

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 290/00029/14

Jodhpur this the 13th May, 2016

CORAM

Hon^{ble} Ms Praveen Mahajan, Administrative Member

Bhanwaru Khan S/o Shri Mazid Khan, By Caste Muslim, Aged about 57 years, R/o VPO Jharod, Via Molasar, Tehsil Didwana, District Nagaur, Rajasthan. At present working as Telecom Mechanic in the office of SDE Didwana, Nagaur, Rajasthan.

.....Applicant

(By advocate : Nitin Trivedi)

Versus

1. The Union of India through the Secretary, Telecommunication Department, Govt. of India, New Delhi.
2. General Manager, Bharat Sanchar Nigam Ltd. (BSNL) Nagaur.
3. The Divisional Engineer (Administration), Bharat Sanchar Nigam Ltd. (BSNL), Nagaur.
4. The Accounts Officer (Cash), General Manager, Office of Tele Communication, BSNL, Nagaur.

(Respondent No. 1 by Advocate : Mr K.S. Yadav)

(Respondent No. 2 to 4 by Advocate : Mr K.S. Yadav proxy counsel for MR Mukesh Dave, Counsel for respondents)

.....Respondents

12/5/16

ORDER (Oral)

The present application has been filed challenging the order of recovery dated 24.07.2013 from the salary of the applicant, passed by Accounts Officer (respondent No. 4) to recover medical advance of Rs 70,000/- from the total sanctioned medical advance of Rs 79,720/-.

2. The case of the applicant, in brief, is that when he was posted in the office of SDE Didwana under the jurisdiction of General Manager, BSNL, Nagaur, he filed an application dated 11.04.2007 (Annex. A/2) for casual leave with permission to leave headquarters for medical check up of his throat from ENT Specialist at Sikar as no specialist was available in Didwana. The applicant consulted ENT Specialist at Sikar on 17.04.2007. After several check ups, he was discharged on 20.04.2007 and referred to SMS Hospital, ENT Department, Jaipur. The Hemato Oncologist, at Bhagwan Mahavir Cancer Hospital and Research Centre, Jaipur recommended the medical leave of 104 days from 24.04.2007 to 08.08.2007 for treatment of cancer. The applicant submitted an application seeking leave for the aforesaid period. The SDE (GE) Didwana vide letter dated 22.05.2007 (Annex. A/6) recommended to the respondent No. 3 to provide the advance amount against the medical treatment of the applicant, giving full background of the case. Before operation, the applicant vide letter dated 25.05.2007 (Annex. A/7) submitted an application for his treatment at Bhagwan Mahavir Cancer Hospital & Research Centre, Jaipur. The respondents vide letter dated 26.05.2007 (Annex. A/8) issued authorization letter for treatment at

applicant recouped successfully, and joined his duties on 09.08.2007 alongwith fitness certificate. Thereafter the applicant provided the bills of the expenses incurred by him during the course of his treatment. The SDE (GE) Didwana in response, sent a letter dated 31.08.2007 (Annex. A/11) to respondent No. 3 for the purpose of adjustment of the aforesaid amount against the advance amount taken by the applicant for his treatment. It is learnt that the BSNL has adopted a procedure for verification of the treatment whenever an employee is admitted in the hospital. On a written or verbal information, an officer, recommended by the higher authorities of the department, visits the hospital, to verify the fact of treatment and hospitalization of the employee. It is the sole responsibility of the department to send an officer to visit the patient (employee) in the hospital to check the correctness of the claim regarding treatment being undertaken by him.

The respondent No. 4 i.e. Accounts Officer vide letter dated 25.04.2008 (Annex. A/12) addressed to the applicant, sought the certificates, which as per the applicant, had already been submitted to the SDE (GE) Didwana and based on which, he had recommended the case of the applicant. The applicant personally informed the respondent no. 4 that the demanded certificates have already been submitted by the SDE (GE) Didwana. Not receiving a response, vide letter dated 21.05.2009 (Annex. A/13), he submitted a representation to the respondent No. 4, reiterating his stand.

Despite several representations, nothing happened. After a lapse of almost 02 years, the respondent No. 4 vide letter dated 24.02.2011 (Annex. A/14) reiterated his observations regarding referral certificates. The SDE (GE), Didwana vide letter dated 18.03.2011 (Annex. A/15) informed the respondent No. 4 that the applicant has informed that a visit had been undertaken by Mr Guptaji, G.M., Sikar. However, no certificate was issued by him at that time. And if it was issued, then it would probably be in the file No. E-011/BSNL-MRS-CH-II/Visit of staff branch. The respondent No. 4 again after lapse of two years, vide letter dated 24.07.2013 (Annex. A/1) straight away sought recovery of the amount of Rs 70,000/- provided to the applicant for his treatment and ordered to recover an amount of Rs 8,000/- per month from the salary of the applicant w.e.f. July, 2013. The applicant submitted a representation dated 24.07.2013 (Annex. A/16) and reminder dated 09.12.2013 (Annex. A/17). No heed was paid to these requests and recovery ordered, was enforced. Aggrieved with the same, the applicant has filed present OA seeking following relief(s):

- I. That the order dated 24.07.2013 (Annex. A/1) may kindly be quashed and set aside.*
- II. That the respondents may kindly be directed to not to recover any amount which has been incurred by him in the treatment of cancer at Bhagwan Mahavir Cancer Hospital & Research Centre, Jaipur.*
- III. That the respondents may also be directed to refund the amount which has been recovered from his salary in pursuance to the order dated 24.07.2013 (Annex. A/1)*
- IV. Any other favorable order which this Hon'ble Tribunal may*

V. Original Application filed by the applicant may kindly be allowed with costs.

3. The respondents have come up with parawise reply and resisted the OA by stating that the applicant was admitted in S.K. Govt. Hospital, Sikar on 17.04.2007 regarding which he did not inform the respondent office. Therefore, the visit of BSNL designated officer could not be arranged as per para 14 of the Corporate Office letter dated 13.01.2006 (Annex. R/1). An employee is required to intimate regarding his/her serious illness requiring hospitalization, to the Section dealing with Medical Policy implementation. They have further submitted that as per medical reimbursement application form, the period of treatment is mentioned by the applicant as 12.04.2007 to 20.04.2007 whereas, as per certificate of hospitalization, the applicant was suffering from Cancer and remained under treatment from 17.04.2007 to 20.04.2007. Thus, false information has been furnished by the applicant in the reimbursement form Annex. A/3. The applicant has claimed that he consulted and visited BMCHRC, Jaipur for treatment but only one indoor medical claim amount to Rs 14,575/- regarding treatment taken from BMCHRC, Jaipur from 01.05.2007 to 03.05.2007 has been furnished. The applicant neither informed the respondent No. 3 that he was admitted in BMCHRC, Jaipur on 01.05.2007 nor enclosed an authorization letter and visit certificates with the indoor medical claim. OPD treatment bill dated 20.04.07 for Rs 45/- & Rs 1586/-, 11.05.2007 for Rs 44/- included in the claims were also wrong.

period 24.05.2007 to 26.05.2007. Accordingly, authorization letter for treatment in hospital was issued by the office on 26.05.2007 for his treatment at BMCHRC, Jaipur from 25.05.2007 to 26.05.2007. Thus, as per respondents, the applicant submitted information with regard to only one case of indoor medical claim out of total 11 medical claims submitted by the applicant for issuance of authorization letter and arranging the visit of BSNL Designated Officer. The respondents have disputed the claim of the applicant in his representation dated 21.05.2009 that he enclosed authorization letter and visit certificates with the medical bills. As per the Deptt., except in one claim, the applicant failed to inform the respondent No. 4 about his admittance in hospital for medical treatment. It was further submitted that sufficient opportunities were granted to the applicant vide letters dated 25.05.2011, 25.08.2011, 05.01.2013 and 17.05.2013 to submit authorization letter and visit certificate with all indoor medical bills. The respondents reiterated that recommendation, forwarding the representation of the applicant by SDE, Didwana vide letter dated 10.12.2013 is of no use in absence of aforesaid certificates.

4. I have heard the parties, considered the rival contentions and gone through the records of the case.

5. As per records of the case, it can safely be inferred, especially in view of reply given by the respondents to para (VII) of the OA, that the respondent authorities were aware about the illness of the applicant and severity of the disease. It is an admitted position that the applicant was

specialized treatment of Cancer. The indoor medical claims of the applicant have not been adjusted against the advance on account of two main reasons. Firstly, that he has not been issued authorization letter for the indoor bills, except one i.e. the requirement of visit of the designated officer of BSNL to visit and verify the genuineness of hospitalization. Secondly, the respondents have disputed the period of treatment from 12.04.2007 to 20.04.2007 in the Bill on account of certificate of hospitalization, wherein he was shown under indoor treatment from 17.04.2007 to 20.04.2007.

6. While going through the records of the case, I find that SDE (GE) Didwana vide letter dated 22.05.2007 (Annex. A/7) has given information regarding summary of events leading to his referral and how the medical condition of the applicant was diagnosed as chronic disease of Cancer.

7. While the onus was on the applicant to inform the respondents about his hospitalization etc. the enormous mental pressure under which he would have been at that time is not difficult to imagine. In these circumstances, it was the duty of the concerned officers, who were obviously in the know of the things to take a step forward and suo-moto verify the fact of his illness from the hospital. It is also noted that the disease of Cancer finds place in the list of specified chronic diseases empowering Circle Heads for waiver of outdoor treatment limit. Though the question of waiver of outdoor treatment limit is not involved in the

present OA but it shows that the severity of disease is recognized in the

8. Once the employee, who is a patient suffering from serious life threatening disease, has informed the authorities, based on which the respondent authorities have issued referral certificate and issued visit certificate for one spell of hospitalization, subsequent hospitalization, backed with other documents produced by the applicant viz. certificate by Doctor, admit card etc. and medical claim of the applicant cannot be disputed, keeping in view the overall circumstance and undisputed fact of illness of the applicant.

9. I find that the approach of the respondents, in dealing the issue, has been rather mechanical. The representations of the applicant have not been dealt with keeping in view the aims and objective of the whole Scheme. It would appear from the fragmented inquiries of the Deptt. raised after yawning gap of 2 years, twice, that the respondents were not interested in resolving the issue, especially the respondent No. 4. Valid administrative doubts could have been settled, by verifying the hospital records. The administrative apathy, to resolve the issue amicably led to avoidable delay and unwarranted and unfair recovery. The technicalities or formalities coupled with insensitivity of the concerned officers should not be allowed to stand in the way of adjusting the valid medical advance against the bills submitted by the applicant for indoor medical treatment.

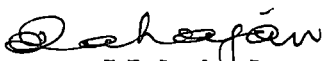
10. I concede that a medical claim has to be supported by proper supporting documents, to enable the competent authority to sanction (in this case adjust) it. Regarding the discrepancy of 4 days pointed out by the

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authorities to reconcile whether admission was on 12th or 17th of April, 2007. The competent authority is directed to adjust the amount⁵⁷ and inform the applicant of the decision by a speaking order, urgently. Almost 09 years have lapsed, and the applicant in addition to his illness, is facing continuous unwarranted harassment and financial hardship on account of the treatment meted out to him by the respondents, which is totally insensitive and lacks judiciousness. Monetary payment/re-payment is not a substitute for the mental agony and anxiety caused to the applicant, on account of the procrastination and indecisiveness of the Respondents. I order the respondents to pay a cost of Rs 10,000/- to the applicant forthwith.

11. The respondents are directed to complete the enquiry in 30 days time and pay the lawful amount which has been incurred by the applicant for his treatment of Cancer at Bhagwan Mahavir Cancer Hospital & Research Centre, Jaipur. The amount which has been recovered from his salary in pursuance of order dated 24.07.2013 (Annex. A/1), should be refunded within one month from the date of receipt of this order.

12. In view of discussions above, order dated 24.07.2013 (Annex. A/1) is quashed and OA is allowed.


[Praveen Mahajan]
 Administrative Member