

(12)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. 135/90  
Transfer Application No.

Date of Decision : 16.6.95

Mrs. Namala Rama Thulasi & 3 ors.

Petitioner

Mr. C. M. Jha

Advocate for the  
Petitioners

Versus

U.O.I. through GM Western Rly.

Respondents

Mr. V. S. Masurkar

Advocate for the  
respondents

C O R A M :

~~The Hon'ble~~ Shri Justice M. S. Deshpande, Vice Chairman

The Hon'ble Shri

(1) To be referred to the Reporter or not ? Yes

(2) Whether it needs to be circulated to other Benches of the Tribunal? No

V.C.

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(13)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, "GULESTAN" BUILDING NO.6  
PRESCOT ROAD, BOMBAY 1

O.A.No. 135 of 1990

Mr. N.B. Rao (since died on 17.12.93)  
through L.Rs:

1. Mrs. Namala Rama Thulasi  
w/o. N B Rao
2. Ms. D.UshaRadiadas, daughter
3. Lt. Namala Venkat Marshima, son
4. Ms. Umasha Francies ..Applicants

v/s

Union of India through  
General Manager, Western Railway  
Churchgate, Bombay 20 ..Respondent

Coram: Hon. Shri Justice M.S. Deshpande, V.C.

Appearance:

Mr. C. M. Jha  
Counsel for the applicant

Mr. V. S. Masurkar  
Counsel for the respondents

ORAL JUDGMENT DATED: 16.6.1995  
(Per: M.S. Deshpande, Vice Chairman)

By this application the applicant seeks a direction to the respondents to reimburse the full amount of expenses incurred by him i.e., Rs. 97,974/- on his treatment. The applicant who entered Railway Service in 1956 had not been keeping well since 1970 and was under the treatment of Jagjiwan <sup>Ram</sup> Hospital of Western Railway. In November 1987 he suffered a heart attack and was admitted in Jewal Nursing Home in a state of emergency and was treated there upto December 20, 1987. He resumed duties thereafter but

continued to have treatment in Jagjiwan Ram Hospital.

On 11.10.1988 the applicant had been for a check up to Preambur Railway Hospital on Southern Railway and there the Doctors opined that the condition of the applicant was not well and high risk surgery was necessary. After return the applicant approached the Jagjiwan Ram Hospital and the Doctors of Jagjiwan Ram Hospital were not able to diagnoise the deteriorating condition of the applicant & he was treated as an out door patient. On April 1, 1989 he had a severe chest pain and his family doctor tried to get some one to perform surgery and as the applicant was sinking he was sent in a state of emergency to Breach Candy Hospital, Bombay and was operated upon by Dr. Bhattacharya on 3.4.89 for coronary Artery Bypass survery and had to bear the expenses amounting to Rs.97,974. He applied for reimbursement of the medical expenses to the General Manager, Churchgate on 18.7.1989 but the application was rejected on 9.8.89. The break up of the expenses claimed by the applicant is Rs.40,000/- as fees of Dr. Bhattacharya and Rs.53,970 as Breach Candy Hospital charges.

2. The contention of the respondents is that the applicant should have undergone surgery when he was advised to do so at the railway hospital at Perambur and he should not have waited for undergoing surgery until he returned to Bombay and sustained the chest pain on 1.4.1989. It is also urged that the Breach Candy Hospital is not an approved hospital. The Medical Attendant was not consulted as required under the rules and the claim made by the applicant would not be covered by the rules. The fact that the applicant had to bear the expenses to the extent he has claimed is not in dispute and what is to be

ascertained is whether the action of the respondents in refusing to reimburse the expenses to the applicant was correct.

3. The applicant died after filing this application and it is being continued by his legal representatives. It is a common ground that the applicant was not in good shape after 1970 and suffered the heart attack in November 1987 and was undergoing treatment at Jagjiwan Ram Hospital of Western Railway. The fact that his condition was precarious is also clear from the certificate issued by the Doctor at Perambur Hospital who advised surgery, but sounded a warning that it was a high risk surgery. The applicant evidently had gone to Perambur after his visit to Tirupati and his ordinary place of residence was Bombay where he was working. It is difficult to find fault with the applicant for not getting himself subjected to surgery at Perambur when he was advised to do so. In the circumstances it is difficult to say that the applicant was adamant in not undergoing surgery though advised and neglected in looking after himself.

4. The fact that the applicant had severe chest pain on 1.4.89 is also not in dispute. What is being urged is that the applicant should have gone to the Rly. Hospital at Bandra which was close to the place where he resided & consulted the Medical Superintendent there and latter would have arranged for an ambulance and sent him to the Rly. Hospital which had the necessary equipment and expertise to treat him. It is urged that since the applicant went of his own accord to the Breach Candy Hospital in disregard of all the provisions made in the rules,

the claim for reimbursement should not have been granted.

5. Rule 8 of Medical Attendance and Medical Examination Rules enumerates the hospitals where the Railway servants shall be entitled to medical assistance and treatment free of charge. Clause (a) reads as under:

- (a) in such a railway hospital or near the place where he falls ill as can, in the opinion of the Authorised Medical Attendant provide the necessary and suitable facilities;
- (b) if there is no such hospital as is referred to in clause (a) in such a Govt. hospital at or near that place as can in the opinion of Authorised Medical Attendant provide the necessary and suitable facilities; or
- (c) If there is no such hospital as is referred to in clauses (a) and (b) or any other hospital at or near that place as can in the opinion of Authorised Medical Attendant provide the necessary and suitable facilities. ~~It~~ It is not obligatory that the treatment must be received in a Railway Hospital or Government Hospital and the rules leave it open to have treatment in any of the hospitals which in the

opinion of the Authorised Medical Attendant provide  
and  
necessary suitable facilities.

6. Rule 9 relates to treatment without prior consultation and says that where in an emergency a railway servant goes for treatment including confinement to a Government hospital without prior consultation with the authorised medical attendant, reimbursement of medical expenses to the extent otherwise admissible will be permissible if after a careful examination of the circumstances of the case the competent medical authority accords an ex-post facto approval. In such cases before re-imbursement is admitted it will be necessary to obtain a certificate prescribed by Government in this behalf from the medical superintendent of the hospital to the effect that the facilities provided were the ~~minimum~~ the minimum which were essential for the patient's treatment. This would also show that prior consultation with Authorised Medical Attendant is not a must for receiving treatment in an emergency. In such cases before the reimbursement is admitted it is necessary to obtain the certificate prescribed by the Government in this behalf 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.

7. According to the respondents Breach Candy Hospital is not a hospital approved by the Railways but it was not stated by them that the Breach Candy Hospital did not have the necessary facilities which were minimum or essential for the patient's treatment. Clause 6 of Section III of the Rules refers to cases of emergency where treatment (including confinement) in a government, recognised hospital, or a dispensary run by philanthropic organisation, <sup>may be had</sup> without prior consultation with authorised medical attendant. The expenses incurred may be reimbursed subject to - 'Competent authority's ex-post facto approval (ii) a certificate being produced in prescribed form from the medical superintendent of the hospital that facilities provided were the minimum required for the patient's treatment. CPO may reimburse upto Rs.500/- in each case of emergency. ~~but that~~ does not restrict the quantum of reimbursement but only ~~restricts~~ the power of CPO to grant reimbursement up to a particular limit. It is, therefore, clear that in case of emergency, and undoubtedly a case of heart attack has to be regarded as a case of grave emergency, it ~~was~~ open to the applicant to proceed to Breach Candy Hospital even without prior consultation of authorised medical attendant. I am not impressed by the submission that under the rules it was necessary first to consult the medical attendant at Bandra who

could have arranged for an ambulance and could send the applicant to an appropriate railway hospital for treatment that was necessary in the present case. It would be difficult to conclude that in cases of such grave emergency the patient should be tied down to the observance of such technical rules. To expect this may ultimately prove fatal to the patient.

8. The Lt. Counsel for the applicant invited attention to the observations of the Supreme Court in Pt. PARMANAND KATARA Vs. UNION OF INDIA & Ors., AIR 1989 SC 2039 to the following effect:

"There can be no second opinion that preservation of human life is of paramount importance. That is so on account of the fact that once life is lost, the status quo ante cannot be restored as resurrection is beyond the capacity of man. The patient whether he be an innocent person or be a criminal liable for punishment under the laws of the society, it is the obligation of those who are in-charge of the health of the community to preserve life so that the innocent may be protected and the guilty may be punished. Social laws do not contemplate death by negligence to tantamount to legal punishment".

Though these observations were made in a different context that was the approach suggested which the authorities and Tribunals should adopt.

9. As I have pointed out earlier there is nothing in the rules which prohibited the applicant in the state of grave emergency to approach the hospital to which he would have had easy access, without obtaining the prior sanction of the authorised medical attendant as per procedural requirement or being bound down by the requirement to approach the nearest railway hospital. Even the rules which have been quoted do away with the prior consultation with the authorised medical attendant. In the circumstances it is apparent that the Breach Candy Hospital had the necessary and essential facilities for performing the type of operation which was necessary and in fact it has been performed and the history of the patient itself shows that the operation should have been performed even earlier. There could be no justification for declining to pay the medical expenses to the applicant which he had claimed by way of reimbursement.

10. It is true that certain formalities had to be performed by the authorities concerned before the CMO and GM could have sanctioned the payment. These

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were merely procedural and some officer had only to find out whether the necessary facilities were available in the hospital where the treatment was given. That should not have resulted in entirely disallowing the claim made by the applicant. I, therefore, see no merit in the defence raised on behalf of the respondents and direct the respondents to pay Rs.97,970/- (Rupess ninety seven thousand and nine hundred seventy only) together with interest at 10% from the date of filing of the application until payment. Respondents are further directed to make the payment within four months from the date of receipt of a copy of this order. No order as to costs.

(M.S.Deshpande)  
Vice Chairman

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