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Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

Original Application No.1332 of 2005.

Allahabad, this the 29 day of September, 2008.

Hon'ble Mr. A.K. Gaur, Member-J

Man Mohan Mishra,
Son of late Niktaman Mishra,
Aged about 74 years,
Resident of N6/2 B-62
Indira Nagar, Post Office
Sunderpur (B.H.U.)
Varanasi.

...Applicant.

By Advocate : Shri V.K. Srivastava.

Versus

1. Union of India, through General Manager, Diesel Locomotive Works, Varanasi.
2. Executive Director (Health) Railway Board, Rail Bhawan, New Delhi.
3. Chief Medical Superintendent, Diesel Locomotive Works, Varanasi.

...Respondents.

By Advocate : Shri A.K. Sinha.

O R D E R

The applicant earlier filed OA No.247/03 in respect of claim for medical reimbursement and the same was allowed vide order dated 4.3.2005. The operative portion of the order is reproduced as under:-

"Accordingly, the OA succeeds and is allowed. The impugned orders dated 10/16.8.1999 and 11.9.1999 are quashed. The Railway Board is directed to examine the applicant's claim for medical reimbursement afresh in accordance with law and in the light of observation made above within a period of two months from the date of communication of this order."

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2. However, the authorities, while making the payment to the applicant truncated the amount from the claim of Rs.1.96 lakhs approximately to Rs.63000/-.

Hence the applicant has filed the aforesaid OA for the balance amount. On 31.12.1998, the applicant retired from Railway Service from the post of Deputy Chief Mechanical Engineer after attaining the age of superannuation. There is a Health Scheme for retired Railway employee, title as "Retired Employees Liberalised Health Scheme-97". All retired Railway employee who have put in minimum 20 years qualifying service in the Railway can join this scheme by depositing contribution, one time, equal to last months pay at the time of retirement and those who had joined the earlier RELHS-97. Under this new scheme, retired eligible railway employees who have opted to join this scheme, their family members and dependents are entitled for free full medical facilities as admissible to serving employees under the Railway Medical Attendance Rules. According to rules contained in para 606 of R-1, a railway servant shall be entitled to medical attendance and treatment free of charge in the Railway/Government/Other Hospitals where required necessary and any amount paid by the Railway servant on account of such attendance and treatment shall on production of a certificate in writing by Medical attendant (Doctor) shall be reimbursed to the railway servant. It is an admitted case that the applicant was a member of "RELHS" scheme since 9.6.1994 existing before "RELHS-97". The applicant

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suffered with severe heart trouble and was admitted in Intensive care Unit, D.L.W, Hospital Varanasi, and was under treatment upto 27.10.1998. Later on he was referred to Cardiology Department of S.S. Hospital, IMS/BHU Varanasi for necessary examination/ investigation and for further treatment vide letter dated 27.10.1998. The applicant was examined by Dr. P.R. Gupta, M.D., D.M. (Cardiology) Professor and Head of Department (Cardiology) IMS/BHU and found to have very severe Ischaemic Heart Disease which required immediate coronary angiography, and if necessary by-pass surgery. According to the applicant he was advised to proceed Apollo Hospital New Delhi on an emergent basis by plane accompanied by a qualified physician to meet an emergency during air travel, as the facility of coronary angiography/by-pass surgery/Angioplasty was not available in B.H.U. Hospital. The applicant acted strictly as per advise of Dr. P.R. Gupta under intimation to C.H.S. who provided the applicant D.L.W. Hospital's Ambulance for taking the applicant to Babatpur Airport, Varanasi. The applicant proceeded to New Delhi by plane on 28.10.1998 duly accompanied by Dr. J. Misra (Medicine) Ex-Senior Resident Cardiology, and By-pass surgery was performed on 29.10.1998. The applicant remained in the Hospital as Indoor patient from 28.10.1998 to 7.11.1998 and was discharged on 7.11.1998. As per advise of the Doctor the applicant stayed at Delhi from 7.11.1998 to 4.12.1998 in a private lodge alongwith two attendants. The medical reimbursement

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claim was submitted by the applicant (Annexure-A-4 compilation B) but the same was rejected by respondent No.3 vide letter dated 10/16-8-1999 on the ground that the claim is time barred and was not admissible as per Para-2 of Railway Board letter dated 10.3.1993. Aggrieved against the order dated 16.8.1999 the applicant preferred a representation before Superior Authority. His representation came to be rejected by Executive Director (Health), Railway vide letter dated 11.9.2001 which reads as under :-

"Sub: Non payment of medical expenses incurred by Sri M.M. Mishra (Retd. Deputy Chief Mechanical Engineer, DLW) on his by-pass surgery in Apollo Hospital, New Delhi.

Your letter No.25/Med/99/94 dated 19.01.2000, 15.4.2000, 18.07.2000 and No.25/Med/2001 dated 08.08.2001 and Board's letter No.2000/11/CA-iii/108 dated 02.02.2001.

Kindly refer to letters cited above. A representation of Sri M.M. Mishra was also forwarded by Sri P.K. Sinha, MLC, Bihar for reimbursement of medical expenses incurred on his own treatment taken in a private hospital and was replied to (copy enclosed).

Sri Mishra did not go to the B.H.U. Medical Science Hospital, Varanasi where he was referred by the specialist and went to Apollo Hospital on his own, therefore, his claim cannot be accepted to."

3. I have also seen paragraph 652 of the Railway Medical Manual Vol.I (III Addition) 2000, all claims for reimbursement of medical charges should invariably be preferred within six month from the date of completion of treatment as shown in the Essentiality Certificate of the Authorized Medical Officer concerned. The second ground of rejecting the claim

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of the applicant by Railway Board's letter dated 10.3.1999, suffice is to refer to paragraph 647 of Railway Medical Manual Vol.I, which would clearly indicate that a Railway employee obtaining medical attendance and/or treatment for himself or a member of his family or dependent relatives should, under the provisions of paragraph 633, consult his Authorized Medical Officer first and proceed in accordance with his advice. In case of failure to do so, his claim for reimbursement will not be entertained "except as provided herein after". It is not disputed that the Authorized Medical Officer referred the applicant to BHU Medical Science and Hospital and it was the Doctor at BHU who referred the applicant to Apollo Hospital considering the case as one requiring 'immediate coronary angiography/by-pass surgery/PTCA'. The expression "as provided hereinafter" referred to in paragraph 647 (Board's letter No.92/H/6-4/121 dated 10.3.1993 provides exception as contained in succeeding paragraphs including paragraph 648 which provides for treatment, in an emergency, without prior consultation with the Authorised Medical Officer. In the circumstances, therefore, the competent authority was not justified in rejecting the applicant's claim being not payable in view of the Railway Board's letter dated 10.3.1993 without proper self direction to the question as to whether the reference made by the Doctor at BHU could be availed of by the applicant or whether it was against paragraph 648 which provides that in case of emergency, a Railway employee may get

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treatment in a recognized hospital without prior consultation with the Authorised Medical Officer.

4. Against the order dated 16.8.1999 and 11.9.1999, the applicant filed OA No.247/03 before this Tribunal and submitted that his claim for medical reimbursement has been rejected without considering the relevant paragraphs of the Railway Medical Manual Vol.I and without proper self direction. Accordingly, the OA was allowed and impugned order dated 16.8.1999 and 11.9.1999 were quashed. The Railway Board was directed to examine the applicant's claim for medical reimbursement afresh in accordance with law and in the light of observation made above within a period of two months. The applicant preferred a representation alongwith order dated 4.3.2005 to respondent No.2. The respondent No.2 instead of passing any reasoned and speaking order, after considering the reimbursement claim of the applicant, arbitrarily issued a cheque of *Rs.19688/- (one lac ninety six thousand eight hundred and eighty)* *Rs.63000/- instead of Rs.1.66 Lakhs* It is alleged by the applicant that the respondents has failed to pass any reasoned and speaking order in pursuance of direction given by this Tribunal through which Railway Board was directed to examine the applicant's case for medical reimbursement claim afresh in accordance with law. A perusal of the order clearly indicates that there is no indication and communication in the order that respondent No.2 has examined the same afresh and without assigning any reason and without giving opportunity of hearing, has passed the impugned order

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dated 12.5.2005 and same was communicated to the applicant on 19.5.2005.

5. Denying the pleas taken by the applicant in the original application the respondents filed their reply. According to the respondents as per the Retired Employees Liberalized Health Scheme, 1997 the scheme neither permit any member of such scheme to avail medical facilities on his own choice nor such member is entitled for reimbursement contrary to the package deal rate at All India Institute of Medical Sciences, New Delhi. He has also submitted that Apollo Hospital, New Delhi was neither a Govt. Hospital nor recognized non Railway Hospital where the applicant received treatment as per advice of Dr. P.R. Gupta. The applicant was referred to Apollo Hospital by Dr. P.R. Gupta on the pad of BHU and not on Registration slip for out door patient a D.O. letter dated 29.11.1999 was sent to Dr. V.P. Singh, Director, IMS, BHU, Varanasi requesting him to apprise as to whether the certificate issued by Dr. P.R. Gupta, was issued inn official or private capacity. Photocopy of the letter has been filed as Annexure-CA-1. According to the respondents Dr. Gupta had very specifically stated in his letter dated 15.12.1999 (Annexure-CA-2) submitted to the Dean , Faculty of Modern Medicine, Institute of Medical Science, BHU, Varanasi in the following terms :-

"For this serious illness patient was referred to higher center since facilities were not available

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for Coronary angiography/By Pass Surgery/PTCA at the BHU, Hospital. As per our Medical Board Policy, patient are paid at the rate of Government Hospital (All India Institute of Medical Sciences, New Delhi), irrespective of Hospital where they have received treatment (Private Hospital) Mr. Mishra was never advised not to go to All India Institute of Medical Sciences, New Delhi. So Mr. M.M. Mishra may be reimbursed accordingly....."

From the aforesaid letter is clear that Dr. Gupta has kept mum about the clinical/physical examination of the applicant in official or private capacity. The applicant went to Apollo Hospital on his own without intimating to the Chief Medical Superintendent, Central Hospital/DLW, Varanasi. Dr. Gupta contradicted his earlier certificate dated 28.10.1998 which is evident from a conjoint reading of the said two letters of Dr. Gupta dated 28.10.1998 & 15.12.1999. In the present case, the applicant has been reimbursed at par with package deal rate of All India Institute of Medical Science, New Delhi. Thus there is neither any irregularity nor illegality in making payment of Rs.63000/- to the applicant in due regard to the judgment and order passed in OA No.247 of 2003. The break-up of Rs.63,000/- is as under :-

Angiography	=Rs.7,000/-
Coronary Artery by pass grafting	=Rs.55,000/-
Medicine purchased by the patient	=Rs.1,000/-

6. According to the respondents, the applicant has put much emphasis on the alleged certificate of Dr. P.R. Gupta dated 28.10.1998 for receiving treatment in Apollo Hospital but, The applicant is not allowed to blow hot and cold in same breath i.e. to receive treatment in Apollo Hospital and not to accept the

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reimbursement at the rate of Government Hospital as clarified by Dr. P.R. Gupta in response to the letter of Chief Medical Superintendent.

7. The applicant by filing rejoinder reply denied the pleas taken in the counter filed by the respondents. According to the applicant it is settled principle of law that in view of a series of the decisions given by Hon'ble Supreme Court, prior consultation/permission of an authorized medical officer does not require in an emergent case, hence the contention made by the respondent in the earlier impugned order is meaning less.

8. Learned counsel for the applicant has not filed copy of the order dated 12.5.2005 either in the original application or in the rejoinder and as such I am not in a position to comment anything upon the same although a reference of the said order finds place in order dated 19.5.2005 (Annexure-6A to the OA). the applicant has submitted in the rejoinder that the respondents without assigning any reasons and without giving opportunity of hearing, has passed the impugned order dated 12.5.2005 and the same was communicated to the applicant on 19.5.2005, except this there is nothing on record on the point of order dated 12.5.2005.

9. I have heard Shri V.K. Srivastava, counsel for the applicant and Shri A.K. Sinha, counsel for the

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respondents and perused the material available on record.

10. It has been argued by the learned counsel for the applicant that the competent authority has not passed any order in pursuance of order dated 4.3.2005 after considering the alleged reimbursement of medical claim of the applicant afresh in accordance with the rules at par with package deal at the rate of All India Institute of Medical Sciences, New Delhi. In support of his contention, learned counsel for the applicant has placed reliance on the decision rendered by Hon'ble Supreme Court in AIR 1997 SC 1255 - State of Punjab and others Vs. Mohinder Singh Chawla, wherein the Hon'ble Supreme Court has held as follows :-

"The employee was entitled to reimbursement of actual room rent charges paid by him. The Government was not entitled to take the stand that the reimbursement could be allowed as per rates charged by All India Institute of Medical Sciences. When the patient was admitted and had taken the treatment in the hospital and had incurred the expenditure towards room charges, inevitably the consequential rent paid for the room during his stay is integral part of his expenditure incurred for the treatment. Consequently, the Government is required to reimburse the expenditure incurred for the period during which the patient stayed in the approved hospital for treatment. It is incongruous that while the patient is admitted to undergo treatment and he is refused the reimbursement of the actual expenditure incurred towards room rent and is given the expenditure of the room rent chargeable in another institute whereat he had not actually undergone treatment.

It is settled law that right to health is an integral to right to life. Government has constitutional obligation to provide the health facilities. If the Government servant has suffered an ailment which requires treatment at a specialized 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. Expenditure, thus, incurred requires to be reimbursed by the State to the employee. Having had the constitutional obligation to bear the expenses for the Government servant while in service or after retirement from service, as per the policy of the Government, the Government is required to fulfill the constitutional obligation. Necessarily, the State has to bear the expenses incurred in that behalf."

11. Learned counsel for the applicant has also placed reliance on the decision of Hon'ble Supreme Court reported in 2006 SCC (L&S) 890- Suman Rakheja Vs. State of Haryana and another. In this case, the Hon'ble Supreme Court clearly ruled that appellant herein would be entitled to get the refund of the amount of 100% medical expenses at the All India Institute of Medical Sciences rates and 75% of expenditure in excess thereto.

12. Learned counsel for the respondents on the other hand submitted that the applicant did not go to BHU as per reference of Authorized Medical Officer, DLW, the finding recorded by the Executive Director (Health), Railway Board that the applicant did not go to BHU where he was referred by the Specialist and went to Apollo Hospital on his own, has already been disclosed by this Tribunal in OA No.247/03 and the said order has become final. It has also been argued that the applicant has been allowed reimbursement at par with package deal rate of All India Institute of Medical Sciences, New Delhi. Thus the payment of Rs.63000/- to the applicant at par with package deal rate of All India Institute of Medical Sciences, New Delhi is

quite legal, valid and as per rule. It is also seen from the record that Dr. Gupta, the referring Cardiologist of the applicant has also expressed his view that as per Medical Board Policy patients are paid at the rate of Government Hospital (All India Institute of Medical Sciences, New Delhi) irrespective of hospital where they have received treatment (Private Hospital). Thus decision of the Competent Authority suffers from no-infirmity, irregularity or illegality in allowing the claim for reimbursement at par with package deal rate of All India Institute of Medical Sciences, New Delhi. It is seen from the record of the case that Dr. P.R. Gupta in his letter dated 15.12.1999 addressed to Dean, Faculty of Modern Medicine, Institute of Medical Sciences, BHU, Varanasi clearly observed that he never advised the applicant not to go to All India Institute of Medical Sciences, New Delhi. As per Medical Board Policy, patients are paid at the rate of Government Hospital (All India Institute of Medical Sciences, New Delhi) irrespective of hospital where they have received treatment.

13. I have also carefully seen the judgment rendered by this Tribunal in OA No.247/03 and found that the Authorized Medical Officer referred the applicant to BHU Medical Hospital and it was the Doctor at BHU who referred the applicant to Apollo Hospital considering the case as one requiring immediate coronary angiography/by-pass surgery/PTCA. Paragraph 648 which

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provides for treatment, in an emergency, without prior consultation with the Authorized Medical Officer. This Tribunal has clearly observed that in the circumstances of the case, the Competent Authority was not justified in rejecting the applicant's claim being not payable in view of the Railway Board's letter dated 10.3.1993 without proper self direction to the question as to whether the reference made by the Doctor at BHU could be availed of by the applicant or whether it was against the paragraph 648 which provides that in case of emergency, a Railway employee may get treatment in a recognized hospital without prior consultation with the Authorised Medical Officer. I have also carefully seen the letter dated 28.10.1998 issued by Dr. P.R. Gupta on the pad of Banaras Hindu University, Varanasi, which reads as follows :-

"Mr. M.M. Mishra 68 years male retired Railway staff was referred to me by the Chief Medical Supdt., D.L.W. on 27th October, 1998 vide his letter No.S.90/Ch./93. Mr. Mishra was clinically evaluated by me on 28.10.1998. Mr. Mishra is found to have very severe Ischaemic Heart disease with Ant. Wall Myocardial Infarction and his Cardiovasular system is found to be very unstable and required immediate Coronary angiography and if necessary bypass surgery/PTCA. He is advised to proceed to Apollo Hospital, New Delhi on an emergent basis within 24 hrs. Further, he is being advised to go by Plane to save the time. He should be accompanied by a qualified Physician to meet any emergencies during air travel. The facility of Coronary angiography/bypass surgery/Angioplasty is not available in BHU Hospital. He is referred to Apollo Hospital with the intension to avoid usual delay in Govt. Hospitals by and large."

14. I have also carefully seen that this Tribunal has clearly opined in its order dated 4.3.2005 that the ✓

applicant's claim for medical reimbursement has been rejected without considering the relevant paragraphs of the Railway Medical Manual Vol.I and without proper self direction and the matter requires to be sent back for re-consideration on its merits in accordance with law and in the light of observation made above.

15. From the perusal of the order dated 19.5.2005 it is quite apparent that the answering respondents has not at all re-considered the relevant paragraphs of the Railway Medical Manual and without reconsidering the case of the applicant as directed by this Tribunal on its merits. The Competent Authority has passed order in a most casual and perfunctory manner, the reasons assigned in the counter affidavit for denying the reimbursement claim of the applicant is not at all mentioned in the impugned order. According to the respondents the applicant's all parameters were normal and he was cheerful. He was advised to be referred to Cardiology Department, BHU but he was not willing to go to BHU. The applicant had no cardiac complication during his stay in Central Hospital. He was directly taken to Babatpur Airport in place of BHU Hospital as is evident from the statement of the Ambulance Driver and Log Book of the Ambulance. It is also submitted by the respondents that if such claim of employee is entertained in breach of the Medical advise, every patient would like to go to Private Hospital of his choice on one pretext or other causing heavy financial burden to the Government.

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16. In view of the following decisions of Hon'ble Supreme Court an order passed by quashi-judicial authority must be speaking, reasoned and after application of mind.

- (i) 2006 (11) SCC 147 - *Director of Indian Oil Corporation Vs. Santosh Kumar.*
- (ii) 2006 SCC (L&S) 840 - *N.M. Arya Vs. United India Insurance Company.*
- (iii) AIR 1986 SC 1173 - *Ram Chandra Vs. Union of India & ors.*
- (iv) 2005 Vol. 7 SC 597 - *National Fertiliser Vs. United India Insurance Company.*

As directed by this Tribunal in its judgment and order dated 4.3.2005, the matter has not at all been reconsidered on its merits in accordance with law.

17. I have also carefully gone through the decision of Hon'ble Supreme Court rendered in AIR 1998 SC 1703- State of Punjab and others Vs. Ram Lubhaya Bagga. In this case, it has been held by the Hon'ble Supreme Court that the court would dissuade itself from entering into this realm, which belongs to the executive. No State of any Country can have unlimited resources to spend on any of its project. The same holds good for providing medical facilities to its citizen including its employees. The reimbursement of medical claim incurred in Private Hospital is only admissible if such treatment is not available in Government Hospital and for this no objection certificate is obtained from the competent authority. In case of Suman Rakheja (supra), the Hon'ble Supreme Court clearly held that where a government servant had

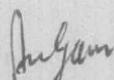
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been rushed to said hospital in emergency the widow would be entitled to get refund of 100 percent medical expenses at the all India Institute of Medical Sciences rates and 75 percent of expenditure in excess thereto.

18. In view of my aforesaid observations, I hereby quash and set aside the order dated 19.5.2005, and matter is remitted back to the competent authority for reconsideration of the claim of the applicant with regard to the medical reimbursement. While considering the case of the applicant, the respondents shall take into account the latest rules and directions given by Hon'ble Supreme Court in its various judgment as indicated above, and pass appropriate reasoned and speaking order within a period of three months from the date of receipt of copy of this order.

19. With the aforesaid observation, the O.A. is disposed of. No order as to costs.


 Member-J

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ORDER SHEET

O.A / MA / RA / CP NO. 1332 OF 2005

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Applicant/s M. M. Mishra Respds. U.O.I. 8 ms.

Advocate for Applicant/s Sh. V.K. Srivastava Advocate for Respondent/s Shri A.K. Sinha

Notes of the Registry	Orders of the Tribunal	Sheet No. <u>15</u>
	<p><u>9-1-2009</u> <u>Hon. Mr. A.K. Gaur, T.M.</u> Answer for the applicant. Shri A.K. Sinha, counsel for the respondent is present. Correction application No. 8060/08 is allowed, as prayed. Office to issue certified copy of order.</p> <p><u>In Jam T.M.</u></p>	
<p><u>Note of Registry</u></p> <p>Misc. Application No 158/09 U/R 12 of the C.A.T. (Procedure) Rules, 1987, is time ext. Application filed by Respt. Counsel Sri Alakh Kumar Sinha submitted for order</p> <p><u>04/12/09</u> <u>SOL</u></p>	<p><u>At 06.02.09</u> Learned counsel for respondent Sri A.K. Sinha submitted that matter has already been referred to the competent authority and prays for two months further time for ensuring compliance of the directions given by the Tribunal. Time prayed for is granted. MA no. 158/09 is disposed of.</p> <p><u>In Jam (A.K. Gaur) JM</u></p>	<p>Contd. On Sheet No. _____</p>