

(OPEN COURT)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

ALLAHABAD THIS THE 04th DAY OF MARCH, 2005.

ORIGINAL APPLICATION No. 247 OF 2003.

HON'BLE MR. JUSTICE S.R. SINGH, VICE-CHAIRMAN.

Man Mohan Mishra, a/a 72 years
S/o Late Muktaman Mishra
R/o N. 6/2 B-62, Indira Nagar,
P.O. Sundarpur (BHU),
Varanasi- 221005.

.....APPLICANT

Council for the applicant: - Sri V.K. Srivastava

V E R S U S

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

.....RESPONDENTS

Counsel for the Respondents: - Sri D.C. Saxena

O R D E R

BY HON'BLE MR. JUSTICE S.R. SINGH, VC.

The applicant, a retired Deputy Chief Mechanical Engineer, D.L.W. Varanasi, has instituted this original application for quashing the orders dated 10/16.08.1999 (Annexure 1) and 11.09.1999 (Annexure 2) and for issuance of a direction to the respondents to declare the reimbursement claim for

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medical expenses preferred by the applicant as legally admissible coupled with direction to pay the reimbursement of medical expenses as claimed by the applicant to the tune of Rs.1,96,888/-.

2. The applicant, it appears, was referred to Institute of Medical Sciences, Department of Cardiology, B.H.U by Chief Medical Superintendent, D.L.W on 27.10.1998 vide letter No.590/CH/93. The case of the applicant is that the doctor in the Department of Cardiology, I.M.S., B.H.U clinically evaluated him, referred the applicant to Apollo Hospital as would be evident from certificate dated 28.10.1998 (Annexure 6). The said certificate would indicate that the applicant was found to have very severe Ischaetric Heart disease with Ant. Wall Myocardial Infraction and Cardiovascular System to be very instable and required "immediate coronary angiography/by pass surgery/PTCA" and the applicant was advised to proceed to Apollo Hospital, New Delhi on emergent basis within 24 hours. Pursuant to the said advise the applicant got himself admitted in Apollo Hospital on 28.10.1998 and he was discharged from the hospital on 07.11.1998 with advise for periodical check-up. The applicant preferred his reimbursement claim on 07.07.1999. The said claim was rejected by order-dated 16.08.1999, which reads as under:

"विशय-प्रतिपूर्ति दावा।

उपरोक्त विशयान्तर्गत आपका प्रतिपूर्ति दावा सक्षम अधिकारी द्वारा विधिवत अवलोकन किया गया। उक्त दावा निन्दित कारणों से देय नहीं है।

1- उक्त दावा टाइम बार्ड केस है।

2- रेलवे बोर्ड के फ्रांक 92/एच/6-4/121 दिनांक 10/3/1993 के पैरा-2 के परिणाम में उक्त दावा देय नहीं है।"

3. Aggrieved against the said order the applicant preferred a representation before the superior authority. His representation came to be rejected by Executive Director (Health), Railway vide letter dated 11.09.2001 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.

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Your letter No. 25/Med/99/94 dated 19.01.2000, 15.04.2000, 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 acceded to."

4. The instant OA was instituted on 06.03.2003. The application for condonation of delay has been filed along with affidavit explaining the delay. The respondents have filed objection to the delay condonation application. The first question, which requires to be considered whether delay in filing OA should be condoned. In paragraph 3 of Misc. Application No. 933/2003 seeking condonation of delay in filing OA, it has been stated that since the applicant's claim for medical reimbursement was rejected, he preferred representations dated 19.10.2001, 05.02.2002 and 02.05.2002 to the respondents clarifying the facts along with the documentary proofs that he got himself treated at Apollo Hospital on the reference of the Doctor at B.H.U. It is further alleged that the applicant fell seriously sick and was bed ridden as would be evident from the Medical Certificate dated 10.12.2002 given by Dr. S.P. Singh. It is further alleged in the application that the applicant met with an accident wherein he suffered fracture in right hand and was treated in the D.L.W Hospital, Varanasi and was under plaster since 18.12.2002 and was recommended for six weeks rest.

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5. The respondents on the other hand have opposed the delay condonation application and filed MA No. 2394/2003 stating therein that the applicant was discharged from Apollo Hospital on 07.11.1998 and was under plaster since 18.12.2002 and he got about 15 months time from the date of Railway Board's letter dated 11.09.2001 to the date of his alleged plaster i.e. 18.12.2002 but he did not file OA for redressal of his alleged grievances.

6. According to Section 21 (1) (b), the Tribunal shall not admit an application, in case an appeal or representation such as is mentioned in Clause (b) of Sub Section (2) of Section 20 has been made and period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months. The applicant persuit by way of representation being bonafide one, I am of the view that he could file O.A from the date of expiry of six months period as referred in Clause (b)(1) of Section 21 of AT Act, 1985. In the totality of facts and circumstances of the fact, I persuade to condone the delay in filing the O.A and allow the delay condonation application and entertain the O.A on its merit.

7. On merits, it has been submitted by the learned counsel for the applicant that the applicant's claim has been illegally and arbitrarily rejected. The impugned order dated 10/16.08.1999 goes to show that the applicant's claim has been rejected firstly, on the ground that it is barred by time, and secondly, on the ground that it was not payable in view of the Railway Board's letter dated 10.03.1993 referred to in the letter dated 10/16.08.1999. The Executive Director (Health), Railway Board in order dated 11.09.1999 (Annexure A- 2) has held that the applicant did not go to BHU Medical Science

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Hospital, Varanasi where he was referred by the Specialist and went to Apollo Hospital on his own and, therefore, his claim could not be acceded to. None of these reasons, in my opinion, are sustainable. According to 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 months from the date of completion of treatment as shown in the Essentiality Certificate of the Authorized Medical Officer/Medical Officer concerned. However, the claim of reimbursement of medical charges not preferred within six months from the date of completion of treatment is required to be "subjected to investigation by the Accounts Officer". The language used in paragraph 652 of the Railway Medical Manual makes it abundantly clear that a medical reimbursement claim not preferred within six months from the date of completion of treatment ought not to be rejected as barred by time. Instead it should be subjected to investigation of the Accounts Officer. Further the stipulation that all claims of reimbursement for medical charges should 'invariably' be preferred within six months suggests that failure to submit medical reimbursement within six months from the date of completion of treatment by itself is not the ground to reject the claim as barred by time without considering the attendant circumstances explaining the delay, if any, in submission of the medical reimbursement claim. The orders impugned herein do not indicate that the competent authority dealt with the question as per the requirement of paragraph 652 of Railway Medical Manual Vol-I referred to above vis-à-vis the question of delay in preferring the medical claim.

8. As regards the second ground of rejecting the claim being not payable in view of the Railway Board's letter dated 10.03.1993, suffice is to refer

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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 10.03.1993) 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 10.03.1993 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.

9. Learned counsel for the respondents has no doubt contended that the applicant did not go to BHU as per reference by the Authorised Medical Officer, DLW. However, the finding recorded by the Executive Director (Health), Railway Board that the applicant

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did not go to BHU where he was referred by the Specialist and went to Apollo Hospital on his own cannot be accepted in the face of certificate issued by Dr. P. R. Gupta, (Card.), H.O.D (Cardiology), Institute of Medical Science, BHU dated 28.10.1998. In my opinion, therefore, the applicant's claim for medical reimbursement has been rejected without considering the relevant paragraphs of the Railway Medical Manual Vol.-I referred herein above and without proper self direction and the matter requires to be sent back for reconsideration on its merit in accordance with law and in the light of observation made above.

10. Accordingly the O.A succeeds and is allowed. The impugned orders dated 10/16.08.1999 and 11.09.1999 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.

11. There will be no order as to costs.

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VICE-CHAIRMAN.

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