

Reserved
(On 12.10.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the **31st** day of **October** 2018

Original Application No. 330/01209 of 2012

Hon'ble Mr. Gokul Chandra Pati, Member – A

Raghuvansh Mani, S/o Adhaya Prasad, R/o Village Bhoganipr Tehsil Ghangata, Post Office Dai Sasd District Sant Kabir Nagar.

... .Applicant
By Adv: Shri Prateek Chandra

V E R S U S

1. Union of India through the General Manager, Northern Eastern Railway, Company, Gorakhpur.
2. The Divisional Railway Manager, N.E. Railway, Izzat Nagar, District Bareilly.
3. The Divisional Railway Manager (Personnel) N.E. Railway, Izzat Nagar, Bareilly.

... . Respondents
By Adv: Shri R.K. Rai

O R D E R

The applicant, Sri Raghuvansh Mani has filed this OA under section 19 of the Administrative Tribunals Act, impugning the order dated 6.8.2010 (Annexure-1 to the OA), by which the respondents have rejected the representation dated 25.3.2010 to consider his medical reimbursement claim for treatment of his wife, who had a sudden heart attack on 26.4.2009, after receiving a notification dated 16.4.2009 mentioning wrongly that the applicant had died. As stated in the Miscellaneous Application No. 105/2013 filed by the applicant after filing the OA, his wife had the heart attack after receiving the said notification dated 16.4.2009 and she was immediately rushed to a private medical institution for her treatment. The wife of the applicant had to be hospitalized from 26.4.2009 till 3.5.2009 when she was discharged and the expenditure was incurred by him was at the rate of Rs. 17,600/- per day. It was also stated that

there was no facility of heart treatment in the Railway hospital at Bareilly for which she had to be admitted in the private hospital.

2. When the respondents did not decide the medical reimbursement bill submitted by the applicant, a representation dated 15.4.2010 was also submitted by the applicant. Earlier, the applicant had submitted the representation dated 25.3.2010 (Annexure -5 to the OA). Then the respondents passed the impugned order dated 6.8.2010 rejecting his claim, for which he filed the OA No. 1836/2010, which was dismissed as not pressed.

3. Thereafter, when no action was taken by the respondents, the applicant submitted a representation dated 17.5.2012 (Annexure-6 to the OA) followed by another representation dated 17.7.2012. When no action was taken, the applicant filed this OA with following prayers:-

- "(A) Issue an order or direction quashing the order 06.08.2010 passed by the respondent no. 3 (Annexure 1 to this O.A.)***
- (B) Issue an order or direction directing the respondents to make payment of the amount incurred by the applicant during the treatment of his wife.***
- (C) Issue an order or direction which this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of this case.***
- (D) award the costs of the application."***

4. The respondents have filed Counter Reply enclosing the order dated 6.8.2010 (Annexure CA-1), stating that the notification dated 16.4.2009 wrongly mentioned about death of the applicant instead of retirement, which was corrected subsequently. Hence, it was stated that the heart attack of his wife was not related to the notification dated 16.4.2009. The respondents quoted the provisions in the para 647 and 648 of the Indian Railway Medical Manual Volume-I (in short IRMM) in the Counter Reply and it is stated that as per these provisions of IRMM, since the applicant did not follow these provisions, his claim is liable to be rejected.

5. In reply to the averments pertaining to the para 648 of the IRMM, the applicant in para 19 of the Rejoinder has mentioned that the OA pertains to the provisions of Rule 647 of the IRMM and he reiterated the averments made in para 4.8 to para 4.13 of the OA.

6. Learned counsel for the applicant and the respondents were heard. The applicant's counsel reiterated the averments in the pleadings. The respondents' counsel stated that the claim of the applicant could not be considered since the applicant treated his wife in a private hospital without any reference by the medical authority of the Railways.

7. This OA challenges the order dated 6.8.2010 rejecting the claim of the applicant for reimbursement of medical claim and it has been filed in August, 2012 after about two years of passing of the impugned order dated 6.8.2010. There is no application for condonation of delay in filing the OA. Section 21 of the Administrative Tribunals Act, 1985 states as under:-

"21. Limitation.—(1) A Tribunal shall not admit an application,—

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where—

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2),

if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

From above, it is clear that the present OA has not been filed within the time stipulated under section 21 of the Act and no application has been filed under the sub-section 3 of the section 21 of the Act explaining the reason for such delay. Hence, the OA is not maintainable under section 21 of the Administrative Tribunals Act, 1985 on the ground of delay.

8. On merit also, it is found from the provisions of the para 648 of the IRMM as extracted in para 19 of the Counter Reply, it is stated that in case of an emergency, where treatment is to be given urgently, the railway employee can go to a Government hospital or a dispensary run by a philanthropic organization or to a recognized hospital, without prior consultation with the competent medical officer of the Railways and in such cases, the reimbursement of the expenses incurred will be permissible, subject to certain conditions. In case, the treatment is availed in a non-recognized private hospital (which is the case in this case), then the GM is empowered to settle the claim upto Rs. 50,000/- per case only if the treatment taken was for emergent cases and for the shortest and unavoidable spell of time. All claims above Rs. 50,000 should be referred to the Railway Board along with the specified documents.

9. Learned counsel for the applicant had submitted written arguments enclosing copy of the circular R.B.H. No. 3/2012 by which the power of General Manager to settle medical reimbursement claims for treatment in non-recognized hospital without any reference of the Railway Medical Authority is enhanced from 2.00 lakh to Rs. 5.00 lakh in case of emergency.

10. Under the provisions of the IRMM as discussed above, the reimbursement of medical claim for treatment in a non-recognized private hospital will be permissible if the applicant establishes the emergent conditions under which he was compelled to admit the patient in a non-recognized private hospital. In this case, the applicant did not furnish with the OA any medical documents of the patient indicating the condition at the time of admission, although he has enclosed some prescriptions in

Annexure-4 to the OA. In the Miscellaneous Application (in short MA) No. 105/2013, the applicant has enclosed the discharge certificate of the patient at Annexure No.1, which does not clearly mention whether the patient was admitted as a case of medical emergency. Copy of the representations submitted by the applicant to the respondents mentioned about heart attack of his wife, but no document has been produced by the applicant to establish the fact that it was a case of medical emergency as per the para 648 of the IRMM.

11. Further, total amount of the claim has not been mentioned by the applicant in the pleadings. In the MA No. 105/2013, it is stated by the applicant that he had spent Rs. 17,600/- per day. But the details of the bill enclosed at Annexure No. 2 of the MA No. 105/2013 shows a total amount of Rs. 17,600/- and it does not indicate that the charges are on per day basis. Hence, no details of total claims have been furnished by the applicant with the pleadings or the MA No. 105/2013.

12. In view of above discussions, the documents and the medical reports furnished by the applicants are not adequate to establish that the situation under which the treatment of his wife was taken up in a non-recognized private hospital was a medical emergency to justify reimbursement of medical expenses in terms of the para 647 and 648 of the IRMM. The circular enclosed with the written argument regarding enhanced financial power of the General Manager is also not helpful for the applicant's case. The OA also suffers from the deficiency on account of delay in filing it as discussed earlier, for which it is not maintainable under the section 21 of the Administrative Tribunals Act, 1985. Hence, the OA is liable to be dismissed both on account of delay and on merit and hence, it is dismissed. No order as to the costs.

(Gokul Chandra Pati)
Member – A

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