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CENTRAL ADMINISTRATIVE TRIBUNAL

ORIGINAL APPLICATION NO 11/2009.
JODHPUR THIS IS THE 10th DECEMBER, 2009.

CORAM :
HON'BLE DR. K.B. SURESH, MEMBER [J]

.....
Jai Prakash Surolia S/o Sh. Onkar Prakash Surolia R/o Bikaner, at present employed on the post of CIT in ACM in ACM Squad, in the office of DCTI, Bikaner Railway Station, NWR, Bikaner.

.....Applicant

[For Applicant : Mr. A.K. Kaushik]

Vs.

- 1- Union of India through General Manager, North Western Railway, Jaipur Zone, Jaipur.
- 2- The Chairman, Railway Board, Rail Bhawan, New Delhi.
- 3- Chief Medical Superintendent, North Western Railway, Bikaner Division, Bikaner .

[For Respondents : Mr. Govind Suthar for Mr. Manoj Bhandari]

...
ORDER
[BY THE COURT]

The applicant who is an employee of the Respondent-Railways is entitled to reimbursement of medical expenses in the normal course. He was apparently admitted to Prince BSM Hospital, Bikaner on 31.5.2005 and remained under their treatment up to 5.6.2005. Thereafter, apparently, on 13.6.2005 while traveling from Sikar to Jaipur by Bus, fell ill and was admitted for emergent treatment in S.K.Soni Hospital, Jaipur, where, surgical procedure was carried-out on him as the Doctor found his condition to be critical and emergent. He was later discharged and on 15.8.2005, a medical reimbursement claim was submitted in respect of the above treatment by him.

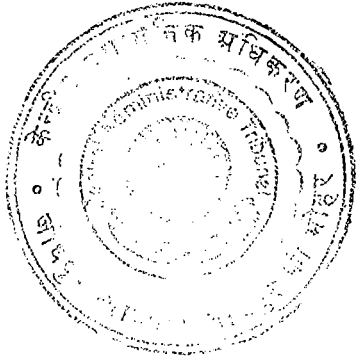


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2. Apparently, while holding the post of Mail/Express Guard at Bikaner, he suffered from heart disease and was de-categorized on 4.8.2005 by the medical committee of Railways at Bikaner. He was declared as unfit in medical A-2 and fit in A-3 medical category and below for jobs of sedentary nature.

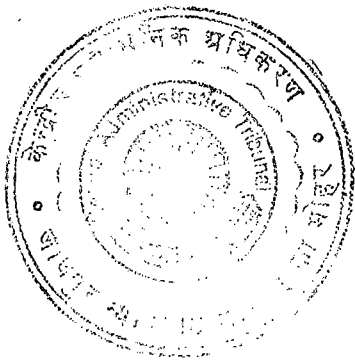
3. But, having done so, the medical reimbursement claim submitted by the applicant was sent for further clarification even though it was duly forwarded by his controlling authority vide letter dated 26.10.2005. The competent authority had advised that certain expenditures were inadmissible and applicant had to re-submit the bill(s). Thereafter, the third respondent requested him vide his letter dated 21.11.2005 which was apparently communicated to him on 2.1.2006 that certain certificates, forms etc. were to be produced so as to clear his outstanding bills as per rules. Apparently, on 13.4.2006, the said certificates along with the requisite forms were also produced. But, vide Annex. A/1 order dated 1.10.2008 at Annex.A/1, applicant's claim had been apparently rejected on the ground that it is not in consonance with the Railway Board's policy dated 31.1.2007.



4. The Tribunal had directed the respondents on 16th September, 28th October 2009, to produce the said Railway Rules if other rules not stated by the applicant, are in existence. Despite providing sufficient opportunities such relied upon rules have not been shown till now. However, the Chief Medical Superintendent, North Western Railway, Bikaner (Respondent No.3), had filed a

counter affidavit taking different³ objections therein. The basic objections are that the Railways do not know as to whether the applicant had traveled from Sikar to Jaipur and thus having no knowledge of the matter denied the same. The applicant would contend that these are matters of record and in any case, if the Railways had any doubt in this regard, they could have conducted an independent investigation in this connection. He would thus say that the denial of medical reimbursement claim is inappropriate.

5. The Medical Superintendent in his reply submitted that as per the rules, the applicant had to be referred to a private hospital by the Railway Hospital but, knowing fully well of this, on his own volition, the applicant went to a private hospital for doing Angiography whereas, such facilities are very much available at Jaipur in the Government hospitals. On this, the applicant would rely on a judgement of the Hon'ble High Court of Rajasthan in D.B.Civil Writ Petition No. 5689/2003 -passed on 9th May, 2005 . The facts of that case is also squarely applicable in this case. The place of treatment is thus to be treated and determined by the place of occurrence of the disease or the emergent position thus arisen. If the applicant was to go to a Railway Hospital and from thence to be recommended to a Government hospital or a private hospital, the applicant would contend that in that case there will not be any further requirement of his claiming medical reimbursement as he will not survive. In any case, the consulting Physician had recommended that the matter was emergent and



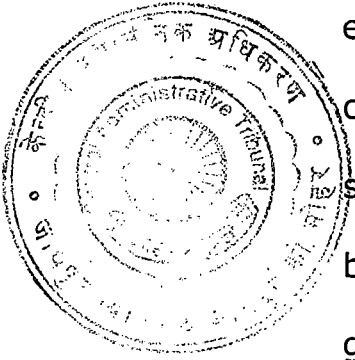
had apparently, admitted him in ^{ICU} and from the discharge summary, the prescribed medicines itself seems to indicate the aggravated heart condition and how the Medical Superintendent could not recognize it, the applicant would contend, is a matter which creates great suspicion. The respondents in their reply would say that the hospital wherein the applicant had undergone the treatment, was not recognized and further no such emergent condition appears on scrutinizing the discharge card, as alleged by the applicant. The degree of emergency is determined at the time of admission and not at the time of discharge from the hospital. Further, from the discharge card, what is available, is the situation during the treatment and the result of such treatment including an indication therein. But, the degree of emergency was also to be interpreted by the medical attendant and the determinant of that must obviously rest with the attending medical physician rather than a person who examines the record at a later stage. Human life cannot be made a matter of pride and prejudice of the Officers even though they themselves may be medical officers, thus says the applicant. The Railways would say that as per Para 648 of the Railway Medical Manual, only in emergent condition the medical reimbursement can be allowed that too after being referred by the competent authority and, therefore, he would say that even if the reimbursement is to be made, the same will have to be certified by the competent authority that the treatment has been undertaken in a recognized hospital by the Railway Medical Department and for that, approval in advance was to be obtained so as to consider and pass such bills by the General Manager. However, it does not find



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place in the earlier records that such a competent authority was named and the applicant was directed to produce a certificate of essentiality from such competent authority. Having not done so, till now the Railways is precluded from saying that a further competent authority has to further certify the essential and emergent nature of the disease of the applicant, would say the applicant. The Railway would say that the case of the applicant is not in line with the policy of the Railway Board. But, even then whatever be the policy, it has to be within the parameters of the constitutional provisions and the permission of legality of dictum as well. The right to life is an integral part of the Constitutional process and merely because a person is a Government servant his right to that could not be jeopardized. Reimbursement of medical expenses is part of such constitutional guarantee and any limitation of such guarantees can be regulated only within the confines of such constitutional guarantees. In an emergency, then what is to be the determinant factor is, can an employee be compelled to go to a Railway hospital and getting him referred to a private or Government hospital or is it incumbent upon him to seek the first available medical assistance and get emergent treatment is the crux of the matter. There is no serious factual dispute that the applicant had got treated at a particular hospital. The Railway is unable to say whether the applicant fell ill or not in the course of his journey so as to necessitate the getting down at a particular hospital. Therefore, since emergency is determinable only by God himself it is not up to men to determine by precise authority what

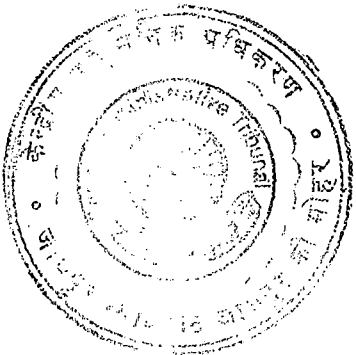


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must be the degree of emergency required for another man to seek to a treatment to save his life.

6. In fact, the Government of India had formulated its Medical Attendance Rules and Appendix VIII regarding Reimbursement in relaxation of rules in emergent cases is relevant to this case as well and is reproduced hereunder :

"(1) Procedure for obtaining treatment from private medical institutions in emergent cases.-The question of streamlining the procedure involved in obtaining treatment in emergent cases has been engaging the attention of the Government of India and as a result of the decision taken in this regard, the Ministry of Finance in their O.M. No. F. 26 (10)-E.V (B)/74, dated the 16th July, 1974 have delegated more financial powers to the Heads of Departments / Ministries to meet the situation. In consultation with the Finance Ministry, the following further decisions have been taken in this regard :-



(1) Circumstances to justify treatment in private medical institution.- In emergent cases involving accidents, serious nature of disease, etc., the person / persons on the spot may use their discretion for taking the patient for treatment in a private hospital in case no Government or recognized hospital is available nearer than the private hospital. The Controlling Authority / Department will decide on the merits of the case whether it was a case of real emergency necessitating admission in a private institution. If the Controlling Authorities/ Departments have any doubt, they may make a reference to the Director - General of Health Services for opinion.

NOTE 1.- In order to eliminate the confusion regarding distinction between a private hospital and a private nursing home/ clinic, the delegated powers are applicable to all medical institutions without making any distinction between a private hospital and a private nursing home / clinic.

(2) Subsequent transfer to Government / recognized hospital . - A point has been raised whether a patient can be transferred from the private hospital to a Government / recognized hospital after the emergency is over for obtaining further treatment. It is clarified that the patient while he is in a private hospital should act according to the advice of the hospital authorities. he should get his discharge from the hospital only when the hospital authorities discharge him.

(3) Payment procedure.-

(i) In cases where the expenditure likely to be incurred, on the treatment of Government servant or member of his family who has been admitted to a private hospital in emergent circumstance, is beyond the paying capacity of the Government servant, the Departments of the Government of India may authorize the Controlling Authority concerned to

meet directly the expenditure incurred on admissible items of treatment subject to the limits mentioned in the Annexure to this letter and the payment in respect of the admissible items of expenditure may be made by the Office / Department concerned to the hospital direct. To enable the Departments concerned to consider such request, a certificate regarding the expenditure likely to be incurred shall be obtained by the Government servant or a member of his family from the hospital authorities concerned and furnished to Controlling Authority.

(ii) The Controlling Officer may make advance payments or advance deposits to hospitals, if demanded. Payment to hospitals at periodic intervals, say, once in a week, on the basis of bills submitted by them may also be made by the Departments, if necessary.

(iii) Payments to the hospitals including advance payments and advance deposits whenever made, may be treated as final charges in accounts. If the final bills submitted by hospitals subsequently reveal that the advance payment / deposit has been more than the final claim, the balance should be got refunded to Government and credited to account as provided for in the rules.

(iv) The charges on account of inadmissible medicines, etc., will be paid by the Government servant himself to the hospital.

(v) In cases where a Government servant himself makes payment to a hospital and claims reimbursement from Government, it should be ensured that payment is also not made by the Department to the hospital direct and for this purpose, claims should be linked properly.



The Departments of the Government of India have been authorized to meet directly the expenditure incurred on admissible items of treatment taken in Ayurvedic or Unani, etc., hospitals in similar circumstances subject to the limits mentioned in the Annexure and on the terms and conditions stipulated above.

The orders (OM, dated the 23rd February, 1977), are in modification of the earlier orders contained in M.F., O.M. No. 26 (10)-E. V(B)/74, dated the 16th July, 1974, which itself is in modification of the O.M. No. 21-(2)-E. V (B)/62, dated the 17th April, 1963. As such the orders of 23rd February, 1977, have to be treated as in modification of the earlier orders and the financial limits mentioned in the earlier M.F., OM cited above, are no more operative."

Thus, the Government in their wisdom had allowed emergency treatment to be taken shorn of all technicalities. The pari material nature of this is available in this instance as well.

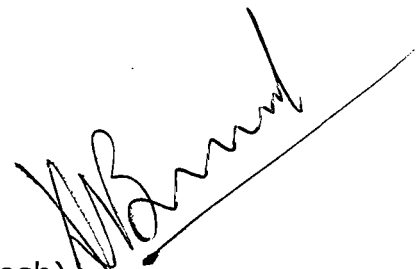
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7. I am in respectful agreement with the rationale announced by the Hon'ble High Court of Rajasthan in the Writ Petition above said, the facts of the case and the determinatory factors are also applicable in this case as well. In that case also, the applicant had to go from pillar to post for almost five years. In this case also, he is even now running. Therefore, this O.A. is allowed and the following orders are passed :

- i) The impugned order produced as Annex. A/1 passed by the 3rd respondent is quashed on the ground that it is a non speaking order and against the provisions of the constitutional guarantee and pari materia legal provisions.
- ii) The respondents are directed to pay the medical reimbursement bills of the applicant as immediately as possible and is to be paid within the next fifteen days without any interest.
- iii) If the said payment is made after a period of fifteen days after the receipt of a copy of this order, he shall also be paid along with it an interest @ 12% per annum.
- iv) No order as to costs.



(Dr. K.B.Suresh)
Member (J)



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in my presence on 8/1/15
under the supervision of
section officer () as per
order dated 07/07/15

Section officer (Record)

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