

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

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Original Application No.290/00339/2017

This, the 30th day of October, 2018

Reserved on 12.10.2018

.....

CORAM:

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

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Madan Mohan Purohit S/o Late Shri Fouj Raj Purohit, aged about 64 years, R/o Ghandhi Chowk, Kabootron ka Chowk, Jodhpur Ex. Sr. Section Officer (ACCT), North Western Railway, Jodhpur.
(Retired on account of superannuation as Senior Section Officer (ACCTS) of DRM Office, Jodhpur.

...APPLICANT

BY ADVOCATE : Mr. Anirudh Purohit

VERSUS

1. Union of India through the General Manager, North Western Railway, Jaipur.
2. Divisional Railway Manager, North Western Railway, Jodhpur Division, Jodhpur.
3. Chief Medical Superintendent North Western Railway, Jodhpur Division, Jodhpur.

RESPONDENTS

BY ADVOCATE : Mr. Vinay Chhipa

ORDER

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The applicant filed the present OA under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

- “(i) *By an appropriate writ, order or direction impugned order dated 03.08.2016 at Annexure-A/1 be declared illegal and be quashed and set aside.*
- (ii) *By an order or direction respondents may be directed to reimburse the permissible medical claim of the applicant amount to Rs.4,00,000/- along with interest @ 12%.*
- (iii) *Exemplary cost be imposed on the respondents for causing under harassments to the applicant.*
- (iv) *Any other relief which is found just and proper be passed in favour of the applicant in the interest of justice.*

2. The brief facts of the case as stated by the applicant are as under:-

The applicant retired attaining the age of superannuation on 31.07.2012 from the post of Senior Section Officer (ACCTS) DRM Office, Jodhpur, and at the time of his retirement he deposited one month salary with the respondents for availing all medical facilities for self and his wife free of cost till they are alive. The wife of the applicant was suffering from knee joint pain. The applicant took his wife for treatment at Railway Hospital, Jodhpur and after taking continuous treatment for a considerable period of time, she did not get any relief from her knee pain. Thereafter, the medical condition of the wife of the applicant was reviewed by the doctors at Railway Hospital, Jodhpur on 28.04.2014 and the wife of the applicant was advised for total knee replacement. It is further averred that the Railway Hospital, Jodhpur is not well equipped for undertaking the surgery of Total Knee Replacement. On 01.05.2014, the Chief Medical Superintended recommended the wife of the applicant to undergo the treatment of

Total Knee Replacement for both legs and referred the patient for further investigation and for other ancillary purposes to Railway Hospital, Jaipur and also issued a medical pass in favour of the patient. But due to some unavoidable domestic problem, he could not visit the Railway Hospital at Jaipur and the wife of the applicant was not able to undergo treatment of her Knee Joint Pain. This fact was brought to the notice of the respondents by the applicant on 02.05.2014 and also requested them to consider their case in future if the circumstance arises accordingly. The applicant also got to know from other employees that the treatment at Railway Hospital, Jaipur is not proper and there is neither pre-operative diagnosis nor there is any appropriate post treatment facility available at Railway Hospital, Jaipur, and further there is also no regular team of doctors empanelled for performing the surgery of Total Knee Replacement. It has been further averred that after some time, the condition of the wife of the applicant deteriorated and she was unable to walk due to her knee pain. Under such compelling circumstances, the applicant was forced to take treatment of his wife and for which he approached the camp of Krishna Shalby Hospital, Jodhpur, on 01.03.2016, where the medical expert after examining the medical condition of the wife of the applicant advised the applicant's wife to undertake surgery of Total Knee Replacement. Thus, there was no option left with the applicant but to take surgery of Total Knee Replacement of his wife at Krishna Shalby Hospital, Ahmedabad. Accordingly, on 25.03.2016 the applicant has admitted his wife, and on 26.03.2016 she was operated for Total Knee Replacement for both legs

and her both knees were replaced and thereafter she was discharged from the hospital on 01.04.2016. After returning back, the applicant submitted the claim for reimbursement of permissible expenses incurred towards medical expenses amounting Rs.4,00,000/- for treatment of his wife along with all necessary documents duly signed by medical authorities. But the respondent No.3 vide order dated 03.08.2016 rejected the claim of the applicant stating therein that the Total Knee Replacement is a planned surgery and the emergency has not been established in this case. Therefore, his case was regretted. Aggrieved by the said impugned order dated 03.08.2016 (Annexure-A/1), the applicant has approached this Tribunal for the reliefs stated above.

3. After issue of the notice, the respondent Railways has filed their reply on 06.09.2018 stating that the applicant's wife Smt. Shyama Purohit was having Osteoarthritis and taking treatment for her knee pain at Divisional Railway Hospital, Jodhpur. It has been averred that Osteoarthritis does not happen in one day and applicant's wife might be suffering from the same since long. The wife of the applicant was advised for Total Knee Replacement (TKR) and referred for further check up/treatment to the Central Hospital, Jaipur vide letter dated 01.05.2014 and medical pass was also issued for one attendant. However, on the very next date i.e. on 02.05.2014, the applicant refused to go to Central Hospital, Jaipur for further treatment of his wife and also submitted refusal in this context in writing, which clearly reveals that applicant's wife was not in any emergent situation. It has been

further averred in the reply that applicant has just leveled bald and baseless allegations in that there is no proper pre-operative diagnosis nor there is any appropriate post treatment facility available at Railway Hospital, Jaipur, whereas there is better treatment and medications are available in the Railway Hospital as well as in the empanelled hospitals/super specialty hospital. There is a specific procedure provided for referral and reimbursement of medical expenses in the Railway Board's Circular dated 31.01.2007. It is further submitted that from a bare perusal of the said circular, it is ex facie clear that as per extant rule, a railway beneficiary must report to Railway Medical Officer for his/her and dependent's medical treatment. The Authorized Medical Officer will make necessary arrangements for medical treatment through Railway Hospital/Govt. Hospital/Pvt. Recognized Hospital. In exceptional situations, CMDs of Zonal Railways can obtain special permission from Railway Board for treatment in any private hospital on case to case basis. Here there is no scope available for any railway beneficiary to go to any private hospital himself/ herself or their dependent on this own violation, except in case of real emergency situation. In the said circular, the emergency also defined. '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

Medical Officer and avails treatment in the nearest and suitable private hospital, the reimbursement claims are to be processed for sanction, after condition of the emergency is confirmed by the authorized Medical Officer ex-post facto. It is further clarified that once the emergency is established beyond doubt, then the case should be further processed for calculating the amount/money to be sanctioned. Admittedly, in the present case, there is no such emergency situation emerged to take the wife of the applicant to Ahmedabad for surgery for Total Knee Replacement. It has been further averred that on 01.03.2016 applicant took his wife for check-up at camp organized by the Krishna Shalby Hospital at Jodhpur and thereafter she was admitted at Ahmedabad on 25.03.2016 i.e. after passing 25 days from the date of check-up. However, the applicant's wife was advised for the Total Knee Replacement in the year 2014 itself and thereafter almost two years have been passed and thereafter applicant in violation of circular dated 31.01.2007 had taken her wife to non-recognized private hospital at Ahmedabad for Total Knee Replacement, which also shows that without there being any emergent situation, in a planned manner surgery was done at Ahmedabad. Therefore, after perusing the entire record of the case in consonance with relevant rules, the respondent No.3 has rightly regretted the applicant's claim for medical reimbursement vide order dated 03.08.2016. Hence, the applicant has failed to point out or show any illegality or ambiguity in the letter dated 03.08.2016 (Annexure-A/1) issued by the respondent No.3 as the same has been issued strictly in consonance with law.

4. Heard Shri Anirudh Purohit, learned counsel for the applicant and Shri Vinay Chhipa, learned counsel for the respondents.

5. Learned counsel for the applicant submits that the condition of the applicant's wife deteriorated to such an extent that she was not able to move then there was no other alternative except to take her at Shalby Hospital wherein replacement for both knees through a surgery was done, as self presentation of one's life is necessary concomitant of right to life enshrined in Article 21 of the Constitution of India. He further submitted that the technicalities of rules and regulations are not required to be followed just in a mechanical manner so as to frustrate the very purpose of providing free medical facilities to the retired employee knowing fully well that applicant in the given circumstances was not having any other alternative than to take his wife to a private hospital in emergency situation. He further submitted that at the time of retirement, the applicant deposited one month salary so as to get free medical treatment for self and his wife till their life. Further health and medical assistance is part and parcel of right of life & liberty and it is fundamental duty of the respondents to provide such facilities to their employees more particularly the retired employees and not to discourage for taking treatment from at hospital where unnecessary expenses are not allowed on the treatment as is done in the private hospitals. He therefore, submitted that the action of the respondents in rejecting the claim of the applicant for medical reimbursement is clearly outcome of colourable exercise of power and such type of power has

been regarded as malafide exercise of power in the eye of law and deserves to be quashed and set aside.

6. Learned counsel for the applicant relies on the Railway Board's Circular dated 31.01.2007 wherein he has pointed out that as per Sub-Clause II para (c) it is clearly mentioned that, "treatment taken in a recognized private hospital but for an ailment for which it is not recognized or treatment taken in a non-recognized private hospital, reimbursement should be made at the CGHS rates of that city or nearest city CGHS approved rates are to be recommended/processed as an upper limit for sanction." In support of his arguments, learned counsel for the applicant relied upon the judgment of Hon'ble Supreme Court in the case of Shiva Kant Jha vs. Union of India reported in AIR 2018 SCC 1975 and the judgment of Hon'ble High Court of Rajasthan passed in case of N.K. Khandelwal vs. Union of India & Ors. (DB Civil Writ petition No.962/2014), decided on 06.04.2018 and the order of this Tribunal passed in Kapileshwar Sahai vs. Union of India & Ors. (OA No.398/2016) decided on 04.05.2017. Learned counsel for the applicant submitted that the case of the applicant is identical to the case of N.K. Khandelwal (supra), and therefore, the applicant is also entitled for at least reimbursement for treatment of his wife at Krishna Shalby Hospital, Ahmedabad at CGHS rates.

7. Rebutting the arguments advanced on behalf of the applicant, Mr. Vinay Chhipa, learned counsel for the respondents submitted that when once the applicant has availed the Retired Employees Liberalized

Health Scheme (RELHS), then applicant is duty bound to follow the rules and regulations of the said scheme. Applicant has to obey the terms and conditions as per the Central Government norms and instructions issued in this respect time to time. The applicant's wife though in 2014 itself was advised to go for Total Knee Replacement, but almost after two years in violation of Railway Board Circular dated 31.01.2007, had taken his wife to non-recognized private hospital at Ahmedabad for Total Knee Replacement, which clearly reveals that there was no case of any emergency but in a planned manner surgery was done at Ahmedabad. Learned counsel for the respondents submitted that the clause I (the cases to be considered for sanction of reimbursement claim) of the Railway Board Circular dated 31.01.2017 reads as under:-

“.....As per extant rules, a railway beneficiary must report to Railway Medical Officer for his/her and dependent's medical treatment. The Authorized Medical Officer will make necessary arrangements for medical treatment through Railway Hospital/Govt. Hospital/Pvt. Recognized Hospital in serious 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 this own bolition, expect in case of real emergency situation.”

He further submitted that in the said circular, the “emergency” was also defined, which reads as under:-

“‘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 accident, 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 health scheme rates are to be recommended/ processed as an upper limit for sanction.”

From perusal of the circular, it is clear that once if the emergency is established then only the employee is entitled to get CGHS rates. Learned counsel for the respondents further contended that the wife of the applicant was referred on 01.05.2014 by the Railway Hospital, Jodhpur to Railway Hospital Jaipur for further investigation and treatment, which the applicant refused by his letter dated 02.05.2014. It is the contention of the respondents that after 2 years, the applicant has taken treatment of his wife in Krishna Shalby Hospital, Ahmedabad. It is the further contention of the respondents that it was a non-referred case and the documents annexed by the applicant along with his application for reimbursement of medical claim did not show any emergency. The applicant's wife surgery was a planned surgery which is very well proved from the fact that on 01.03.2016 applicant took his wife for check-up at camp organized by Krishna Shalby Hospital at Jodhpur and thereafter she was admitted at Ahmedabad on 25.03.2016 i.e. after passing 25 days from the date of check-up. Learned counsel for the respondents thus submitted that since the case of the applicant is not an emergent case and treatment of the applicant's wife got from the non-recognized private hospital, therefore, the applicant is not entitled to any relief from this Tribunal. In support of his arguments, he relied upon the following judgments:-

- (i) OA No.340/2012 (Vijay Kumar vs. General Manager, Northern Railway, New Delhi & Ors) decided on 03.05.2012 of CAT, New Delhi.
- (ii) OA no.517/2016 (Ramesh Prakash Mathur vs. UOI & Anr) decided on 31.07.2018 of CAT, Jodhur Bench.

- (iii) DB Civil Writ petition No.6330/2016 (Narendra Singh Panwar vs. BSNL & Ors), decided on 08.03.2018 of Hon'ble Rajasthan High Court at Jodhpur.
- (iv) OA No.343/2017 (Shiv Ratan Sharma vs. Chairman 7 MD, BSNL & Anr.) decided on 14.09.2018 of CAT, Jodhpur Bench.
- (v) OA No.1824/2008 (Govind Lal Chopra vs. UOI & Ors), decided on 03.03.2009, CAT, Delhi.

8. After considering the rival contentions of both the parties as well as judgments cited by the learned counsels for both sides and perusal of the records, it would be appropriate to discuss the facts of the case before arriving at any conclusion. The short facts of the case are that the wife of the applicant was suffering from knee problems and the applicant had got his wife treated at Railway Hospital, Jodhpur, but since she did not get any relief from the treatment undergone there, her case was reviewed by doctors at Railway Hospital, Jodhpur on 28.04.2014 and the wife of the applicant was advised for Total Knee Replacement. It had been submitted by the applicant that the said hospital was not well equipped for undergoing the said surgery, therefore, the Chief Medical Superintendent vide his letter dated 01.05.2014 recommended the case of the wife of the applicant to take further treatment at Railway Hospital, Jaipur. Immediately, on the next date i.e. on 02.05.2014, the applicant refused to take treatment at Railway Hospital, Jaipur due to his personal reasons and requested them to consider his case in future, if circumstances arise thereafter. It is the case of the applicant that since condition of his wife deteriorated, he was forced to take his wife to the camp organized by Krishna Shalby Hospital at Jodhpur on 01.03.2016, where the medical expert after

examining her wife advised to take surgery for Total Knee Replacement. Thereafter, the applicant took his wife to Krishna Shalby Hospital, Ahmedabad and got her admitted on 25.03.2016 where she was operated for both legs and both of knees were replaced on 23.03.2016. The applicant thereafter submitted claim of Rs.4,00,000/- to the respondent department for the expenses incurred for treatment of her wife. The said claim of the applicant was rejected by the respondents department vide impugned order dated 03.08.2016 (Annexure-A/1) on the ground that Total Knee Replacement is a planned surgery and the emergency has not been established in this case.

9. The question to be resolved is whether there was any 'emergency' to allow the applicant's medical claim in terms of Railway Board instructions dated 31.01.2007. If not, then in the case of a planned-procedure undertaken from a private non-recognized hospital whether his medical claim is reimbursable in the facts and circumstances of the present case? As per the Circular dated 31.01.2007, it is clear that if the Emergency is proved then only the applicant is entitled for CGHS rates and not otherwise. It is clear that the Railway Hospital, Jodhpur does not have the facility of Total Knee Replacement for which a reference was made to Government Hospital, Jaipur on 01.05.2014. But, on the very next day i.e. on 02.05.2014, the applicant refused to undergo for treatment of his wife for Total Knee Replacement. However, on 25.03.2016 (after almost 2 years), he

admitted his wife at Krishna Shalby Hospital Ahmedabad, where she was operated on 26.03.2016 for Total Knee Replacement for both legs and both her knees were replaced. It is seen from the records that at that time, the respondent Railways had not referred the case of the applicant for taking surgery at Krishna Shalby Hospital, Ahmedabad. The applicant had also not sought any permission in this regard from the Railways. It appears that the applicant in a planned manner has taken the treatment of his wife at private non-recognized hospital as he did not want to take treatment from Railway Hospital, Jaipur which fact clearly reveals from the contention raised by the applicant in the Original Application itself.

10. I have also gone through the judgments cited by the learned counsel for the applicant. As far as case of Shiva Kant Jha's (supra) is concerned, it is seen that the applicant therein was admitted in hospitals in 'emergency conditions' and the doctors did his operation and had implanted CRT-D device and have done so as one essential and timely. But in the present case, the applicant has failed to establish any emergent situation for taking surgery of his wife for Total Knee Replacement at Krishna Shalby Hospital, Ahmedabad. Therefore, the facts and circumstances of the case of Shiva Kant Jha (supra) is different from the present case. Also as stated by Apex Court at para 15 of the said judgment, it was made clear that the said decision is confined to this case only.

11. As far as case of Kapileshwar Sahai (supra) is concerned, the treatment of the applicant therein was taken from SMS Medical College and Hospital, Jaipur, which is State Government Hospital and the Tribunal looking to the fact that the treatment was done at a well reputed Government Hospital had allowed the OA and granted reimbursement of medical claim to the extent of medicine and artificial implant. Further, the Hon'ble Tribunal had also taken into consideration the order passed in N.K. Khandelwal's case (supra) and held that in N.K. Khandelwal's case, the applicant chose to undergo treatment in private hospital and not in a Government Hospital and therefore the Hon'ble Tribunal recommended his case for full admissible amount for reimbursement as per the Railway Board letter dated 31.01.2007 (Annexure-R/1). But in the present case, the applicant has taken treatment of his wife at Krishna Shalby Hospital, Ahmedabad, which is a private non-recognized hospital. Therefore, the facts and circumstances of the case of Kapileshwar Sahai is different from the present facts and circumstances of the present case.

12. During the course of argument, learned counsel for the applicant heavily relied on the judgment of Hon'ble Rajasthan High Court passed in N.K. Khanelwal vs. Union of India & ors (DB Civil Writ Petition No.962/2014) and submits that the present case is exactly identical to that case wherein the Hon'ble High Court held that the reimbursement of medical claim cannot be denied on the ground that his wife did not undergo surgery at Railway Hospital, Mumbai. After perusal of

judgment passed in N. K. Khanelwal's case, it is seen that the case of his wife was referred by the Chief Medical Superintendent of the Railway Hospital Jodhpur on 18.12.2010 for taking knee replacement from Jagjeewan Ram Railway Hospital, Mumbai. The applicant therein immediately admitted his wife in the aforesaid hospital on 22.12.2010, but when he found that the Orthopedic Surgeon who had to perform the surgery was on leave for two weeks, he got his wife discharged immediately and took her to Shalby Hospital, Ahmedabad where his wife underwent knee replacement on 27.12.2010 (i.e. after 04 days from the date of discharge from the Government Hospital). But in the instant case, it is admitted fact that the case of the applicant's wife was referred by the Divisional Railway Hospital, Jodhpur on 01.05.2014 for total knee replacement at Central Hospital, Jaipur, but the applicant on the very next day i.e. on 02.05.2014 refused to go at Central Hospital, Jaipur for treatment of his wife and after almost 2 years later i.e. on 01.03.2016 he took his wife for check-up at camp organized by the Krishna Shalby Hospital at Jodhpur and thereafter after passing of 25 days from the said check-up he admitted his wife on 26.03.2016 at Krishna Shalby Hospital, Ahmedabad, which shows that there is no emergent situation because the applicant himself chose to take treatment of his wife after two years. Further, it is also seen from the averments made in para 4.6 of the OA wherein the applicant himself has averred that there is no proper pre-operative diagnosis nor there is any appropriate post treatment facility available at Railway Hospital, Jaipur, which shows that the applicant has already made up his mind not to take

treatment of his wife at Government Hospital, Jaipur. Therefore, the facts and circumstances of the case of N.K. Khandelwal (supra) are different from the facts and circumstances of the present case because in the N.K. Khandelwal's case the applicant therein after referral of case, got his wife admitted in the private hospital immediately but due to the reason that the concerned doctor was on leave, whereas in the instant case the applicant after referral of case was sleeping for two years and then got his wife treated from the Krishna Shalby Hospital Ahmedabad. It is the further contention of the applicant that in N.K. Khandelwal's case, the Hon'ble High Court of Rajasthan after considering the clause II (para C) of Railway Board Policy No.2005/H/6-4/Policy-II dated 31.01.2007, held that the applicant therein is entitled for reimbursement of his claim at CGHS rates. In this connection, I would like to quote para II of the aforesaid circular, which reads as follows:-

“II Calculation of the amount of reimbursement to be sanctioned out of the claimed amount:-

Once the emergency is established beyond doubt, then the case should be further processed for calculating the amount/money to be sanctioned.

For that, following guidelines are given:

- (a) Treatment taken in Govt. Hospital-Full admissible amount should be recommended for sanction.
- (b) Treatment taken in recognized private hospital for an ailment for which it is not recognized-Rate as approved by Railway should be processed for sanction.
- (c) Treatment taken in a Recognized Private Hospital but for an ailment for which it is not recognized or treatment taken in a non-recognized private hospital-reimbursement should be made at the CGHS rates of that city or nearest city CGHS (Central Government Health Scheme) approved rates are to be recommended/processed as an upper limit for sanction.”

From perusal of the aforesaid clause-II, it is very clear that once the emergency is established beyond doubt then the case should be

processed further for calculating the amount. But in the present case, in my considered view, the applicant has failed to establish any emergency situation, rather it is seen that he himself waited for two years after referral of case by the Railway Hospital, Jodhpur for treatment of his wife for Total Knee Replacement.

13. Looking to the facts and circumstances of the case, it appears that there is no emergency situation in which the applicant's wife was brought to Krishna Shalby Hospital, Ahmedabad on 01.03.2016. As per the Railway's circular, the emergency cases have got a different connotation and it has been defined as any condition of symptom viz. road accident, other types of accident, acute heart attack etc., resulting from any cause arising suddenly and if not treated at the early convenience be determined to the health of the patient or will jeopardize the life of the patient. It is clear that there is no stretch of imagination, a person who has been suffering from knee pain, however, acute it is cannot claim that she has been admitted in the hospital as an emergency and knee pain which requires complete knee replacement is not a disease, if not treated immediately be detrimental to the life of the patient or will jeopardize her life. Therefore, after going through the history of the present case and the judgments cited by both the parties, it cannot be said that the present case pertains to an emergency. An employee cannot have an absolute right to claim reimbursement of any amount which is not covered under the provisions of law, as in the present case the treatment taken in Krishna Shalby Hospital,

Ahmedabad was a pre-planned one and also the same is not in consonance with Railway Board Circular dated 31.01.2007.

14. Therefore, in view of the observations made above, I find no reason to interfere with the decision taken by the respondents vide impugned order dated 03.08.2016 (Annexure-A/1), which is just and proper. Accordingly, the OA being devoid of merit is dismissed with no order as to costs.

(HINA P. SHAH)
MEMBER (J)

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