

Central Administrative Tribunal
Principal Bench
New Delhi

R.A.No.313/2015
M.A.No.4056/2015
in
O.A.No.1937/2014

New Delhi, this the 20th day of January, 2016

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

1. Union of India
Through General Manager
Northern Railway
Baroda House
New Delhi.
2. Chief Medical Director
Northern Railway
Baroda House
New Delhi – 110 024. ... Review Applicants
3. Chief Medical Superintendent
Northern Railways Divisional Hospital
New Old Delhi, Railway Station, Delhi

Versus

Sh. Tika Singh
Aged 46 years
S/o Sh. Kewal Singh
Working as Senior Sector (Section) Officer (Account)
Under Sr. DFM,
New Delhi
R/o Vill. & PO Sutana, Distt. Panipat (Har) ... Respondent

O R D E R (By Circulation)

The present RA has been filed 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 08.07.2015 in OA No.1937/2014.

2. The applicant, a Senior Section Officer (Accounts) in the respondent-Northern Railway, filed the OA, aggrieved by the Orders dated 22.09.2012 and 03.07.2013, in rejecting the claim of the applicant for reimbursement of the medical expenses incurred by him in connection with a road accident occurred on 16.12.2011 at Panipat. On 16.12.2007, due to serious road accident, the applicant was injured in Panipat and immediately he was admitted into the nearest Hospital but when the condition of the applicant became serious, on the advice of the Doctors, the family members of the applicant taken him to Orthonova Hospital, opposite main IIT Gate, New Delhi, in an emergency condition on the same date, i.e., 16.12.2011. The applicant was diagnosed as a case of "Tibial Plateau Fracture Schatzker Type V", and was operated as an emergency case and was finally discharged on 20.12.2011 with follow up treatment. The applicant incurred a total expenditure of Rs.1,40,476/- at the said Orthonova Hospital for his treatment, and accordingly he submitted the medical claim for reimbursement of the same, through proper channel. The Additional Chief Medical Officer, Panipat recommended the case of the applicant for reimbursement vide his remarks dated 12.08.2012 as under:

"PO is a non referred case and appears to be an emergency."

3. However, the Chief Medical Superintendent, New Delhi, vide Order dated 22.09.2012 rejected the claim of the applicant as under:

"From submitted documents it appears that claimant has sustained a # and travelled from PNP and got admitted to private hospital Delhi. As per discharge summary Pt. (Sl.o.18) was admitted with pain and swelling of 5 days. Patient has travelled from PNP to Delhi and opted for treatment at private hospital instead of Railway hospital where facility for this treatment is available. Claim is hence rejected by CA."

The appeal of the applicant was also rejected by the Chief Medical Director, vide Order dated 03.07.2013, as follows:

- "The patient travelled all the way from PNP to Delhi but went to a private non-recognized hospital at New Delhi.
- The patient should have reported to NRCH/NDLS where facilities for such treatment are available.
- In view of the above, the claim is not sustainable and is regretted once again.

Therefore emergency as per Railway Board policy No.2005/H/6-4/policy-II dated 31.01.2007 could not be established. Hence, the claim has been regretted by the competent authority."

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

"8. It is not in dispute that the applicant met with a road accident at Panipat and was shifted to Delhi as per the Doctor's advice and was operated as an emergency case at Orthonova Hospital, New Delhi for treatment of Tibial Plateau Fracture Schatzker Type V, and incurred the expenditure in question.

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10. As rightly contended by the learned counsel for the applicant that when an accident occurred, the person seriously injured in the accident would not be in a position to take decisions or to give directions to his attendants in which hospital he is to be admitted for his treatment. The persons who are accompanying the injured, basing on the advice of the Doctors will admit the injured in a particular hospital. That is why RBH No.1/2007 rightly included the road accidents under the category of emergency. The definition given to the "emergency" in the said Circular also supports the case of the applicant. The contention of the respondents that, since the applicant travelled 100 kms. i.e., from Panipat to New Delhi, to admit in Orthonova Hospital when the Railway Hospital is situated within 90 kms. itself and, hence, he did not establish the emergency situation, is untenable, unsustainable and unreasonable, in view of the aforesaid discussion.

5. This Tribunal by its Order dated 08.07.2015, after hearing both sides, after giving the reasons mentioned above, allowed the OA and directed the respondents to consider the medical claim of the applicant and to reimburse the medical expenses incurred by the applicant, if otherwise eligible, within 90 days from the date of receipt of the said order.

6. The respondents in the OA filed this RA along with an MA seeking condonation of delay of 58 days.

7. In the circumstances and for the reasons mentioned therein, the MA 4056/2015 is allowed and the delay in filing the RA is condoned.

8. The Review Applicants, have 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.

9. Even as per the review applicants themselves, as stated in the Review Application, that they have approached this Tribunal by way of review, "for seeking reconsideration of the order passed by this

Tribunal dated 08.07.2015 on the basis of certain reasons inasmuch as this Hon'ble Tribunal was pleased to pass a final order in the aforesaid OA thereby directing the department to reimburse the medical expenses, if otherwise eligible." In other words, the review applicants are trying to reargue the OA, which was disposed of, on merits, after hearing both sides by giving reasons, which is not permissible.

10. 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."

11.. 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.

12. 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.”

13. 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."

14. 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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