

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 25.07.2013

OA No. 772/2012 with MA No. 386/2012

Mr. Hawa Singh, counsel for applicant.
Mr. M.K. Meena, counsel for respondents.

Heard learned counsel for the parties.

O.A. & M.A. are disposed of by a separate order on the
separate sheets for the reasons recorded therein.


(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Kumawat

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 772/2012
with
MISC. APPLICATION NO. 386/2012

DATE OF ORDER: 25.07.2013

CORAM

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Jhamman Singh S/o late Shri Durga Prasad, aged about 74 years, caste Vaish Khatirya (retired office Superintendent WR Ajmer) R/o 152, Krishana Vihar Colony, Near Gym, Kundan Nagar Ajmer (Rajasthan).

...Applicant

Mr. Hawa Singh, counsel for applicant.

VERSUS

1. Union of India through its General Manager, North Western Railway, Jaipur.
2. Director General, Railway Health Services, Ministry of Railways, Rail Bhawan, Opposite Krishi Bhawan, New Delhi.
3. Chief Medical Director, North Western Railway, Jaipur.
4. Chief Medical Superintendent, North Western Railway, Ajmer.

...Respondents

Mr. M.K. Meena, counsel for respondents.

ORDER (ORAL)

The applicant has filed the present Original Application praying for the following reliefs: -

- "1. The impugned order dated 03.01.2011 & 30.09.2009 annexure-A/1 & annexure-A/2 be quashed and set-aside. Further direct the respondent to reimbursement the medical bills of Gheesi Bai Memorial Mittal hospital (private hospital) amounting rupees 170758/- as per CGHS rates of Jaipur.

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2. Any other relief which this Hon'ble Tribunal deems fit in the facts and circumstances of the case. The cost of original application be allowed in favour of the applicant."

2. Brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant is a retired employee of Indian Railways and also is a Member of Retired Employees Liberalized Health Scheme. His card No. is RELHS/3544/9 dated 01.07.1997. He submitted that wife of the applicant suffered from a severe chest pain on 13.04.2009 at about 12:30 hours. She was immediately admitted to the JLN Hospital, Ajmer and after medical examination declared severe heart attack in medical terms as acute IOWMI and admitted in ICCU and was thrombolysed by injection Elaxim. But on 14.04.2009, the doctor shifted her to general ward in a critical condition for want of one bed vacant for emergency at night. In that situation, there was no option other than to shift her to private hospital to save the life of patient. Therefore, wife of applicant was admitted to private hospital in ICCU ward in emergency and next day i.e. on 15.04.2009, treating a case of emergency, coronary Angiography and coronary Angioplasty was done. The medical reimbursement bills of Gheesi Bai Memorial Hospital (private hospital) amounting to Rs. 1,70,758/- were submitted to the office of respondents but the claim has been denied on the ground of not a case of emergency.

3. Learned counsel for the applicant further submitted that the right of a citizen to get medical care is a part and parcel of the right to live under Article 21 of the Constitution of India.

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Such right is further re-enforced under Article 47 of the Constitution of India. It is an equally sacred obligation cast upon the State. 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.

4. Learned counsel for the applicant submitted that the respondents vide their letter dated 03.01.2011 (Annexure A/1) have rejected the claim of the applicant by assigning a reason that the claim of the applicant is not valid as per para 648 of Indian Railway Medical Manual, 2000.

5. Learned counsel for the applicant further submitted that the Railway Board letter dated 31.01.2007 (Annexure A/14) provides the procedure for disposal of reimbursement of medical expenses. The meaning of word 'emergency' has been explained as "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 accidents, other types of accidents, acute heart attack, etc.

6. Learned counsel for the applicant further submitted that the applicant vide letter dated 22.04.2009 (Annexure A/15) informed to Chief Medical Superintendent, NWR, Ajmer in continuation of his earlier letter dated 13.04.2009 by detailing out the reason of immediately admitting his wife to Gheesi Bai

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Memorial Mittal Hospital (private hospital) in ICCU (cardiac) as she was forcefully shifted from ICCU ward to general ward in JLN Hospital, Ajmer even 72 hours were not passed and she was a patient of severe / massive heart attack case. The decision to save the life of his wife was taken by the applicant. Therefore, it cannot be said that it is not a case of emergency.

7. Learned counsel for the applicant also submitted that the applicant submitted the required documents as demanded by the respondents to sanction his reimbursement of medical expenses including the emergency certificate and essentiality certificate (Annexure A/16).

8. Learned counsel for the applicant further submitted that the Government of India, Ministry of Health & Family Welfare vide office memorandum No. S. 14021/51/2007-MS dated 12th September, 2008 (Annexure A/18) recognized the Gheesi Bai Memorial Mittal Hospital & Research Centre, Ajmer - 305004 (Rajasthan) for treatment of Central Government Employees and their family members under CS (MA) Rules, 1944.

9. Learned counsel for the applicant submitted that subsequently on 04.05.2010 (Annexure A/19), an agreement was signed between the CMS, North Western Railway, Divisional Hospital, Ajmer and Vice President, Gheesibai Memorial Mittal Hospital & Research Centre, Ajmer for providing Cardiac treatment invasive and non invasive Cardiac Surgery, OPD & IPD treatment & peripheral vascular investigations with related

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consultation, investigation and treatment of all existing & retired employees of Railways and their dependents which are governed by R.E.L.H.S. Rules for a period of one year with effect from 04.05.2010 on monthly billing system and the treatment will be as per CGHS, Jaipur rates. Though, he admitted that the case of the applicant is prior to the date of this agreement.

10. Learned counsel for the applicant further submitted that para 648 of Indian Railway Medical Manual, 2000 nowhere stipulates that the reimbursement of medical claim of the applicant can be refused by the respondents.

11. To support his averments, learned counsel for the applicant placed reliance upon the following judgments: -

- (i). Union of India and Others vs. Avtar Singh and Another - [2012 (2) SLR 448 (Pb. & Hry.)].
- (ii). Bipinchandra N. Mistry vs. Union of India & Ors. - [2013 (1) (CAT) SLJ 95].

Therefore, he submitted that in view of the ratio decided by the Hon'ble High Court of Punjab and Haryana in the case of Union of India and Others vs. Avtar Singh and Another and by the Central Administrative Tribunal, Bombay in the case of Bipinchandra N. Mistry vs. Union of India & Ors., the applicant is entitled for reimbursement of medical expenses and the respondents be directed accordingly.

12. On the other hand, learned counsel for the respondents submitted that wife of the applicant was admitted in JLN Hospital

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on 13.04.2009 at about 12:50 hours due to severe chest pain and was treated by Heart Specialist (Cardiologist) Dr. R.K. Gokhru, but patient left the hospital against the medical advice (LAMA) of treating Doctor and got herself admitted in a private hospital. The treating Doctor has not mentioned that bed was not available in the emergency in JLN Hospital, Ajmer. The shifting of patient from JLN Hospital to private hospital against the medical advice of doctor itself indicate that patient was not willing to take treatment in a Government hospital where facilities of Angiography and Angioplasty were already available.

13. Learned counsel for the respondents submitted that the facility of treating emergency cases of heart attack are not available in the Railway Hospital but patients are being referred to Government Hospital and other empanelled hospitals at Jaipur. In this case, the patient has already gone to the Government hospital i.e. JLN Hospital, Jaipur. He could have continued to avail medical facilities / treatment in that hospital and would have requested for post-facto referral to that hospital.

14. Learned counsel for the respondents further submitted that the emergency has been defined in the Railway Board letter dated 31.01.2007 but in the same letter, it is also mentioned that "hence, there is no scope available for any railway beneficiary to go to any private hospital himself/herself or their dependents on their volition, except in case of real emergency situation". In this case, patient had already gone to Government hospital and upto that treatment was justified and reimbursed

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accordingly. The applicant has been reimbursed an amount of Rs. 30,000/- for the treatment taken by the wife of the applicant at JLN Hospital, Jaipur. Learned counsel for the respondents submitted that memorandum regarding recognition of Gheesibai Memorial Mittal Hospital & Research Centre, Ajmer is for the treatment of Central Government Employees other than Railways.

15. Learned counsel for the respondents further submitted that the applicant was not reimbursed the amount which he incurred on treatment in a private hospital after leaving Medical College as it was not permissible under the rules. He should get referred himself from his authorized medical officer for treatment in a private hospital. Had he continued the treatment in the Government JLN Hospital, Ajmer, he would have been reimbursed the full amount incurred in that hospital; therefore, the action of the respondents in rejecting the claim of the medical reimbursement of the applicant relating to private hospital is according to the rules. Therefore, the Original Application should be dismissed with costs.

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

17. Learned counsel for the respondents raised preliminary objections submitting that this Original Application is time barred and therefore it should be dismissed on this count alone. On the

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other hand, learned counsel for the applicant stated that the applicant has filed a Misc. Application praying for condonation of delay in filing the Original Application. He prayed that looking to the peculiar circumstances of the case, the delay in filing Original Application may be condoned.

18. Having considered the rival submissions of the parties, in the interest of justice, delay in filing the Original Application is condoned, as such, the case was heard on its merit. The Misc. Application No. 386/2012 for condonation of delay is allowed accordingly.

19. It is admitted between the parties that wife of the applicant suffered from severe chest pain on 13.04.2009 at about 12.30 hours and she was immediately admitted to JLN Hospital, Ajmer and she was treated there. However, on 14.04.2009, the applicant shifted his wife to the private hospital. It is also admitted between the parties that the applicant has been reimbursed the claim of Rs. 30,000/- which he spent on the treatment of his wife while she was admitted in JLN Hospital, Ajmer.

20. It is also admitted between the parties that in the private hospital, she has undergone coronary Angiography and coronary Angioplasty, but since Gheesibai Memorial Mittal Hospital & Research Centre, Ajmer is a private hospital, therefore, the respondents have denied the medical reimbursement of Rs. 1,70,758/- incurred by the applicant on the treatment of his wife.

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21. The main reliance of the respondents in denying the reimbursement of medical expenses to the applicant is upon the provision of para 648 of Indian Railway Medical Manual 2000. The relevant part of para 648 (1) of Indian Railway Medical Manual 2000, is reproduced as under: -

" 648. Treatment in an emergency:

- (1) Where, in an emergency, a Railway employee or his dependant 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 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.

22. The respondents have further relied upon the Railway Board's letter dated 31.01.2007 wherein it has been mentioned that "Hence, there is no scope available for any railway beneficiary to go to any private hospital himself/herself or their dependants on their own volition, except in case of real emergency situation. However, in the same circular dated 31.01.2007, 'emergency' has also been defined as under: -

"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 accidents, other types of accidents, acute heart attack etc. Under such conditions, 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,

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after the condition of the emergency is confirmed by the authorized Railway Medical officer ex-postfacto."

23. I have carefully gone through the provision of para 648 of Indian Railway Medical Manual 2000, which provides for treatment in an emergency. The provision has already been quoted above, clearly provides that where, in an emergency, a Railway employee or his dependant 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 Authorised Medical Officer, reimbursement of the expenses incurred, to the extent otherwise admissible, will be permitted.

24. In the present case, it is admitted that wife of the applicant suffered from severe heart attack and she was admitted to JLN Hospital, Ajmer on 13.04.2009. She was given treatment in the JLN Hospital, Ajmer. However on 14.04.2009, the applicant shifted his wife to Gheesibai Memorial Mittal Hospital & Research Centre, Ajmer. She has undergone there coronary Angiography and coronary Angioplasty procedure in emergency on 15.04.2009. Therefore, the contention of the respondents vide their letter dated 30.09.2009 that the case of the applicant was not one of emergency cannot be accepted.

25. I have also carefully perused the circular dated 31.01.2007 (Annexure A/14) in which emergency has been defined by the respondents. Even in this circular, acute heart attack has been

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termed as emergency. Therefore, the claim of the applicant is also supported by the circular of the respondents dated 31.01.2007.

26. The contention of the respondents is that had the applicant got her wife treated at JLN Medical College then they would have fully reimbursed the expenses incurred on medical treatment but since he has shifted his wife from JLN Medical College to a private hospital on his own, therefore, he is not entitled for the reimbursement of medical expenses incurred in a private hospital. I am not inclined to agree with the contention of the learned counsel for the respondents. The right of a citizen to get medical care is a part and parcel of the right to live under Article 21 of the Constitution of India. Such right is further re-enforced under Article 47 of the Constitution of India.

27. The Hon'ble High Court of Punjab and Haryana in the case of Union of India and others vs. Avtar Singh and another (supra) in para 7 & 8 has held as under: -

"7. The right of a citizen to get medical care is a part and parcel of the right to live under Article 21 of the Constitution of India. Such right is further re-enforced under Article 47 of the Constitution. It is an equally sacred obligation cast upon the State.
.....

8. The present writ petition is a mere reflection of the mechanical manner and utter insensitivity with which a claim for medical re-imbursement of an employee has been dealt with at the hands of a welfare State. We are unable to refrain ourselves from observing that the present writ petition is wholly frivolous."

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28. The Hon'ble High Court of Punjab and Haryana while delivering the judgment in the case of Union of India and others vs. Avtar Singh and another (supra) has relied upon the observations of the Hon'ble Supreme Court made in the case of Surjit Singh vs. State of Punjab and others, 1996 (2) SCT 234 : [1996 (1) SLR 786 (SC)]. In the case before the Hon'ble High Court of Punjab and Haryana, the patient was earlier treated in a Govt. hospital and then PGI and subsequently in a private hospital. In the present case also, the patient has been treated first in Govt. hospital and subsequently in private hospital. The Hon'ble High Court upheld the decision of the Central Administrative Tribunal, Chandigarh Bench allowing the reimbursement of medical expenses incurred in the treatment of his wife at a private hospital and dismissed the writ petition with costs filed by the Union of India & Ors. The facts and circumstances of the case of Union of India and others vs. Avtar Singh and another (supra) is similar to the facts and circumstances of the present case. Hence, the ratio decided by the Hon'ble High Court of Punjab and Haryana is squarely applicable in the present case.

29. I have also carefully gone through the order of Central Administrative Tribunal, Bombay, in the case of Bipinchandra N. Mistry vs. Union of India & Ors. (supra). In that case also, the applicant's wife had severe intolerable chest pain and was taken to private hospital. In that OA, the respondents were directed to reimburse the medical expenses in question as prayed for by the

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applicant. While passing that order, Central Administrative Tribunal, Bombay relied upon the following case law: -

- (i). Vasu Dev Bhanot v. Union of India & Others, 2008 (4) SLR 114.
- (ii). Suman Rakheja vs. State of Haryana & Another, 2006 SCC (L&S) 890.
- (iii). Surjit Singh v. State of Punjab & Others, 1996 (2) SCC 336.
- (iv). Pt. Paramanad Katara vs. Union of India & Others, AIR 1989 SC 2039.
- (v). Smt. Gouri Sengupta vs. State of Assam, 2000 (1) ATJ 582.


30. In the present case, it is admitted fact that wife of the applicant was admitted in JLN Hospital, Ajmer in emergency due to acute heart attack. However, she was shifted for treatment in a private hospital. Even the circular dated 31.01.2007 (Annexure A/14) provides that 'once the emergency is established beyond doubt, then the case should be further processed for calculating the amount / money to be sanctioned'. It further provides that 'treatment taken in a non-recognized private hospital, the reimbursement should be made at the CGHS rates of that city or nearest city'.

31. Therefore, in view of the discussions made hereinabove, in the present Original Application, the respondents are directed to process the case of the applicant as per the above terms of the circular dated 31.01.2007 (Annexure A/14). The applicant is entitled to receive the reimbursement of the medical expenses of his wife incurred in Gheesibai Memorial Mittal Hospital &

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Research Centre, Ajmer, limiting it to the extent as per rates prescribed by the Central Government Health Scheme. The respondents are directed to complete this exercise within a period of three months from the date of receipt of a copy of this order.

32. Consequently, the Original Application is allowed in the above terms with no order as to costs.


(ANIL KUMAR)
ADMINISTRATIVE MEMBER

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