

(3)

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

NO  
Medical  
Reimbursement

O.A. No. 240 OF 1990.

~~Exhibit~~

DATE OF DECISION 26-3-1993

Hasmukh Chandulal Shah, Petitioner

Mr. P.K. Handa, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

Mr. N.S. Shevde, Advocate for the Respondent(s)

## CORAM :

The Hon'ble Mr. R.C.Bhatt, Judicial Member.

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

Hasmukh Chandulal Shah,  
 Sr. Clerk,  
 resident of  
 32, Ambika Kunj Society,  
 Opp: Prabhu Nagar,  
 Waghodiya Road,  
 Vadodara.

..... Applicant.

(Advocate: Mr. P.K. Handa)

Versus.

1. Union of India,  
 Secretary,  
 Ministry of Railways,  
 Rail Bhavan,  
 New Delhi.
2. General Manager,  
 Western Railway,  
 Churchgate, Bombay.
3. Divisional Railway Manager,  
 Vadodara Division  
 Western Railway,  
 Pratapnagar, Vadodara.
4. Medical Superintendent  
 Railway Hospital,  
 Vadodara Division,  
 Western Railway,  
 Pratapnagar, Vadodara.

..... Respondents.

(Advocate : Mr.N.S.Shevde)

ORAL ORDER

O.A.No. 240/1990

Date: 26.3.1993.

Per: Hon'ble Mr. R.C.Bhatt, Judicial Member.

Heard Mr. P.K. Handa, learned advocate for  
 the applicant and Mr. N.S.Shevde, learned advocate  
 for the respondents.

2. This application is filed by the applicant,  
 under section 19 of the Administrative Tribunals Act,  
 is filed by the applicant in  
 1985, working as a Senior Clerk in DRM Office in  
 general branch at Pratapnagar. It is the case of the  
 applicant that on 28th April, 1985 he met with an

accident at his own residence at about 13.30 hrs.

The applicant at that time was alone in his house and the neighbours saw the applicant in his house lying unconscious and therefore, the neighbours took the applicant in an Ambassador Car from National Highway No.8 as there was a complete curfew in Baroda City including Pratapnagar for which a necessary certificate from Police Commissioner Baroda is produced by the applicant at Annexure A-1. It is the case of the applicant that the neighbours first took the applicant to Randerwala's shop, who immediately directed the applicant to be taken to SSG Hospital as his bone is streached and so the neighbours took the applicant in car to SSG Hospital but there was Junior Doctors strike in that hospital.

The applicant is produced the necessary certificate at Annexure A-2 to show that there was no arrangement for emergency treatment by Orthopeadic Surgeon.

thereafter the applicant was immediately taken to private Orthopeadic Surgeon who operated him on the same day.

3. The applicant then submitted the application Annexure A-3 and also requisite Forms at Ann. A-4. The applicant had informed the Railway Hospital authorities by an application dated 1st May, 1985 Annexure A-3. The Medical Authorities denied by letter dated 17th February, 1986 stating that the expenses incurred in a Private Doctors Clinic are

not reimbursable. Thereafter the application of the applicant was forwarded to General Manager(E) CCG vide letter dated 15th January, 1988, produced at Annexure A-5, the claim of the applicant for reimbursement was for Rs. 2624.20, some querries were raised by General Manager Office but these were not replied by Divisional Authorities. Inspite of many reminders from Headquarter Office to DRM Office dated 7th June, 1988, 4th August, 1988 and 23rd December, 1988 produced by the applicant at Annexure A-6, A-7 and A-8, the DRM Office authorities have failed to comply to ~~file the~~ reply. But ultimately the reply had been given by the Divisional authorities vide letter dated 30th June, 1989 produced at Annexure A-9 along with an endorsement of reply received from MS/BRC dated 7th June, 1988 in which the Medical Superintendent accepted that the applicant got injury at residence of dislocation of the left elbo with comminuted fracture of radial head and treatment for which was not available in Railway Hospital, Pratapnagar. The same was available in SSG Hospital Baroda, which was a State Government Hospital, but there was a strike. It is also the case of the applicant that his claim for reimbursement should be accepted as per provisions contained in para 654 of Indian Railway Medical Manual, but the Divisional Authorities vide letter dated 26th September, 1989 produced at Annexure A gave reply to the Divisional Secretary as under:

"In this connection it is stated that the case of Shri Hasmukhbhai Chandulal Shah, Clerk DRM-BRC for reimbursement of medical expenses was referred to Railway Board by Headquarter office CCG vide letter No. E/SR/695/12/271 dated 11th July, 1989. The Railway Board's has conveyed their inability to agree to the proposal for Rs. 2522-40 on account of reimbursement of medical expenses".

The applicant has therefore, filed this application seeking the relief that the respondents be directed to reimburse the medical expenses submitted with his application dated 21st August, 1985 vide Annexure A-4 for Rs. 2522.40.

4. It is important to note at this stage that though from the documents produced by the applicant, it appears that the officers of the railway department had suggested the higher authority to consider about the reimbursement of the expenses incurred by the applicant due to the injury to him, the railway board without proper application of mind ~~only~~ <sup>proper</sup> rejected the proposal without giving ~~any~~ reasons. The only reason which can be spelled out from the letter Annexure A dated 26th September, 1989 is that the Railway Board has conveyed their inability to agree to the proposal of reimbursement. In my opinion, this is not a reasoned order. The Railway Board ought to have applied independently its mind to the special circumstances in which the applicant had to take treatment in the Private Hospital.

5. The respondents in the reply have come with the case that as per Para 602(B) Note (ii) of the Indian Railway Medical Manual, 1981 reimbursement of medical expenses for treatment taken in Private Hospital is not admissible in any circumstances whatsoever even if it is taken on the advice of the authorised medical attendant. It is very shocking that the respondents have taken such a stand in the reply. If one examines the circumstances under which the applicant had to take a treatment in the Private Hospital namely that the day on which the applicant suffered injury i.e., on 28th April, 1985, there was a complete curfew in Baroda City and the Junior Doctors were on strike in SSG Hospital. Can such special circumstances should not be considered to give the reimbursement to the applicant ? More over, there was no way to approach the Pratapnagar Railway Hospital at the first instant and the injury was somewhat severe and the applicant was required to be operated. More over, the Railway Medical Authorities have atleast has accepted that there was no treatment available in Railway Hospital, Pratapnagar. The applicant in his application has mentioned that the Railway Medical Authorities have reimbursed to other employees under similar circumstances. If reimbursement was given in an identical case or the circumstances under which the applicant had to take treatment in a Private Hospital the railway board ought not to have rejected

the claim of reimbursement summararily in the manner in which it is done as found in Annexure A. I am of the view that the case of the applicant requires most sympathetic consideration and if such cases are rejected by the Board summarily the people may loose confidence from the authorities. In a present case when there was curfew on the relevant date and when it was not possible to approach immediately to the Railway Hospital, the railway authorities should ask themselves a question as what would be the plight of the applicant who had met with an accident and required immediate treatment. Should he wait for going to the Railway Hospital after curfew is lifted and suffer the consequences or should he go immediately to a hospital where he can get a treatment. I, therefore, quash the order passed by the Railway Board, Annexure A dated 26th September, 1989 and direct the respondents authorities to consider the special circumstances under which the applicant has taken the treatment and if possible to relax the rule and to give the reimbursement if it is satisfied about the circumstances under which the applicant had to take treatment from the Private Hospital. With these directions, the application is disposed of with no order as to costs. The case of the applicant should be disposed of within four months from the receipt of the order of the Tribunal.

*Renzel*

(R.C.Bhatt)  
Member (J)

| Date    | Office Report | ORDER  |
|---------|---------------|--|
| 27-4-94 |               | <p>None is present for the applicant.<br/>Adjourned to 5-5-94, at the request of Mr. Shevde.</p> <p><br/>Dr. R. K. Saxena<br/>Member (J)</p> <p><br/>(V. Radhakrishnan)<br/>Member (A)</p> <p>ssh#</p> |

| Date     | Office Report | ORDER   |
|----------|---------------|---|
| 5-5-1994 |               | <p>Mr. Handa says that C.A.No.20/94 has been heard and disposed of. In view of this M.A.231/94 does not survive. M.A. 231/94 disposed of accordingly.</p> <p><i>BS</i></p> <p>(Dr.R.K.Saxena)<br/>Member (J)</p> <p><i>VR</i></p> <p>(V.Radhakrishnan)<br/>Member (A)</p> <p>vtc.</p> |