

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO.214 OF 2009

Friday, this the 15th day of January, 2010.

CORAM:

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

A. Sreerangan,
(Retd. Keyman, Southern Railway/
Trivandrum Division), residing at
Ambanattu House, Venga P.O.,
Sastamcotta, Kollam District.

... **Applicant**

(By Advocate Mr. T.C.G. Swamy)

versus

1. Union of India, represented by
The General Manager, Southern Railway,
Headquarters Office, Park Town P.O.,
Chennai – 3.

2. The Chief Medical Director,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 3.

3. The Medical Superintendent,
Southern Railway, Medical Branch,
Trivandrum Division, Trivandrum – 14.

4. The Divisional Railway Manager,
Southern Railway, Trivandrum Division,
Trivandrum – 14. ...

Respondents

(By Advocate Mr. Thomas Mathew Nellimoottil)

The application having been heard on 15.01.2010, the Tribunal on
the same day delivered the following.

ORDER

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

The applicant, A. Sreerangan, who retired from the Railways as early
as in 1996 and who is a member of the Retired Employees Liberalised Health
Scheme – 1997 has approached this Tribunal as his medical claim to the
extent of Rs.1,43,000/- in respect of his treatment in Amrita Hospital has been

truncated by the respondents to an amount of Rs.10,800/- only on the ground that there is no emergent situation to warrant medical treatment in a Private Hospital.

2. Facts relating to dates of the applicant having fallen ill, conducting of surgery, etc. not being disputed, the same obviate the debate. The simple question is whether there has an emergent situation on the basis of which the applicant is entitled to reimbursement as claimed.

3. Rules on the subject have been adduced by the respondents. In the instant case, the respondents have not denied the fact that initially there was an urgency and as such initial admission may be considered as urgent treatment. However, the objection to the claim was that subsequent treatment including PTCA which was conducted after four days was not of emergent nature. The applicant objected to the same on twin grounds :

(a) that the opinion was not from the competent authority namely, CMD.

(b) the term "Emergency" has been duly clarified by the Railway Board as "*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 jeopardize the life of the patient.*"

4. Counsel for the applicant argued that the respondents have rejected the claim of the applicant without considering the legal position. He has also relied upon a decision by this Tribunal vide order dated 25th July, 2007 in O.A. No.564/2006. The facts in that case are stated to be almost identical to that of the present case.



5. Counsel for the respondents submitted that the authorities have referred the matter earlier to Respondent No.2 and as such it cannot be stated that the decision was by a Lower Authority.

6. From the records it is not exactly known whether the 2nd respondent namely the Chief Medical Director had an occasion to verify the opinion of the Cardiologist of the Railway Hospital, Perambur. It is only when the CMD endorses the views of the Cardiologist that the claim could be rejected. This aspect may first have to be verified. Even if the above part has been played by the CMD, the decision by the Railways could be challenged before this Tribunal. Here exactly the decision of this Tribunal in O.A. No.564/2006 comes into play. The facts in that case and the decision are as under :-

"The applicant, a retired Mail Driver of Southern Railway, Trivandrum Division, is aggrieved by the order dated 27.3.2006 (Annexure.A3) of the 2nd respondent rejecting his request for reimbursement of medical expenses incurred by him on account of an emergency treatment undertaken for his wife and Annexure.A4 order dated 12.4.2006 by which the medical claim of the applicant has been returned to him.

2. The brief facts of the case are that the applicant voluntarily retired from service on 16.7.99. He is covered under the Annexure.A2 Retired Employees Liberalized Health Scheme, 1997 (RELHS-1997 for short). This Scheme has since been incorporated as Para 612-A of Sub Section 11 of Chapter VI of the Indian Railway Medical Manual. By virtue of the said Scheme, he became entitled to be provided with full medical facilities as admissible to serving employees under the Railway Medical Attendance Rules.

3. The applicant and his wife were travelling by Guruvayur Express Train on 30-31/1/2005. During the course of the journey, applicant's wife, who was suffering from heart problems, felt uneasiness in the chest after the train left the Alleppey Station. The couple got down at Ernakulam Station and the applicant's wife was taken to the Amrita Institute of Medical Sciences and Research Centre for immediate check up and treatment, where she had undergone an angiogram on



31.1.2005. itself. The report indicated total occlusion of Right Coronary Artery with a medical advice for Percutaneous Transluminal Coronary Angioplasty to be undertaken immediately for which the applicant was asked to deposit an amount of Rs. 1,20,000/- in advance. The hospital authorities conducted the angioplasty on the applicant's wife on 4.2.05 and she was discharged on 6.2.2005. He incurred the medical expenses of Rs. 1,36,567/- (Rupees one lakh thirty six thousand five hundred and sixty seven) out of which Rs. 16,500/- was adjusted by Matha Amritanandamayee Math Charitable Subsidiy. The applicant applied to the 4th respondent, Medical Superintendent vide Annexure.A5 for reimbursement of the medical expenses incurred by him as admissible under Para 648(1) of the Indian Railway Medical Manual wherein it has been provided as under:

"1) Where, in an emergency, a Railway employee or his dependent has to go for treatment (including confinement) to a Government hospital or a recognized hospital or a dispensary run by a philanthropic organization, without prior consultation with the Authorized Medical Officer, reimbursement of the expenses incurred, to the extent to otherwise admissible, will be permitted. In such a case, before reimbursement is admitted, it will be necessary to obtain, in addition to other documents prescribed, a certificate in the prescribed form as given in Part C of Certificate B of Annexure. III to this Chapter from the Medical Superintendent of the hospital to effect that the facilities provided were the minimum which were essential for the patient's treatment. In such cases, the General Managers are delegated with powers to allow:

(a) full reimbursement of medical expenses in case of Govt. Hospitals and

(b) upto a limit of Rs. 50,000/- in case of recognized hospitals and dispensaries run by philanthropic organization. All cases above Rs. 50,000/- should be referred to the Railway Board along with the proforma given in Annexure.VI to this Chapter, duly filling all the columns".

The 4th respondent, thereafter, allotted the required funds for reimbursement vide the endorsement at Annexure.A5 stating "funds available". Thereupon,

Anexure.A5 and A6 medical claim of the applicant was forwarded to the 2nd respondent. But the 2nd respondent returned the claim to the 3rd respondent vide the impugned Annexure.A3 letter dated 27.3.2006 with the following remarks/ observations:

"The claim cannot be considered for reimbursement as the same has not been recommended by the specialist doctor of Railway Hospital, Perambur who has examined the case.

In view of the above, the claim is returned herewith your further disposal".

The 3rd respondent, vide the Annexure.A4 letter dated 12.4.2006 returned the claim to the applicant.

4. The applicant has referred to Rule 648 (2) of the Indian Railway Medical Manual and relied upon the same for his claim for reimbursement of the medical expenses incurred on emergency situation. Clause (2) of Para 648 of the aforesaid Rule is as follows:

"2) In case, where the treatment had to be taken in private/non recognized hospitals in emergent circumstances, without being referred by the Authorized Medical Officer, the General Managers are empowered to settle reimbursement claims upto Rs. 30,000 per case. It should be ensured that treatment taken in private hospitals by Railway men is reimbursed only in emergent cases and for the shortest and unavoidable spell of time. All claims above Rs. 30,000/- should be referred to the Railway Board, along with the duly filled in proforma given in Annexure.VI to this Chapter."

The other grounds on which the applicant challenges the impugned orders are that (i) the Annexure A3 and A4 are totally arbitrary, discriminatory, non-speaking and without jurisdiction and hence violative of Articles 14, 16 and 21 of the Constitution of India, (ii) Even though Annexure.A2 provides for full medical facilities to the retired employees as admissible to serving employees, the impugned Annexure.A3 and A4 orders are opposed to all canons of equity, justice and fair play and hence they have to be set aside. (iii) Amrita Institute being run by a philanthropic organization, medical claims upto Rs. 50,000 can be sanctioned by the General Manager and beyond rs.

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50,000/- the matter has to be referred to the Railway Board and the 2nd respondent or any specialist doctor of the Railway Hospital, Perambur has no right or authority to reject the claim, and (iv) the 3rd respondent had referred the matter to the 4th respondent and later to the 2nd respondent, only after having been found that the claim was genuine and the rejection of the claim is totally illegal, arbitrary and violative of Articles 14 and 21 of the Constitution.

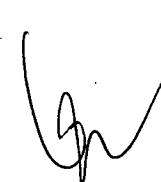
5. The 3rd respondent, Chief Medical Superintendent, Railway Hospital, Trivandrum has filed a reply on behalf of all respondents. They have submitted that Para 648 of the Indian Railway Medical Manual states that reimbursement of medical expenses is permissible only for the treatment taken in Government Hospital or a recognized Hospital or a dispensary run by a Philanthropic organization without prior approval from the AMO in emergency. The respondents have relied upon the Annexure.A3 letter dated 4.5.1994 of the Chief Personnel Officer, Southern Railway, Chennai, wherein it has been stated "*Under exceptional emergency conditions, if a patient avails treatment in a private hospital, his claim for reimbursement of medical expenses would be forwarded to Railway Board for consideration, if the Authorized Medical Attendant (AMA) and Chief Medical Director (CMD) are fully satisfied that there is adequate justification for the patient to have availed treatment in the private hospital.*" The said letter further stipulates that if a patient is taken to the Private Hospital, "*it has to be ensured that the patient is kept as inpatient in the Private Hospital for the minimum time possible and is transferred to the nearest Railway/Government Hospital for further management.*" They have further submitted that the on perusal of the records submitted by the applicant, the Specialist Doctor of the Department of Cardiology, Institute of Cardiac Treatment and Research, Southern Railway Headquarters Hospital, Perumbur vide Annexure.R3(2) letter dated 2.2.2006 has stated that "*though the patient has double vessel disease and require angioplasty, it was not an emergency situation as claimed by her husband and very well could have been done at the Railway hospital/Perambur.*" Moreover, the Amrita Institute of Medical Sciences has not certified that an emergent action was required in the case of the applicant's wife and by transporting her to the nearest Railway Hospital would result in loss of life. For the aforesaid reasons, the applicant is not entitled for reimbursement of the medical claim in respect of his wife.

6. In the rejoinder the applicant states that the Annexure.R.1 is not relevant because an emergency is felt

by the patient, his/her relatives and attending doctors and that the Cardiologist of the Amrita Institute has certified by his letter dated 28.9.06 that the coronary angiogram was done on an emergency basis. Hence the contention of the respondents that the treatment was not on emergency is not sustainable.

7. The applicant's counsel Ms. Rajitha has relied upon the judgment of the Apex Court in the case of State of Punjab V. Ram Lubhiya Bagga (1998) 4 SCC 117 wherein it was held that securing protection of one's life is one of the foremost obligations of the State. She has also relied upon the order of a coordinate Bench of this Tribunal in OA 325/2005 dated 13.7.2006 in which it was stated that the respondents have to be pragmatic in their approach in all such matters.

8. I have heard Ms. Rajitha for the applicant and Ms. P.K. Nandini for the respondents. By virtue as a member of the RELHS, 1997, no doubt it is the responsibility of the respondents to provide the applicant and his dependent family members with full medical facilities as admissible to serving employees. Para 648 of the Indian Railway Medical Manual has provided the manner in which "treatment in an emergency" is to be dealt with. "Emergency" situation in a patient's case is not defined in the said Manual. Whether there is emergency in seeking medical help or not largely depends on the assessment of the situation by the patient or his/her immediate family members or other persons who have been with the patient at the time of occurrence of the so called "emergent situation". In the case of an accident, it may be a stranger who might have got the patient admitted to the hospital. The decision as to whether the patient has to be rushed to the nearest hospital immediately or whether the patient can wait till the advice from a general physician is obtained largely depends upon the state of affairs of the patient as understood by the person attended the patient. Applicant's wife in this OA is a known case of heart patient. According to the applicant, she felt uneasiness during the journey and her condition was that she was not in a position to sit, lie down or walk. In such a situation, it was but natural for the applicant to come to the conclusion that it was a case of emergency. He could not take the risk of taking his wife to a general physician in a government hospital and get his advice in the matter. He has, therefore, discontinued the journey at Ernakulam and rushed his wife to the Amrita Hospital. The cardiologist in the hospital who treated his wife had also certified that "she was seen in OPD on 31/01/05 for unstable angina and coronary angiogram was done during same admission in emergency basis." (Annexure.A8). In



such circumstances, the report of the Sr.DMO, Department of Cardiology Treatment and Research, Southern Railway Headquarters Hospital, Perambur, Chennai that "though the patient has double vessel disease and require angioplasty, it was not an emergency situation as claimed by her husband and very well could have been done at the Railway hospital/Perambur" cannot be appreciated. The O.A is allowed. The Annexure.A3 letter dated 27.3.2006 and Annexure.A4 letter dated 12.4.2006 are quashed and set aside. It is declared that the applicant is entitled to the reimbursement of the medical expenses incurred by him for treatment of his wife as claimed in Annexure.A5. The applicant may resubmit his claim for reimbursement of medical expenses and on receipt of the same, the respondents shall consider the same in accordance with the rules and the amount admissible shall be reimbursed to him at the earliest but not later than two months from the date of receipt of the claim from the applicant. There is no order as to costs."

7. As the case of the applicant in the present O.A. and that in the other O.A. No.564/2006 are identical, logically the decision of the Tribunal in the above case has to be followed. In view of the above this O.A. is allowed. The Chief Medical Director may re-examine the entire matter keeping in view the decision of this Tribunal in O.A. No.564/2006. He may pass appropriate orders in accordance with law in respect of the claim of the applicant within a period of three months from the date of communication of this order. No costs.

(Dated, the 15th January, 2010.)



Dr. K.B.S. RAJAN
JUDICIAL MEMBER

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