

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

Original Application No.123/2013

Jodhpur, this the 17th day of January, 2014

CORAM

HON'BLE MR. JUSTICE KAILASH CHANDRA JOSHI, JUDICIAL MEMBER

N.K.Khandelwal Ex Assistant Commercial Manager (East), North Western Railway, DRM Office, Jodhpur, aged 76 years, presently residing at Plot No.152, Sardarpura, 2nd "C" Road, Jodhpur

.....Applicant

By Advocate : Applicant present in person.

Vs.

1. Union of India through General Manager, North Western Railway, Head Quarters Office, Jaipur.
2. Chief Medical Superintendent, North Western Railway Hospital, Jodhpur
3. Divisional Railway Manager, North Western Railway, Jodhpur
4. Chief Medical Director, North Western Railway, Head Quarters Office, Jaipur

...Respondents

By Advocate : Mr. Salil Trivedi

ORDER (ORAL)

Per Justice K.C.Joshi, Member (J)

By way of this OA the applicant has challenged the order dated 11.4.2012 (Ann.A/1) and 22.12.2012 (Ann.A/2) whereby medical claim of the applicant's wife has been rejected by the respondent-department.

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2. Short facts of the case, as stated by the applicant, are that the applicant retired from the post of Assistant Commercial Manager on 30.4.1995. The wife of the applicant was facing knee problem, as such, she was recommended to Jagjeewan Ram Railway Hospital at Mumbai for knee replacement and the case was referred on 18.12.2010 by the Chief Medical Superintendent, Jodhpur. The applicant got his wife admitted to Jagjeewan Ram Hospital on 22.12.2010, but since the concerned Doctor was on leave for two weeks, therefore, the applicant had to withdraw his wife's admission from Jagjeewan Ram Hospital, Mumbai. Thereafter the applicant got his wife's knee replacement from Shalby Hospital, Ahmedabad on 27.12.2010. The applicant spent Rs. 3,97,507 in all for his wife's treatment at Shalby Hospital, Ahmedabad. After taking treatment at Shalby Hospital, the applicant made correspondence with the respondent-department, but could not get his claim settled. It is stated by the applicant that finally he has reduced his claim only to the extent of Jagjeewan Ram Hospital, Mumbai but the claim of the applicant has been denied, therefore, he has filed this OA praying for the following reliefs:-

“(a) That by an appropriate writ, direction or orders the respondents may please be directed to pass or allow the medical claim of the applicant's wife to the extent Rs. 3,97,507 alternatively the humble applicant may kindly be paid the medical expenses which would have been incurred by the Railway Administration if the applicant's wife knees transplantation was done in Jag-Jeewan Ram Hospital, Mumbai including all expenses (Surgery, Medicines and Doctors fees etc.) and Anne.A/1 and A/2 may kindly be quashed.

(b) Any other relief which warrants in the facts and the circumstances of the case."

3. The respondents by filing reply have denied the right of the applicant and submitted that bare perusal of Ann.A/3 reveals that in the clinical diagnosis of applicant's wife, it is observed that she was suffering from a pain in knee for the last 12 years and, as such, she was referred to J.R.H., Mumbai, which is a super specialty hospital. The respondents have stated that it was not a case of emergent situation and the applicant's wife was admitted to J.R.H. Hospital without there being any emergent situation or any sort of emergency, but the applicant in a pre-planned manner took away his wife to Ahmedabad in Shalby Hospital. The applicant before leaving the J.R.H. Mumbai, at his own even did not care to take any advice or instructions from J.R.H. Hospital where his wife was already admitted. Further submitted that as per the instructions issued by the Railway Board in respect of emergent situation, if the case of the applicant's wife is examined in respect of emergency, then there is no emergency, in as much as, the applicant's wife was referred by the railway Doctor at J.R.H. Mumbai on 13.12.2010 and she was got admitted on 22.12.2010 and the operation was conducted at Ahmedabad on 27.12.2010. It is further submitted that the replacement of knee was on account of old osteoarthritis and that can be done any time without there being any emergency, as according to the applicant, his wife was suffering from last 12 years. Therefore, the applicant is not entitled to the relief as prayed for.

4. Heard both the parties. Applicant present in person contended that applicant's wife was recommended by the Chief Medical Superintendent (CMS), Railway Hospital, Jodhpur to Jag-Jeewan Ram Hospital (JRH), Mumbai and the applicant got admitted his wife in that hospital, but when he came know from the nurse of JRH that concerned doctor Mr Jain is on leave and his wife started crying from unbearable pain, he got released her from Jagjeewan Ram Hospital and admitted in Shalby Hospital, Ahmedabad where she was operated on 27.12.2010 and upto 3.01.2011 the treatment was continued. He further contended that in the emergency situation, there was no way except to shift his wife from Jagjeewan Ram Hospital, Mumbai to Shalby Hospital, Ahmedabad and he got operated his wife from Ahemdabad, therefore, he is entitled to get the claim of Rs 3,97,507/- as per the scheme of the Railway Board applicable for reimbursement to retired and serving Railway employees. He further contended that while considering the claim of the applicant, the Railway authorities did not take into consideration the RBH No. 3/2012 dated 13.12.2012, therefore, order Annex. A/1 & A/2 are per se illegal and require to be set aside by this Tribunal.

5. The applicant, present in person also contended that the question relating to emergency has been decided by the Hon'ble Apex Court in Surjit Singh vs State of Punjab & Ors reported in (1996) 2 SCC p. 336 in which it has been held that a patient cannot wait for unlimited time having ailment of serious type, as he is to be treated by competent doctors in the hospital. While relying on this judgment, the applicant contended that in the present case when he was informed by her wife through nurse of Jagjeewan Ram Hospital that the concerned doctor is on leave, he immediately got released his wife and took her to Shalby Hospital, Ahmedabad and soon after

admission on 27.12.2010 she got operated her knee and was treated upto 03.01.2011. Thus, she was admitted in emergent condition and although treatment was taken not in the Railway Hospital or any referred authorized hospital of Railway, but the applicant is entitled for reimbursement of Rs 3,97,507/-.

6. In support of his argument, he also relied upon two more judgments:

- (i) State of Punjab & Ors vs Ram Lubhaya Bagga & Ors reported in 1998 SCC (L&S) p. 1021.
- (ii) State of Rajasthan vs Mahesh Kumar Sharma reported in (2011) 4 SCC p. 257

The applicant further contended that life of an individual is precious and to have effective treatment is his right, therefore, his claim cannot be rejected merely on technical grounds by the railway authorities.

7. Per contra, counsel for the respondents contended that wife of the applicant was sick from last 12 years and she was referred by the competent authority to Jagjeewan Ram Hospital, Mumbai. In the OA, it has been averred that the applicant was informed by the nurse that concerned doctor is on leave for two weeks. Soon after filing the reply by the respondent-department, by way of rejoinder the applicant produced copy of the letter dated 22.12.2010 in which for the first time this fact was averred that the applicant came to know that Dr Jain (Concerned Doctor) has gone on leave upto 31st December, 2010. Counsel for the respondents further contended that in the letter Annex. A/4 dated 31.01.2007, emergency has been defined by the Railway Board itself and Annex. A/10 (RBH No. 03/2012) referred by the applicant speaks for emergency cases whereas from the facts of the case as averred by the applicant itself, he could not

make out a case of emergency, therefore, Annex. A/1 & A/2 are as per law and does not require to be interfered with.

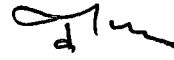
8. Considered rival contentions of both the parties and also perused the judgment cited by the applicant.

9. In the case of Surjit Singh (supra), the Hon'ble Apex Court held that life of an individual is precious and this was a case of State Govt. employee in which operation was conducted at London and the applicant applied for the reimbursement equal to the admissible rate of Escort Hospital, Delhi. In that case the applicant applied for reimbursement of the claim at the prevalent rates in one of the private hospital in India recognized by the State Government for treatment of its employees for open heart surgery and in that case the Hon'ble Apex Court held that it is not necessary for the applicant to prove the case of emergency. In the case of State of Punjab & Ors vs Ram Lubhaya Bagga & Ors, the Hon'ble Apex Court held that Article 21 imposes obligation on the State to safeguard life of every person. Preservation of human life is thus of paramount importance and timely medical treatment to a person in need of such treatment, is his right to life guaranteed under Article 21 of Constitution of India. In that case Hon'ble Punjab & Haryana High Court has held the applicant entitled for reimbursement of his total expenses incurred in private hospital. That was a case of heart attack where the applicant had an heart attack and advised to go Delhi but due to long strike in the AIIMS he was admitted in the Escorts Hospital and on those facts Hon'ble Apex Court declined to interfere in the order of the Hon'ble High Court. In the case of State of Rajasthan vs Mahesh Kumar Sharma, the Hon'ble Apex Court allowed the applicant to the reimbursement to the specified limit.

10. In view of the arguments advanced by both the parties, the short question involved in this case is that whether it was an emergency situation in which the applicant's wife was brought to Shalby Hospital, Ahmedabad on 27.12.2010. So far as emergency is concerned, it has been referred in letter dated 31.01.2007⁴ of Railway Board that "**emergency shall mean any condition or symptom resulting from any cause, arising suddenly and if not treated at the early convenience, be detrimental to the health of the patient or will jeopardize the life of the patient. Some examples are – Road accidents, other types of accidents, acute heart attack, etc.**" In the present case, it is admitted fact that applicant's wife was being treated by the doctors of Railway Hospital, Jodhpur at the time of recognition of ailment and they referred applicant's wife for treatment to JRH, Bombay, but on 27.12.2010 she was brought to Shalby Hospital, Ahmedabad after releasing her from JRH and operated there. Therefore, the facts of the cases cited by the counsel for the applicant are not applicable to the present case because when the applicant's wife was getting the treatment of old osteoarthritis of both knees in Railway Hospital, Jodhpur for the last 10-12 years, the applicant got released her wife from the referred hospital because concerned doctor in that hospital was on leave upto 31.12.2010; in the above circumstances, in my considered opinion, it cannot be said that it was a case of emergency in which patient required immediate/emergent treatment that too at Ahmedabad. Moreover, simply on the oral information of the nurse, the applicant got his wife released from the JRH and after 4 days she was admitted in Shalby Hospital, Ahmedabad. Therefore, the entire facts and circumstances of the present case are different from the judgments cited by the applicant.



11. In view of the discussions made hereinabove, it is not a fit case in which Annex. A/1 & A/2 can be quashed as the applicant has not made out a case of emergent medical condition. Accordingly, OA lacks merit and the same is dismissed with no order as to costs.



(JUSTICE K.C. JOSHI)
JUDICIAL MEMBER

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