

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

**ORIGINAL APPLICATION NO. 248/2008
&
ORIGINAL APPLICATION NO. 258/2008**

Date of order: 20.01.2011

CORAM:

HON'BLE MR. JUSTICE S.M.M. ALAM, JUDICIAL MEMBER

(1) OA No. 248/2008

Surendra Singh Pokharna S/o Shri Narendra Singh Pokharna, aged about 53 years, R/o 32, Vaibhavnagar, Main Bhopalpura Road, Shashtrinagar, Bhilwara (Raj.) presently working on the post of Sub Post Master at Kashipuri Post Office, Bhilwara (Raj.).

...Applicant.

Mr. S.K. Malik, counsel for applicant.

VERSUS

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

... Respondents.

Mr. M. Godara, proxy counsel for
Mr. Vinit Mathur, counsel for respondents.

(2) OA No. 258/2008

Surendra Singh Pokharna S/o Shri Narendra Singh Pokharna, aged about 53 years, R/o 32, Vaibhavnagar, Main Bhopalpura Road, Shashtrinagar, Bhilwara (Raj.) presently working on the post of Sub Post Master at Kashipuri Post Office, Bhilwara (Raj.).

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1. The Union of India through the Secretary, Ministry of Communication Dak Bhawan, New Delhi.

2. The Director, Postal Services, Rajasthan Southern Region, Ajmer (Raj.).
3. The Superintendent of Post Offices, Bhilwara Division, Bhilwara.

... Respondents.

Mr. M. Godara, proxy counsel for
Mr. Vinit Mathur, counsel for respondents.

ORDER

Both the Original Applications are being disposed of by this common order passed in O.A. No. 248/2008 as both the OAs have been filed by applicant Surendra Singh Pokharna for reimbursement of medical claim with respect to the treatment of his wife on two different occasions.

2. Original Application No. 248/2008 has been filed by the applicant claiming reimbursement of the medical claim of Rs. 69,975/- along with the interest @ 12% per annum towards expenditure done on the treatment of applicant's wife in Escorts Heart Institute and Research Centre, New Delhi, for the period from 08.05.2006 to 12.05.2006. The Original Application No. 258/2008 has been filed by the applicant claiming reimbursement of the medical claim of Rs. 25,108/- along with the interest @ 12% per annum towards expenditure done on the treatment of applicant's wife in Santokha Durlabhji Memorial Hospital, Jaipur, for the period from 20.09.2007 to 25.09.2007.

In both the cases, the claims of the applicant for reimbursement of the medical claim were rejected by the competent authority (respondents).

3. The brief facts of the O.A. No. 248/2008 are as follows:

The applicant's wife Smt. Pukhraj Jain, Postal Assistant, Bhilwara while on leave at New Delhi all of a sudden got heart problem and was immediately taken to Escorts Heart Institute and Research Centre, New Delhi for treatment, where she was admitted and treated from 08.05.2006 to 12.05.2006. On being discharged, the hospital authority gave bill amounting to Rs. 69,975/-. The applicant submitted the said bill before the respondent no. 3 for reimbursement along with original documents, whereupon the respondent no. 3 vide letter dated 30.06.2006 (annexure A/3) made some query from the applicant and thereafter issued explanation vide letter dated 27.11.2006 (annexure A/4) for not obtaining prior permission for taking treatment outside the District / State and also with regard to the finding of Escorts Hospital, New Delhi regarding the non-serious nature of disease. The applicant submitted explanation vide his letter dated 24.01.2007 (annexure A/5), and thereafter vide letter dated 12.02.2007 (annexure A/6), the applicant made it clear that due to sudden heart problem at Delhi, he got treatment of his wife at Escorts Hospital, New Delhi and so it was not possible to take prior permission for treatment outside District/State. However, the respondents vide impugned order dated 13/16.07.2007 (annexure A/1) rejected the medical reimbursement claim of the applicant. Thereafter, the applicant filed appeal before the higher authority vide application dated 30.07.2007 (annexure A/7), which was returned back on the ground that it was not filed before the competent authority, then the applicant filed appeal before the respondent no. 2 vide

annexure A/9 dated 11.09.2007 but the respondent no. 2 vide order dated 07.11.2007 (annexure A/2) rejected the appeal. Being aggrieved by both the impugned orders, the applicant preferred this Original Application.

4. The brief facts of the O.A. No. 258/2008 are as follows:

The applicant's wife Smt. Pukhraj Jain, Postal Assistant, Bhilwara while on leave at Jaipur, all of a sudden got some problem, and she was immediately admitted to Santokba Durlabhji Memorial Hospital, Jaipur for treatment, where she undergone for surgery for Vaginal Hysterectomy and remained there as indoor patient from 20.09.2007 to 25.09.2007 (in the O.A., it has been wrongly stated that the applicant's wife was admitted to hospital for treatment of heart disease and remained in the hospital from 20.07.2007 to 25.08.2007, but in rejoinder, the mistake has been corrected). After being discharged, the applicant submitted the claim of medical reimbursement amounting to Rs. 25,108/- before the respondent no. 3, whereupon the respondent no. 3 vide letter dated 10.01.2008 (Annexure A/2) asked explanation as to how he has got treatment of his wife at Santokba Durlabhji Memorial Hospital, Jaipur without being referred from the Medical Officer, Bhilwara, and no permission for treatment at Jaipur has been taken from the Head of the Department. Vide letter dated 30.01.2008 (Annexure A/3), the applicant submitted the reply of the said letter and explained that as his wife's condition deteriorated, as such there was no occasion to get reference from the Medical Officer, Bhilwara or to get permission from the Head of the

Department. The applicant submitted that the hospital is a recognized one. However, the respondent no. 3 vide order dated 25.02.2008 (annexure A/1) rejected the medical reimbursement claim of the applicant. The applicant preferred appeal to PMG, Southern Region, Ajmer vide annexure A/4 dated 04.08.2008 but the same was returned back to the applicant, then again on 04.09.2008 (Annexure A/6), the applicant filed appeal before the respondent no. 2, but no order was passed on his appeal till the filing of the Original Application.

5. In both the cases, notices were issued to the respondents and in compliance of the notices; the respondents have appeared through lawyer and have filed reply of the OAs. The facts mentioned in both the cases are more or less admitted by the respondents but the respondents' contention is that the medical reimbursement claim of the applicant were rejected by the respondents because of the fact that the treatment outside the District / State was not recommended by the authorized medical attendant and prior permission for getting the treatment outside the Headquarters was not taken by the applicant or his wife from the competent authority. It has also been contended that in both the cases, there was no such emergent situation under which the applicant's wife could have been admitted into the hospital for emergency treatment. Thus, the main ground for opposing the claim of the applicant by the respondents in both the cases is that the treatment was taken in violation of the Central Services (M.A.) Rules, Condition No. 4 and so the same were rightly rejected.



Signature

6. In both the cases Shri S.K. Malik, advocate, appeared for the applicant, whereas for the respondents Shri M. Godara, proxy counsel, for Mr. Vinit Mathur advocate appeared for the respondents.

7. In both the cases, it is not disputed that the treatment of the applicant's wife at Escorts Heart Institute and Research Centre, New Delhi and at Santokba Durlabhji Memorial Hospital, Jaipur were taken without taking any permission from the respondents and without taking permission to leave the Headquarters for the purpose of treatment. It is also not in dispute that the authorized Medical Attendant had not referred or recommended the treatment of applicant's wife in both the hospital as required under condition no. 4 of Central Services (M.A.) Rules. However, the applicant's contention is that on both the occasions, emergent situation had arisen for getting the treatment. The argument of the learned advocate of the applicant is that there are catena of judgments on this point that if any emergent situation arises and if the reference of the authorized Medical Attendant is not possible or prior permission of the authority, cannot be obtained immediately, the treatment can be taken in any private hospital recognized by the Central Government / State Government. In this regard, the learned advocate of the applicant has placed reliance upon the following decisions:

(i). (1996) 2 SCC 336 – Surjit Singh vs. State of Punjab and Others.

(ii). (1997) 2 SCC 83 – State of Punjab & Others vs. Mohinder Singh Chawla and Others.

(iii). 1999 (1) ATJ 125 – Renu Saigal vs. State of Haryana.

(iv). 2000 (3) WLC (Raj.) 585 - Shankerlal vs. State of Rajasthan & Ors.

(v). 2001 (1) ATJ 466 – Laxman Dass vs. State of Haryana.

(vi). 2001 (2) ATJ 25 – Dr. (Mrs.) Asha Singh vs. Union of India & Ors.

Besides above mentioned judgments, the learned advocates has also placed reliance upon two judgments of the Central Administrative Tribunal passed in O.A. No. 821/2007 (Principal Bench) – K.P. Singh vs. Govt. of NCT of Delhi & Anr., and O.A No. 137/2007 (Jodhpur Bench) – Kanhiyalal Dhakad vs. Union of India & Ors.

8. In reply to the arguments made by the applicant's lawyer, Shri M. Godara, advocate, appearing for the respondents submitted that none of the decisions relied by the applicant's lawyer apply in the cases before this Tribunal as situation in all the above mentioned cases were quite different from the situation in the present two cases. He submitted that in both the cases before this Tribunal, there is nothing to show that the applicant's wife was suffering from any chronic serious ailment and any emergent situation had arisen to get her admitted into the hospital for treatment. He submitted that all the cases relied by the applicant's lawyer relate to the cases of serious nature like surgery, treatment of Leukemia (cancer) and operation of heart. But here in this case (OA No. 248/2008), the finding of

Escorts Heart Institute and Research Centre, New Delhi will show that no heart ailment was found by the doctor which establishes that the applicant's wife was simply admitted for routine check up which is not permissible as per rule. He further submitted that although it is true that in OA No. 258/2008, the applicant's wife had undergone surgery for removal of uterus (hysterectomy), but it is a very common operation and the treatment is available in every Government Hospital, as such in both the cases, the applicant is not entitled for reimbursement of the medical claims.

9. I have gone through all the decisions relied by the applicant's lawyer and I am in full agreement with the learned advocate of the respondents that none of the decisions is applicable so far O.A. No. 248/2008 is concerned because of the fact that the finding of the Escorts Heart Institute and Research Centre, New Delhi shows that nothing abnormal was detected in the heart of the applicant's wife on medical examination of the applicant's wife. The relevant records of the treatment of the applicant's wife has been placed before me and from the finding issued by the Department of Radio Diagnosis and Imaging issued under the signature of Dr. Ranju Agarwala, Junior Consultant of Escorts Heart Institute and Research Centre Ltd., New Delhi shows that on medical examination of the applicant's wife, her cardiac shape & size was found normal, aorta and pulmonary vascularity were found normal, no lesion of lung parenchyma was seen, bony thoracic cage was normal and domes of diaphragm and costophrenic angles were clear. Thus, the



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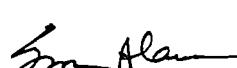
medical findings of Escorts Heart Institute and Research Centre, New Delhi shows that the applicant's wife had got no ailment of heart, therefore, it can be held that the applicant's wife was admitted into the Escorts Heart Institute and Research Centre, New Delhi only for the purpose of routine check up but the Rule does not permit to reimburse such medical expenditure done for routine check up in a private hospital even though it is recognized by the Central or State Government, and therefore, I find and hold that the medical reimbursement claim relating to the O.A. No. 248/2008 was rightly rejected by the respondents.

10. It has been submitted by the learned advocate of the applicant that the respondents have made some part payment towards the medical reimbursement claim which establishes that the respondents have admitted the claim of the applicant and so they are legally bound to clear the remaining dues. I cannot accept this argument of the learned advocate of the applicant in view of the fact that the Rule does not permit the reimbursement of such medical claim.

11. So far medical reimbursement claim relating to O.A. No. 258/2008 is concerned, I am of the view that it is based on different footing and the same is covered by the decision reported in 2001 (2) ATJ 25 – Dr. (Mrs.) Asha Singh vs. Union of India & Ors., as the applicant's wife had undergone surgery for removal of uterus (hysterectomy). The applicant has placed document on record that Santokba Durlabhji Memorial-cum-Medical Research Institute, Jaipur is a recognized hospital where treatment can be taken for general purpose and diagnostic

procedures except Oncology, Cardiac Surgery and Transplantation. The removal of uterus through surgery (hysterectomy) is not related with Oncology or with Cardiac Surgery or with Transplantation; as such I am of the view that the medical treatment for hysterectomy is permissible in Santokba Durlabhji Memorial Hospital-cum-Medical Research Institute, Jaipur. In such view of the matter, I find and hold that the applicant is entitled for reimbursement of this claim towards medical reimbursement for treatment of his wife done at Santokba Durlabhji Memorial Hospital-cum-Medical Research Institute, Jaipur.

12. In the result, the O.A. No. 248/2008 stands dismissed, whereas the O.A. No. 258/2008 is allowed and the respondents are directed to pay the medical reimbursement claim amounting to Rs. 25,108/- towards the treatment of the applicant's wife at Santokba Durlabhji Memorial Hospital-cum-Medical Research Institute, Jaipur within a period of three months from the date of receipt/production of a copy of this order. However, it is observed that the applicant will not be entitled to get any interest on the said claim along with the costs of this O.A. Accordingly both the Original Applications are disposed of. Let copy of this order be kept in O.A. No. 258/2008.



(JUSTICE S.M.M. ALAM)
JUDICIAL MEMBER

दिनांक २१/६/१६ के आदेशानुसार
मेरी उपस्थिति में दिनांक १६/६/१६
को अम-स-व १६ दिन बद्द।

अम-स-व अधिकारी
स्वेच्छिय प्रसादनिक अधिकारण
जोधपुर न्यायपीठ, जोधपुर