

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 17.09.2014

OA No. 515/2012 with MA No. 244/2012

Mr. R.D. Meena, counsel for applicant.
Mr. R.G. Khinchi, counsel for respondents.

Heard learned counsel for the parties. The O.A. and M.A. are disposed of by a separate order on the separate sheets for the reasons recorded therein.

Anil Kumar
(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Kumawat

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION No. 515/2012

With

MISC. APPLICATION NO. 244/2012

DATE OF ORDER : 17.09.2014

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Narendra Kumar Singhal, Retired Guard, Station Manager, N/W Railway, aged about 70 years, B/C Agarwal, R/o 229, Asha Deep, Mandir Marg, Nirman Nagar-AB, Jaipur (Rajasthan)

... Applicant

(By Advocate: Mr. R.D. Meena)

Versus

1. Union of India through General Manager, N/W Railway, Jaipur.
2. Chief Medical Superintendent, Railway Hospital, Jaipur.
3. Chief Medical Director, N/W Railway, Jaipur.

... Respondents

(By Advocate: Mr. R.G. Khinchi)

ORDER

PER HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

The applicant has filed this OA praying for the following reliefs:-

- "(i) Quash and set aside the impugned order dated 6.1.2011 (Annexure A/1) and 2.5.2011 (Annexure A/2).
- (ii) Issue directions to the respondent department for reimbursement of the entire medical bills submitted by the petitioner for treatment of his wife.
- (iii) Any other order or direction which this Hon'ble Tribunal deems fit and proper, in favour of the applicant."

2. The brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant is a retired

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employee of the Railways. That the applicant's wife was suffering from Knee Joint pain since 1993. The applicant consulted the Orthopedic Surgeon, who was posted in the Railway Hospital, Jaipur, who suggested to replace the knee joint. Thereafter in the year 2009, his wife was registered in the hospital but she was not operated.

3. Again the applicant consulted the Doctors of the Railway Hospital in the month of July, 2010 and they referred the applicant's wife to Jagjivan Ram Hospital, Railway Hospital, Mumbai for replacing the knee joint. That the applicant alongwith his wife went to Jagjivan Ram Hospital, Mumbai and consulted the doctors who advised him that the operation could be done after two months and till then the patient should be admitted in their hospital. The hospital management was not providing accommodation. The applicant was 70 years old patient of Diabetes and it was not possible for him to stay there with his wife for three months. Even his wife was not in a position to wait for the operation for three months since she was facing severe pain in her knee joint. Therefore, the applicant took his wife to Jaipur and met with doctors of the Railway Hospital, Jaipur and requested to get operated his wife but they denied.

4. The learned counsel for the applicant submitted that thereafter the applicant took his wife to Tagore Hospital, Shipra Path, Mansarovar, Jaipur where she was operated on 06.09.2010 under the package of Rs.3,60,000/-. The applicant

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applied for the reimbursement of the medical bills. His claim for medical reimbursement has been rejected by the respondents vide their letter dated 06.01.2011 (Annexure A/1) and 02.05.2011 (Annexure A/2). Being aggrieved by the decision of the respondents for not allowing his claim of the medical reimbursement, the applicant has filed the present OA.

5. The learned counsel for the applicant argued that since the wife of the applicant was in acute pain, therefore, in an emergency she had to be operated in a private hospital. He requested the doctors of the Railway Hospital, Jaipur as well as to the doctors of the Jagjivan Ram Hospital, Mumbai for operation of his wife but they denied for the operation. Therefore, in such an emergent situation, the applicant had to take his wife to the private hospital namely, Tagore Hospital and Research Centre, Jaipur.

6. The learned counsel for the applicant submitted that the applicant is a pensioner and the respondents have shown inhumane attitude towards a retired person by rejecting the genuine medical claim of the operation of his wife. The applicant had no option but to go to a private hospital in an emergency. Therefore, the respondents be directed to reimburse the medical bills of the applicant.

7. On the other hand, the respondents have filed their reply. In their reply, they have submitted that the claim of the applicant for reimbursement of medical expenses incurred for

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treatment of his wife was rightly rejected. In Railway Board guidelines No. 2005/H/Policy-II dated 31.01.2007, it has been clearly mentioned that in exceptional situation, CMD of Zonal Railways can obtain special permission from Railway Board for treatment in any private hospital on case to case basis. Therefore, there is no scope available for any railway beneficiary to go to any private hospital himself on their own volition, except in case of real emergency situation. The Railways have annexed the guidelines at (Annexure R/1). The emergency has also been defined in these guidelines which are quoted below:-

"Emergency" shall mean 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 will jeopardize the life of the patient. Some examples are - Road accident, other types of accidents, acute heart attack etc. Under such condition, when the Railway beneficiary feels that there is no scope of reporting to his/her authorized Railway Medical Officer and avails treatment in the nearest and suitable private Hospital, the reimbursement claims are to be processed for sanction, after the condition of the emergency is confirmed by the authorized Railway Medical officer ex-postfacto."

8. The respondents have stated in the present matter, there was no emergency due to which the applicant choose for treatment of his wife in a private hospital without special permission of the Board or without properly referring the matter by the competent authority. In the present case, there was no emergency as described in the guidelines dated 31.01.2007.

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9. The respondents have further stated that according to the applicant, doctors advised the applicant with regard to the operation of his wife in the year 2009 then why the applicant did not arrange for the operation of his wife at that time till 2010.

10. The respondents have stated that the patient was referred to Jagjivan Ram Hospital, Mumbai but the applicant did not take the treatment there and instead took the treatment from the private hospital at Jaipur. Since there was no emergency, therefore, the respondents are not bound to reimburse the applicant's medical expenses. The applicant got his wife operated in a private hospital at his own risk.

11. The very fact that the wife of the applicant was advised operation in the year 2009 but the applicant chose not ^{to} get *Anil Kumar* operated at that time shows that there was no emergency in the case of the applicant. When the wife of the applicant was suffering from knee joint pain since 1993 and he waited for the operation till 2010 then it can easily be said that there was no emergency for operation in a private hospital. According to the applicant himself, the doctors of the Jagjivan Ram Hospital, Mumbai, which is a Railway Hospital, asked him to wait for two months then the applicant ought to have waited for that period.

12. The learned counsel for the respondents further submitted that the applicant has not filed any document to

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prove that the doctors in 1993 had advised any operation of his wife after attaining the age of 60 years. The respondents have also stated that there are private hospitals which are recognized by the Railways but the applicant has chosen the one which is not recognized by the Railways. Therefore, the OA has no merit and the claim of the applicant has been rightly rejected according to the rules and instructions on the subject.

13. The applicant has filed the rejoinder in which he has reiterated the fact which has been mentioned in the OA. Annexure-1 to the rejoinder is a document which shows that the wife of the applicant was referred to Jagjivan Ram Hospital, Mumbai by the Railway Hospital, Jaipur on 28.07.2010. Annexure-2 to the rejoinder shows that she was examined at the Jagjivan Ram Hospital, Mumbai.

14. Heard the learned counsel for the parties and perused the documents on record and the case law referred to by the learned counsel for the applicant.

15. During the arguments, the learned counsel for the applicant reiterated the facts, which have been mentioned in the OA. His main thrust of the argument was that wife of the applicant was in acute pain and, therefore, she was not in a position to wait for two months for operation, as advised by the doctor at Jagjivan Ram Hospital, Mumbai. Therefore, the applicant took his wife back to Jaipur. When the doctors at Railway Hospital, Jaipur refused to arrange for operation of the

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wife of the applicant then he had no option but to go to a private hospital. Thus the applicant went to private hospital in emergency in compelling circumstances.

16. The learned counsel for the applicant argued that in case of emergency, the reimbursement of medical expenses is allowed. In support of his averment, he referred to judgment of the Hon'ble Supreme Court in the case of Chhotu Ram Yadav vs. State of Haryana, 2005 (13) SCC 393 and Suman Rakheja vs. State of Haryana & Another, 2004 (13) SCC 562. He also referred to the judgment of the Hon'ble High Court of Rajasthan in the case of M.P. Gupta vs. State of Rajasthan & Another, SB Civil Writ Petition No. 1321/2009 decided on 10.04.2012.

17. On the other hand, the learned counsel for the respondents also reiterated the facts that they have mentioned in their reply. He argued that there was no emergency and the applicant went to private hospital for his own volition. He further submitted that according to the applicant his wife had pain in knee joint since 1993. She was initially advised operation in 2009 but the applicant did not arrange for the operation. In 2010, the Railway Hospital referred the wife of the applicant to Jagjivan Ram Hospital, Mumbai, which is a Railway Hospital and has facility of knee joint replacement. The applicant went to Mumbai but he did not get his wife operated there. He could have waited for two months if he was advised by the doctors at Mumbai but he on his own came back to

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Jaipur and got his wife operated in a private hospital. The learned counsel for the respondents further submitted that the applicant has not produced any document which could prove that on his return from Mumbai, he again consulted the doctors at Railway Hospital, Jaipur and doctors of Railway Hospital, Jaipur refused to help the applicant. Thus it is clear that there was no emergency in which the wife of the applicant was got operated in a private hospital, which is not even recognized by the Railways. Therefore, his claim has been rightly rejected.

18. Having heard the rival submissions of the parties, after perusal of the documents on record and the case law referred to by the learned counsel for the applicant, I am of the view that the applicant has failed to make out any case for the interference by this Tribunal. According to the applicant, his wife had pain in her knee since 1993 but she was advised operation after she attains the age of 60 years, though it has not been mentioned in the OA as to when she attained the age of 60 years. According to the applicant she was advised operation again in 2009. The applicant in the OA has not given any reason as to why she was not operated in 2009 when the doctors advised her for operation and she was suffering from knee pain since 1993. Moreover again in 2010, the applicant's wife was referred to Jagjivan Ram Hospital, Mumbai, which is a Railway Hospital. According to the applicant, he took his wife to Jagjivan Ram Hospital, Mumbai but come back to Jaipur because he was asked to wait for two months and the pain was so severe that it was not possible for his wife to wait for two

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months for that operation, therefore, they decided to come back to Jaipur. According to the pleadings in the OA, the applicant has stated that the doctors at Jagjivan Ram Hospital, Mumbai advised that patient should be admitted in their hospital till the operation is performed. Thus had the applicant admitted his wife in the Jagjivan Ram Hospital at Mumbai, she would have been in the care of specialist doctors. They would have taken care of extreme pain that the wife of the applicant was suffering but instead of admitting her wife, the applicant came back and got his wife operated in a private hospital. I am inclined to agree with the contention of the learned counsel for the respondents that the applicant has not produced any document which could suggest or prove that on return from Mumbai, the applicant again consulted the doctors at Railway Hospital, Jaipur and they have refused to help the applicant. It is not disputed that Railway Hospital, Jaipur referred the wife of the applicant to Jagjivan Ram Hospital which has the facility of knee joint replacement. Therefore, it was the duty of the applicant to get his wife operated in Jagjivan Ram Hospital, Mumbai or if it was inconvenient to him then on return from Mumbai, he could have obtained the proper permission from the competent authority in the Railways to get his wife operated in a private hospital but he made no efforts to this effect. Therefore, I am of the view that the applicant is not entitled for any relief in the present OA.

19. I have perused the case law referred to by the learned counsel for the applicant. In the case of Chhotu Ram Yadav vs.

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State of Haryana, 2005 (13) SCC 393, the Hon'ble Supreme Court held that the Hon'ble High Court decided for itself that appellant's claim was not a situation of emergency and that Hon'ble High Court did not gave a finding as to whether Ganga Ram Hospital, Delhi was a recognized hospital or not. Therefore, the Hon'ble Supreme Court directed the respondents to process the claim of the appellant for medical reimbursement in the light of the policy enunciated in the aforesaid Memo dated 14.10.2003 and take proper decision thereupon. In the present OA, the respondents have decided the case of the applicant as per their policy dated 31.01.2007 (Annexure R/1). The respondents have stated that the Tagore Hospital where the wife of the applicant was operated is not a recognized hospital by the Railways. This fact has not been disputed by the learned counsel for the applicant. Further the respondents have categorically stated that the case of the applicant is not one of emergency and to support they have referred to the guidelines dated 31.01.2007 (Annexure R/1) in which emergency has been defined. Therefore, the ratio decided by the Hon'ble Supreme Court in the case of Chhotu Ram Yadav vs. State of Haryana (Supra) is not applicable under the facts & circumstances of the present OA.

20. I have also carefully perused the judgment of the Hon'ble Supreme Court in the case of Suman Rakheja vs. State of Haryana & Another, 2004 (13) SCC 562. In this case, the appellant's husband had suffered paralytic stroke on the left side of the body and therefore, was admitted in an emergency

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condition in a private hospital. Under these circumstances, the Hon'ble Supreme Court allowed the medical reimbursement of the appellant whereas in the present case, the respondents have categorically stated that it is not a case of emergency. They have stated that surgery of knee joint replacement is a planned surgery and it not covered under emergency as per the policy dated 31.01.2007 (Annexure R/1). Therefore, I am of the view that the ratio decided by the Hon'ble Supreme Court in the case of Suman Rakheja vs. State of Haryana & Another (supra) is not applicable under the facts of the present case.

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~~20~~. I have also perused the judgment of the Hon'ble High Court of Rajasthan, Jaipur Bench, Jaipur in the case of M.P. Gupta vs. State of Rajasthan & Another (SB Civil Writ Petition No. 1321/2009 decided on 10.04.2012). In this case, the claim of the petitioner was denied on the ground that the treatment taken by him in Jagjivan Ram Hospital, Mumbai was not a Government hospital whereas it was held that the said hospital is a Government hospital run by the Ministry of Railways, Government of India. Therefore, the Hon'ble High Court considered the fact that Jagjivan Ram is a Government hospital and allowed reimbursement to the petitioner, which was less than permissible for similar treatment in government hospital. However, in the present case, the applicant's wife has been operated in a private hospital without the permission of the competent authority and according to the respondents; the treatment was not taken in emergency. Therefore, I am of the

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opinion under the facts & circumstances of the present case, the ratio decided by the Hon'ble High Court of Rajasthan, Jaipur Bench, Jaipur in the case of M.P. Gupta vs. State of Rajasthan & Another (supra) is not applicable in the present OA.

22. Thus on the basis of above facts & discussion, I find no merit in the present OA. Consequently, the OA being devoid of merit is dismissed with no order as to costs.

23. The MA No. 244/2012 for condonation of delay in filing the OA is disposed of accordingly.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

Abdul