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CENTRAL ADMINISTRATIVE TRIBUNAL,  
JODHPUR BENCH, JODHPUR.

ORIGINAL APPLICATION NO. 81/2006

Date of order: 18th May 2007.

CORAM:

**HON'BLE MR. TARSEM LAL, ADMINISTRATIVE MEMBER**

Indermal Jain son of sh. Parasmal Jain, aged about 69 years,  
resident of 8-Mahaveer Nagar, Near Politicnic College, Residency  
Road, Jodhpur.

...Applicant.

Mr. Kuldeep Mathur, counsel for applicant.

**VERSUS**

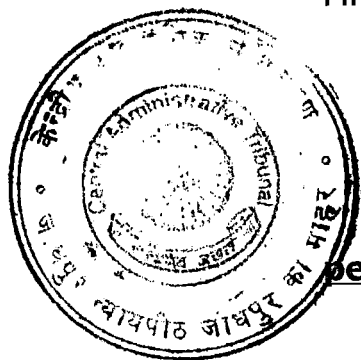
1. The Union of India, through the General Manager, North-West  
Railway, Jaipur (Raj.).
2. Chief Medical Superintendent, North-West Railway Hospital,  
Jodhpur.

...Respondents.

Mr. Salil Trivedi, counsel for respondents.

**ORDER**

**per Hon'ble Mr. Tarsem Lal, Administrative Member)**



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The applicant, Shri Indermal Jain, has filed this Original Application praying that the order dated 16.12.2005 (Annex.A/1) may be quashed and set aside. He has also prayed that the respondents may be directed to refund medical expenses incurred by the applicant in connection with medical treatment of his wife vide his application dated 14.10.2005 Annex. A/6.

2. The brief facts of this case are that the applicant had retired from service on 31.01.1995 while he was holding the post of Divisional Chief Ticket Inspector, Jodhpur. The applicant after retirement deposited his contribution for medical facilities as per the rules prevailing in the respondent-department. The applicant has been issued an Identity Card No. 011184 for availing the medical facilities.

3. The applicant submitted that his wife is a patient of diabetes, mellitus hypertension and heart diseases and in the year 1999 underwent a bypass surgery at Inderprusth Apollo Hospital, New Delhi. The wife of the applicant in the month of June, 2005 visited respondent No. 2 i.e. Chief Medical Superintendent, North-West Railway, Hospital, Jodhpur with certain health complaints.

The respondent No. 2 after examining his wife advised to visit Central Hospital Northern Railway, New Delhi for review and reassessment for her post CABG Angina. The applicant thereafter immediately proceeded to New Delhi along with her wife and the applicant was advised by his family members to first get her wife examined from Inderprasth Apollo Hospital as earlier in the year



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1999 she undergone bypass surgery. There on the advice of the Doctor, her wife underwent coronary angiography. However, the applicant in view of the fact that being a retired railway employee he is required to get his case referred from Central Hospital, Northern Railway, New Delhi requested Doctors of Apollo Hospital to discharge his wife. The request was accepted and the wife of the applicant was discharged from the hospital.

4. At the time of discharge, wife of the applicant was feeling weakness and it was decided that she may be given rest for few days before visiting Central Hospital, Northern Railway, New Delhi. Unfortunately, wife of the applicant suffered from heavy chest pain on 28.06.2005, therefore, in the emergency, she was taken and admitted to Escorts Heart Institute & Research Centre Limited, New Delhi. It is submitted that distance of the Escorts Heart Institute & Research Centre Limited, New Delhi from East of Kailash where petitioner was residing is only about 3 km.s. whereas the distance of Central Hospital Northern Railway was about 15 km.s. and the distance of Inderprasth Apollo Hospital was about 5 km.s.

5. The Doctors of the Escorts Heart Institute & Research Centre Limited, New Delhi hospital advised immediate coronary artery bypass graft (CABG) surgery. The applicant was also told with a view to save life of his wife he should not move in the hospital as earlier in the year 1999 also she had gone coronary artery bypass graft (CABG) surgery. The applicant informed all these details to the Medical Director, Central Hospital, New Delhi vide letter dated 04.07.2005 (Annexure A/5).

6. The applicant had incurred an expenses of Rs. 3,05,832.00 in

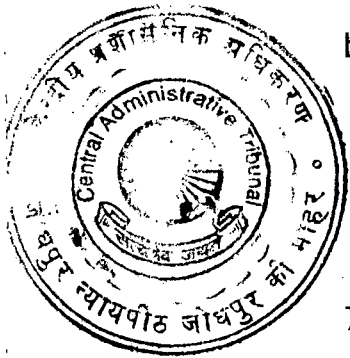


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the bypass surgery of his wife carried out at Escorts Heart Institute & Research Centre Limited, New Delhi. The applicant submitted an application dated 14.10.2005 (Annexure A/6) to respondents claiming refund of medical expenses incurred in connection with medical treatment of his wife and also enclosed all necessary documents along with emergency certificate issued by the Doctors of Escorts Hospital. The applicant thereafter submitted a representation vide Annexure A/7 explaining all facts and circumstances under which he took her wife to Escorts Hospital and requested to pass appropriate orders for reimbursement of medical expenses incurred by him. The applicant submitted that respondent No. 2 vide order dated 16.12.2005 (Annexure A/1) has informed him that his claim for refund of medical expenses has been rejected by the competent authority. Hence this O.A. has been filed and following relief has been requested by the applicant.

" That the respondents may be directed to refund medical expenses incurred by the applicant in connection with medical treatment of his wife as per application Annex. A/6 submitted by him."

7. Respondents have filed their reply to the O.A. and submitted that despite the fact that patient was referred to the Central Hospital, Northern Railway, New Delhi by the respondents for review and reassessment but the patient was taken to the Apollo Hospital, New Delhi on 22.06.2005 for angiography and discharged on 23.06.2005 without informing the Railway authorities. The applicant has deliberately not given the date as to when his wife was taken to the Apollo Hospital for Angiography and when she was discharged.



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8. The cases of bypass surgery are referred to the recognized private institutions for further treatment like bypass surgery etc., but neither the applicant nor the patient followed the rules in this regard and in a pre-planned manner get her admitted in Escorts Heart Institute for bypass surgery and now just with a view to claim the reimbursement, a story has been concocted which is far away from truth as evident from the records itself. The applicant has not given the complete details and the applicant has nowhere stated as to when they proceeded for Delhi after his wife's case was recommended for review and reassessment to the Central Hospital, New Delhi.

9. Respondents have also submitted that though the applicant has stated that his wife suffered heavy chest pain on 28.06.2005 and was admitted in emergency in the Escorts Heart Institute, but it is revealed from the records that the bypass surgery of the applicant's wife was conducted on 05.07.2005. Further after the coronary angiography, the patient visited Maharaja Agrasen Heart Institute & Research Centre, New Delhi on 23.06.2005 and Delhi Heart and Lungs Institute, New Delhi on 27.06.2005 respectively before admission to the Escorts Heart Institute. Thus, the applicant at no point of time deemed it proper to inform the Central Hospital, New Delhi regarding the chest pain on 28.06.2005 and admission to Escorts Heart Institute and no justification has ever been given by the applicant in this regard.

10. Respondents have further submitted that when the patient was admitted on 28.06.2005 in Escorts Heart Institute, New Delhi in emergency because of the severe chest pain, as contended by

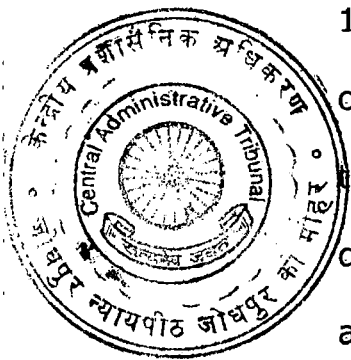


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the applicant, but admittedly the bypass surgery was conducted on 05.07.2005. Had there been any sort of emergency as alleged by the applicant, the bypass surgery should have been conducted on the date or on the next date when the patient was admitted to the Escorts Heart Institute. Thus, all these contradictory facts goes to show that there was no emergency and the applicant ought to have visited the Central Hospital, Northern Railway, New Delhi at the first instance, where the patient was referred but the applicant ignored the same at his own risk.

11. The respondents have also averred that the expenses as shown by the applicant could have been much less than what they are had the applicant adopted the proper channel provided under the rules in this regard, but the applicant at his own chose to adopt a different mode in a preplanned manner for which the authorities of the respondents are not responsible so also for the expenses alleged to have been incurred by the applicant.

12. The case of the applicant was considered by the authorities of the respondents in its true letter and spirit and it was found that the applicant is not entitled for reimbursement of his claim as he did not follow the procedure and rules in this regard. The applicant got the bypass surgery done from the Escorts Heart Institute at his own risk as the patient was not referred for that Institute. Thus, whatever, expenses have been incurred by the applicant, it was at his own risk, for which the authorities of the



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respondents are not responsible under the rules of reimbursement of the claims for medical expenses. Therefore the respondent has averred that this O.A. deserves to be dismissed.

13. I have heard the rival submissions made by learned counsel for both the parties and perused the pleadings and records of this case.

14. Learned counsel for the applicant reiterated the facts given in the OA and stated the following:-

(i) The patient was suffering from heart diseases and such patients are generally referred by the Central Hospital Northern Railway, New Delhi to other Govt. or authorised private hospital. The Central Hospital, Northern Railway, New Delhi is not having any facilities of bypass surgery etc. in the hospital itself. In other words, the operation pertaining to heart diseases cannot be conducted at the Central Hospital Northern Railway, New Delhi.

(ii) That at the time of discharge from the Apollo Hospital, New Delhi She, i.e. the wife of the applicant was feeling weakness, therefore, it was decided that she may be given rest for few days before visiting Central Hospital Northern Railway, New Delhi.

(iii) That Unfortunately, wife of the applicant suffered from heavy chest pain on 28.06.2005, therefore, in the emergency, she was taken to Escorts Heart Institute & Research Centre Limited, New Delhi where she was



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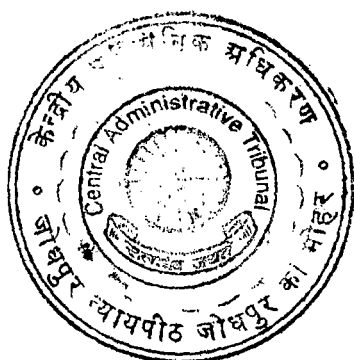
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admitted in emergency on 28.06.2005.

(iv) At this juncture, it is also submitted that distance of the Escorts Heart Institute & Research Centre Limited, New Delhi from East of Kailash where petitioner was residing is only about 3 k.m. whereas the distance of Central Hospital, Northern Railway was about 15 km.s and the distance of Inderprusth Apollo Hospital was about 5 km.s.

(v) Learned counsel for the applicant pleaded that this Bench of the Tribunal in the case of **Shekhar Chand Jain vs. UOI & Ors.** (OA No. 89/2004) decided on January 17, 2005, in similar circumstances, the respondents were directed to consider the case of the applicant for reimbursement of the medical expenses amounting to Rs. 1,85,153/-, accepting the emergency certificate produced by him and release the payment, as admissible under the rules and instructions.

(vi) The learned counsel for the applicant pleaded that the Apex Court in the case of **Surjit Singh vs. State of Punjab and others** [(1996) 2 SCC 336] has held vide para 12 of the judgement as under:



" The appellant therefore had the right to take steps in self preservation. He did not have to stand in queue before Medical Board, the manning and assembling of which, barefacedly, makes its meetings difficult to happen. The appellant also did not have to stand in queue in the government hospital of AIIMS and could go elsewhere to an alternative hospital as per policy. When the State itself has brought Escorts on the recognised list, it is futile for it to contend that the appellant could in no event have gone to Escorts and his claim cannot on that basis be allowed, on suppositions. We think to the contrary. In the facts and circumstances, had the appellant remained in India, he could have gone to Escorts like many others did, to save his life. But instead he has done that in London incurring considerable expense. The doctors causing his operation there are presumed to have done so as one essential and timely. On that hypothesis, it is fair and just that the respondents pay to the appellant, the rates admissible as per Escorts. The claim of the appellant having been found valid, the question posed at the outset is

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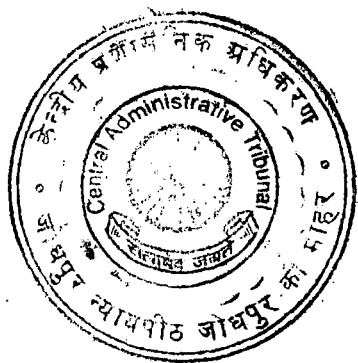
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answered in the affirmative. Of course the sum of Rs. 40,000 already paid to the appellant would have to be adjusted in computation. Since the appellant did not have his claim dealt with in the High Court in the manner it has been projected now in this Court, we do not grant him any interest for the intervening period, even though prayed for. Let the difference be paid to the appellant within two months positively. The appeal is accordingly allowed. There need be no order as to costs."

15. He further pleaded that the Hon'ble High Court of Rajasthan at Jaipur has also held in D.B. Civil Writ Petition No. 5689/2003 decided on 09.05.2005 in the case of **Anil Kumar Surolia vs. The State of Rajasthan and others** as under:

" 6. In the factual background as detailed above, we are of the firm view that even if the required treatment was available in SMS hospital at Jaipur or other approved hospitals in the State of Rajasthan, the petitioner was indeed entitled to medical reimbursement if he had got the treatment elsewhere necessitated on account of circumstances beyond his control. Self preservation is the first instinct in every human being. Person having suffered heart attack is not expected to await treatment at a far off distance as time is the essence in saving valuable life in such matters. There is every risk of a person breathing his last if he has to await treatment of heart attack. In the circumstances, even if such medical treatment as obtained by a Government employee be available in the State itself, he shall be still entitled to medical reimbursement for the treatment obtained elsewhere if the same is necessitated on account of circumstances beyond his control. In emergent situation thus it is not incumbent for a patient to obtain medical treatment only in approved hospitals of the Government. We would have discussed the matter in further details as per provisions of the Rajasthan Civil Services (Medical Attendant) Rules but it is conceded during the course of arguments that if the petitioner was to obtain medical treatment at SMS hospital at Jaipur or other government approved hospitals in the State of Rajasthan, he would have been paid the same amount for the treatment he ultimately got from Krishna Heart Institute. If that be a fact, and which as mentioned above, is conceded, we are of the view that the stand taken by the State Government is obdurate and wholly uncalled for. We could imagine if perhaps the petitioner had spent far more and was claiming the same while getting treatment in a non-approved hospital. Government in any case had to pay the same amount spent by the petitioner at Krishna Heart Institute even if the petitioner was to get treatment in SMS hospital or other approved hospital in the State of Rajasthan. This Court cannot but deprecate the attitude of the Government in rejecting justified claims in teeth of the recommendations made by this Court. Registrar General of this Court indeed supported the cause of the petitioner but the favourable recommendation made by this Court have been turned down on wholly untenable grounds.

7. Before we may part with this Order, we would like to mention **that the Government cannot insist upon an employee to get himself treated at recognised government institution.** All that the Government in these circumstances can do is to reimburse the concerned employee at the rates that may be applicable in the recognised government institutions. Reference in this connection may be made to the judgement of the Supreme Court in Surjit Singh vs. State of Punjab and others [ AIR 1996 SC 1388] and State of Punjab and others vs. Mohan Lal Jindal [ (2001) 9 SCC 217].



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The Learned counsel also relied on a single Judge Bench case of the Hon'ble High Court of Rajasthan at Jaipur in the case of **Uma Shankar Srivastava vs. State of Rajasthan and others**

[S.B. Civil Writ Petition No. 5083 of 2003- decided on 06.01.2006]. Paras 6 to 8 of the Judgement reads as under:

" 6. Health and medical assistance is part and parcel of right to life and liberty and it is fundamental duty of the State to provide such facilities to its citizen, more particularly, the retired Government employees, who have through out their service tenure been contributing to the scheme. It is expected of the State Government to frame rules in regard to giving medical benefits to the retired Government employees also so that no arbitrary discretion is left with the Board of Trustees and the Committees, which decide claims of the pensioners.

7. **Admittedly, wife of the petitioner has been operated in Government hospital in the State itself and the bills have been issued by the Rajasthan Medical Relief Society, SMS hospital, Jaipur and as such authenticity of the bills also cannot be disbelieved. Since, there is no limit prescribed in the scheme for reimbursement of the expenses incurred on treatment in a Government hospital in the State, in my opinion, the petitioner is entitled for reimbursement of the entire expenses as claimed by him.**

8. Accordingly, the writ petition is allowed. **The respondents are directed to make payment of remaining amount of Rs. 70,000/- to the petitioner within thirty days from the date of receipt of certified copy of this order. Since, wholly unreasonable and contradictory stand has been taken by the respondents in the present matter, they are further directed to pay a cost of Rs. 10,000/- also to the petitioner along with the amount as ordered above.**

Therefore the learned counsel for the applicant pleaded that Rs. 3,05,832/- as claimed by the applicant may be reimbursed.

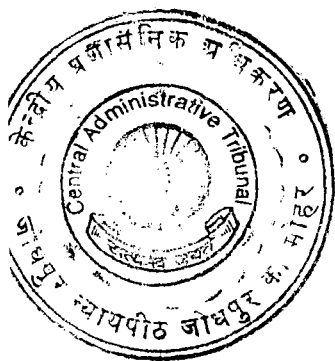


16. On the contrary, learned counsel for the respondents pleaded that each case has to be examined on its facts and merits. Learned counsel for the respondents averred that the patient started journey on 22.06.2005 and was admitted on 28.06.2005 in Escorts Heart Institute, New Delhi in emergency because of the severe chest pain, as contended by the applicant, but admittedly the bypass surgery was conducted on 05.07.2005. Therefore, there was enough time with the patient to get his case referred from the Central Hospital Northern

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Railway, New Delhi to the hospital where the patient could obtain the treatment which has not been done. He therefore, averred that there was no emergency in this case and the applicant should have taken his wife first to the Central Hospital, New Delhi for treatment. He referred to the Railway Board letter dated 31.01.2007 wherein emergency situation has been clearly defined. It has also been stipulated in the above circular that there was no scope available for any railway beneficiary to go to any private hospital himself/herself or their dependents on their own volition except in case of real emergency.

17. The learned counsel for the applicant pleaded that the above Railway Board letter has been issued in January 2007, whereas the applicant's wife had undergone the treatment in July 2005, therefore, the above guidelines are not applicable in this case. He also pleaded that an intimation of emergent situation was given by the applicant to the respondent vide Annex. A/5. The emergency certificate issued by the Escorts Heart Institute and Research Centre Limited, New Delhi, vide Annex. A/4 has also been supplied to the respondents.



18. The learned counsel for the respondents further pleaded that that the Railway Hospital at Jodhpur had directed the applicant to take his wife to the Central Hospital, New Delhi, whereas the applicant has taken his wife first to the Apollo Hospital and then to the Escorts Heart Institute and Research Centre Limited, New Delhi which is a procedural irregularity and

therefore the applicant is not entitled for any reimbursement of his wife's treatment.

19. I have carefully considered the pleadings made by the learned counsel for both the parties and waded through the judgements cited by the learned counsel for the applicant. It is a fact that the applicant's wife has been suffering from heart problem and she was referred to the Central Hospital, Northern Railway, New Delhi, by the Chief Medical Superintendent North West Railway Hospital, Jodhpur. However, the applicant first took his wife to Apollo Hospital, New Delhi for Angiography and subsequently in an emergent situation took treatment for his wife in the Escorts Heart Institute and Research Centre Limited, New Delhi and incurred an expenditure of Rs. 3,05,832/-. The applicant has already submitted the 'Emergency Certificate' issued by the Escorts Heart Institute and Research Centre Limited, New Delhi dated 02.07.2005 ( Annex. A/4). An intimation of the emergent situation was also given by the applicant vide his letter dated 04.07.2005 ( Annex. A/5) to the Medical Director, Central Hospital, Northern Railway, New Delhi.



20. It is settled law that Government servants have fundamental right to self preservation. The Hon'ble Apex Court has held that self preservation of one's life is the necessary concomitant of the right to life enshrined in Art. 21 of the Constitution of India, fundamental in nature, sacred, precious and inviolable. The fact that wife of the applicant was suffering

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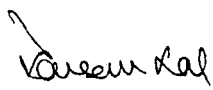
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from heart disease and she was referred by the Chief Medical Superintendent North West Railway Hospital, Jodhpur to Central Hospital, Northern Railway, New Delhi for treatment, where she had taken treatment in an emergent situation from Escorts Heart Institute and Research Centre, Limited, New Delhi for self preservation of her life.

21. In view of the above discussion, the O.A is allowed. The respondents are directed to consider the case of the applicant for reimbursement of the medical expenses incurred for the heart treatment of his wife amounting to Rs. 3,05,832/- by accepting the emergency certificate issued by Escorts Heart Institute and Research Centre Limited, New Delhi and release the amount admissible as per the rules and instructions available on the subject within a period of three months from the date of receipt of a copy of this order.

22. The O.A is disposed of in the above terms. In the facts and circumstances of this case, there will be no order as to costs.



  
( Tarsem Lal )  
Administrative Member.

Nlk/jsv

Part II and III destroyed  
in my presence on 23-6-14  
under the supervision of  
section officer ( ) as per  
order dated 26-2-14.

Section officer (Record)

Dave 25/5/07  
Received copy by me  
Farheen Dave



R/c  
(Gunnahel + vadi)  
23/6/07