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**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

Original Application No. 137/2007

Date of order: 17.04.2008

HON'BLE MR. JUSTICE A.K. YOG, JUDICIAL MEMBER.

Kanhiyalal Dhakad S/o Shri Bhanwar Lal aged about 46 years, resident of 2 J 4 R.C. Vyas Colony, Bhilwara, Rajasthan, presently posted as Postal Assistant at Head Post Office, Bhilwara under the Superintendent of Post Offices, Bhilwara Division, Bhilwara.

...Applicant.

Shri S.K. Malik, counsel for applicant.

VERSUS

1. Union of India through the Secretary, Ministry of Communication, Department of Posts, Dak Bhawan, New Delhi.
2. The Post Master General, Rajasthan Southern Region, Ajmer.
3. The Superintendent, Post Offices, Bhilwara Division, Bhilwara.

...Respondents.

Shri M. Godara, advocate, holding brief of
Shri Vinit Mathur, counsel for respondents.

ORDER

Per Mr. Justice A.K. Yog, Member (J)

Factual matrix, of the present case, as culled out from the pleadings of the parties in the above Original Application No. 137/2007 (Kanhiyalal Dhakad vs. Union of India and Others), is noted in brief.

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The applicant (Kanhiyalal Dhakad), an employee of Postal Department, Head Post Office, Bhilwara, claimed reimbursement of the expenses under relevant statutory rules incurred on medical treatment of his son (Ravi). The Respondents rejected said claim vide impugned order dated 22.05.2007 and hence the said O.A. before this Tribunal under Section 19, The Administrative Tribunals Act, 1985.

It is contended that Ravi (son of the Applicant) aged about 16 years suddenly fell ill on 31.10.2006; in unconscious condition, he was taken to Mahatma Gandhi Hospital, Bhilwara (a Government Hospital) and admitted in Intensive Care Unit (I.C.U.) of said Hospital on 31.10.2006; he remained under treatment there till 03.11.2006; the patient continued to be unconscious with no improvement; on the advise / recommendation of competent authority of the hospital (i.e. C.M.O./P.M.O.) he was discharged on 03.11.2006 with reference for treatment to higher center; same day (03.11.2006) the patient (Ravi) was taken to S.M.S. Medical College, Jaipur but not admitted and denied treatment there due to non-availability of room; he was then taken to Rungta Hospital, Malviya Nagar, Jaipur and admitted on 03.11.2006 itself (Annexure A/3 to the O.A.); son of the applicant (Ravi) remained under treatment of said Hospital and discharged from there on 22.11.2006 with an instruction to come for check up on 14.01.2007; the applicant,

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thereafter, submitted medical claim in lieu of the expenditure incurred over the treatment of his son, on 13.02.2007; the medical bills were returned vide letter dated 14.03.2007 / Annexure A/4 to the O.A. issued by respondent No. 3 requiring the applicant to obtain counter signature from the P.M.O., Bhilwara; the concerned P.M.O., M.G. Hospital, Bhilwara counter signed the medial bills on 19.03.2007 along with certificate / Annexure A/5, but the respondent No. 2 / Post Master General, Rajasthan Southern Region, Ajmer, however, refused to sanction and pay the claim of the medical bills vide impugned order dated 22.05.2007 / Annexure A/1 to the O.A. and, therefore, the present O.A. claiming following reliefs:

"(i) By an appropriate Writ, Order or Direction, respondents may be directed to reimburse the medical claim of Rs. 2,54,190/81 along with interest at the rate of Rs. 12% per annum.

(ii) By an appropriate Writ, order or Direction, respondents may further be directed to reimburse the Conveyance Charges of Rs. 4,500/- towards Conveyance for carrying the son of the applicant from Mahatma Gandhi Hospital, Bhilwara to Jaipur and back from Jaipur to Bhilwara alongwith Interest @ 12% per annum.

(iii) Exemplary cost for causing undue harassment may kindly be imposed on the respondents.

(iv) Any other relief which is found just and proper in the facts and circumstances of the case, be passed in favour of the applicant in the interest of justice."

The respondents, on being noticed, put in appearance and filed their counter - reply as well as Additional Affidavit (additional counter - reply).

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Basic facts of the case, noted above, are not in dispute.

Relevant extract of Para 4 of the 'counter - reply' (verified by Ganpat Lal, Superintendent of Post Offices, Bhilwara), reads:

"4. That though the bill was submitted to the Regional Office, Ajmer vide letter dated 21.3.2007 along with a certificate duly countersigned by the P.M.O., Bhilwara for seeking the necessary guidance as the treatment was taken from a private hospital recognized for CGHS beneficiaries and the amount of bill was very huge. The Regional Office Ajmer had returned the bill stating that as per para 4 of the Appendix VIII of the CS (MA) Rules, 1944, the authorities lower than the Head of Department should not exercise these powers to sanction reimbursement claims for obtaining treatment at Private Hospital. Thus, on reexamination of the claim the information was called for from the Medical Officer on 17.4.2007 regarding nature of disease which was replied on 18.4.2007 that the son of the applicant was suffering from viral hepatitis with Encephalitis and it is a serious disease which is dangerous to life and accordingly he was referred. Thus, after receipt of this information, his case was resubmitted before the R.O. Ajmer vide letter dated 7.6.2007 and after due consideration and examination by the competent authority, his claim was rejected as he took treatment from the hospital which was neither recognized nor accepted as higher center. Accordingly, the applicant was informed vide letter dated 21.5.2007."

(underlined to emphasise)

The respondents, however, make an attempt to defend the impugned order vide para 4.1 to 4.6, reproduced below :

"4.1 That the contentions made in Para 4.1 of the original application are not admitted as stated by the applicant and in reply, it is respectfully submitted that the case of the applicant has not been referred and countersigned by the PMO as per the provisions of Government of India Order (4) below Rule 6 of the CS (MA) Rules, 1944.

4.2 That the contentions raised in Para 4.2 of the original application are denied and in reply, it is respectfully submitted

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that neither the applicant produced any receipt for expenses of conveyance through ambulance from Bhilwara to Jaipur Rs. 3500/- nor he claimed for any such expenses to the respondent No. 3. The applicant has not submitted any documentary proof in support of his version regarding first approaching to SMS Hospital for treatment and taking treatment from Runghta Private Hospital as required under the provisions of CS (MA) Rules, 1944. As such the plea of the applicant is not tenable in the eye of law.

4.3 That the contentions raised in para 4.3 of the Original application are not admitted as stated by the applicant and in reply, it is respectfully submitted that the countersigned of the PMO/DMO is necessary when the treatment is taken from outside the District as stated in above para.

4.4 That the contentions raised in Para 4.4 of the original application are not admitted in the manner stated by the applicant that he got countersignature whereas he has furnished a fresh certificate issued by AMO on 19.3.2007 and the same was countersigned by PMO in which the AMA has not mentioned the name of station and Hospital from where further treatment is to be taken as such, this certificate can not be treated as per the provisions of GIO (4) below Rule 6 of the CS (MA) rules, 1944.

4.5 That the contentions raised in Para 4.5 of the original application are denied and in reply, it is respectfully submitted that the applicant has taken the treatment from outside the district and from private hospital without following the provisions of GIO (4) below Rule 6 of CS (MA) Rules, 1944. Powers for reimbursement of such type of claims are vested with the Head of Department as per para (4) of Appendix VIII of CS (MA) Rules, 1944. The applicant is covered under the CS MA Rules, 1944 but in the present case, the applicant got the treatment of his son from the Private Hospital and respondent No. 3 is not empowered to admit such claim preferred by the applicant for treatment taken from private Hospital. The presumption of the applicant that the respondent No. 2 rejected the claim without examining the same is not correct. It is a fact that Runghta Hospital was authorized from General purpose treatment and diagnostic service and specialized pediatric services but neither it is approved by the department of posts nor the CMO Bhilwara has particularly referred the case for Runghta Hospital, Jaipur but the case was referred to "Higher Center gastroenterology". The applicant instead of utilizing the services provided by the Government SMS Medical College, Jaipur got his child admitted in Runghta Hospital at his sweet will and the competent authority has not convinced about the need to get treated in a hospital not recognized under the CSMA Rules besides not accepting Runghta Hospital as a Higher Center specialized for Gastroenterology treatment.

4.6 That the contentions raised in para 4.6 of the original application are denied and in reply, it is respectfully submitted

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that as he has taken treatment in Runghta Hospital without following the provisions of GOI (4) below Rule 6 of the CS (MA) Rules, 1944. As the AMA Bhilwara did not referred the case to take treatment from Runghta Hospital Jaipur but the AMA referred to Higher Center Gastroenterologist for needful. However, the respondent No. 2 rejected the claim after careful consideration of the case as the competent authority was not convinced about the need to get treated in a hospital not recognized under CS (MA) Rules, besides not accepting Runghta Hospital as higher specialized center for gastro enterology treatment."

Para 3, 4 and 5 of the additional counter-reply (titled as 'additional affidavit'), are also reproduced;

"3. That the contention of the applicant regarding application of provisions of GID (11) below Rule 2 of CS (MA) Rules, 1944 & the orders of GOI MOH & FW OM No. F-514021/12/98-MS dated 31.12.1998 regarding taking of treatment from the recognized private hospital and authorization of Rungta Hospital are not correct and far from the truth. As the case is different one, the patient was undergoing treatment at M.G. Hospital, Bhilwara and thereafter shifted to Rungta Hospital, Jaipur which comes under the provisions of GID (4) below Rule 6 of CS (MA) Rues, 1944 for which the clear recommendation of the AMA duly counter signature from CMO/PMO is mandatory as the patient was shifted out side the District. Moreover, it is pertinent to state that in the cases failing under GID (11) below Rule 2 the prior permission from the Head Office is also necessary which has also not been taken in the instant case.

4. That the applicant has not submitted any T.A. claim along with MR claim and as such, there is no question of un-attendance. The contention of the applicant regarding saving of the life and not getting of the proof for approaching to SMS Hospital are only after thoughts and it is crystal clear from the GIMH & FW DMF No. 514021/12/98-MS dated 31.12.1998 that the Rungta Hospital is authorized for General purpose treatment and diagnostic procedure and specialized treatment for paediatrics but it is not a higher center than the SMS Hospital and not recognized by the department. As such, the plea of the applicant is not tenable.

5. That at the time of submission of the claim no counter signature of the CMO/PMO was available, as such, the treatment was taken in contravention of the provisions of GID (4) below Rule 6 ibid can not be sanctioned."

(underlined to emphasise)

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From the bare perusal of the pleadings of the Respondents, it is clear that 'objections' rejecting 'Medical - Claims' in question are based on the reading of rules / Govt. Orders by adopting a too 'technical' approach in interpreting them and stretching ^{or it} ~~their~~ reading/understanding to an illogical end.

Moreover, the respondents, before rejecting the medical claim in question, should have been given an 'opportunity' and pass a 'reasoned order' disclosing the 'objection' in categorical terms. Apart from it, it is also clear from the 'objections' disclosed in their counter-reply/additional counter-reply, that respondents refused to entertain 'Medical Claim' in question ^{is} ~~is~~ only with respect to ^{or} ~~some~~ of 'procedural-infractions' in submitting these 'Medical Claims' without coming to the conclusion of "Treatment" & "Expenses" in question itself being fictitious.

The applicant, against the 'counter-reply' of the respondents, filed rejoinder-affidavit; relevant para 3, 4.1 to 4.7 are reproduced:

"3. That the reply to para No. 3 of the OA, is not accepted as submitted by the respondents. It is contended that there was no need to refer the patient by the medical Board. No such provision is there in the Rules, according to the provisions contained in G I D No. 4 (ii) below Rule 6 of C.S. (M.A.) Rules,

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1944 and the treatment outside District / State be recommended by A.M.A. and counter signed by Chief Medical Officer. As such patient was referred for treatment to higher centre in the evening when the patient was in unconscious condition and also the Chief Medical and Health Officer / PMO Office was closed. As the time was crucial in saving the life of the patient, it was not possible to get cleared administrative hurdles. However on hearing from respondent No.3 vide letter dated 14.3.2007 (Annex. A/4) applicant got counter signed the reference certificate from the PMO In-charge of the M.G. Hospital, Bhilwara.

4.1 That the reply given in this para is incorrect. It is submitted that the receipt/s and the T.A. Claim was submitted along with the medical bill and the same is still unattended by the respondent No. 3. As regards non production of proof for approaching Sawai Mansingh Hospital, Jaipur, it is submitted that every movement was valuable for saving the life of patient as such no time could be spent for getting proof. Further, it is cristal clear that as Rungta Hospital itself is a recognized hospital for Central Government employees under the C.S. M.A. Rules, 1944, there was no occasion for the applicant to get such proof from the said hospital, viz., the Sawai Mansingh Hospital, Jaipur. It was at his liberty to take treatment either from a Govt. Hospital or from a duly recognized hospital.

4.2 to 4.3 That the plea taken by the respondents under these paras is denied and not accepted and it is submitted that counter signatures of P.M.O. were obtained and submitted vide Annexure A/5 to the respondents.

4.4 to 4.5 That the reply given by the respondents to these paras of the O.A. are also not acceptable as the contents of such reply are incorrect. It is contended that it was upto the AMA/PMO to write as they deem proper. However, they have referred for further treatment from Jaipur which has clearly been mentioned IN Annex. A/5. The A.M.A. referred to higher centre which is clearly shown in the discharge ticket also.

Further, it is submitted that the Appendix VIII itself clears reimbursement in relaxation of rules in emergency cases. It was also a case of emergent nature being serious nature of disease. In para 4 of the reply also the respondents admits that the Medical Officer confirmed vide letter dated 18.4.2007 that Ravi Prakash was suffering from a serious disease. which was dangerous to life. As such, if the applicant would have took treatment from a private hospital or nursing home, the reimbursement was yet to be permissible but in this case Rongta Hospital is a hospital authorised by the Ministry of Health for reimbursement purpose under the C.S. (M.A.) Rules, 1944. The Department of Posts have no powers to authorise any hospital separately under the said rules. Thus, the contention of respondents are totally baseless.

4.6 That the averments made in reply to this para are also

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denied being incorrect in view of the reply given in the foregoing paras.

4.7 That the reply submitted by the respondent -department to para 4.7 is not accepted as stated. It is submitted that although there is no provisions to submit any representation to any other higher authorities, however, the medical reimbursement bill was submitted to the controlling authority i.e. the Superintendent of Post Offices, Bhilwara. Further, it is submitted that the objection raised by the controlling authority was also met after thereafter, the amount was to be sanctioned by the Superintendent of Post Offices, Bhilwara, who unauthorisedly forwarded it to the higher authorities i.e. Post Master General (SR), Ajmer who rejected the bill without giving opportunity or showing valid reasons. Thus, there was no other alternative with the applicant except to approach to this Honourable Tribunal."

According to the pleadings on record, the respondents have failed to controvert specifically the "factum of deadly/critical illness" and its treatment of the son of the applicant. Medical discharge ticket issued by M.G. Hospital, Bhilwara / Annexure A/2 to the O.A.; proves that Ravi (son of the applicant) was suffering from Hepatic Encephalitis / Viral Hepatitis, a critical/fatal disease. There is no reason to disbelieve the Version of the applicant for not admitting his son and treated in S.M.S. Hospital, Jaipur, the reason for his son being taken to Rungta Hospital, Jaipur, admittedly a CGHS approved Hospital as admitted by the Respondents in para 4, 4.1 to 4.6 of the counter-reply (quoted above).

Learned counsel for the respondents place reliance on relevant rules (referred in the counter reply) to justify rejection of 'medical claim' in question.

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The respondents, however, fail to show anything from the statutory rules or Government of India order etc. that 'counter-signature' could not be obtained subsequently; particularly considering the explanation of the applicant vide para 3 of the Rejoinder (quoted above), viz. - it was not possible to observe the procedural formality when patient was referred/discharged from M.G. Hospital, Bhilwara, and that medical claim could be denied only on that ground only or that the patient was not admitted in a Government (duly recognized/approved Hospital); particularly when 'no room was available' at S.M.S. Hospital at Jaipur or otherwise the other Hospital (well a private/Govt.), was preferred for better treatment.

The respondents made no attempt to find ^{or. out} from S.M.S. Hospital, Jaipur to verify correctness of the version/explanation offered by the Applicant for having failed to 'admit' his son in S.M.S. Hospital, Jaipur.

Facts indicated in Discharge ticket / annexures A-2 & A-3 to the O.A., viz. son of the applicant was in a critical condition, he was referred to a 'higher centre' and not to 'S.M.S. Hospital, Jaipur' for his treatment, have not been disputed/denied by the respondents.

The relevant statutory rules in respect of medical claim

have to be read pragmatically keeping underlying object for the prescribed procedure and adopt rational approach to make them practical and purposeful. In other words, not to treat the 'prescribed procedure' in the Rules as a 'Testament of Bible' or laying a 'straight jacket' path – and expect 'one' to follow them strictly – with no exception or variance, even it may cost 'life' of the patient itself.

In the case of **K.P. Singh vs. Govt. of NCT of Delhi and Anr.** (O.A. No. 821/2007); decided vide order dated 28.09.2007, Central Administrative Tribunal - Principal Bench, New Delhi, repelled similar contention / defence of the respondents; for convenience, para 5 of the said order, reads:

"5. When a person in emergency approaches the nearest hospital to save his life, it is not foreseen that such a hospital is either recognized or whether there has been a referral from the Government of such treatment. The primary concern at that time is to save life, which has been guaranteed under Article 21 of the Constitution of India. In such an event, it is for the private hospital, which is unfortunately not before me in the proceedings, yet when charged medical expenses beyond the package rates, the Government should rise to the occasion and redeem the excess charges charged by the private hospital from the pensioner and/or else they should reimburse these excess medical charges to the government servant with liberty to realize it from the concerned hospital. If it is not so, the private hospital should be de-recognized forthwith so that the amount of money which they are getting out of profit is mainly from the Government servants and pensioners approaching them for treatment.

While allowing the said O.A. No. 821/2007; the Principal Bench of the Tribunal relied upon the ratio laid down by the Apex Court in the case of **Suman Rakheja v. State of Haryana**

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(2004) 13 SCC 562; the decision in the case of **Farooq Hasan vs. Union of India & Ors.**- 2007 (2) SCT 672 (Rajasthan High Court) and in the case of **Promlesh Bhatnagar vs. Employees State Insurance Corporation & Anr.**- SLJ 2007 (1) 537 (Delhi High Court).

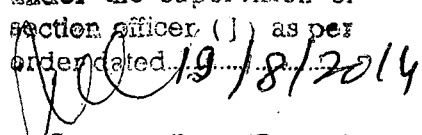
In view of the above discussion, the impugned order dated 22.05.2007 / Annexure A/1 to the O.A., cannot be sustained and liable to be set aside.


Consequently, the impugned order dated 22.05.2007 / Annexure A/1 to the O.A., is set aside and the respondents are directed to ensure reimbursement of medical claim amounting to Rs. 254190.81 in respect of Sh. Ravi Prakash Dhakad son of Shri Kanhiya Lal Dhakad / the applicant in the O.A., along with simple interest @ 9% p.a. on aforesaid amount from the date it became due till its actual payment, within three months of receipt of a certified copy of this order.

Original Application No. 137/2007 stands allowed with above directions.

No order as to costs.


[A.K. Yog]
Member (J)

Part II and III destroyed
in my presence on 07/12/19
under the supervision of
section officer () as per
order dated 19/08/2014

Section officer (Records)


S. J. Malik
Adv
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