

**CENTRAL ADMINISTRATIVE TRIBUNAL
AMHEDABAD BENCH**

**Original Application No. 41/2018
Ahmedabad, this the 20th February, 2019**

CORAM :

Hon'ble Shri M.C. Verma, Member (J)

Shri Natwarsinh K Khant,
S/o. Shri Kalusinh Khant
Aged 64 years
Retired PA, Valsad HO,
R/O. : At & PO. Doli, Via Mora
Dist. – Mahisagar – 389 110.

... Applicant

(By Advocate Ms S S Chaturvedi)

V/s

1 Union of India,
Notice to be served through
Chief Post Master General,
Khanpur, Ahmedabad – 380 001.

2 Sr. Supdt. of Post Office,
Valsad Division,
Thithal Cross Road,
Valsad – 960 001.

... Respondents

(By Advocate : Ms.R.R.Patel)

O R D E R (ORAL)

Per Shri M C Verma, Member (Judicial)

1. The jurisdiction of this Tribunal has been invoked by the applicant Shri Natwarsinh K Khant, a senior citizen & a retired employee of the respondents stated to have been retired on 31.07.2014, by filing this OA, with MA No.21/2018 for condonation of delay, against the alleged unfair treatment meted out to him pertaining to reimbursement of medical claims. He has impugned order dated 29.11.2016 (**Annexure A/1**) whereby and whereunder his claim for medical reimbursement has been rejected.

2. The case of the applicant, as set out in the OA is that he retired from service of respondents, on attaining superannuation on 31.07.2014. That he was suffering from "Bilateral Inguinal Hernia" and on 12/08/16 he felt severe pain and in emergency was admitted to Lotus Hospital at Valsad and underwent surgery on same day. That on 15.10.2016 applicant placed his claim for reimbursement of the medical expenses incurred by him for aforesaid treatment, with duly filled up form and written representation but by impugned order his claim was rejected. Applicant has annexed with OA copy of his representation dated 15/10/16, duly filled up form for reimbursement of the medical expenses, emergency certificate issued by Lotus Hospital and medical bill relating to treatment as Annexure A/2 to Annexure A/5 respectively.

3. Notice was issued to respondents who filed detailed reply. Respondents have not disputed the factum of applicant having taken indoor treatment for himself on 12/08/2016 & 13/08/2016 at Lotus Hospital in Valsad. The only plea taken in reply for not giving reimbursement of the medical bill for Rs.40,970/- is that "reimbursement of medical bill cannot be granted to a retired government official according to Rule 1(2)(iv) of the Central Services (MA) Rules 1944 and hence the claim has been returned and that Lotus Hospital is a private hospital.

4. Rejoinder has been filed by the applicant reiterating that applicant is a retired employee of Postal Department and retired employees of Postal Department are entitled to medical reimbursement incurred by them and that Rules of 1944 has been quashed by Hon'ble Supreme Court in various cases. It has been pleaded that Hon'ble Supreme Court has held that "*a central government employee during service or after retirement can't be denied the reimbursement of bill merely on the ground that during a medical emergency, he took treatment from a private hospital which is not in the list of the Central Government Health Scheme (CGHS) empanelled hospitals.*"

5. Upon completion of pleadings, matter was admitted for final hearing. I have heard learned counsel Mr. S S Chaturvedi Adv., who appeared for applicant as well learned counsel Ms. R.R. Patel Adv., who appeared for respondents and have perused the record minutely.

6. At the threshold it is pertinent to note that Learned counsel Ms. R.R.Patel has urged that the OA is time barred and hence deserve dismissal on this score alone. MA No.21/18, application for condonation of delay, is still pending. Instant OA, assailing decision (Annexure A/1) dated 29/11/16 of respondent was preferred on 15/01/18. There is thus delay of 47-48 days. In application for condonation of delay, it has been pleaded that applicant was sick and could not approach the advocate earlier. Having considered the pros & cons of the matter, the short period of delay and other surrounding circumstance, I find that it is not a case of inordinate delay or latches and it would be appropriate to allow this application for condonation of delay application and to advert to OA on its merit. Accordingly, MA No. 21/18 is allowed.

7. Ms S S Chaturvedi, learned counsel for applicant took me through various documents annexed with the OA and urged that it is not in dispute that the applicant is retired employee of the respondents nor it is in dispute that he was suffering from Inguinal Hernia and took treatment for that and has undergone surgery. She submitted further that it is settled legal position that a retired employee is entitled to claim medical reimbursement, applicant put forward his claim within the stipulated time and it was wrongly rejected on ground of Rule 1(2)(iv) of the Central Services (MA) Rules 1944 which has already been set aside. Learned counsel while pressing the OA has also submitted that action of the respondents in not allowing the claims is arbitrary, is violative of principles of natural justice and is in violation of law as has been laid down by Hon'ble the Supreme Court, she placed reliance upon the decision dated 17th September, 2018 passed by this Tribunal on 17/9/18, in

O.A. No. 41 of 2017, urged to allow instant O.A. and to direct the respondents to make payment of the medical bills.

8. Ms R R Patel, learned counsel for respondents disputed the submission that Central Services (MA) Rules 1944 has been set aside, she also referred Rule 1(2)(iv) of Central Services (MA) Rules 1944 and has submitted that according to sub clause (IV) of Note 2 attached to Rule 2 of said Rules a retired employee is not entitled for medical reimbursement. Central Services (MA) Rules 1944 reads as under: -

“(1) These rules may be called the Central Services (Medical Attendance) Rules, 1944.

(2) They shall apply to all Government servants other than (i) those in Railway service, and (ii) those of non-Gazetted rank stationed in or passing through Calcutta, whose conditions of service are prescribed by rules made or deemed to be made by the Central Government, when they are on duty, leave or Foreign Service in India or when under suspension.

Note 1.....

*Note 2. – **These rules do not apply to -----***

- (i)*
- (ii)*
- (iii)*
- (iv) Retired Government officials. -----”*

9. Considered the submissions and perused the record. Before advertizing to the merits of the case, it is significant to refer the impugned order itself because the same, interestingly is reflecting how casually it was passed, it contains no reason barring that as per Swamy's Compilation book of Medical Attendance Rules book page No. 01 Note 2, these rules do not apply to retired Government officials. Operative portion of impugned order is reproduced verbatim herein for ready reference: - **“-----Sub : RMC Bill of Shri N K Khant, Ex PA Valsad HO who retired on Superannuation w.e.f. 31/07/2014 A/N. Ref : Your application dated 15/10/2016.---With reference to above cited application, it is to intimate that as per Swamy's Compilation book of Medical Attendance Rules book page No. 01 Note 2, There rules do not apply to _____ (iv) retired Government**

officials. (OS/MA) Rules are not applicable to retired Central Government employees. --- As per above refer OM, your Medical Reimbursement claim is returned to you. ---- Sd. Sr. Supdt. of Post Offices Valsad Dn. Valsad – 396001.”

10. It is settled legal position that the Government employee during his life time or after his retirement is entitled to get the benefit of the medical facilities and no fetters can be placed on his rights. It has been held by Hon'ble the Supreme Court in decision titled ***Shivakant Jha Vs. UOI & Ors.*** decided on 13.4.2018 in WP(C) No. 694 of 2015. that: - ***“The right to medical claim cannot be denied merely because the name of the hospital is not included in the Government Order. The real test must be the factum of treatment. Before any medical claim is honoured, the authorities are bound to ensure as to whether the claimant had actually taken treatment and the factum of treatment is supported by records duly certified by Doctors/Hospitals concerned. Once, it is established, the claim cannot be denied on technical grounds.”***

11. Instant case issue relates to medical claims. It is not the case of the respondents that the applicant was not under state of emergency or was not in a position to reach recognised hospital for treatment or that the pain is not of emergency nature. Applicant, as stated felt acute pain and was taken to Lotus Hospital at Valsad. It is acceptable to common sense, in such situation that ultimate decision as to in which hospital he has to be taken for the treatment vests only with relative to decide and it was for the Doctor, who is well versed and expert both on academic qualification and experience gained to decide as to the manner in which the ailment should be treated and therefore, no scope is left to the patient. Speciality Hospitals are established for treatment of specified ailments and services of Doctors specialized in a discipline are availed by patients only to ensure proper, required and safe treatment. Can it be said that taking treatment in Private Hospital

by itself would deprive a person to claim reimbursement solely on the ground that the said Hospital is private. Under emergency circumstance treatment can be taken in private / non-recognised hospital. Anyhow, it is not the case of the respondents that no treatment was taken or no expenses for treatment was incurred

12. Action of the respondents in not allowing the claims appears to be arbitrary and violative of principles of natural justice and also in violation of settled legal proposition of law. The medical claim ought not to have been denied merely because the name of the hospital is not included in the Government Order. The real test must be the factum of treatment and once, it is established, the claim cannot be denied on technical grounds. I therefore, quash the decision (Annexure A/1) dated 29.11.2016 of respondent whereby and whereunder claim for medical reimbursement of applicant has been returned unpaid.

13. In the present view of the matter, it is not necessary to go into the detail whether the Rule of 1944 had been set aside or not. Applicant is entitled to admissible amount of medical reimbursement. I thus direct the respondents to pay the amount of expenses incurred by applicant, under admissible head for reimbursement, for taking treatment at Lotus Hospital at Valsad, within two months of receipt of copy of this order, with interest @ 6% per annum, w.e.f. date of filing of this OA which as per record is 15/01/2018.

14. In view of the foregoing discussion, I dispose of instant OA with the above terms. There shall be no order as to costs.

[M.C.Verma]
Member (J)

abp

