

Central Administrative Tribunal
Principal Bench
New Delhi

R.A.No.53/2016
in
O.A.No.757/2015

New Delhi, this the 4th day of March, 2016

Hon'ble Shri V. Ajay Kumar, Member (J)

Shri Kiran Kumar, aged about 53 years
S/o Late Shri Gopal Das
Working as Office Superintendent
Under E.O./Vigilance, Northern Railway
DRM Office, New Delhi. ... Applicant

Versus

1. Union of India through
The General Manager
Northern Railway
Baroda House
New Delhi.
2. The Chief Medical Director
Northern Railway, Baroda House
New Delhi.
3. The Chief Medical Superintendent
Northern Railway
Shyam Prasad Mukherjee Marg
Delhi Main
Delhi. ... Respondents

ORDER (By Circulation)

The present RA has been filed by the applicant under Section
22(3)(f) of the Administrative Tribunals Act, 1985 read with Rule 17

of the Central Administrative Tribunal (Procedure) Rules, 1987, seeking to review of the Order dated 27.01.2016 in OA No.757/2015.

2. The applicant, an Office Superintendent under the respondent-Northern Railway, filed the OA questioning the action of the respondents in not reimbursing the balance medical expenditure to the extent of Rs.64,854/- out of the total claim of Rs.1,21,164/-, in connection with the treatment of the applicant's son during the period from 04.04.2013 to 17.04.2013 in Shishu Sadan Multispeciality Childrens Hospital, New Delhi, a non-recognized private hospital.

3. It was clearly observed in the OA order as under:

“10. The respondents placed heavy reliance on the Annexure R1 dated 31.01.2007 whereunder certain instructions for disposal of the applications for reimbursement of the medical expenses by the Railway employees have been issued. The relevant paragraphs of the said Annexure read as under:

“The issue of bringing in objectivity, consistency and transparency in disposal of reimbursement cases, where the treatment has been taken in emergency without consultation with the Authorized Medical Officer, has been under consideration of the Board.

The Railway Board after thorough review of the whole subject of reimbursement has taken the following decisions which are to be implemented with immediate effect.

Any instructions on this subject as available in IRMM 2000 or any office order issued prior to this office order and will stand modified, accordingly.

I The cases to be considered for sanction of reimbursement claim:

To provide proper medical treatment, the Indian Railway Health Care Delivery system has 121 number of Railway Hospitals and 586 No. of Railway Health Units established all over India. In addition to this, all Govt. Hospitals and more than 115 private hospitals all over the country

have been recognized to provide necessary medical treatment to Railway beneficiaries.

As per extant rules, a railway beneficiary must report to Railway Medical Officer for his/her and dependents' medical treatment. The Authorized Medical Officer will make necessary arrangements for medical treatment through Railway Hospital/Govt. Hospital/Pvt. Recognized Hospital. In exceptional situations, CMDs of Zonal Railways can obtain special permission from Railway Board for treatment in any Private Hospital on case to case basis. Hence, there is no scope available for any railway beneficiary to go to any private hospital himself/herself or their dependents on their own volition, except in case of real emergency situation."

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II. Calculation of the amount of reimbursement to be sanctioned out of the claimed amount:-

Once the emergency is established beyond doubt, then the case should be further processed for calculating the amount/money to be sanctioned.

For that, following guidelines are given:-

a) Treatment taken in Govt. Hospital - Full admissible amount should be recommended for sanction.

b) Treatment taken in Recognized Private Hospital for an ailment for which it is recognized-Rate as approved by Railway should be processed for sanction,

c) Treatment taken in a Recognized Private Hospital but for an ailment for which it is not recognized or treatment taken in a non-recognized Private Hospital:- Reimbursement should be made at the CGHS rates of that city or nearest city. CGHS (Central Govt, Health Scheme) approved rates are to be recommended/processed as an upper limit for sanction.

III The approved rates of private hospitals recognized by Railway should be put on the Web sites of the Zonal Railways so that at all levels of processing /sanction these are accessible to all concerned.

IV In Medical Science, no list can be fully exhaustive. Hence, it is likely that there will be few occasions when a claim has been submitted which is not appearing exactly in the CGHS rate list. On these

cases, the MD/CMS/MS in charge of Divisions will apply their mind and will come to a logical conclusion. Then, they will pass a speaking order to certify the rate/s being recommended, in consultation with Associate Finance.

V All the reimbursement cases be processed as per check-list issued earlier to avoid back reference.

VI These instructions shall be effective from the date of issue of this letter. Past cases, already decided, shall not be re-opened.

VII. This issues with the concurrence of Finance Directorate of Ministry of Railways.”

11. It is not disputed that Shishu Sadan Multispeciality Childrens Hospital, is a non-recognized private hospital. Hence, Instruction/Clause No.II(c), which provides for reimbursement of the medical expenses at the CGHS rates of the particular city or nearest city, is applicable. Hence, since the respondents reimbursed the medical expenses as per the said Clause, and that the applicant has not questioned the validity of the said Clause, no fault can be found with the action of the respondents.

12. The applicant’s counsel has also not able to show any other instructions of the Railways which superseded the Annexure R1, to take any different view in the matter.

13. In view of the aforesaid discussion, the OA is devoid of any merit and the same is dismissed. No order as to costs.”

4. This Tribunal by its Order dated 27.01.2016, after hearing both sides, after giving the reasons mentioned above, dismissed the OA.

5. The Review Applicant, has not raised any valid ground which warrant the invoking of the review jurisdiction of this Tribunal. No error apparent on the face of the record, either pleaded or proved.

6. The law on review is well settled. The Hon’ble Apex Court in **Ajit Kumar Rath v. State of Orissa and Others** - (1999) 9 SCC 596 held that “power of review available to the Tribunal under Section 22(3)(f) is not absolute and is the same as given to a Court

under S. 114 read with Order 47 Rule 1 of CPC.”. It has further held that “the scope of review is limited to correction of a patent error of law or fact which stares in the face, without any elaborate argument being needed to establish it” and that “exercise of power of review on a ground other than those set out in Order 47 Rule 1 amounts to abuse of liberty granted to the Tribunal and hence review cannot be claimed or asked merely for a fresh hearing or arguments or corrections of an erroneous view taken earlier.”

7. In **Union of India v. Tarit Ranjan Das**, - 2004 SCC (L&S) 160 – the Hon’ble Apex Court held that the scope of review is rather limited and it is not permissible for the forum hearing the review application to act as an appellate authority in respect of the original order by a fresh order and rehearing of the matter to facilitate a change of opinion on merits.

8. In **State of West Bengal and Others v. Kamal Sengupta and Another** – (2008) 8 SCC 612 – the Hon’ble Apex Court after referring to **Ajit Kumar Rath’s** case (supra) held that “an order or decision or judgement cannot be corrected merely because it is erroneous in law or on the ground a different view could have been taken by the Court/Tribunal on a point of fact or law and while exercising the power of review the Court/Tribunal concerned cannot sit in an appeal over its judgment/decision.”

9. In a recent judgment, the Hon’ble Supreme Court in **Kamlesh Verma v. Mayawati and Others** (2013) 8 SCC 320, after discussing

various case laws on the jurisdiction and scope of review, summarised the principles of review as under:

"20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1. When the review will be maintainable:-

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;
- (ii) Mistake or error apparent on the face of the record;
- (iii) Any other sufficient reason.

The words "any other sufficient reason" has been interpreted in *Chhajju Ram v. Neki*, [AIR 1922 PC 112] and approved by this Court in *Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius & Ors.*, [(1955) 1 SCR 520], to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in *Union of India v. Sandur Manganese & Iron Ores Ltd. & Ors.*, [JT 2013 (8) SC 275].

20.2. When the review will not be maintainable:-

- (i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.
- (ii) Minor mistakes of inconsequential import.
- (iii) Review proceedings cannot be equated with the original hearing of the case.
- (iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.
- (v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.
- (vi) The mere possibility of two views on the subject cannot be a ground for review.
- (vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.
- (viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.
- (ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated."

10. One of the main grounds taken by the applicant in the RA is that this Tribunal had not taken cognizance of Annexures A/4 and A/5, which have a bearing on the merits of the case. This, in my view, is incorrect as after perusing the pleadings on the record only, this Tribunal passed the aforesaid order. Therefore, it can not be stated that this Tribunal had not taken cognizance of the aforesaid Annexures. Once, admittedly, the applicant's son was admitted in a non-recognized hospital in emergency conditions and the claim made by the applicant was reimbursed under the CGHS rates as per the Railway Board's Circular dated 31.01.2007, no further amount can be reimbursed to the applicant. Therefore, accordingly the OA was dismissed. The present RA, in my considered view, is an attempt to reargue the entire case, which cannot be permissible under the guise of RA.

11. In the circumstances and in view of the aforementioned principles of law, the RA is devoid of any merit and accordingly, the same is dismissed in circulation. No costs.

(V. Ajay Kumar)
Member (J)

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