

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.**

ORIGINAL APPLICATION NO.140 OF 2018

Date Of Decision:- 15th October, 2018.

CORAM:HON'BLE SHRI. R. VIJAYKUMAR, MEMBER (A).

Shri. Babu Gurunath Lohar

Age 38 years, Pipe Fitter (HSK-1)

AED/AEW,

INS Hansa, Dabolim, Goa- 403802

Residing at H. No.212/C,

Near Ganpati Temple

New Vaddem,

Vasco-da-Gama, Goa 403802.

....Applicant

(Applicant by Advocate Shri. G.S. Sambary)

Versus

1. Union of India,

Through: The Secretary,

Ministry of Defence,

New Delhi 11 0011.

2. The Chief of Naval Staff,

For the Director of Civilian Personnel

Naval Headquarters,

New Delhi 110011.

3. The Flag Officer Commanding-in-Chief

Headquarters, Western Naval Command

Shahid Bhagat Singh Road,

Mumbai 400001.

4. The Flag Officer Commanding,

(For SO (Civ)

Headquarters Goa Naval area,

Vasco Da Gama

Goa 403801.

5. The ACDA (Navy)

Account Office (Navy)

DAD Complex, Deepawadi

Shanthinagar, Vasco-da-Gama

Goa 403802.

....Respondents

(Respondents by Advocate Shri. N.K. Rajpurohit)

Reserved On : 06.09.2018.
Pronounced on: 15.10.2018.

ORDER

This OA was filed on 28.08.2017 under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

“8(a). This Hon’ble Tribunal will be graciously pleased to direct the Respondents No.4 and 5 to reimburse the Medical claims amounting to Rs.89,320/- and travelling bill amounting to Rs.44,157/- along with interest @ 12% per annum.

(b). This Hon’ble Tribunal will be pleased to pass such other and further orders as deem fit in the fact and circumstances of the case.

(c). The cost of this application be awarded to the applicant.”

2. The facts of the case are that the applicant served at INS Hansa which is a Naval air station at Dabolim Goa. On 18.12.2013, while at work at the runway, shreds of metal went into his right eye. He was taken to the MI Room and then to INHS Jeevanti where X-ray confirmed the presence of foreign material in his eye and he was referred to Dr. Parulekar Eye Hospital, Dabolim which consulted officials and referred him to Galaxy Eye Hospital, Nafsa. On 19.12.2013, this hospital took a CT Scan and due to shortage of staff, wished to schedule the requisite operation on 28.12.2013. The applicant was returned to INHS Jeevanti where an Ultrasound test was carried out and because they did not have a specialist eye surgeon, he was referred by INHS Jeevanti to Sankara Netralaya Hospital, Chennai and was sent by an Air alongwith an attendant so as to have an emergency operation that could save his eye sight. He left on 20.12.2013 by Air and after operation where the foreign materials were removed he returned by flight along with the attendant. He then

visited Sankara Netralaya Hospital, Chennai on 20.12.2014 for post operative treatment and again on 25.03.2015, with appropriate reference letter from the authorized medical officer. He visited again and was operated on 15.07.2015 and again on 02.09.2015 with appropriate references and yet again on 16.03.2016. After every visit and treatment, he has submitted bills for travel, room rent, consultation charges and medical treatment. He was not paid Rs. 2500/- for the CT Scan taken on 19.12.2013 by Galaxy Eye Hospital. He has submitted against various bills for which, small amounts have been reimbursed to him and the details of bills and reimbursement are as below:

“1. Travel (air) bill for Rs.22,700/- and Medical re-imburement bill for a sum of Rs.

63,918/-. DCDA(N) has approved Rs. 4436-(II AC Train fare) against the travelling Bill of Rs. 22,700/- and Rs. 15,326/- as against the medical bill for a sum of Rs. 63,918/- stating that this is admissible under the Pune Package rate held with DCDA(N). Said amount was not paid to the applicant.

2. Visited to Sankara Netralaya Hospital Chennai on 13/2/2014. Travel bill of Rs. 2300/- (train) and consultation charges of Rs. 400/-.

3. On 08/03/2014 applicant again operated on his right eye. Submitted travel bill of Rs. 2,560/- (train) and operation charges of Rs. 25,732/-.

4. Visited Sankara Netralaya Hospital Chennai on 12/5/2014. Submitted travel bill for Rs. 2,220.00/- and Consultation Bill of 470/-.

5. Visited Sankara Netralaya Hospital Chennai on 4/9/2014 for post operative treatment. Travel bill for Rs. 1,980.00 and Consultation Bill of Rs. 400/-.

6. On 30/10/2014, applicant again operated at Chennai on his right

eye. Submitted a traveling bill of Rs. 2,545/- and operation charges of Rs. 35,331/-.

7. On 20/12/2014, visited Sankara Netralaya Hospital Chennai for post operative treatment. Submitted travel bill of Rs. 2,610/- and consultation charges of Rs. 3,210/-.

8. Visited Sankara Netralaya Hospital Chennai on 25/03/2015 for post operative treatment, after obtaining reference letter from the Medical Officer. Submitted travel bill of Rs. 2,520/- and consultation charges of Rs. 798/-.

9. Applicant once again operated on his right eye on 15/07/2015. Submitted a travel bill of Rs. 2,602/- operation charges of Rs. 34,983/-.

10. Again visited the Sankara Netralaya Hospital Chennai on 02/09/2015 for post operative treatment. Submitted travel bill of Rs. 1,980/- and consultation bill of Rs. 400/-. Only Rs. 400/- paid to the him. Amount of Rs. 1,980/- not reimbursed to applicant.

11. Again visited Sankara Netralaya Hospital, Chennai on 16/03/2016 for post operative treatment. Submitted travel bill of Rs. 2,520/- and consultation charges of Rs. 400/-. Not been reimbursed to the applicant.

12. Total Medical expenses incurred is Rs. 63,918.00 + 400.00 25732.00+ 470.00+ 400.00 + 35331.00 3210.00 + 798.00 +34983.00 + 400.00+400.00 Rs. 1,66,042.00 (Rupees one lac sixty six thousand forty two only) or which Rs. 76,722.00 has been reimbursed. Sum of Rs. 89,320.00 is pending for reimbursement.

13. Similarly, total travel expenses incurred is Rs. 22700.00+ 2300.00+ 2560.00 +2220.00 + 1980.00 +.2545.00+ 2610.00+ 2520.00+2602+ 1980.00+ 2520.00)= Rs. 46,557.00 (Rupees forty six thousand five hundred fifty seven only) of which only Rs. 2400/ has been reimbursed and a sum of Rs. 44,1571- is still pending for reimbursement.”

3. He has, therefore, requested that the balance of the claim of Rs. 1,66,042/- may be reimbursed to him. This is tabulated for convenience as below:

(A) Medical Expenses

<i>S. No.</i>	<i>Treatment period/ consultation</i>	<i>Medical Claims Submitted</i>	<i>Present Status</i>		<i>Remarks</i>
			<i>Paid</i>	<i>Disallowance</i>	
(i)	25.12.13 to 27.12.13	Rs.63,918/-	Nil	Nil	Pending with PCDA (Mumbai)
(ii)	10.03.14 to 12.03.14	Rs.25,732/-	Rs.13,062/-	Rs.12,670/-	Rs.12,670/- due to the individual
(iii)	15.02.14, 14.05.14, 06.09.14, 20.12.14	Rs.40,609/-	Rs.36,492/-	Rs.4117/-	Rs.8215/- due to the individual
(iv)	15.07.16	Rs.34,983/-	Rs.26,768/-	Rs.8215/-	--
(v)	02.09.06	Rs.400/-	Rs.400/-	Nil	Pending with ACDA
(vi)	16.03.16	Rs.400/-	Nil	--	
(vii)	Total Claim Submitted	Rs.1,66,042 /-			
(viii)	Paid	Rs.76,722/-			
(ix)	Total due	Rs. 89,320/-			

(B) Travelling Expenses

<i>S. No.</i>	<i>Treatment/ treatment period</i>	<i>Travelling expense/ claims submitted</i>	<i>Present Status</i>		<i>Remarks</i>
			<i>Passed/Paid</i>	<i>Disallowance</i>	
(i)	25.12.13 to 27.12.13	Rs.22,700/-	Nil	Nil	Pending with PCDA (Mumbai)
(ii)	10.03.14 to 12.03.14 15.02.14, 14.0514, 06.09.14, 20.12.14	Rs.16,735/-	Passed	--	Forward for allocation of budget for charge expenditure
(iii)	15.07.16	Rs.2602/-	Rs.2400/- (advance paid) Rs.130/-	Rs.72/-	--do--
(iv)	02.09.06	Rs.1980/-	Rs.1980/-	Nil	--do--
(v)	16.03.16	Rs.2540/-	Rs.2540/-	--	--do--

(vi)	Total Claimed	Rs.46,557/-	
(vii)	Total Paid	Rs.2,400/-	
(viii)	Balance due	Rs. 44,157/-	

4. The applicant had previously approached this Tribunal in OA No. 450/2016 in which directions were issued on 17.06.2016 to the respondents to consider his claim and pass an appropriate reasoned order to which, the respondents had replied in their letter No. 275/55/13-IND dated 15.09.2016 with the above tabulation in response.

5. Thereafter, the applicant made a fresh and corrected representation on 03.11.2016 requesting reimbursement of medical and travel bills to which Respondent No.5 denied the availability of any bills. As the Respondent No. 4 and 5 failed to comply with the orders of this Tribunal and were exchanging letters of denial, he then filed this OA seeking payment of bills alongwith 12% interest. He emphasizes that the accident that occurred was an emergency and he would have lost his eye sight unless an emergency operation was conducted for which the respondents and their medical authorities had referred him to Sankara Netralayal Hospital, Chennai. Instead, Respondent No.5 was auditing his bills with reference to CGHS bills for Pune without giving reasons.

6. In their reply, the respondents have confirmed the nature of the accident and the emergency and have attributed the auditing of bills to Respondent No.5 and that Respondent No.4 was not involved

in this matter since they processed the bills as required. A confusion arose when the applicant claimed that his bills were pending whereas his bills were scrutinized and cleared after disallowing various amounts, as a result of which, no claims were actually pending with the Respondent No.5. They argued that the individual has not furnished any factual information by which they are liable and claims that the entire medical expenditure has to be reimbursed without considering the eligibility and auditing/documentation required. They assert that the department has paid entitled amount to the applicant.

7. During this hearing, it was confirmed from the learned counsel for respondents that the applicant had suffered an emergency and had obtained necessary medical approval and recommendations prior to his visits. The reasons for regulating the claim passed at CGHS rate list did not receive any clarity in the absence of instructions available with the learned counsel for respondents. When summoned and heard, the respondents were also unable to explain the basis for disallowing amounts under individual items of the medical bills which had been listed by the respondents as Exhibit R-2 and the basis for such deduction when the charges were raised by an empanelled hospital. It was confirmed that the applicant is governed by the CS (MA) Rules, 1944.

8. During the final hearing on 16.08.2018 at Goa, the applicant and his counsel were present but neither the respondents nor their counsel appeared. This occurred despite acceding to the specific

requests of the counsel for respondents at the hearing at Mumbai. This was despite the fact that the notice of this hearing at Goa had been brought to the notice of the Counsel. Notice was, therefore, issued through the applicant by Dasti for service on Respondent No.4 and 5 to appear along with their counsel on 17.08.2018. Only Respondent No.4 appeared. The applicant submitted an affidavit stating that Respondent No.5 had refused the notice. Therefore, arguments and citations furnished by the learned counsel for applicant were heard and taken for consideration. The Respondent No.4 was heard on this matter and hearing deferred including the issue of contempt of Respondent No.5 to Mumbai. Finally, Respondent No.5 appeared along with his counsel on 06.09.2018 and tendered his apology.

9. I have gone through the O.A. alongwith Annexures A-1 to A-7 filed by the applicant. I have also gone through the Reply along with Annexure R-1 to R-3 filed by the Respondents and affidavit filed by Respondent No.5 with Annexure A-1 and have also carefully examined the various documents annexed in the case.

10. I have heard the learned counsel for the applicant and the learned counsel for the respondents and have carefully considered the facts, circumstances, law points and rival contentions in the case.

11. Most of the factual elements of the claim have not been disputed between the applicant and respondents. The applicant is duly governed by the CS (MA) Rules, 1944 and suffered a serious accident that could potential damage his eye permanently and the operation

was taken up at the instance of the respondents at Sankara Netralaya Hospital, Chennai on an emergency basis.

12. With regard to the travel costs, the applicant travelled by air with an attendant on the first occasion. From the date of accident, initial treatment was taken up by reference to multiple eye hospitals and he was returned to his base hospital and then despatched to Chennai. All this suggests that the applicant had suffered from a serious emergency which needed immediate treatment. His subsequent visits were made by train in accordance with his entitlement and involved periods of stay at Chennai for which he incurred charges for stay at Chennai. All these steps were taken by him as claimed by the applicant and remained without rebuttal and are, further, with the approval of his medical attendant at Goa. In these circumstances, the unexplained cuts that have been imposed and the pending payments which are stated to have been cleared but remained unpaid are rather peculiar. It is also unclear if we refer to the explanation of Respondent No.5 that they had adopted CGHS rates for Pune to mean that Respondent No.5 had regulated the travelling allowance bills on the basis that the applicant was only permitted to travel Pune instead of travelling to Chennai as actually done by him.

13. With regard to the medical bills, the detailed statement at Annexure R-2 suggests that arbitrary cuts have been imposed. For instance anesthesia charges have been allowed for Rs.300/- against the bill of Rs. 1730/-. Glucose Tolerance Test for Rs. 400/- taken for

surgery purpose has been disallowed entirely and for surgery charges of Rs. 9040/- only Rs. 220/- was allowed. Even the claim that respondent No.5 has regulated these amounts based on rates for CGHS Pune appears incredible and also perhaps explains why they were not able to give any clarity in Court when asked to explain each item of deduction and the logic involved.

14. The learned counsel for applicant has referred to certain decisions of the Hon'ble High Court of Madras and of this Tribunal in this Bench and of the Ahmedabad Bench. In Writ Petition No.10392/1996 decided on 28.07.2003 the Hon'ble High Court of Madras considered of EV Kumar V/s. UOI & Ors. The Hon'ble High Court considered the case of the petitioners under CS (MA) Rules who had undergone by surgery at Apollo Hospital Madras and submitted bills which excluded items falling in non-reimbursable categories under the rules. The judgment quoted the decision of the Hon'ble Apex Court in S. Jagannath V/s. Union of India & Ors. reported in (1997) 2 SCC 87, wherein the Supreme court has held that "if the Government Servant has suffered an ailment which requires treatment at a specialized hospital and on reference whereat the Government servant had undergone such treatment therein, it is but the duty of the State to bear the expenditure incurred by the Government Servant."

15. In OA No.297/2010 decided by Ahmedabad Bench of this Tribunal in Mr. Prakashchandra Kantilal Patel V/s. Chief

Postmaster-General Gujrat Circle & Anr. decided on 01.04.2011.

The claim of the applicant was upholding on the following grounds:

“It is evident from the aforesaid rule that a Government servant is entitled to free medical treatment either in a Government hospital or if no government hospital is available, such other hospital which in the opinion of the Authorized Medical Attendant can provide such treatment. It is further provided in sub-rule (2) in Rule 6 that any amount paid by him for such treatment shall be reimbursed on production of a certificate by the authorized Attendant. The essential characteristic of the above rule is “free treatment” at a Government hospital or any other hospital. Therefore, when an employee receives medical treatment from a hospital that is authorized for such medical treatment, there is no justification to deny the reimbursement of actual expenditure in such cases would not be consistent with Rule 6 of CS (MA) reproduced in this judgment. In the present case, it is not the case of the Respondents that the medical treatment availed was not authorized. If it was not certified as authorized, they would not have reimbursed any amount.

Refusal for payment of full medical expenses incurred by the applicant in a recognized hospital cannot be sustained under the rules. In view of the above, the OA is allowed and Respondents are directed to pay the remaining amount of the claim within a period of three months from the date of receipt of this order.”

16. Further, this bench has held in **OA No. 513/2011 of Shri. Bipinchandra N. Mistry V/s. Union of India & Ors. decided on 23.08.2012** in respect of Railway employee who had to take emergency treatment for his wife, his bills were directed to be entirely settled. It is mentioned in that context the view of the **Hon’ble High Court of Punjab & Haryana in Vasu Dev Bhanot V/s. Union of India & Ors., (2008 (4) SLR 114)** held that “it is settled law that right to health is an integral to right to life Government has constitutional obligation to provide the health facilities. If the Government servant

or his dependant has suffered an ailment which requires emergency treatment, it is but the duty of the State to bear the expenditure incurred by the Government servant. Expenditure thus incurred by the Government servant, while in service or after retirement, requires to be reimbursed by the State to the employee.”

17. In these circumstances, we are unable to find any justification for denial or any kind of audit of the claims of the applicant by the respondents especially Respondent No.5. The reference by Respondent No.5 which has been endorsed by Respondent No.4 on the adoption of CGHS Pune rate list flies in the face of the fact that the respondents have rushed the applicant to Chennai for emergency treatment. It is only appropriate that the respondents bear the entitled costs incurred by the applicant at the empanelled hospital Chennai which has a well known specialty in this subject. Therefore, the entire amount of the medical claim and the travel claims including hotel stay based on actual travel by the applicant shall be payable by the respondents. Considering the reasons given for auditing his bills and the lack of any reasonable explanation for the disallowance despite opportunity provides to the respondents by this Tribunal, it is also appropriate to direct that the amount disallowed which will now be paid shall be considered for payment of interest at 9% from the date of production of bills until date of actual payment in addition to costs of Rs. 10,000/- that may have been incurred by the applicant for this legal challenge.

18. The payment orders as above shall be disbursed to the applicant along with interest within a period of four weeks and any delay beyond that period shall require additional penal interest of 18% on the entire balances due to the applicant.

19. In the circumstances, the OA is allowed accordingly as above.

(R.Vijaykumar)
Member (A)

srp