

**Central Administrative Tribunal
Principal Bench, New Delhi
OA-1013/2017**

New Delhi this the 03rd day of August, 2018

Hon'ble Sh. Pradeep Kumar, Member (A)

Sudhir Kumar Raman (age about 50 years)

Group 'C'

S/ Sh. Raghubir Singh

Working as Reservation Supervisor,

N. Rly., Computer Reservation Center, Ghaziabad,

R/o H.No. A-409, Sector-9, Vijay Nagar,

Ghaziabad.

... Applicant

(By Advocate : Sh. Gaya Prasad)

Versus

1. Union of India, through
General Manager,
Northern Railway, Head Quarter Office,
Baroda House, New Delhi.
2. Chief Medical Director,
Northern Railway, Head Quarter office,
Baroda House, New Delhi.
3. Dr. Shashi Bhushan,
Dy. Chief Medical Director/MS
Northern Railway, Head Quarter office,
Baroda House, New Delhi.
4. Chief Medical Superintendent,
Northern Railway,
Divisional Hospital, Delhi.

... Respondents

(By Advocate : None)

ORDER (ORAL)

Learned counsel for the applicant submitted that there was no one representing the respondents.

2. Learned counsel for the applicant brought out that the applicant is a Railway employee working as Reservation Supervisor, Northern Railway, Computer Reservation Centre, Ghaziabad. The applicant's son is suffering from Duchene Muscular Dystrophy (DMD). This disease is not treated at Railway Hospital and the applicant had taken his son to Chaitanya Hospital and Nursing

Home, Pune when he came to know that this treatment may be available. This treatment was given to his son and applicant had submitted bill amounting to Rs. 6 lakhs to the respondents for reimbursement. This reimbursement was not agreed and, hence the applicant had approached this Tribunal for redressal of his grievance.

3. This matter came up before Tribunal in OA No. 435/2014, and vide order dated 1.5.15, following directions were given and matter disposed off:

"5. I have considered the submissions made on both sides. A person invoking jurisdiction of this Tribunal under Section 19 of the Act, 1985 is required to exhaust all remedies available to him. In the case in hand, as noticed above, the appeal of the applicant against the order of the Chief Medical Superintendent dated 17.07.2012 impugned in this proceeding is admittedly pending. It is true that considerable long time has lapsed and the appeal ought to have been disposed of expeditiously. Therefore, keeping in view the provision of Section 20 of the Act, I am of the view that the present Application is premature and does not lie at this stage. However, the appeal of the applicant is required to be disposed of on merit, keeping in view the law and the authorities in this regard expeditiously, preferably within a period of two months from the date of production of certified copy of this order"

6. The Application is accordingly disposed of with the above Order. It is made clear that this order may not be construed or interpreted to have expressed any opinion on merit as the appellate authority is required to dispose of the appeal on merit. There shall be no order as to costs."

3.1 Thereafter, the case of the applicant was considered by the respondents and order was passed by the respondent on 15.12.2016 as under wherein the claim of the reimbursement was rejected:-

"In response to your appeal dated 24-8-2012, the medical Board was held at NRCH/New Delhi on 16-8-2016 and as per the opinion of Medical Board, the Stem cell administration is not an established & standard line of management for Duchenne Muscular Dystrophy. It is still in the very early stages and this requires further careful, in depth studies and observations before being approval as a standard therapy.

The patient father has not consulted at AllMS, New Delhi or Pt. G.B. Pant Hospital at Delhi, which are reputed centers for management of Neurological diseases.

The Members of the Medical Board as doctors can give an opinion of essential requirement for only a established and approved line of management in any disease from which a patient is suffering. It cannot give an opinion on trials or any non established modalities of management.

Hence reimbursement of expenses as a standard medical treatment in this case cannot be recommended under the current guidelines of medical management for this disease.

In view of above, hence, Competent Authority not recommended for reimbursement of medical expenses as per the policy as stem cell therapy is not established standard line of treatment for DMD."

4. The applicant pleaded that a similar matter for the same disease had come up before the Tribunal in OA No. 437/2014 which was decided on 18.02.2015 with the following directions:-

"In the above facts and circumstances of the case, allow this O.A. and direct the respondents to reimburse the medical expense of 7 Lacs incurred by the applicant for the treatment of his son, within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs."

4.1 The applicant brought out that the respondents challenged this order before Hon'ble High Court (Writ Petition No. 10157/2015) and vide order dated 30.10.2015, this WP was dismissed with the following orders:-

"8. The Tribunal examined the entire documents available on record and reached a conclusion that in fact, the respondent's son was suffering from DMD and Rs. 7.00 lacs were spent by the respondents for the treatment of his son, who has since died. The learned Tribunal has also noted that initially the respondent had approached the Central Hospital, Northern Railway and AllMS for treatment. What has prevailed in the mind of Tribunal is that no parent could have left his child to die and he wanted to avail to every possible treatment for his child.

9. We find no infirmity in the reasoning of the Tribunal and thus, dismiss the writ petition, except to state that the present case would not be treated as a precedent. The amount be released in favour of the respondent within four weeks from today. No costs.

CM.APPL 25066/2015 (stay)

10. Application stands dismissed in view of the order passed in the writ petition.

Thereafter, the above order of this Tribunal was complied with.

4.2 The plea of the applicant is that his case is similar and he also deserves to be granted the reimbursement on same reasoning.

5. The case was heard. The averments in the counter and rejoinder have been gone through. The salient difference in the case decided in OA No. 437/2014 (Ref. para 2.0 above) and the present O.A. is that the applicant in O.A. 437/2014 was referred by Railway Hospital to AIIMS. Thereafter, he had gone to Chaitanya Hospital and Nursing Home, Pune as treatment was not available even at AIIMS, and where unfortunately the applicant's son did not survive.

5.1 In the instant OA, the applicant had taken his son directly to Chaitanya Hospital and Nursing Home, Pune, without going through the referral process from the Railway hospital.

5.2 The plight of a parent under such circumstances can very well be appreciated. The denial of reimbursement in instant case, for reasons brought out in para 3.1 above, cannot sustain, merely because patient was not taken to AIIMS first. And especially so in view of similar case in OA No. 437/2014 (Ref. para 4 & 4.1 above).

This Tribunal has to do "substantive justice" and "not be misled by technicalities". The amount spent on treatment is considered due and needs to be reimbursed.

6. The present O.A. is allowed. Respondents shall release RS. 6 lakhs within a period of six weeks. No orders as to costs.

(Pradeep Kumar)
Member (A)

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