

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 146 OF 2009

Wednesday, this the 11th day of November, 2009.

CORAM:

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

K. Asokan,
Kattakath House, Shoranur,
working as Khalasi Helper,
JE, S&T, Telephone Exchange,
Southern Railway, Shoranur.

... Applicant

(By Advocate Mr. R. Venugopal)

versus

1. Union of India represented by the
General Manager, Southern Railway,
Chennai.
2. The Chief Medical Director,
Southern Railway, 4th Floor,
Moor Market Complex, Park Town,
Chennai – 600 003.
3. The Divisional Railway Manager,
Southern Railway, Palakkad Division,
Palakkad.
4. The Chief Medical Superintendent,
Southern Railway, Divisional Office,
(Medical Branch), Palakkad.
5. Senior Divisional Medical Officer,
Railway Sub-Divisional Hospital,
Shoranur.

... Respondents

(By Advocate Mr. Thomas Mathew Nellimoottil)

The application having been heard on 05.11.2009, the Tribunal
on11-11-2009... delivered the following:

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

This case relates to grant of medical reimbursement to the applicant,
who had to take certain medical treatment , instead of Railway Hospital, at a



private Hospital, on emergent situation. Certain dates in respect of his ailment and treatment would be essential to have a proper appreciation of the case.

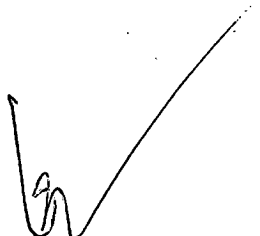
- 20-07-2006: Applicant while functioning at Shoranur, suffered from severe chest pain. Referred to Railway Hospital at Palakkad. Though he was proceeding to Railway Hospital, as the situation was aggravated, he was to be admitted in a private Hospital at Valluvanad Hospital, Ottappalam where he was to be kept as inpatient till 26-07-2006.
- 26-07-2006: From Valluvanad Hospital, the applicant came to Shoranur Railway Hospital where he was inpatient till 29-07-2006.
- 31-07-2006: Applicant was referred by the Railway Doctors at Shoranur to Railway Hospital, Perambur, where specialized treatment is available. However, while moving to Perambur Hospital, the applicant had severe attack and had to be hospitalized at Trichur itself in a private hospital, where he was to be performed necessary surgery on 1st August, 2006.
- 05-08-2006: Applicant was discharged from the Private Hospital at Trichur.

2. The applicant approached the Senior Medical Officer, Shoranur thereafter and at the time when he claimed reimbursement, the same was supported by Annexure A-7 certification by the Senior Medical Officer, Shoranur, who recommended the case of the applicant for reimbursement of medical expenses undertaken in the private Hospitals, i.e. Valluvanad Hospital, Ottappalam as well as Trichur Hospital.

3. Respondents, however declined to afford necessary medical reimbursement to the applicant on the ground that as per the Chief Medical Director, Madras, the case is not covered under the extant rules. Annexure A8 refers. Hence, this O.A. seeking the following reliefs:-

"1. Call for the records leading to passing of Annexure A8 order rejecting the reimbursement of the medical expenses incurred and set aside the same as the same is highly illegal and arbitrary and against the facts, circumstances and the evidence available on record;

2. Direct the respondents 2, 4 and 5 to reconsider Annexure A6 Application for reimbursement of the medical expenses incurred and pass orders allowing



the claim;

3. Grant such other reliefs as this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case, with cost."

4. Respondents have contested the O.A, stating that there are a few contingencies under which such reimbursement for treatment taken from private Hospital is permitted and they have also referred to Annexure R-1 letter dated 04-05-1994 relating to the subject.

5. Counsel for the applicant argued that Annexure A-7 is specific in that the extent of emergency has been duly appreciated by the Senior Medical Officer and hence, the Respondents could have easily reimbursed the amount.

6. Counsel for the respondent submitted that the circumstances under which the medical reimbursement could be granted for taking treatment in private Hospital have been itemized in para 5 of the counter reply.

7. Arguments have been heard and documents perused. This is a case, where the applicant was struggling for life and he was, on the basis of the gravity of ailment, referred to by the respondents themselves to a specialized hospital viz., Railway Hospital Perambur. Again, the emergency situation has been appreciated, as per Annexure A-7 by the authorized Medical Officer. The applicant was in all his seriousness prepared to visit the Railway Hospital at Perambur, but he could not do so due to the sudden adverse development, which compelled him to move to a private Hospital. The dates of reference by the authorities to Perambur Railway Hospital, admission in private Hospital, performance of the requisite surgery/treatment would all go

to show that the applicant's move to private Hospital was an inevitable one. Under the circumstances, it is expected of the respondents to consider the case with utmost sympathy, within the frame work of the rules and regulations.

8. Law laid down by the Supreme Court has always to be kept in view while deciding the issues coming before the Tribunal. As such, it is very much appropriate (perhaps essential too) to refer to the law propounded by the Apex Court in the case of medical reimbursement. One of the recent case on the subject is ***State of Karnataka v. R. Vivekananda Swamy, (2008) 5 SCC 328***, wherein, the Apex Court has held as under:-

20. Law operating in this field, as is propounded by courts from time to time and relevant for our purpose, may now be taken note of.

21. In *Surjit Singh v. State of Punjab* this Court in a case where the appellant therein while in England fell ill and being an emergency case was admitted in Dudley Road Hospital, Birmingham. After proper medical diagnosis he was suggested treatment at a named alternate place. He was admitted and undergone bypass surgery in Humana Hospital, Wellington, London. He claimed reimbursement for the amount spent by him. In the peculiar facts of that case it was held:

"11. It is otherwise important to bear in mind that self-preservation of one's life is the necessary concomitant of the right to life enshrined in Article 21 of the Constitution of India, fundamental in nature, sacred, precious and inviolable. The importance and validity of the duty and right to self-preservation has a species in the right of self-defence in criminal law. Centuries ago thinkers of this great land conceived of such right and recognised it. Attention can usefully be drawn to Verses 17, 18, 20 and 22 in Chapter 16 of *Garuda Purana* (a dialogue suggested between the Divine and Garuda, the bird): in the words of the Divine:

17. *Vinaa dehena kasyaapi
canpurushartho na vidyate
Tasmaaddeham dhanam
rakshetpunyakarmaani saadhayet*

Without the body how can one obtain the objects of human life? Therefore protecting the body which is the wealth, one should perform the deeds of merit.

18. *Rakshayetsarvadaatmaanamaatmaa
sarvasya bhaajanam Rakshane
yatnamaatishthejje vanbhaadraani pashyati*

One should protect his body which is responsible for everything. He who protects himself by all efforts, will see many auspicious occasions in life.

* * *

20. *Sharirarakshanopaayaah kriyante
sarvadaa budhaih Necchanti cha
punastyaagamapi kushthaadiroginah*

The wise always undertake the protective measures for the body. Even the persons suffering from leprosy and other diseases do not wish to get rid of the body.

* * *

22. *Aatmaiva yadi naatmaanamahitebhyo
nivaarayet Konsyo
hitakarastasmaadaatmaanam
taarayishyati*

If one does not prevent what is unpleasant to himself, who else will do it? Therefore one should do what is good to himself."

We may, however, notice that in that case, before this Court, Rules framed under the proviso to Article 309 of the Constitution of India, were not in force. What were in force were the policies regarding reimbursement of medical expenses framed by the State of Punjab on 25-1-1991 and 8-10-1991.

22. This Court, however, considered the validity of a rule in regard to reimbursement of the medical expenses vis-à-vis the fundamental right of a citizen in terms of new policy evolved by the State of Punjab limiting claim for reimbursement in ***State of Punjab v. Ram Lubhaya Bagga*** opining:

"26. When we speak about a right, it correlates to a duty upon another, individual, employer, government or authority. In other words, the right of one is an obligation of another. Hence the right of a citizen to live under Article 21 casts obligation on the State. This obligation is further reinforced under Article 47, it is for the State to secure health to its citizen as its primary duty. No doubt the Government is rendering this obligation by opening government hospitals and health centres, but in order to make it meaningful, it has to be within the reach of its people, as far as possible, to reduce the queue of waiting lists, and it has to provide all facilities for which an employee looks for at another hospital. Its upkeep, maintenance and



cleanliness has to be beyond aspersion. To employ the best of talents and tune up its administration to give effective contribution. Also bring in awareness in welfare of hospital staff for their dedicated service, give them periodical, medico-ethical and service-oriented training, not only at the entry point but also during the whole tenure of their service. Since it is one of the most sacrosanct and valuable rights of a citizen and equally sacrosanct sacred obligation of the State, every citizen of this welfare State looks towards the State for it to perform its this obligation with top priority including by way of allocation of sufficient funds. This in turn will not only secure the right of its citizen to the best of their satisfaction but in turn will benefit the State in achieving its social, political and economical goal. For every return there has to be investment. Investment needs resources and finances. So even to protect this sacrosanct right finances are an inherent requirement. Harnessing such resources needs top priority."

However, having regard to the fact that the medical facilities continued to be given and an employee was given free choice to get treatment from any private hospital in India but the amount of payment for reimbursement was regulated, it was opined: (*Ram Lubhaya Bagga case*)

"29. No State of any country can have unlimited resources to spend on any of its projects. That is why it only approves its projects to the extent it is feasible. The same holds good for providing medical facilities to its citizens including its employees. Provision of facilities cannot be unlimited. It has to be to the extent finances permit. If no scale or rate is fixed then in case private clinics or hospitals increase their rate to exorbitant scales, the State would be bound to reimburse the same. Hence we come to the conclusion that principle of fixation of rate and scale under this new policy is justified and cannot be held to be violative of Article 21 or Article 47 of the Constitution of India."

The said principle was reiterated in *State of Punjab v. Mohan Lal Jindal*.

23. The question came up for consideration before this Court in *Confederation of Ex-Servicemen Assns. v. Union of India* wherein a Constitution Bench of this Court had the occasion to notice *Ram Lubhaya Bagga*. Agreeing therewith it was opined:

"66. ... In our considered opinion, though the right to medical aid is a fundamental

right of all citizens including ex-servicemen guaranteed by Article 21 of the Constitution, framing of scheme for ex-servicemen and asking them to pay 'one-time contribution' neither violates Part III nor is it inconsistent with Part IV of the Constitution. Ex-servicemen who are getting pension have been asked to become members of ECHS by making 'one-time contribution' of reasonable amount (ranging from Rs.1800 to Rs.18,000). To us, this cannot be held illegal, unlawful, arbitrary or otherwise unreasonable."

9. The above mentioned decision would go to show that while medical reimbursement could be made for having the treatment in emergent cases in private Hospital, the authorities may regulate the extent of reimbursement. In other words, complete shutting of the doors for such case has not been contemplate. In the instant case, as is seen from the documents, the Senior Medical Officer, Shoranur has recommended the case, being fully satisfied of the emergent requirement of the treatment of the applicant. Annexure A-7 refers. As such, the genuineness of the applicant and the compelling circumstance under which he had to have treatment at Trichur cannot be doubted. Such a facility is available with the railways, and Full powers without limit are available for reimbursement of medical expenses for treatment taken in emergency without proper reference by an Authorized Medical Attendant are available with the Railway Board, vide Rule 648(2) of the Indian Railways Medical Manual (available in website <http://www.Indianrailways.gov.in/financecode/MMVol-I/Chapter6.pdf>)).


However, rejection has been made at the level of Chief Medical Director, without the case being referred to the Railway Board for their consideration, as they are the ultimate authority to decide the case of medical reimbursement for treatment taken in private institutions. The case does deserve consideration by the competent authority.



10. In view of the above, this O.A. is **disposed of** with a direction to Respondent No. 1 to prepare a proper statement of case for reference to the Railway Board, which would, keeping in view the spirit in grant of medical facilities/medical reimbursement as highlighted by the Apex Court in the case of Vivekananda Swamy(supra) ^{and} arrive at a judicious conclusion and inform the first respondent, who would act on the basis of the decision as communicated by the Railway Board.

11. The matter pertains to the period of August 2006. As such, prescription of time would be justified. Hence, a period of six months is calendared for compliance of the orders of the Tribunal. No cost.

(Dated, the 11th November, 2009.)


Dr. K.B.S. RAJAN
JUDICIAL MEMBER

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