

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**PATNA BENCH**

**Original Application No 050/00021/2016**

Reserved on 06.02.2018  
Pronounced on \_09.02.2018

**CORAM :**

**Hon'ble Shri Jayesh V. Bhairavia, Member (J)**

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1. Dinesh Kumar Singh, S/o Sri Jawala Prasad Singh working as Tech-1 (W.T.M)/S.N.T., Eastern Railway, Jamalpur, resident of village- Ram Nagar, P.O. & P.S.-Jamalpur, Dist.-Munger (Bihar).

.....**Applicants**

**By Advocate : Shri A.N. Jha**

**VERSUS**

1. The Union of India represented through General manager, Eastern Railway, Fairlie Place-17, Netaji Subhash Road, Kolkata (W.B.)
2. The Chief Personnel Officer, Eastern Railway, Fairlie Place,-17, Netaji Subhash Road, Kolkata (W.B.)
3. The Divisional Railway Manager, Eastern Railway, Malda Division, Malda Town, Malda (W.B.)
4. The Senior Divisional Personnel Officer, Eastern Railway, Maldah Division, Malda Town, Malda (W.B.).
5. The Chief Medical Superintendent, Eastern Railway, Jamalpur (Bihar).

.....**Respondents**

**By Advocate : Shri S.K. Ravi, Id. Standing counsel for Railway**

**O R D E R**

**Per Jayesh V. Bhairavia, Member (J):** The instant OA has been filed by the applicant against the respondents for non payment of medical expenses incurred during the treatment of his dependent wife.

2. It is the case of applicant that the applicant is working as W.T.M.-I, under Senior S.E (Tele.), Eastern Railway, Jamalpur. In the year 2010-11, the applicant came to know that his wife smt. Anita Singh is suffering from cancer. Treatment for the same was started at the C.M.S., Eastern Railway and subsequently, she was admitted to Mahavir Cancer Sansthan Hospital, Phulwari Sharif, Patna in the month of December 2011, she had undergone extensive medical treatment and she was undergone chemo therapy.
3. It is further submitted by the I/c for applicant that the applicant had submitted an application to the Chief Medical Superintendent, E.R., Jamalpur to consider and to refer the case of applicant as a Railway case to Mahavir

Cancer Sansthan, Patna as she was under treatment of chemo therapy process. In pursuance to it, the Chief Medical Superintendent vide letter dated 12.03.2012 (Annexure A/2 refers) informed the Medical Director, E.C.Railway that the patient i.e Smt. Anita Singh aged 45 years, wife of Shri D.K. Singh, W.T.M.-I under SSE/TELE/OH, Eastern Railway, Jamalpur suffers from Ca Ovary with Metastasis with bilateral irregular adrenal mass with moderate ASCETS and getting treatment at Mahavir Cancer Sansthan on her own initiative. The husband of the patient who is the railway employee has submitted an application to the office of Chief Medical Superintendent to refer the case to the said Hospital as a Railway case as a patient has been advised for a chemo therapy, accordingly, letter was written to CMD, E. Railway, Kolkata for permission. In response to it, the CMD, E. Railway, Kolkata has given permission vide letter dated 21.07.2012 to refer the patient to M.D./E.C.Railway direct for further treatment and management. Therefore, the patient is being referred to Medical Director E.C. Railway.

It is further submitted that the said letter dated 12.03.20012 of C.M.D. Jamalpur was received by Additional CHD/Admin. Central cum Super-speciality Hospital, ECR/Patna on 09.04.2012.

4. It is further contended by the applicant that the condition of his wife was deteriorating day by day and continuous thorough medical supervision became essential being emergency case and also the process of chemo therapy and the said treatment was continuing at Mahavir Cancer Sansthan, Patna. However, she succumbed to her illness and died on 23.03.2013.
5. The applicant had submitted his application by providing the reference of letter dated 15.3.2012 bearing no. C.M.S./ER/JMP's letter no. : H/SS/15 alongwith all the bills of medical expenses incurred during her treatment for reimbursement to the office of Additional Chief Medical Director/Administration, Central cum Super Speciality Hospital, ECR, Patna. and requested to counter sign the same for the purpose of reimbursement of medical expenditure in total Rs.02,81,734/- (Annexure A/3 series refers).

6. It is further contended that the applicant had submitted an application by way of representation dated 17.04.2013 to the DRM, Malda in which the applicant had stated all facts of the case and requested to pay the medical reimbursement of Rs.2,81,734/ of the treatment of his wife Smt. Anita Singh (Annexure A/4 refers). The applicant had again submitted his representation dated 29.10.2013 (Annexure A/5 refers.). In response to the said representation the applicant had received a letter dated 17.01.2014 from the office of Medical Superintendent (I/C)/ E.Rly/MLDT i.e Malda Division respondents by which he was advised to submit photo copy of his current registered identity with a view to process the claim for reimbursement of his medical expenditures. (Annexure A/6 refers).

Immediately the applicant provided the details of his registered medical identity card to the office of the M.S (IC) Eastern Railway, Malda Town. It is further submitted that the Medical Superintendent (I/C) Malda addressed a letter dated 30.01.2014 to the Divisional Railway Manager, Eastern Railway, Malda and informed that on scrutiny, it is found that medical card bearing no. 398336has been registered at the office of CMS/JMP, under the custody of CWM/ER/JMP and further stated in the said letter that as per the letter dated 19.11.2009 of FA & CAO (F&B)/ER KK that "such medical reimbursement claims shall be dealt by medical unit where the employee has registered his medical card hence; it was informed that the reimbursement can be made from the office of CMS/ER/JMP. (Annexure A/8 refers). It is also submitted that applicant was low paid salary worker and did not know about the detail procedure to be followed and applicant was made run to pillar to pillar i.e office to office and his claim was not considered. Again the applicant had submitted his request by way of representation to office of the Chief Medical Superintendent, ER, Jamalpur and stated therein that he was informed that the process for reimbursement of medical expenditures will be carry out by the office of the CMO/ER/Jamalpur therefore, release the payment from the said office at the earliest. (Annexure A/9 refers)."

7. On the basis of aforesaid averment and contention the learned counsel for applicant Shri A.N. Jha has submitted that the applicant is working as a W.T.M. in a lower cadre of Railway Department, he did not possess any detail information or had been given any proper advise for undergoing detail procedure of railway department for the purpose of taking medical treatment of his wife. His wife was fighting against the serious diseased and her immediate medical treatment was the sole priority for the applicant because her life was in danger. In the city of Patna in the year 2012-13, there was no other Hospital than the Mahavir Cancer Sansthan for providing medical treatment including chemo therapy for the cancer patient. Therefore, with a view to save the life of dependent wife the medical treatment of chemo therapy and other medical check up was taken at said Hospital.

It is further submitted that it was informed by the applicant to the respondents that the dependent wife of the applicant was suffering from serious disease i.e cancer of last stage and she was advised to take chemo therapy treatment. There was emergency for providing medical treatment. The respondents has erroneously and arbitrarily not sanctioning the claim of applicant for the reimbursement of medical expenses incurred during her treatment. The I/c for applicant relied upon the judgement passed by the Hon'ble High Court of Patna in the case of Rajendra Prasad Yadav Vs The Rajendra Agriculture University reported in 2010 (1) PLJR page 505. The order passed by the CAT, Bombay Bench in the case of OA 304/2005 dated 25.09.2006 reported in 2006 (3) 414 ATJ and the order passed by CAT Jabalpur Bench in OA 505/2006 reported in 2006 (3) 50 and contended that the claim of the applicant is squarely covered by the various judicial pronouncement in identical cases. The non-consideration of his claim for reimbursement of medical expenditure by the respondents is illegal and therefore the relief(s) sought in the OA be granted.

8. In response to the notice issued by this Tribunal the respondents have filed their written statement dated 22.12.2015 and also have filed supplementary written statement on 21.08.2017. The respondents have denied the claim of applicant.

9. The learned standing counsel for the Railway Shri S.K. Ravi submitted that the wife of the applicant was not referred to Mahavir Cancer Sansthan in the month of December 2011. However, it is admitted fact that she died on 23.3.2013. It is submitted that vide letter dated 12.03.2012 (Annexure A/2), it was made clear that the case of his wife was referred to the M.D./ EC Railway for further treatment/management and case was not referred to Mahavir Cancer Sansthan. The bills which were submitted for reimbursement are related to Mahavir Cancer Sansthan and it is not related to MD/EC Railway. The medical treatment had been taken at Mahavir Cancer Sansthan, Patna by the applicant on his own initiative and chosen not to follow the instructions stated in the letter dated 12.03.2012. It is also stated that the applicant had not submitted any proof of registration of medical card, Jamalpur Railway Hospital. The medical reimbursement claim shall be dealt by the medical unit where the employee has been registered therefore the applicant was advised to submit photo copy current medical identity card but the applicant did not follow the said instructions.
10. It is further submitted by the respondents that the representation dated 10.05.2014 referred as annexure A/9 of the OA is produced without any supporting document medical treatment. It is also submitted that majority bills are signed by the private hospital under the seal of one Doctor Mr. Jitendra Kumar Singh and not by the competent authority of Mahavir Cancer Sansthan. As per the record, the applicant's wife was never admitted in Eastern Railway main Hospital at Jamalpur. On the basis of supplementary written statement the I/c for respondents submitted that during the year 2012, in Patna, no other private hospitals were tied up with the Jamalpur Hospital, Eastern Railway. (Annexure R/2 refers).
11. It is further submitted by the respondents that vide letter dated 07.8.2017 (Annexure R/3 refers) the Medical Superintendent, Jamalpur had informed that from 07.5.2013 there was a tie with Rajeshwar Hospital, Patna for treatment of patient referred in emergency from Railway Hospital, Jamalpur prior to that no tie up was there with Jamalpur Hospital. The patients were

used to referred to PMCH and IGIMS, Patna after getting the approval of CMD, Eastern Railway, Kolkata.

12. It is further submitted by the respondents that as far as cancer patients are concerned, they were being sent to Tata Memorial Hospital through Central Hospital, Byculla after permission of CMD, Kolkata. Cancer patients were/are also being referred to Indian Railway Cancer Institute and Research Centre, North Eastern Railway, Varanasi after due permission of CMD, Eastern Railway, Kolkata. (Annexure R/3 refers).
13. It is also submitted that "emergency means any condition or symptoms resulting from any cause arising suddenly and if not treated at the early convenience, be detrimental the life of the patient. Under such condition, when the Railway beneficiary feels that there is no scope of reporting to his/her authorised railway, medical officer and avail treatment in the nearest and suitable private hospital. The reimbursement claims are to be processed for sanction, after the condition of emergency is confirmed by the authorised medical officer in light of Railway Board letter dated 31.01.2007 (Annexure R/4 refers)." In the present case, the wife of the applicant had been treated in Mahavir Cancer Sansthan on his/her initiative and has not followed the advise of CMD, Jamalpur Railway Hospital. (Annexure A/2 dated 12.3.2012 refers). The applicant was failed to follow the instructions issued by the said office and violated the provisions of Railway Board's letter and the case of the applicant was not falling under the strict meaning of emergency therefore the medical treatment taken in the private hospital that too without prior permission or approval, the applicant is not entitled for reimbursement of medical expenses incurred for the treatment of his wife.
14. Heard both the counsels and perused the pleadings and documents on record.
15. The crux of the legal issue involved in the present O.A is whether the applicant is entitled to claim for reimbursement of medical expenditure incurred for medical treatment of cancer/chemo therapy of his dependent wife.

16. The Hon'ble Apex Court in the case of Pt. Parmanand Katara Vs Union of India & Ors reported in AIR 1989 (SC) 2039 held as under :-

*"There can be no second opinion that preservation of human life is of paramount importance. That is so on account of the fact that once life is lost, the status quo ante cannot be restored as resurrection is beyond the capacity of man. The patient whether he be an innocent person or be a criminal liable to punishment under the laws of the society, it is the obligation of those who are in-charge of the health of the community to preserve life so that the innocent may be protected and the guilty may be punished. Social laws do not contemplate death by negligence to tantamount to legal punishment."*

17. The Hon'ble Supreme Court of India in the case of Surjit Singh Vs State of Punjab and others reported in AIR 1996 (SC) 1388 held as under :-

*"It is otherwise important to bear in mind that self preservation of one's life is necessary con-concomitant of the right to life enshrined in Article 21 of the Constitution of India, fundamental in nature, sacred, precious and inviolable."*

18. The Hon'ble Supreme Court of India in the case of consumer education and research Centre and others Vs Union of India and others, reported in 1995 (3) SCC 42 have held that "the jurisprudence of personhood or philosophy of the right to life envisaged under Article 21 of the Constitution of India, envisages its sweep to encompass human personality in its full blossom with invigorated health which is a wealth to the workman to earn his livelihood. Right to health and medical care to protect his health and vigour while in service or post retirement is a fundamental right of a worker under Article 21, read with Article 39 (e), 41, 43, 48-A and all related articles and fundamental human rights to make the life of worker meaningful and purposeful with dignity of a person."

19. The Hon'ble Apex Court laid down the principle of law that "right of self preservation of one's life by getting best possible treatment has been recognised as species of the right to life as enshrined in Article 21 of Constitution of India."

It is apt to note that in a complicated medical treatment i.e chemo therapy (in the present case) which is involving immense urgency, continuous expert medical supervision is a treatment of urgent nature. If urgent and continuous medical treatment such as chemo therapy in the disease of cancer not provided then it will be dangerous to the life. One can only provide the best possible medical treatment at the nearest place to save one's life, once life of the person is lost, it cannot be brought back by any human being.

20. The applicant had provided urgent medical treatment of chemo therapy and other related treatment to save the life of his dependent wife from the only nearest hospital i.e Mahavir Cancer Sansthan, Patna, Bihar. The said details were admittedly made known to the Chief Medical Superintendent, Eastern Railway, Jamalpur and also to Chief Medical Director, Eastern Railway, Kolkata. (Annexure A/2, letter dated 12.03.2012 refers). However, the CMD had not directed the applicant to take further treatment and management from any other hospital and it is only directed to the applicant that the patient be referred to Medical Director E.C. Railway for further treatment. It is sorrow affair on the part of respondents not to consider the urgency and seriousness of the patient who was under continuous treatment of chemotherapy at Mahavir Cancer Sansthan (a Private hospital) i.e the only hospital which provide the necessary required medical treatment in cancer.
21. In the present case, the applicant has been provided with medical identity card and he is beneficiary of scheme of reimbursement of medical expenses. However, the applicant's claim for reimbursement of medical expenses incurred during the treatment of his dependent wife, who subsequently expired due to said disease of cancer on 23.03.2013, has been denied mainly on the ground that the applicant's case cannot be considered as a case of emergency and also the applicant had not approached the M.D./ER Railway as directed by the CMD/ER, his case was not referred to Private hospital for taking medical treatment.

22. It is noticed that vide letter dated 17.01.2014 applicant was informed by the respondents to submit the photo copy of current registered medical identity card for the purpose of processing the claim of reimbursement of medical expenditures. The applicant had submitted his registered medical card and thereafter vide letter dated 30.01.2014 the Medical Superintendent (Malda) informed the applicant that his medical card is registered at the office of Chief Medical Superintendent/Jamalapur under the custody of Chief Works Manager/ER/Jamalapur therefore, his medical reimbursement claim shall be dealt by the medical unit where the employee has registered his medical card and reimbursement can be made from the office of CMS/ER/Jamalpur. Thereafter, applicant had approached the said office but all in vain, and till date, his claim has not been considered.

The respondents, by way of written statement reply to this OA, took a stand that medical treatment is not in nature of urgency as per the provision of Railway Board letter dated 31.01.2007 and the applicant had taken medical treatment in private medical hospital on his own initiative. Therefore, The applicant is not entitled for the reimbursement. The said submission of respondents are contrary to the fact on hand, as stated hereinabove, it was within the knowledge of the respondents that the applicant was providing medical treatment to his dependent wife for chemotherapy to cure cancer effect, the said facility was only available at private hospital, Patna Bihar at the relevant time as there was no facility of such cancer treatment available at Government Hospital or any Hospital recognized by the Government in Patna Bihar. It is also noted that said medical treatment of chemotherapy cannot be said to be not a urgent or emergency treatment. The respondents ought to have considered the case/claim of the applicant under "reimbursement in relaxation of Rules of medical attendance rules 1944 in emergent cases." It is not disputed that the medical treatment of chemotherapy and other treatment, including pathological tests were provided to the wife of the applicant.

The decision of respondents denying reimbursement of medical expenditure on such a deadly disease appears to be technical and

hypothetical as it is contrary to welfare scheme of the government and the same cannot be sustained in law as laid down by the Hon'ble Apex Court. The respondents cannot completely escape from the responsibility to extend the benefit of reimbursement of the medical expenditure to his employee. The said impugned decision of the respondents for denying the claim of reimbursement of medical expenditures on the ground that case of treatment of cancer such as chemo therapy was not urgent nature is against the spirit of law laid down by the Hon'ble Apex Court as well as it amounts to violation of Article 21 of the Constitution of India. The judgement relied upon by the I/c for applicant is also applicable on the issue on hand. It is reiterated that right of self preservation of one's life by getting best possible treatment has been recognised as species of the right to life as enshrined in Article 21 of Constitution of India.

23. In conclusion, in view of above position, as also the law laid down by the Hon'ble Apex Court (supra), I am of the considered opinion that the applicant who had provided medical treatment of chemotherapy and other related treatment at the Mahavir Cancer Sansthan and other medical tests at other hospital to his wife was of urgent nature and it was urgently required to save the life of his wife who unfortunately died during the course of her treatment. The respondents are under obligation to extend the full benefit of welfare scheme to its workmen who are not much literate and well versed with the rules and procedures. Therefore, The applicant is entitled to reimbursement of the medical expenditure incurred during the said medical treatment of his wife. Accordingly, the O.A is partly allowed with a direction to the respondents to consider the claim of applicant for reimbursement of medical expenses as per admissible rate and subject to the limit and ceiling prescribed by the department of Railway. The claim of the applicant be settled within a period of three months from the date of receipt of the order. No order as to costs.

(Jayesh V Bhairavia  
Member(J)

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