the medical manual. The issue therefore reduces itself as to whether the authorities could truncate the claim and if so on what basis.

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2. The facts capsule: Applicant retired from the Railways in 1987. Provision exists for reimbursement of medical expenses incurred by the retired govt. servant and his family. The applicant, due to sudden and serious ailment of his wife, instead of approaching the Authorized Medical Officer of the Railways, had directly got his wife treated for heart ailment (which warranted installation of a double pace maker on the person the patient) in Escorts Hospital at New Delhi and preferred the claim for a total of Rs. 1,31,481/- while the respondents had initially reimbursed to the tune of Rs 60,500/- being the rate of Railway Hospital, Perambur, Chennai (T.N) and later on with the approval of the Railway Board the amount was enhanced to a total of Rs 85,000/- and the claim was 'settled'.

3. The applicant has challenged the above act of the respondents in not granting the full amount of the medical claim.

4. Respondents have contested the O.A. Their contention mainly is as under: -

a. The reimbursement claim preferred by the applicant in respect of the medical expenses of his wife was turned down by the then Chief Medical Superintendent, Izzatnagar, on the ground that the applicant did not consult the authorized Railway Medical Doctor nor he informed

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the Chief Medical Superintendent, Izzatnagar, for the treatment of his wife, whereas his residence is hardly at a distance of 2 Kms from the Railway Hospital Izzatnagar and he knew that a well equipped Intensive Cardiac Care Unit (I.C.C.U.) was available in the Railway Hospital, Izzatnagar. He got his wife admitted first in the two local private Hospitals of Bareilly and then took her to Escort Hospital, Delhi, without consulting or even informing the authorized Railway Doctor, which is necessary as per Indian Medical Manual.

b. Moreover, the applicant did not take his patient to the government recognized Hospital of Delhi e.g. AIIMS or Lucknow, instead he got his wife treated in a private non recognized Hospital of Delhi and he did not even inform the concerned Railway Authorities about the same.

c. On humanitarian grounds, it was decided that the case may be recommended for the reimbursement of the amount, which was permissible as per rate of Railway Hospital, Perambur, Chennai (i.e. Rs. 60,500=00) and the case was sent accordingly to Senior DFM, Izzatnagar for financial vetting. After obtaining Divisional Finance vetting, case was further sent to C.M.D., N.E. Railway, Gorakhpur for further action.

d. C.M.D./N.E. Railway/GKP forwarded the case to Railway Board after obtaining vetting from HQ finance. The claim of

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applicant has been reviewed in the Railway Board as a special case & decided to sanction an amount of Rs. 85,000/- towards the cost of Pacemaker implanted to his wife Smt. Kiran Mathur on 15.04.1999 at a private hospital.

5. Arguments have been heard and the documents perused. Rules provide for reimbursement of medical expenses both when the authorized medical officer is consulted in advance as also otherwise. The difference is that the sanctioning authority is the Railway Board when the claims exceeds certain prescribed amount. The relevant clause 647 and 648 is reproduced below:

"647. Reimbursement allowed if medical attendance was availed at the instance of the Authorized Medical Officer: -

(1) A Railway employee obtaining medical attendance and/or treatment for himself or a member of his family dependent relatives should, under the provisions of para 633 consult his Authorized medical Officer first and proceed in accordance with his advise. In case of his failure to do so, his claim for reimbursement will not be entertained except as provided hereinafter. All claims for reimbursement should be scrutinized with a view to see that the Authorized Medical Officer, or another Medical Officer who is either of equivalent rank or immediately junior in rank to his Authorized Medical Officer and attached to the same hospital/health unit as the Authorized Medical Officer, was consulted in the first instance.

Note: When a patient is referred to any Govt./recognized hospital by Authorized Medical Officer the referral covers treatment/investigations in the specific hospital only. If in the course of treatment in the hospital some investigations are required to be done at a place other than that hospital such referral should also be routed through the Authorized Medical Officer except

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those cases who are taking indoor treatment in that hospital. Only those cases (particularly those taking treatment as OPD patients in the referral hospitals), where it has been specifically certified by the Authorised Medical Officer that re-reference was done with his approval, will be considered for reimbursement.

648. Treatment in an emergency:

1. Where in an emergency, a Railway employee or his dependant has to go for treatment (including confinement) to a Government hospital or a recognized hospital or a dispensary run by a philanthropic organization, without prior consultation with the Authorised Medical Officer, reimbursement of the expenses incurred, to the extent otherwise admissible, will be permitted. In such a case, before reimbursement is admitted, it will be necessary to obtain, in addition to other documents prescribed, a certificate in the prescribed form as given in part C of certificate B of Annexure III to this chapter from the Medical Superintendent of the hospital to the effect that the facilities provided were the maximum which were essential for the patient's treatment. In such cases, the General Managers are delegated with powers to allow:

- a. full reimbursement of medical expenses in case of Govt. hospitals and
- b. up to a limit of Rs. 50,000/- in case of recognized hospitals and dispensaries run by the philanthropic organizations. All cases above Rs. 50,000/- should be referred to the Railway Board alongwith the Performa given in Annexure VI to this chapter, duly filling all the columns.

6. It would be seen that there is no prescription of any amount in the case of the Railway Board in according its sanction under clause 648 of the Medical Manual. No rules confining the



reimbursement only of the cost of pace maker has been brought to the notice by the respondents. The general rules are that the amount could be confined to the package rate, if one such rate existed in respect of various hospitals. It is for this reason that the amount sanctioned by the Railway Board exceeded the cost of pace maker as per the rates of the Perambur Railway Hospital. While enhancing the amount of reimbursement of medical claim over and above the cost of pace maker, the Railway Board at the same time did not give the reasons as to why the full amount is not reimbursed. The railways also do not ~~have any doubt~~ ^h that the claim is inflated (nor could it be so as the treatment is in one of the hospitals recognized by the Department of Personnel. Though, perhaps, the said institution would not have been recognized by the Railways, the fact that the DOPT has recognized would suffice in instill the confidence that the bills raised by the said Hospital are genuine.

7. A look at the considered view of the Apex Court in the case of medical reimbursement is appropriate at this stage.

8. While dealing with the rights and responsibility of the Government as well as the Government servant, with particular reference to the State's obligation on ensuring the health of the citizens, the Apex

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Court in the case of State of Punjab v. Ram Lubhaya

Bagga, (1998) 4 SCC 117, at page 129 held as under:-

"26. When we speak about a right, it correlates to a duty upon another, individual, employer, government or authority. In other words, the right of one is an obligation of another. Hence the right of a citizen to live under Article 21 casts obligation on the State. This obligation is further reinforced under Article 47, it is for the State to secure health to its citizen as its primary duty. No doubt the Government is rendering this obligation by opening government hospitals and health centers, but in order to make it meaningful, it has to be within the reach of its people, as far as possible, to reduce the queue of waiting lists, and it has to provide all facilities for which an employee looks for at another hospital. Its upkeep, maintenance and cleanliness has to be beyond aspersion. To employ the best of talents and tone up its administration to give effective contribution. Also bring in awareness in welfare of hospital staff for their dedicated service, give them periodical, medico-ethical and service-oriented training, not only at the entry point but also during the whole tenure of their service. Since it is one of the most sacrosanct and valuable rights of a citizen and equally sacrosanct sacred obligation of the State, every citizen of this welfare State looks towards the State for it to perform its this obligation with top priority including by way of allocation of sufficient funds. This in turn will not only secure the right of its citizen to the best of their satisfaction but in turn will benefit the State in achieving its social, political and economical goal. For every return there has to be investment. Investment needs resources and finances. So even to protect this sacrosanct right finances are an inherent requirement. Harnessing such resources needs top priority."

9. Next is in the other cases when the Government was restricting the claims at the rates applicable to



AIIMS, and the individuals had undergone the treatment in Escorts Hospital, invariably they were reimbursed the amount as per the bill of Escorts Hospital. In this regard, even in the case of Ram Lubhaya Bagga referred to above, his review application was considered by the Apex Court and the Apex Court had ordered as under:-

"However, his contention is that he was paid the full amount of medical reimbursement charges even under the new policy and in the common order sought to be reviewed, we have taken the view that if any amount on the medical reimbursement bill is already paid to the person concerned after the new policy came into operation, then the amount already paid should not be recovered. Consequently, if the petitioner's case falls within this exceptional category permitted by us in the common judgment, appropriate orders will be required to be passed in his case also by giving him a fresh opportunity to prove his case. Hence, notice is directed to be issued to the respondents limited to the consideration whether the petitioner was paid the full amount of medical reimbursement charges after the new policy had already come into force, and if yes, whether any recovery can be effected from him."

10. In the case of State of Punjab v. Mohan Lal Jindal, (2001) 9 SCC 217 while allowing the appeal preferred by the Government, the Apex Court has observed as under:-

It is further submitted by learned counsel for the respondent that the appellants may consider his grievance. He may submit such a representation on compassionate grounds. We have no doubt that such a representation will be sympathetically considered by the appellant authorities on its own merits.



11. In addition, the applicant has relied upon the case of one G.S. Sood vide order dated 27th May, 2003 in OA 141 of 2001, wherein referring to a decision of the Hon'ble Delhi High Court, this Tribunal held as under:-

9. At this stage it would be relevant to refer to the judgment given by Hon'ble Supreme Court and Hon'ble High Court of Delhi. In somewhat similar circumstances it was held by Hon'ble Supreme Court in the case of Uma Shashi Thakur as under :-

"We have read, from the judgment under appeal, some of the rates that are prescribed, and are charged. They are totally unrealistic having regard to medical expenses that are required to be incurred those days. There is very urgent need to update the prescribed rates.

The appeal is allowed. The order of the Tribunal under appeal is set aside. The orders of recovery dated 20th July and 17th August, 1994, are quashed. If any amount has already been recovered, the same shall be returned to the applicant. No orders as to costs."

10. Similarly in 2001(3) ATJ 470 Hon'ble High Court in identical case as in hand held as under :-

"I have given careful considerations to the arguments advanced by learned counsel for both the parties. There cannot be any dispute with regard to the ratio laid down by the Supreme Court in State of Punjab Vs. Ram Lubhaya Bagga's case (supra). In that case the petitioner challenged the policy of the Government with regard to fixation of allowances. In that case no recommendation was made by the CGHS for getting the treatment from a private hospital. As far as the case in hand is concerned, it is the Government hospital, namely RML Hospital which has recommended the case of the petitioner for a

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specialized treatment by a specialty hospital, which is on the approved list of CGHS. When the respondents themselves have recommended the case of the petitioner for getting treatment at a specialty hospital, to deny the benefit of giving full reimbursement would be contrary to the grant of medical facilities to a retired Government servant, if he cannot actually avail of the same. If the Government hospital did not have the facility for giving treatment like the one which was required to be given to the petitioner then it was an obligation on the part of the respondents to have reimbursed the total amount paid to the said hospital. Following the ratio laid down in the State of Punjab and others V. Mohinder Singh Chawla (*supra*) I direct the respondents to reimburse the amount of Rs.80,620/- to the petitioner within a period of four weeks."

11. A perusal of these judgments would show that the present case in hand is squarely covered by this judgment, therefore, applicant would be entitled to reimbursement of full amount.

12. It would also be relevant to quote another judgment given by Hon'ble High Court of Delhi reported in 2003(96) FLR 181 wherein it was held as under: -

"(i) The cost of medical treatment has been rising over a period of time and respondents cannot deny the actual reimbursement from a hospital recognized by them for treatment on the basis of applying the rates as per the previous memorandum which were intended for a period of two years and were subject to revision. Reference is also invited to a decision of a Co-ordinate Bench of this Court in Civil Writ No.5317 of 1999 titled M.G. Mahindru v. Union of India and another, decided on 18 December, 2002, wherein the learned Single Bench

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relying on the decisions of *Narendra Pal Singh v. Union of India another*, as well as *State of Punjab and others v. Mohinder Singh Chawla*, directed reimbursement of the full expenses incurred. In the instant case, it is not in dispute that the said facility or treatment was not available at C.G.H.S. or RML hospital and the petitioner was referred after due permission to a specialty hospital duly recognized by the respondents. The cannot therefore, deny full reimbursement to the petitioner by placing reliance on an earlier memorandum of 1996 wherein the rates given were applicable and intended for a period of two years on the ground that the said rates have not been revised.

(ii) Reference may also be usefully invited to the last office memorandum bearing F.D. Rec-24/2001/JD(M) /CGHS/ DELHI/ CGHS (P), Government of India, Ministry of Health and Family Welfare, dated 7 September 2001. The said circular reconsidered the question of recognition of private hospitals, diagnostic centers under CGHS scheme for specialized treatment as well as fixing of package ceiling rates. The salient term as per this memorandum is that the recognized hospital is obliged not to charge more than the package rates from the beneficiary.

(iii) The only submission by learned counsel for respondent Ms. Pinky Anand was

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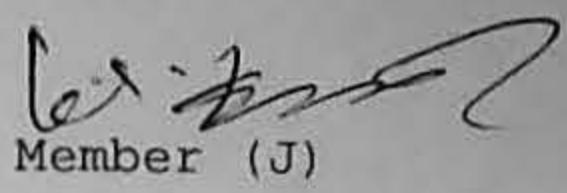
that the respondents had reimbursed the rates as per the circular of 1990 and in all other cases reimbursement had only been done when ordered by the Court. This is hardly a satisfactory State of Affairs. Respondents are required to be more responsive and cannot in a mechanical manner deprive an employee of his legitimate reimbursement, especially on account of their own failure in not revising the rates. In view of the foregoing discussion and the judicial pronouncements as noted above, the petitioner is entitled to full reimbursement of the expenses incurred at the Escorts Heart Institute and Research Center New Delhi where he was duly referred for specialized treatment by the respondents after according permission. Escorts Heart Institute and Research Center being a recognized hospital for this purpose, the petitioner is entitled to be reimbursed the actual expenses, as incurred. A writ of mandamus shall issue to the respondents who shall pay Rs.70,115.85 to the petitioner within four weeks from today, together with costs assessed at Rs.1,500."

12. Taking into account the entire concept of medical reimbursement and the conspectus of the case, it is evident that that it is only appropriate for the Railway Board to consider the reimbursement of the entire claim without any truncation and sanction the same. The OA thus, succeeds. The respondents

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are directed to make available the balance amount of medical reimbursement claim to the applicant, *within 4 months*

13. Under the circumstances, no cost.



Member (J)

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