

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.1366 of 2013

Reserved on: 31.10.2018

Order pronounced on: 01.11.2018

Between:

B. Srinivasa Rao, S/o. Ganneyya,
Aged about 45 years, Occ: Technician Grade I,
S.S.E., OHE, CHE,
Srikakulam Road, Waltair Division,
R/o. Railway Quarters No. Type II/60-2,
Mattakkivalasa, Amadalavalasa,
Srikakulam District.

...Applicant

And

1. Union of India, Rep. by its General Manager,
East Coast Railways, Chendrasekharpur,
Bhubaneswar.
2. The Divisional Railway Manager,
East Coast Railways, Visakhapatnam.
3. The Chief Medical Superintendent,
East Coast Railways, Waltair.

...Respondents

Counsel for the Applicant ... Mr. M. Krishna Rao

Counsel for the Respondents ... Mr. S.M. Patnaik, SC for Railways

CORAM:

***Hon'ble Mr. B.V. Sudhakar* ... Member (Admn.)**
***Hon'ble Mr. Swarup Kumar Mishra* ... Member (Judl.)**

ORDER
{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}

The OA is filed for not reimbursing the Medical Bill of Rs.3,82,243.46 to the applicant by the respondents.

2. The brief facts are that the applicant was appointed as Technician Grade III in the 2nd respondent office on 21.3.1998. The applicant when he went to

Chennai on 10.4.2012 fell in a bath room and was taken to a nearby nursing home who in turn advised him to go over to Apollo Hospital for being treated by an Orthopaedic Surgeon. Accordingly his relatives who did not know the procedure of taking him to the Railway Hospital took him to Apollo Hospital the same day. The Apollo Hospital authorities did Hip Replacement on 11.4.2012 and discharged him on 16.4.2012. When the applicant represented for reimbursement of Rs.3,82,243.46 towards cost of medical treatment, the respondents rejected the same on grounds that the applicant should have gone to the Railway Hospital for treatment and that the Hip Replacement is not an emergency surgery. Aggrieved over the same the present OA has been filed.

3. The contention of the applicant is that the Orthopaedic Doctor has advised Hip replacement to be done immediately otherwise it will lead to serious consequences. After falling in the Bathroom the condition of the applicant was very bad as he could not move and had to be necessarily moved to Apollo Hospital with the assistance of others in emergency condition.

4. The respondents claim that the applicant had Hip surgery in 2000-2001 and was suffering from pain in the right hip for the last 6 months leading to difficulty in walking, as per discharge summary. For getting treated he could have gone to the Railway Hospital and on his volition, he has joined Apollo Hospital and got the Hip replacement done which cannot be treated as emergency surgery. Therefore he is not eligible for medical reimbursement.

5. Heard the Learned counsel and perused documents. The 1d counsel submitted on lines parallel to the written submissions.

6. From records submitted it is seen that Apollo Hospital is a recognized private hospital by the Respondents. The emergency certificate dt 7.7.2012 issued by the Apollo Hospital indicates that he was admitted through emergency service and hip replacement was done. As per Railway Board lr dt 17.4.2007 any condition in which delay could result in loss of life, loss of limb and so on, shall be treated as emergency condition. The applicant fell and became immobilised. Naturally it calls for immediate medical attention and hence an emergency. At that instant of time one would not know as to the medical condition of the applicant. It could have become fatal because of an internal injury which would have been known only when there is immediate medical diagnosis. Saving one's life is more important than interpreting rules at that juncture of time. Anything may happen since human body is too complex and one needs emergent attention since preserving life is paramount. We do come across many cases where people loose life for innocuous incidents where external injuries appear to be minor but would have caused internal damage not easily discernable, which turn out to be fatal unless attended to on emergency basis. Therefore no chances can be taken in regard to medical treatment. The applicant fell and could not move which obviously is a medical emergency. The hospital authorities have diagnosed applicant's condition as a serious hip injury and was accordingly operated. If the Hip injury was not treated on an emergency basis it could have crippled him forever. In other words he would not have been in a position to use his right leg which tantamounts to loss of limb. Cases of loss of limb are considered as an emergency as per the Railway Board letter dt 17.4.2007. In fact, Article 21 of the Constitution of India has held that "Self preservation of one's life is the necessary concomitant of the right to life enshrined in Article 21 of the Constitution of India, fundamental in nature, sacred, precious and inviolable. The

Honourable High Court of A.P in W.P. No.2572 of 2003 dealing with T.V. Rajagopala Rao vs Additional Director, Central Govt Health Scheme has held that “*self preservation being a concomitant right to life also includes a duty and a right of the person to get himself treated for ailments. Since a citizen has a right to preserve his life and get treated by a Doctor in case of disease it follows that he has the right to go to a Doctor of his choice and a hospital of choice.*” In the present case the applicant was admitted to a hospital recognised by the respondents and has every right to get himself treated to preserve himself. Further, it may also be seen from the angle that had he been crippled for lack of treatment in time it would have impaired his productivity which is not good for the organisation. Such loss of productivity in financial terms would have been much more than the medical bill claimed by the applicant. Hence the respondents are expected to process such claims in organisational interests and in facilitating the individual to preserve his right to self preservation. More so, when the respondents represent the State. Honourable Supreme Court in ***Suman Rekha and the State of Haryana and anr*** in CA No.5060 of 2004 has allowed hundred percent medical reimbursement at AIIMS rates and 75 percent of expenditure in excess thereof, when the Govt. Servant was admitted in an emergency in a private hospital which was not recognised. Thus the case of the applicant is well covered by the cited judgments. He has been admitted in an emergency condition in a hospital recognised by the respondents as explained above. Therefore the OA fully succeeds.

7. OA is accordingly allowed and the respondents are directed to consider:

- i) Processing the medical bill submitted by the applicant for Rs.3,82,243.46 as per medical rules of the respondents organisation

considering the fact that the applicant got himself admitted in Apollo Hospital in an emergency condition and make the payment due within 30 days from the date of receipt of this order.

8. In the circumstances, there shall be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (JUDL.)

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 1st day of November, 2018

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