

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00852/2018

Thursday, this the 31st day of January, 2019

CORAM:

Hon'ble Mr. Ashish Kalia, Judicial Member

G. Thilakan, aged 64 years,
 Railway Material Chaser, (Retd.),
 Sudhi Heaven, Parayakkad PO, Thuravoor,
 Alleppey.

..... **Applicant**

(By Advocate : Mr. Siby J. Monippally)

V e r s u s

1. Union of India, rep. by General Manager,
 Southern Railway, Park Town, Chennai – 3.
2. The Chief Medical Director, Southern Railway,
 Park Town, Chennai-3.
3. The Chief Medical Superintendent,
 Southern Railway, Trivandrum Division,
 Trivandrum – 14.

..... **Respondents**

(By Advocate : Mr. V.A. Shaji)

This application having been heard on 28.01.2019 the Tribunal on
 31.01.2019 delivered the following:

ORDER

Hon'ble Mr. Ashish Kalia, Judicial Member –

The applicant claimed relief as under:

“a) To direct the respondents to fully reimburse the amount (Rs. 7,19,320/-) incurred for the treatment and hospitalization of the wife of the applicant.

And

b) Grant such further and other reliefs as the nature and circumstance of the case may require.”

2. The brief facts of the case are that the applicant retired as a Railway Material Chaser on 10.11.2013. His wife suffered with severe disease of vermicular septal reapture on 25.7.2016 and was taken to Railway Hospital, Ernakulam for treatment. On diagnosis it was found that the disease requires expert treatment and she was taken to Lakshmi Hospital, Ernakulam which is a referral hospital of Railways. However, the doctors of Lakshmi Hospital referred the case to Amritha Institute of Medical Sciences, Ernakulam for expert treatment. She underwent an operation in the said hospital and was declared dead on 9.8.2016. The applicant is a member of the Railway Employees Liberalised Health Scheme and he was issued with an identity card. The applicant presented the bills for treatment of his wife to the respondents for reimbursement. However, the respondents restricted and sanctioned the bills to an amount of Rs. 1,93,000/- only. Applicant submitted a representation dated 10.5.2018 to respondent No. 3. However, the same has not been considered by the respondents. Aggrieved the applicant had filed the present OA.

3. Notices were issued to the respondents. They have entered appearance through Shri V.A. Shaji and filed a reply statement. The stand taken by the respondents in the reply statement is that no such letter dated 10.5.2018 stated to have been filed by the applicant had been received in the office of the respondents. Further as per CGHS guidelines package rate is allowed for the first 12 days. For the remaining period eligible amount was calculated as per CGHS rates and payment was made to the applicant.

Further the Railway Board OM dated 31.1.2007 clearly states that reimbursement of medical expenses for treatment taken in a non-recognized private hospital should be made at the CGHS rate of the city. The applicant's wife had undergone a surgery which is included in the CGHS package rate and the admissible amount of Rs. 1,93,548/- was paid to the applicant after approval of the competent authority. Respondents pray for dismissing the OA.

4. Heard Shri Siby J. Monippally, learned counsel appearing for the applicant and Shri V.A. Shaji, learned standing counsel appearing for the respondents. Perused the records.

5. The Hon'ble Supreme Court in *Shiva Kant Jha v. Union of India* – Writ Petition (Civil) No. 694 of 2015 dated 13.4.2018 held as under:

“12) With a view to provide the medical facility to the retired/serving CGHS beneficiaries, the government has empanelled a large number of hospitals on CGHS panel, however, the rates charged for such facility shall be only at the CGHS rates and, hence, the same are paid as per the procedure. Though the respondent-State has pleaded that the CGHS has to deal with large number of such retired beneficiaries and if the petitioner is compensated beyond the policy, it would have large scale ramification as none would follow the procedure to approach the empanelled hospitals and would rather choose private hospital as per their own free will. It cannot be ignored that such private hospitals raise exorbitant bills subjecting the patient to various tests, procedures and treatment which may not be necessary at all times.

13) It is a 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 is acceptable to common sense, that ultimate decision as to how a patient should be treated vests only with the Doctor, who is well versed and expert both on academic qualification and experience gained. Very little scope is left to the patient or his relative to decide as to the manner in which the ailment should be treated. 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 Speciality Hospital by itself would deprive a person

to claim reimbursement solely on the ground that the said Hospital is not included in the Government Order. 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. Clearly, in the present case, by taking a very inhuman approach, the officials of the CGHS have denied the grant of medical reimbursement in full to the petitioner forcing him to approach this Court.

14) This is hardly a satisfactory state of affairs. The relevant authorities are required to be more responsive and cannot in a mechanical manner deprive an employee of his legitimate reimbursement. The Central Government Health Scheme (CGHS) was propounded with a purpose of providing health facility scheme to the central government employees so that they are not left without medical care after retirement. It was in furtherance of the object of a welfare State, which must provide for such medical care that the scheme was brought in force. In the facts of the present case, it cannot be denied that the writ petitioner was admitted in the above said hospitals in emergency conditions. Moreover, the law does not require that prior permission has to be taken in such situation where the survival of the person is the prime consideration. The doctors did his operation and had implanted CRT-D device and have done so as one essential and timely. Though it is the claim of the respondent-State that the rates were exorbitant whereas the rates charged for such facility shall be only at the CGHS rates and that too after following a proper procedure given in the Circulars issued on time to time by the concerned Ministry, it also cannot be denied that the petitioner was taken to hospital under emergency conditions for survival of his life which requirement was above the sanctions and treatment in empanelled hospitals.

15) In the present view of the matter, we are of the considered opinion that the CGHS is responsible for taking care of healthcare needs and well being of the central government employees and pensioners. In the facts and circumstances of the case, we are of opinion that the treatment of the petitioner in non-empanelled hospital was genuine because there was no option left with him at the relevant time. We, therefore, direct the respondent-State to pay the balance amount of Rs. 4,99,555/- to the writ petitioner. We also make it clear that the said decision is confined to this case only.

16) Further, with regard to the slow and tardy pace of disposal of MRC by the CGHS in case of pensioner beneficiaries and the unnecessary harassment meted out to pensioners who are senior citizens, affecting them mentally, physically and financially, we are of the opinion that all such claims shall be attended by a Secretary level High Powered Committee in the concerned Ministry which shall meet every month for quick disposal of such cases. We, hereby, direct the concerned Ministry to device a Committee for grievance redressal of the retired pensioners consisting of Special Directorate General, Directorate General, 2 (two) Additional Directors and 1 (one) Specialist in the field which shall ensure timely and hassle free disposal of the claims within a period of 7 (seven) days. We further direct the concerned Ministry to take steps to form the Committee as expeditiously as possible. Further, the above exercise would be futile if the delay occasioned at the very initial stage, i.e., after submitting the relevant

claim papers to the CMO-I/C, therefore, we are of the opinion that there shall be a time frame for finalization and disbursement of the claim amounts of pensioners. In this view, we are of the opinion that after submitting the relevant papers for claim by a pensioner, the same shall be reimbursed within a period of 1 (one) month.

17) In view of the foregoing discussion, we dispose of the petition filed by the writ petitioner with the above terms.”

6. In the light of the judgment of the apex court in *Shiva Kant Jha's* case (supra), it appears to this Tribunal that the same decision can be made applicable to the instant case also. Accordingly, this Tribunal hold that the applicant is entitled to reimbursement of full permissible amount claimed as per the medical bills given by him for treating his wife after deducting Rs. 1,93,548/- i.e. the amount already sanctioned. Ordered accordingly. The above exercise shall be completed within a period of two months from the date of receipt of a copy of this order. Parties are directed to suffer their own costs.

(ASHISH KALIA)
JUDICIAL MEMBER

“SA”

Original Application No. 180/00852/2018

APPLICANTS' ANNEXURES

- Annexure A1** - Photostat copy of the identity card issued to the respondent under Railway Employees Liberalised Health Scheme.
- Annexure A2** - Photostat copy of the certificate issued by the Amritha Institute of Medical Sciences.
- Annexure A3** - Photostat copy of all the check list and proforma for reimbursement of medical expenses including the recommendation to the 2nd respondent.
- Annexure A4** - Photostat copy of the representation dated 10.5.2018 to Chief Medical Superintendent, Trivandrum.

RESPONDENTS' ANNEXURES

- Annexure R1** - True copy of the work sheet.
- Annexure R2** - True copy of the Railway Board policy letter No. 2005/H/6-4/Policy II dated 31.1.2007.

-X-X-X-X-X-X-X-