

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

(THIS THE ...^{30th}..... DAY OF NOVEMBER, 2011)

HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MR. SHASHI PRAKASH, MEMBER (A)

Original Application No. 1569 of 2005
(U/s 19 of Administrative Tribunal Act, 1985)

Rajendra Kumar Agarwal
Son of Late Jyoti Prasad Agarwal,
Aged about 65 years, resident of
160, Old Katra, Allahabad.

.....**Applicant**

Present for Applicant: Shri S.S. Sharma, Advocate

VERSUS

1. Union of India through
The General Manager,
Central Railway, Head Quarter's Office
Mumbai CST.
2. The General Manager,
Central Railway, Head Quarter's Office
Mumbai CST.
3. The Chief Medical Director,
Central Railway,
Mumbai CST.
4. The Medical Director
Central Railway Hospital,
Byculla, Mumbai.

.....**Respondents**

Present for Respondents: Shri K.P. Singh, Advocate.

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ORDER

(Delivered by Hon'ble Mr. Shashi Prakash, Member (A))

Through this Original application the applicant has challenged the order dated 4.10.2005 of the Chief Medical Director Central Railway, Mumbai CST rejecting his claim for reimbursement of medical expenses incurred on medical treatment in case of an emergency at an unrecognized hospital. The claim of the applicant has been rejected on the ground that there was no emergency and that the case could have been handled by Central Railway hospital at Byculla Mumbai.

2. In brief the facts of the case are that the applicant was appointed as Assistant Inspector of Works on Western Railway on September 1962. In July 1969 he was transferred to Northern Railway and after passing Conversion course he was posted as Assistant Permanent Way Inspector in Allahabad Division of Northern Railway. Subsequently the applicant was promoted in Class I service and posted as Executive Engineer (Construction) , Northern railway at Delhi.

3. On a medical check up in August 1998 it was found that the applicant was a heart patient and received medical treatment in he concerned Divisional hospitals of the Railways and the All India Institute of Medical Sciences, New Delhi. On account of his ailment his physical activities were restricted as per medical advice. In December 1999 the applicant was transferred and posted as Executive Engineer (Construction) Central Railway Mumbai CST. He

continued to receive medical treatment for his heart trouble at Central Railway hospital Byculla, Mumbai. Due to his health condition the applicant took voluntary retirement w.e.f. 30.6.2004.

4. In January 2005 the applicant underwent a surgery at the Byculla Railway Hospital for removal of his gall bladder. Even after removal of the gall bladder the applicant continued to experience severe stomach pain and got admitted at Byculla Central Railway hospital for diagnosis and treatment. Though he was released on 26.5.2005 from the hospital after five days the root cause of his ailment could not be diagnosed.

5. On 9.3.2005 the applicant experienced severe stomach pain and breathlessness on account of which he became unconscious. Being already a heart patient, his family members considering the situation as an emergency decided to seek immediate medical help from the nearest located hospital i.e. Leelavati Hospital, Bandra Mumbai which was closest to his residence at Andheri. The applicant received the required medical treatment and discharged from the hospital on 10.3.2005 with the advised for complete bed rest. For the aforesaid treatment and conduct of tests the applicant was required to pay an amount of Rs. 23,738/- which he paid out of his own pocket. However, only after a lapse of three days i.e. on 14.3.2005, the applicant once again developed severe pain in stomach along with breathlessness and the family was constrained to take him to Leelavati hospital where he has been treated earlier and where after conduct of necessary tests, a Stictroplasty surgery was conducted on 15.3.2005 and the biopsy test thereafter indicated that the applicant suffered from Intestinal Tuberculosis. He was discharged from

Leelawati hospital on 23.3.2005. For the tests and procedures conducted in Leelawati hospital an amount Rs.82,965/- was charged.

6. The applicant by a letter dated 14.4.2005 and 15.4.2005 claimed reimbursement in prescribed form for the above medical expenses incurred at Leelavati Hospital from the Chief Medical Director Central Railway Byculla along with the supporting documents. On receipt of the aforesaid claims the CMD, central Railway CST wanted to know the reason why the applicant did not avail of the medical services in the Railway hospital. In reply the applicant by a letter dated 23.7.2005 explained in detail the emergency situation and the need for immediate medical attention in the nearest hospital so that his life could be saved. The applicant submitted that the facility and expertise required for treatment of the nature of his ailment did not exist in the railway hospital. The CMD, Central Railway Mumbai rejected the claim of the applicant citing the reason that the facts as stated by him did not constitute an emergency and the case could be handled by the Railway hospital Byculla. In reply to the rejection order of the CMD, CR Mumbai, the applicant reiterated his case for need of emergency treatment which was also turned down by the CMD by order dated 4.10.2005 on the same ground.

7. The learned counsel for the applicant argued that the case of the applicant according to the facts as brought out is clearly that of an emergency. He submitted that the Railway hospital was 20 kms away from applicant's residence and therefore the compulsion of urgency forced him to take treatment in a hospital nearer to his residence otherwise it would have endangered his life. In the circumstances, the family members of the applicant were fully

justified in taking the applicant to the nearest hospital to ensure immediate medical attention. Further the certificate given by the Leelawati hospital specifically mentions that the patient was admitted as an emergency case.

8. In the counter reply the respondents have stated that the applicant was diagnosed as suffering from Intestinal tuberculosis for which he was operated on 15.3.2005. This is a chronic disease for which he could have attended the Railway hospital for the treatment. Therefore his decision to take treatment in private hospital does not entitle him for medical reimbursement as claimed by him under the existing I.E.R.M. While admitting that as per Medical Manual of the Railways, treatment at the private hospital in emergency situation can be reimbursed, in the instant case the applicant intentionally attended the private hospital the second time when he could have taken treatment at Railway hospital. He could have taken treatment in a private hospital only on recommendation by a Railway doctor as per provisions contained in Para 648 of I.R.E.M. As the claim of the applicant is not covered under the said rules it has been rightly rejected by the administration.

9. Learned counsel for the applicant drew the attention of the Tribunal to the following cases : **'K.P.Damodaran Vs. the Joint Director Central Government Health Scheme** decided on 14.2.2002 by the Central Administrative Tribunal, Ernakulam Bench wherein it has been observed that the reimbursement of medical expenses for treatment in an emergent situation in a private hospital binds the Competent Authority to give ex-post-facto approval of reimbursement of the expenditure incurred for the treatment. In **S.P. Kapoor Vs. Union of India** decided by Delhi High Court decided on 27.7.1999

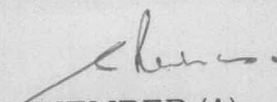
wherein it has been observed that reimbursement of medical expenses in a situation of emergency in case of a person rushed to a nearby hospital in order to save his life cannot be denied even if such a hospital is not recognized.

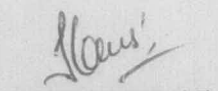
10. Having examined the submissions made by both the parties and the case law quoted above, it is felt that while the reimbursement of medical claims for treatment undergone in non recognized hospital is subject to the approval by the Competent Authority in accordance with the relevant rules, it is apparent from the facts as stated by applicant in the present case, that the situation so emerged that obtaining the requisite permission in this regard may have delayed the Medical attention required by the applicant and could have posed a threat to his life in view of the fact that the Railway Hospital was situated at a considerable distance from the place where the applicant was residing.

It is a matter of common knowledge that serious ailments occur suddenly and require prompt attention. In such events the natural reaction of the family members would be to ensure immediate treatment rather than to get bogged down with the prescribed formalities. Saving of life becomes the prime concern. Accordingly in the given circumstances the claim of the applicant deserved due consideration of Competent Authority rather than being outright rejected on technical grounds. The two citations given in para 9 above have also taken an unambiguous view that in such case ex-post facto approval should be given. The respondents have also argued that the applicant avoided treatment at the Railway hospital and intentionally went to an unrecognized hospital for treatment of his ailment. This contention cannot hold good in the light of ~~from~~ the facts as brought

out by the applicant in para 1 to 5 of the OA which clearly demonstrate that prior to this emergency situation treatment at a private hospital, he was all along taking treatment only from the railway hospitals or All India Medical Institute. Therefore attributing motives in the case ⁱⁿ ~~appears~~ does not appear to be well founded.

11. In view of the aforementioned facts and circumstances we feel that the medical claim of the applicant for treatment in a private hospital is based upon adequate justification. Accordingly, the impugned orders dated 31.8.2005 and 4.10.2005 issued by the Chief Medical Director Central Railway are set aside. The respondents are directed to reimburse the medical claim of the applicant in accordance with the Rules as are applicable to Railway employees in cases of emergency treatment undergone in unrecognized hospitals. The above exercise shall be completed and payment made within a period of three months from the date of receipt of this order. No order is being made with regard to payment of interest. The Original Application is allowed.


MEMBER (A)


MEMBER (J)

Uv/

O.A. No. 1569/2005

30.04.2012

Hon'ble Mr. Shashi Prakash, A.M.

Present: -

Shri Ravi Sharma, Counsel for the applicant and Shri K.P. Singh, Counsel for the respondents.

M.A. No. 1266/2012

This M.A. has been filed by the respondents seeking further time to implement the Order dated 30.11.2011 passed by this Tribunal. Time of two months from today is granted to implement the Order. It may be noted that no further time shall be granted for implementation of the Order.

M.A. No. 1266/2012 stands disposed of.

Member-A

/M.M/