

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated this Wednesday the 27th day of March, 2002

O.A.143 of 2000

Ramnath Datta,
Additional Chief Electrical Engineer,
Western Railway,
R/o 22.44, HIG Housing Scheme,
Bandra Reclamation, Bandra.

(By Advocate Shri M. S. Ramamurthy)

- Applicant

Versus

1. Union of India
through the Secretary,
Ministry of Railways,
Railway Board, Rail Bhavan,
New Delhi.
2. The General Manager,
Western Railway,
Churchgate, Mumbai.
3. The Director,
Jagjivan Ram Hospital,
Mumbai Central, Mumbai.
4. The Director General (Health Services)
Railway Board,
Rail Bhavan, New Delhi 110 001.

ORAL ORDER

By Hon'ble Mr. B.N. Bahadur - Member (A) -

The applicant in this case is aggrieved at not being provided, what he feels should be proper reimbursement of medical expenses incurred by him on Open Heart Surgery for by-pass, and installation of Pacemaker.

2. The facts of the case as brought out by the applicant are that he had been a patient with a heart problem, and that on 23.8.1996 the applicant suffered severe heart pain and other complications at about 9.00 p.m. He called a private Cardiologist who advised that the applicant be shifted to

hospital and that since open heart surgery facility was not available at the Government Railway Hospital (Jagjivan Ram Hospital), the applicant shifted to a private hospital. The applicant states that he was admitted at 10.00 p.m. on 23.8.1996 to this hospital, and claims that the Railway Hospital authorities were informed next day (orally as clarified by counsel). Angiography was done on 28.6.1996 and on the same day open heart surgery for by-pass surgery was also performed. The applicant was discharged from the hospital on 11.9.1996.

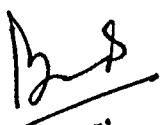
3. The applicant then describes that he spent more than four lakhs on surgery but claimed 2.9 lakhs. It is contended that Rs.2.05 lakhs were recommended for reimbursement when the matter was referred by Respondent no.3 to Railway Board, which has sanctioned only an amount of Rs.42,500/- (Exhibit - A). The representation made in this regard by Applicant has been rejected by the respondents.

4. The respondents in the case have filed a written statement of reply, resisting the claim of the applicant and stating that the Railways have paid Rs.42,500/- which they state is 50% of the expenditure that would have been involved had the said treatment been taken in a government hospital. Their stand is that the case was not referred to Authorised Medical Attendant (AMA). They further state that in fact that it is the Bombay

in a government hospital was being paid, while the full amount could be given. Further the basis for 50% was questioned by learned counsel. It was argued that, admittedly, no facility of Open Heart Surgery is available in any of the Government Hospitals and that the applicant was taken to the private hospitals only because of this and the emergency factor. The facts from the OA were highlighted to make the point that this indeed was a case of emergency.

7. The learned counsel Shri V.S.Masurkar who argued the case for the respondents stated that the respondents were bound by rules and that rules cannot be relaxed. He stressed the fact that a Railway Dispensary existed right in Bandra, and that this was a case where no reference was made by Authorised Medical Attendant. The learned counsel provided us with a copy of Indian Railway Medical Manual Volume - I (Third Edition - 2000) and sought support from Rule 648 of this Manual. He also made the point that the applicant's Annexures at page 16 went against him since the case referred therein, the treatment was taken at an approved hospital. Here the applicant was admittedly not taken even to an approved hospital.

8. I have seen all papers in the case, and have considered the arguments made on behalf of learned counsel of both sides. I have seen the relevant rule cited from the relevant Manual and have also gone through the judgment made in OA 285/00 (supra)



...5/-

from which support was sought by applicant's counsel. In the first place, one of the points that will need to be decided, as indeed mentioned in judgment in the aforesaid OA is whether the present case was one of emergency. Obviously this assessment has to be made with reference to each individual case on its fact. Hence on this point the facts of this particular case are examined. The main point that immediately comes up is that it is not denied that an applicant had a background of heart disease, and did come into severe problem in the late evening of 23.8.1996. More importantly after admission an Angiography was carried out within three days on 26.8.1996 and the operation was also performed on the very same day viz. 26.8.1996. Now this is not the matter of simple illness. Once an Angiography is performed merely, within two to three days of admission, and an operation conducted on the same day, it has to be concluded immediately that the matter was an emergency. An operation like an Open Heart Surgery is not advised and performed very lightly; nor is this, indeed, the contention by the respondents. Thus, no further arguments are needed in the facts of this particular case to conclude that it was a case of emergency. It is difficult to be moved only by one objection that a Dispensary was not consulted or recommendation from Authorised Medical Attendant not obtained. The very rules of government envisage treatment in emergency. Rule 648 (1) of the Indian Railway Medical Manual

b/s

....6/-

-2000 was not admittedly brought out by Respondents last time, but is now taken cognizance of. It reads as under:-

1. Where, in an emergency, a Railway employee or his dependant has to go for treatment (including confinement) to a Government Hospital or a recognised hospital or a dispensary run by a philanthropic organisation, without prior consultation with the Authorised Medical Officer, reimbursement of the expenses incurred, to the extent 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 the 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 ;



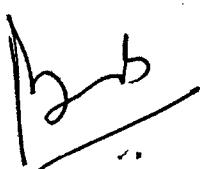
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(b) upto a limit of Rs.50,000/- in case of recognised hospitals and dispensaries run philanthropic organisations. All cases above Rs.50,000/- should be referred to the Railway Board along with the proforma given in Annexure VI to this chapter, duly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

A clear reading of this rule shows that this does not go against the applicant. There are provisions, with reasonable limits for full reimbursements albeit at Government Hospitals, which will include the approved Hospital viz. Bombay Hospital.

9. A point of importance which is indeed to be taken into consideration here is that, admittedly, the government hospital of Railways does not have the facility for Open Heart Surgery. If they had, the matter would have been different. This point has been discussed at para 15 in the judgment in OA 285/00. The reasoning given therein need not be repeated here as a point which applies in the present case too. Further it is true, as contended by the learned counsel for the applicant that there is no strict logic as to why 50% amounts as described should be enough. This amount was given as stated in para 5 (page 31) "considering the genuineness of the disease and hardship of the beneficiary". Now will 50% suffice when the case was admittedly genuine?

....8/-



10. In short, once we decide that this was a case of emergency, the reasoning as accorded in the case of Dholan Lilaram Lulla (supra) will become applicable. At the same time we have to remember that a person entitled to benefits should not compel government to reimburse amounts that are higher with reference to package deal rates in approved hospitals i.e. Bombay Hospital in this case. The criteria for taking an approved hospital would be relevant for considering the extent of reimbursement. If a certain hospital like the present one where applicant was admitted charges high rates, the government servant cannot expect reimbursement of total expenditure. This OA is therefore to be allowed in the same terms as OA 285/00 where also reimbursement was allowed but restricted as stated in Para 17 of the judgment therein.

11. In view of the discussion above, this OA is allowed to the extent and in terms of the following orders -

O R D E R

(a) The applicant shall be paid the entitled amounts as per claim made by him for medical reimbursements; if the amounts admissible as per rates/package deal in the tie-up hospital (Bombay



.....9/-

Hospital) are less, then, the rembursements will will be limited to such lesser amounts. Needless to say, the amounts already paid shall be suitably adjusted. No interest will be payable.

- (b) The impugned letter/s are quashed and set aside.
- (c) The respondents shall make the aforesaid payments within the three months from the date of receipt of a copy of this order, indicating briefly the item-wise amount paid to the applicant.
- (d) Parties shall bear their own costs.

B.N.Bahadur

(B.N.Bahadur)
Member (A)

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*Order/Judgement despatched
to Applicant, Respondent (s)
on 19/11/02*

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