

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

(This the 1 day of 10 2009)

Present

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

Original Application No.838 of 2005
(U/S 19, Administrative Tribunal Act, 1985)

O D'Costa aged about 70 years, son of Mr. S.F. D'Costa, resident of 31/16, Civil Lines, Jhansi (U.P).

..Applicant.

By Advocate : Shri M.P. Gupta
Shri S.K. Mishra

V E R S U S

1. The Union of India through the General Manager, North Central Railway, Allahabad (U.P).
2. The Chief Medical Superintendent, North Central Railway, Jhansi.

.....Respondents

By Advocate : Shri S.S. Agnihotri

O R D E R

(Delivered by : Hon'ble Mr. A.K. Gaur, Member-J

The applicant through this O.A filed under section 19 of Administrative Tribunals Act, 1985 has prayed for following main relief/s: -

- "1). That the respondents be directed to produce in original before this Bench the application of the applicant alongwith all the enclosures, submitted by him in the office of the respondent 2 on 31.08.2004 for re-imbursement of the expenses incurred by the applicant in Jahangir Hospital, Pune for proper consideration of the Bench ;
- ii). To the respondents be further directed to pay to the applicant the sum of Rs. 49822/- by way of re-imbursement with interest at the rate of Rs. 18/- per sent per annum from 31.08.2004 to the actual date of payment and quash and set aside the order dated 09.03.2005 (Annexure-I)."

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2. It is alleged that the applicant, who is a retired Railway employee, is a Cancer patient and he was referred to the Central Railway Hospital, Byculla (Mumbai) by the Railway Hospital at Jhansi as he is a member of Retired Employees Liberalized Health Scheme 1997 since his retirement. According to the applicant, the hospital authorities at Byculla referred him for treatment to the Tata Memorial Hospital, Mumbai, where he had undergone major surgery and the amount spent in treatment at Tata Memorial Hospital was reimbursed by the Railways. Subsequently when the applicant went to the Tata Memorial Hospital for follow checkup, the consulting surgeon advised immediate surgery but as the surgeon, who treated him was not available at the Tata Memorial Hospital at that time, he was referred to Pune where Dr. R.B. Kasbekar, who had performed surgery earlier, was available and the applicant was sent to Jahangir Hospital, Pune by Dr. R.B. Kasbekar and on his advise, the applicant was admitted there on 28.06.2004 and was discharged on 03.07.2004. However, the stitches were removed on 15.07.2004 and 22.07.2004. The applicant submitted his claim on prescribed format for reimbursement of Rs. 49822/- (the expenses incurred in treatment at Pune) alongwith application dated 31.08.2004 (Annexure-II of O.A), which was rejected by the respondent No. 2 vide order dated 14.09.2004 (Annexure-III of O.A). Aggrieved the applicant filed a representation dated 27.09.2004 to the respondent No. 2 for re-consideration of his claim and also requesting for return of original documents. As no heed was paid, the applicant preferred another representation dated 29.10.2004 and in response thereto, the respondent No. 2 vide letter dated 29.10.2004 (Annexure - VI of O.A) informed the applicant that his claim of not maintainable and the Original documents cannot be returned. Thereafter the applicant sent a legal notice dated 17.01.2005 through his Advocate and in response

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thereto, the respondent No. 3 vide order dated 09.03.2005 addressed to his Advocate (Annexure- I of O.A) rejected the claim of the applicant.

3. The grievance of the applicant is that the claim of the applicant cannot be rejected on the basis of letter of Dr. Rajesh Mistry dated 24.03.2004. Learned counsel for the applicant submitted that the rule 647(1) Note of Indian Railways Medical Manual 2000, on the basis of which the claim of the applicant has been rejected, is not applicable. Learned counsel for the applicant invited my attention towards Rule 648 relating to Treatment in an emergency/Annexure VIII of O.A and submitted that alongwith his claim for reimbursement the applicant submitted a certificate issued by the Medical Superintendent of Jahangir Hospital, Pune to substantiate the emergency as provided under Rule 648 of Indian Railways Medical Manual 2000. It has been alleged by the learned counsel for the applicant that the Rule 648 has deliberately been overlooked by the respondent No. 2 while rejecting the claim of the applicant vide order dated 09.03.2005.

4. On notice respondents filed Counter Reply in the form of Written Statement. In para 6 of Written Statement, it has been stated that paragraph 4.6 of the O.A are not in the knowledge of the respondents nor the respondents are in possession of any documents relating to the facts stated in the paragraph under reply , and no document relating to non-availability of accommodation to the applicant in Tata Memorial Hospital has been filed with the O.A and there is also no document on record that the surgeon, who had treated the applicant, was not available at Tata Memorial Hospital. Learned counsel for the respondents further submitted that the averments made by the applicant that he was sent for

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treatment to Pune, where Dr. R.B. Kasbekar , who had performed surgery earlier, was available and he was sent to Jahangir Hospital, Pune is totally false and contrary to the letter of Dr Rajesh Mistry dated 24.06.2004, which was filed by the applicant with his claim for reimbursement. Learned counsel for the respondents invited my attention to the Letter dated 24.06.2004/Annexure-1 of Written Statement and submitted that there is nothing in this letter to show that the applicant was referred or sent to Jahangir Hospital, Pune. Learned counsel for the respondents further submitted that the claim of the applicant has rightly been rejected on the basis of Rule 647(1) Note to the Indian Railway Medical Manual 2000 and the Rule 648 relating to treatment in emergency (relied on by the applicant) is not at all applicable in this case.

5. Applicant filed Rejoinder Affidavit. In para 3 of R.A, it has been stated that the letter dated 24.06.2004 filed by the respondents clearly speaks that Dr. Rajesh Mistry, Professor had written to Dr. R.B. Kasbekar at Pune because of couple of surgeries were done by him, which shows that the doctor in question was recommended for follow check up, who at the relevant time was not available at Tata Memorial Hospital, therefore the applicant went to Pune , where he was available. As the applicant had to be undergo surgery being a cancer patient and delay in surgery could have been fatal, there was no other option but to go for surgery by Dr. R.B. Kasbekar, who had earlier performed surgery of the applicant twice, in Jahangir Hospital, Pune, where he was referred by the concerned Doctor. Learned counsel for the applicant further submitted that the letter of Dr. Rajesh Mistry itself speaks regarding

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emergent treatment, therefore, the claim of the applicant is fully covered under Rule 648 relating to treatment in emergency.

6. We have heard learned counsel for both sides and perused the pleading as well.

7. The sole controversy involved in the instant case that as to whether the case of the applicant comes within the purview of Rule 648 relating to treatment in emergency or not. The contention of the respondents is that in view of Rule 647(1) Note to the Indian Railway Medical Manual 2000 , the applicant is not entitled for any reimbursement and Rule 648 relating to treatment in emergency (relied on by the applicant) is not at all applicable in this case. For better appraisal of the controversy involved in the present case, I would like to refer para 647(1), which is as follows: -

“647.Reimbursement allowed if medical attendance was available 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 or dependent relative should under the provisions of para 633 consult his Authorized Medical Officer first and proceed in accordance with his advice. 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 or 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/investigation in that specific hospital only. If in the course of treatment in that hospital some investigations are

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required to be done at a place other than that hospital such referral should also be routed through the Authorized Medical Officer except 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 Authorized Medical Officer that re-reference was done with his approval, will be considered for reimbursement.”.

8. I would also like to refer Rule 648 of Indian Railways Medical Manual 2000, which is as follows:-

“648 Treatment in an emergency:

(1). Where in an emergency, a Railway employee or his dependent 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 Authorized 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 minimum which were essential for the patient's treatment. In such cases, the General Manager are delegated with powers to allow:

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

(2) In case, where the treatment had to be taken in private/non-recognized hospital in emergent circumstances, without being referred by the Authorized Medical Officer, the General Managers are empowered to settle reimbursement claims up to Rs. 30,000/- per case. It should be ensured that treatment taken in private hospitals by Railway men is reimbursed only in emergent cases and for the shortest and unavoidable spell of time. All claims above Rs. 30,000/- should be referred to the Railway Board alongwith the duly filled in proforma given in Annexure VI to this Chapter.”.

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9. In the instant case, the applicant, who is a Cancer patient, had been referred for treatment to the Tata Memorial Hospital, Mumbai, where he had undergone major surgery twice and the surgery was completed by Dr. R.B. Kasbekar. The letter dated 24.06.2004 filed by the respondents clearly speaks that "couple of surgeries were done by you", which indicates that the doctor in question was recommended for follow check up, who at the relevant time was not available at Tata Memorial Hospital, therefore the applicant went to Pune, where Dr. R.B. Kasbekar was available. As the applicant had to undergo surgery being a cancer patient and delay in surgery would have been fatal, the applicant was admitted in Jahangir Hospital, Pune, where he was referred by the concerned Doctor for surgery by Dr. R.B. Kasbekar, who had earlier performed surgery of the applicant twice, as is evident from the letter dated 24.06.2004/Annexure-1 of Written Statement. A perusal of letter of Dr. Rajesh Mistry (referred to above) clearly indicates **that** in emergency, an Railway employee or his dependent has to go for treatment to a Govt. hospital or recognized hospital without prior consultation with authorized Medical Officer, reimbursement of the expenses incurred to extent, otherwise admissible will be permitted. No doubt that the applicant was under treatment and earlier operated upon by Dr. R.B. Kasbekar, who was available at Pune and not at Mumbai, the applicant was referred to him at Pune at the request of the applicant as is evident from the letter of Dr. Mistry. By no stretch of imagination, it could be treated to be a case of emergency as indicated in Rule 647(1) and 648 of Indian Medical Manual. In this regard, I would like to refer the letter dated 31.08.2004 (Annexure -II of O.A) written by the applicant. Relevant paragraphs of the said letter are as follows: -

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“ During the follow-up check-up at TATA Memorial Hospital the consulting surgeon notices some nodules above the upper left lip, which needed surgery. Since there was no accommodation, I requested the Surgeon (Dr. R.C. Mistry) to refer my case to Pune (Encl. No. 17).

On examination at Pune by Dr. R.B. Kasbekar (who had done my case previously) he suggested immediate hospitalization after required test (encl. 5). I was admitted to Jehangir Hospital, Pune where Dr. Kasbekar is attached. I was admitted on 28.06.2004 and after surgery was discharged on 03.07.2004 and advised rest till the sutures were removed i.e. 15/07/2004 and 22/07/2004 (Encl. No. 2 & 11).”

10. Having given my anxious thought to the pleas advanced by the either side and the relevant rules (quoted above) as well as the extract of the letter filed by the applicant (quoted above), I am firmly of the opinion that it was not a case of emergency warranting immediate reference to Dr. R.B. Kasbekar at Pune, who had earlier performed surgery of the applicant at Mumbai.

11. In view of the discussions made above, I find no case for interference. O.A. accordingly dismissed.

12. The parties are directed to bear their own costs.


(MEMBER-J)

/Anand/