

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

...

Original Application No.290/00118/2017

Reserved on : 12.09.2018
Pronounced on : 17.09.2018

CORAM:

HON'BLE MRS. HINA P.SHAH, MEMBER (J)

Chhanwar Lal Borana Son of Shri Hira Lal Ji, aged about 60 years, Resident of Railway Station, Mokalsar, Mukam & Post Mahilawas, Tehsil Siwana, District Barmer.

...Applicant

(By Advocate: Shri Manoj Bohra)

Versus

1. Union of India through General Manager, HQ Office, North-Western Railway, Malviya Nagar, Near Jawahar Circle, Jaipur-17.
2. Chief Medical Director, North-Western Railway, Jaipur
3. Chief Medical Superintendent, North-Western Railway, Jodhpur
4. Divisional Medical Officer, North-Western Railway, Jodhpur

...Respondents

(By Advocate: Shri Salil Trivedi)

ORDER

The applicant has filed the present OA u/s 19 of the Administrative Tribunals Act, 1985 praying for the following reliefs:

- (i) By an appropriate writ, order or direction, the impugned Order dated 18.10.2016 (Annex.A/1) passed by the Divisional Medical Officer, North-Western Railway, Jodhpur and impugned Order dated 21.9.2012 (Annex.A/2) passed by the Chief Medical Superintendent, North-Western Railway, Jodhpur may kindly be quashed and set-aside and the claim of medical bills to the tune of Rs. 1,18,409/- submitted by the applicant may kindly be reimbursed alongwith interest @ 18% p.a.
- (ii) Any other appropriate order or direction, which may be considered just and proper in the light of above, may kindly be issued in favour of the applicant.
- (iii) Costs of the application may kindly be awarded in favour of the applicant.

2. Brief facts of the case, as stated by the applicant, are as under:-

The applicant was initially appointed on the post of Traffic Khalasi in 1992 and retired on superannuation on 30.4.2016 from the post of Travelling Ticket Inspector (TTI). On 23.5.2012, his mother fell ill and was admitted in Kamla Nagar Hospital, Jodhpur and during her treatment, the treating Doctors advised to referred her to a higher centre on 26.5.2012 and discharged her on the same day from the hospital. After discharge, the applicant took his mother to Rajasthan Hospital, Ahmedabad for taking further treatment and where she remained from 26.5.2012 to 8.6.2012 and expenses amounting to Rs. 1,18,408.64 had

been incurred by the applicant. Thereafter the applicant submitted medical bill of her treatment for reimbursement vide letter Ann.A/5. It is the case of the applicant that it was an emergent situation and, therefore, his mother was taken for treatment in higher centre at Ahmedabad because there was requirement to save her life. The respondents rejected the claim of the applicant vide letter dated 21.9.2012 (Ann.A/2). The applicant made an appeal dated 30.9.2016 against rejection and the same was rejected vide order dated 18.10.2016 and it was made clear by the respondents that the earlier decision dated 21.9.2012 dismissing claim of the applicant for medical reimbursement is found proper (Ann.A/1). It is the plea of the applicant that the applicant had also taken treatment from the said Rajasthan Hospital, Ahmedabad later on and had incurred expenses to the tune of Rs. 10,935/- for treatment from 19.6.2012 to 22.6.2012 and the said bill was reimbursed by the respondents. It is only the bill regarding treatment from 26.5.2012 to 8.6.2012 has been rejected by the respondents without any cogent and sufficient reason. It is under RTI that the applicant got the reasons for rejection of his claim for medical reimbursement that it is a matter pertaining to the treatment taken at Rajasthan Hospital,

Ahmedabad and since the case was not referred to General Manager or Chief Medical Director, Jaipur, as per Railway Board policy dated 31.1.2007, his claim is not in accordance with the rules. It is the claim of the applicant that powers with regard to medical reimbursement have been delegated vide letter dated 7.8.2008 wherein the Divisional Railway Manager has been authorized to make reimbursement upto Rs. 2 lakhs wherein the treatment has been taken from private recognized hospital/non-recognized hospitals without reference from the medical officer. Therefore, the impugned order passed by the Chief Medical officer is without justification.(Ann.A/11).

3. The respondents after issue of notice filed reply on 15.9.2017 wherein they have raised preliminary objection pertaining to limitation. The respondents state that the present OA is hopelessly time barred as the applicant was already intimated vide letter dated 21.9.2012 pertaining to rejection of his claim for medical reimbursement. The applicant thereafter made appeal to the respondents vide letter dated 30.9.2016 which was intimated by the respondents vide letter dated 18.10.2016 that they have earlier decided the claim of the applicant vide letter dated 21.9.2012 dismissing the claim of the applicant and the

same is found proper. The respondents state that there is no provision for filing any statutory appeal against the said rejection in cases of medical reimbursement. The present OA is filed on 10.3.2017 and, therefore, the said OA suffers from gross delay and laches and, therefore, as per Section 21 of the Act, the present OA deserves to be dismissed. It is settled position of law that the applicant has to approach the Tribunal within time and, therefore, the present OA deserves to be dismissed on the ground of limitation.

On merit, the respondents state that when the applicant's mother was advised by the Doctors of Kamla Nagar Hospital, Jodhpur and she was referred by them for higher centre, the applicant ought to have contacted the medical authorities of the respondents for referring the case to higher centre as per the instructions issued by the Railway Board. But inspite of adopting the due process of reference, the applicant on his own took treatment of his mother at Ahmedabad in a pre-planned manner. After the applicant's mother was discharged from Kamla Nagar Hospital, Jodhpur, the applicant had sufficient time for referring the matter to the respondents but he on his own admitted her without getting the case referred by the respondents in the emergent situation. The case of the

applicant was neither referred nor any emergency was established. The medical claim can be considered for reimbursement, though the case is not referred by the railways, but the emergency has to be established as per the parameters laid down for establishing emergency which was not found in the present case after examining the admission and discharge summary of the applicant's mother. In these circumstances, the competent authority of the respondents has rightly rejected the claim raised by the applicant for reimbursement and, therefore, the same does not require any interference from this Tribunal and the OA deserves to be dismissed.

4. Heard Shri Manoj Bohra, counsel for the applicant and Shri Salil Trivedi, counsel for the respondents and perused the material available on record.
5. The learned counsel for the applicant contended that the applicant could not be denied reimbursement of medical claim for treatment of his mother as he has taken the treatment in an emergency and he referred to the judgment of the Hon'ble High Court in the case of **Gyanendra Kumar Pareek vs. Stae of Rajasthan** reported in 2009(4) WLC (Raj.)95 where in, it was held that when a family member

suffers from cardiac ailment, the prime objective of the other family member would be to save his/her life. At that time, services of whichever hospital is suited could be utilized because emergency knows no law and no procedure and when human life is at stake, in such situation, ultimate responsibility of the State cannot be washed off. He also referred to the judgment of the High Court in the case of **Anil Kumar Surolia vs. State of Rajasthan** reported in 2005(3) WLC (Raj.) 396, **Surjit Singh vs. State of Punjab and Ors.** AIR 1996 SC 1388 and **State of Punjab & Ors. vs. Mohan Lal Jindal**, (2001) 9 SCC 217.

6. The learned counsel for the respondents contended that when the doctors of Kamla Nagar Hospital, Jodhpur advised and referred to higher centre, the applicant did not contact the medical authorities of the respondents for referring the case to the higher centre as per the provisions of the rules. The applicant had sufficient time after discharge of his mother, but he on his own in a pre-planned manner, took his mother to Ahmedabad. The respondents have their own super-speciality hospitals where the cases of emergent situation are referred. Since it was neither a referred case nor the emergency was established,

therefore, the respondents have rightly rejected his case for reimbursement as per provisions of the rules.

7. After going through the pleadings of the parties, it is evident that the applicant has took his mother for treatment at Ahmedabad without contacting the respondent authorities. His case for medical reimbursement could have been considered by the respondents, if there exist an emergent situation for such treatment, even without any reference to the railway authorities. But the fact of emergency can only be established by an expert body in the field on the basis of some parameters.

8. In these facts and circumstances, I deem it just and proper to direct the respondents to refer the matter to an expert committee in the field and after recommendations of the said committee on the issue of emergent situation, settle the claim of the applicant accordingly. This exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

9. With these directions, the OA stands disposed of. No order as to costs.

(HINA P.SHAH)
Member (J)

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