

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.2800 /2015

Reserved on: 27.04.2017
Pronounced on: 28.04.2017

Hon'ble Mrs. P. Gopinath, Member (A)

Shri Ranjan Sinha
S/o Late Rajender Prasad Sinha,
R/o VPO Bandwar, Distt. Begusarai, Bihar,
Senior Clerk/Railway Protection Force,
Assistant Security Commissioner Office,
Northern Railway, Varanasi, U.P.

... Applicant

(By Advocate: Mr. K.K.Sinha)

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 Security Commissioner,
RPF, Northern Railway,
Baroda House, New Delhi.
4. The Chief Medical Superintendent,
Northern Railway, Lucknow, UP.
5. The Addl. Chief Medical Superintendent,
Northern Railway, Varanasi, UP
6. The Assistant Security Commissioner,
RPF, Northern Railway,
Varanasi, UP.

... Respondents

(By Advocate: Mr. Shailendra Tiwari with Mr.A.K.Srivastava)

ORDER

The applicant is working in the Railway Protection Force as a Constable at Goods Shed, Lucknow. The applicant suffered from Spondylitis and was under the treatment of Additional Chief Medical Superintendent from 13.06.2013 to 18.06.2013. Thereafter he was

referred to Sri Sunder Lal Hospital, Varanasi. In the course of treatment, on 10.07.2013 at 12.00AM the right hand of the applicant became senseless and he developed uneasiness in the head. The family members took him to the nearest hospital i.e Laxmi Medical Care Centre, Varanasi. The doctors in the said hospital recommended surgery which was performed next day on 11.07.2013. Applicant remained hospitalized till 20.07.2013. An expenditure of Rs.80382 was incurred on the surgery and stay in the hospital.

2. The applicant on being declared fit, joined duty and, preferred the claim of Rs.80382 for reimbursement along with related documents. The CMO, Lucknow did not approve the reimbursement and advised that appeal in the matter would rest with CMD, NR, Baroda House. Such an appeal was filed by the applicant vide Annexure A-6 letter dated 29.01.2014. Appeal remains undecided.

3. The applicant argues that his case can be cited as an emergency as per the Railway Board order on the subject, in view of loss of sensation in his right hand and uneasiness in the head which was an unusual development and caused panic.

4. The respondents would argue that the applicant underwent a planned surgery, which was an elective procedure. The applicant brings to notice that while he was undergoing OPD treatment at Sunder Lal Hospital, Varanasi Hindu University, the fact of continuous trauma in his right arm had been noted and recorded in his OPD ticket. A perusal of Annexure A-7, emergency admission of applicant to Laxmi Medical Care Centre, Varanasi reveals that the applicant was admitted on 10.07.2013 at 12.00AM in a state of unconsciousness with pain in upper limb and sensation loss in the limb. Hence this is a case where

the applicant was admitted at mid night with medical symptoms which could cause distress to the family members attending on him.

5. The respondents argue that the case of applicant is not covered by the Railway Board OM dated 31.01.2007 where the procedure for reimbursement of medical expenses has been laid down. In para 1 it is stated as follows:

"As per extant rules, a railway beneficiary must report to Railway Medical Officer for his/her and dependents' medical treatment. The Authorised Medical Officer will make necessary arrangements for medical treatment through Railway Hospital/Govt. Hospital/Pvt. Recognized Hospital in exception 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.

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

From the above it is clear that whereas the first hospital of preference should be Railway Hospital/Govt. Hospital/Pvt. Recognized Hospital, in exceptional situations like an emergency, treatment can be availed in the nearest and suitable private hospital and reimbursement claim for such a treatment be sanctioned thereafter. Some example given to cite an emergency is road accident or a heart attack. The listing, however, is not exhaustive in the OM. In para 1 (b) one of the clinical findings at the time of admission required in emergency cases is level

of consciousness. As brought to the notice of the Bench by the applicant, he was in a state of sensation loss in upper arm and not fully conscious at the time of admission.

6. Respondents argue that as per Railway Board policy there is no scope for railway beneficiary to go to any private hospital by himself except in a case of real emergency. Applicant brings to notice Writ Petition (Civil) 7540/2015 of the Hon'ble High Court of Delhi in the case of **Union of India Vs. Smt. Shanti Devi and Others** passed in a similar case of emergency in respect of a railway employee. In para 6, the Hon'ble High Court lays down in detail the conditions which can be considered as coming under the category of emergency. At serial no. 12 of para 6 one of the conditions cited is condition which could result in loss of life or limb. The said judgment also cites the judgment passed by the Apex Court in similar cases which are reproduced below:

"9.1 In *Suman Rakheja v. State of Haryana and another*, 2006 SCC (L&S) 890, the Hon'ble Supreme Court held thus:

In the present case also the appellant's husband had to be rushed to the private hospital because he had developed a paralytic stroke on the left side of the body, as there was blood clotting on the right side of the brain and therefore, was admitted, in an emergency condition in the hospital. In the present case the discharge certificate also shows that the case was an emergency one. In *Sant Prakash* case the Division Bench held that the petitioner therein would be entitled to 100% medical expenses at the AIIMS rates and 75% of the expenditure in excess thereto.

9.2 In *Vasu Dev Bhanot v. Union of India & others*, 2008(4) SLR 114, the Hon'ble High Court of Punjab & Haryana held thus:

It is settled law that right to health is an integral to right to life. Government has constitutional obligation to provide the health facilities. If the Government servant or his dependant has suffered an ailment which requires emergency treatment, it is but the

duty of the State to bear the expenditure incurred by the Government servant. Expenditure thus incurred by the Government servant, while in service or after retirement, requires to be reimbursed by the State to the employee.

9.3 In Smt. Gouri Sengupta v. State of Assam, 2000 (1) ATJ 582, the Hon'ble High Court at Gauhati held that denial of reimbursement of medical expenses on the ground the petitioner got the treatment in a private nursing home which is not recognized by the Government is not justified.

9.4 In Bipinchandra N.Mistry v. Union of India and others, 2013(1) SLJ 95 (CAT), the applicant's wife had severe intolerable chest pain and was taken to a private hospital for treatment. The medical claim was rejected on the ground of the applicant not availing of medical treatment from recognized hospital. Relying on the decisions in Surjit Singhs case(supra), Suman Rakhejas case(supra), Vasu Dev Bhanot's case (supra), Smt. Gouri Senguptas case (supra) and some other decisions and referring to the Railway Board's letter dated 5.4.2000, which permits treatment in private hospital in emergency condition, the Bombay Bench of the Tribunal held that denial of reimbursement of expenses incurred in connection with medical treatment was not justified and accordingly, directed the respondents to reimburse the medical expenses to the applicant.

7. The respondent department has laid down very comprehensive guidelines for reimbursement of medical expenses. It also lays down that in the event of an emergency such treatment could be availed in the nearest hospital. The case of the applicant is one which would come under this category and the Apex Court in the above cited judgments averred that it is the duty of the state to bear the expenditure incurred by the Government servant and reimburse the same to the employee even if such treatment was taken in a private hospital in an emergency. Going by the ratio of the Apex Court in **Suman Rakheja Vs. State of Haryana and Another** (2006) SCC (L&S) 890, the applicant be given 100% of entitlement as approved by the Railway Board for treatment in a private hospital and if the

same does not meet the total expenses incurred by the applicant, 75% of the expenditure in excess be also reimbursed to the applicant.

OA is allowed accordingly.

(Mrs. P. Gopinath)
Member (A)

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