

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

...

Original Application No.290/00408/2016

And

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Reserved on : 03.08.2018

Pronounced on : 10.08.2018

CORAM:

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

OA No.290/00408/2016

Jai Singh Sankhla s/o late Sh. Jawar Singh aged about 82 years, r/o
Maliyon Ka Mohalla, Merta Road, District Nagaur, Retired Mail Driver,
North Western Railway, Jodhpur

...Applicant

(By Advocate: Shri S.K.Malik)

Versus

1. Union of India through the General Manager, North Western Railway,
Jaipur

2. The Divisional Railway Manager, North Western Railway, Jodhpur
Division, Jodhpur

3. Chief Medical Superintendent, North Western Railway, Jodhpur Division,
Jodhpur

...Respondents

(By Advocate: Shri Salil Trivedi)

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ORDER

Since the above two OAs have been filed by the same applicant for claiming full reimbursement of the expenses for the treatment taken in private unrecognized hospital and the respondents have reimbursed him the medical expenses on the basis of the Central Government Health Scheme (CGHS) rates, therefore, these are being decided by this common order.

2. In OA No.408/2016, the applicant has prayed for quashing and declaring illegal the impugned order dated 24.5.2016 and seeking direction to the respondents to reimburse the balance amount of his medical claim to the tune of Rs. 23083/- along with 12% interest per annum.

3. In OA No.409/2016, the applicant has prayed for quashing and declaring illegal the impugned order dated 15.11.2015, and direction to reimburse the balance amount of medical claim amounting to Rs. 75408/- along with interest @ 12% per annum.

4. Brief facts of the case are as under:-

The applicant in OA No. 408/16 pleaded that he retired on superannuation from the post of Mail Driver on 31.5.1992. At the time of retirement, he deposited one month's salary with the respondents for availing medical facilities for self and his wife on free of cost till they are alive. The applicant was on his way from Merta Road to Pal Balaji Temple, Jodhpur with his relatives. Suddenly, he got acute stomach pain and became unconscious. Immediately, he was taken to nearby Shriram Hospital where as an emergency case, he was admitted in ICU ward on 20.5.2014. After diagnosis, the Doctor advised him immediate operation of stomach. He was discharged on 23.5.2014. After his recovery he submitted his claim for medical reimbursement alongwith relevant documents and medical bills vide letter dated May, 2015 for a sum of Rs. 43,977/-. In the month of January, 2016, the applicant was paid a sum of Rs. 20,894/- out of his total claim of Rs. 43,977/-. The applicant made an application under RTI Act to the respondents vide letter dated 12.5.2016 asking for details about payment and the same was replied vide letter dated 25.5.2016. The applicant vide impugned order dated 24.5.2016 was informed that as his case is a non-referred case, hence the amount has been paid as per CGHS rates as sanctioned by the General Manager.

5. In OA no.409/2016, the applicant has pleaded that he while on journey from Jodhpur to Ahmedabad on the eve of attending a family function all of sudden he fell unconscious and due to acute medical problem, his relatives took him to nearby CIMS Hospital, Ahmedabad in emergency. The applicant was admitted in ICU/GICU on 27.3.2014 and after his complete treatment he was discharged on 1.4.2014. The applicant had vide letter dated 2.12.2015 submitted his claim for medical reimbursement amounting to Rs. 1,08,580/ for the expenses incurred by him on his treatment in CISM, Ahmedabad alongwith documents and medical bill. In the month of October, 2015, the applicant was paid a sum of Rs. 33,174/- on account of medical reimbursement out of a sum of Rs. 1,08,580/-. Thereafter the applicant moved an application dated 30.10.2015 under RTI Act seeking information from the respondents pertaining to the details of payment of the said amount and also the information as to why full amount as claimed has not been paid. The respondents vide letter dated 18.11.2015 supplied the impugned order dated 15.11.2015 wherein it has been mentioned that the medical claim of reimbursement submitted by the applicant was a non-referral case, hence the amount has been paid at CGHS rates sanctioned by the General Manager. Aggrieved by the said impugned

order dated 15.11.2015, the applicant preferred an appeal to the next higher authority and the said appeal was sent to the Ministry of Law and Justice who in turn vide OM dated 5.2.2016 forwarded his appeal to CPIO, Rail Bhawan, New Delhi. Thereafter, the CPIO, Railway Board vide letter dated 29.2.2016 forwarded the same to the respondent No.2 i.e. Divisional Railway Manager, NWR, Jodhpur Division, Jodhpur. Thereafter respondent No.2 vide letter dated 16.3.2016 supplied copy of the impugned order dated 15.3.2016 alongwith details. The impugned order dated 15.3.2016 is also under challenge wherein it is stated that the said case is non-referred case and that payment to the claim has been made as per CGHS rates.

6. The respondents have filed reply in OA No.408/2016 on 23.2.2017 and have stated that medical claim raised by the applicant for taking treatment in Shriram Hospital, Jodhpur was examined by the competent authority of the respondents and after having examined the same, the medical claim as raised by the applicant was reimbursed as per CGHS rate list and the sum of Rs. 20894/- was sanctioned and paid to the applicant. They have further stated that the demand of the applicant for full payment of his medical claim is not at all justified and the admissible amount and claim of the applicant can only be sanctioned as per CGHS rates and the same was duly sanctioned and paid to the applicant. The respondents further state that claim of the applicant was examined by the competent authority as per the policy and if the patient takes treatment from any private hospital in emergency the medical reimbursement will be given as per the CGHS rates only. The respondents have pointed out that the impugned order is just and proper and there is no infirmity in the said order and therefore, the present OA deserves to be dismissed.

7. In reply to OA No.409/2016 they have stated that the medical claim for reimbursement raised by the applicant amounting to Rs. 1,08,580/- has been examined by the competent authority and after having examined the said case and as per the instructions issued by the Railway Board, admissible amount as per CGHS rates has been sanctioned to the tune of Rs. 33174/- and after taking financial concurrence the same has already been paid to the applicant against his medical claim. The amount so paid is strictly as per the CGHS rules. The respondents have further stated that the applicant has taken treatment in non-recognised private hospital and as it is a non referred case, the respondents after taking into consideration, the relevant aspect has granted the admissible amount as per CGHS rates and the same has been paid to the applicant. The respondents have further averred that as the claim of the applicant was examined by the competent authority and as per policy, if the patient takes treatment from any private hospital, in emergency, the medical reimbursement will be given on the basis of CGHS rates only. They have stated that as the impugned order passed is just and proper, therefore, the OA deserves to be dismissed.

8. Heard Mr. S.K.Malik, learned counsel for the applicant and Mr. Salil Trivedi for the respondents and perused the material available on record.

9. During the course of arguments, the learned counsel for the applicant relied upon the judgment of the Hon'ble Rajasthan High Court in SB Civil Writ Petition No.185/2008 decided on 29.1.2015, wherein the treatment was taken at unrecognized hospital without any reference. The Hon'ble High Court was of the view to reimburse the medical expenses in accordance with the rates prescribed in the Medical Concession Scheme. The applicant has also relied upon another judgment of Hon'ble Rajasthan High Court in SB Writ Petition No.1914/2014 decided on 4.6.2015, wherein the treatment was taken at Krishna Heart and Super Speciality Hospital, Ahmedabad. The Hon'ble High Court had directed the

respondents to reimburse the amount of medical expenses for his treatment at Krishna Heart and Super Speciality Hospital Ahmedabad in accordance with the Rajasthan Civil Services (Medical Attendance) Rules.

10. The learned counsel for the respondents relied upon the decision of this Bench in OA No.292/2015 decided on 16.1.2017 wherein the treatment was taken at an unrecognized private hospital at Gujarat in emergency. The respondents have passed the claim to the extent of expenses at the rates fixed by the Government under the CS (MA) Rules. In that case there was a procedure prescribed for claiming payment over and above the prescribed rates. The Tribunal observed that if the applicant wants to avail the benefit of referring the matter to the Technical Standing Committee, he may do so, and in that event the respondents may take appropriate decision after recommendations of the said Committee.

11. In both these cases, the applicant claims full payment being cases of emergency. The respondents have stated that the claim of the applicant was examined and as per policy if the treatment is taken from private hospital in emergency, the medical reimbursement will be given on the basis of CGHS rates. It is noted that as per the averment of the applicant in OA No.408/2016, he has pleaded that suddenly he got acute stomach pain and became unconscious, whereas in the document at page 13 of the OA in the column (iii) i.e. 'level of consciousness', it has been mentioned as "counscious/oriented". In another case also he has pleaded that all of sudden he became unconscious, but in the document at page 15 in column (iii) i.e. 'level of consciousness', it has been mentioned as "Drowsy, but responds to verbal communication". The fact of emergency can only be established by an expert in the field on the basis of circumstances, disease and the treatment given for such disease.

Further, it is not clear from the record produced by the parties as to what are the rates for such treatment under the CGHS and whether the applicant has been paid the amount as per the prescribed rates under CGHS towards the reimbursement of medical claim submitted by him.

12. In these facts and circumstances, the respondents are directed to re-examine the claim of the applicant as per relevant rules and pass appropriate reasoned and speaking orders. So far as case of emergency is concerned, the respondents are further directed to refer the matter to an expert committee in the field, and after recommendations of the said committee, claim of the applicant be accordingly settled. This exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

13. Both the OAs stand disposed of in above terms. No costs.

(HINA P.SHAH)
MEMBER (J)

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