

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
ORIGINAL APPLICATION NO. 180/00804/2017

Wednesday, this the 12th day of December, 2018

CORAM

HON'BLE MR.ASHISH KALIA, JUDICIAL MEMBER

Varghese P.S
Loco Pilot (Goods)
Office of SSE/C&W Southern Railway
Palakkad Division
Palakkad

... **Applicant**

[By Advocate Mr.Harikumar G Nair]

V.

1. The General Manager
Southern Railway
Headquarters Office
Park Town P.O
Chennai -660 003
2. Chief Medical Director
Southern Railway, IV Floor
Moore Market Complex
Park Town, Chennai – 600 003
3. Chief Medical Superintendent
Divisional Railway Hospital
Olavakkot
Palakkad -678 009
4. Divisional Medical Officer
Divisional Railway Hospital
Olavakkot
Palakkad – 678 009

... **Respondents**

(By Advocate Mr.Thomas Mathew Nellimoottil)

This application having been finally heard on 12.12.2018, the Tribunal on the same day delivered the following in the open court.

O R D E R (ORAL)

Per: MR.ASHISH KALIA, JUDICIAL MEMBER

The present Original Application has been filed by the applicant seeking the following reliefs:-

- “1. To call for records leading to Annexure A-6 and set aside the same as illegal, unlawful, arbitrary and unreasonable;
2. To declare that the applicant is entitled to reimbursement of the expenses incurred in the treatment of his wife as covered by Annexure A-5
3. To direct respondent nos.1 to 4 to allow the claim of the applicant for reimbursement of medical expenses and release the amount forthwith; and
4. To grant such other relief as this Tribunal may deem fit to grant.”

2. Applicant is working with the respondents initially as Assistant Loco Pilot and thereafter promoted as Loco Pilot (Goods) at Palakkad Division. After marriage, the couple does not have children and therefore, have undergone infertility treatment. The applicant has approached the Railway Doctors and the Chief Medical Officer accorded permission to constitute infertility Medical

Board at Railway Hospital at Perambur. On the basis of such recommendation, the 3rd respondent forwarded the case of the applicant to the Railway Hospital, Perambur for immediate action as per Annexure A-3. Unfortunately, despite repeated reminders from the applicant as well as the office of the 3rd respondent, this Board has not been constituted. In the meantime, the applicant was advised for IVF treatment on emergent basis as per Annexure A-4. Thereby, the Specialist Doctor has advised to go through IVF process without further delay since there was no option left at that juncture. Annexure A-4 reads as follows:

“ Mrs.Nitha Varghese blood result (low AMH) and scanning report showed a decreasing ovarian function, she was advised to go through IVF process without any further delay, since there was no option left at that juncture.

Dr.Krishnankutty , MD, DGO, FICOG. ”

3. Applicant has incurred expenses to the tune of Rs.1,79,380/- and proof thereto has been submitted to the respondents, but the respondents rejected the same by impugned order at Annexure A-6. Annexure A-6 reads as follows:-

“The reimbursement application with enclosures is returned herewith due to the following reason.

As per Railway Board Order No.2014/H/6-3 IVF (Policy) dated 1.7.2014, request for IVF treatment for Railway beneficiaries would be considered only on the basis of advice tendered by adequately qualified Govt/Rly.Gynecologist. Permission for IVF procedure to be accorded by CMD of the zone in consultation with associate finance on receipt of advice for the same from Gynecologist of Govt/Railway Hospital. Sanctioning authority for sanction of reimbursement would be GM.

Hence copy of medical board papers and CMD sanction is required for processing the reimbursement. ”

4. Aggrieved by this, applicant has approached this Tribunal for redressal of his grievances.

5. Respondents entered appearance through counsel Mr.Thomas Mathew Nellimoottil and filed reply statement thereto. They oppose the present application mainly on the ground that the applicant's wife had treatment from private hospital without waiting for the proper permission by Railway Medical Board. Lastly, it is submitted that this was not an emergent medical condition and the applicant has gone for this treatment without waiting for proper permission from Medical Board and oppose this application with tooth and nail.

6. Rejoinder thereto has been filed by the applicant reiterating the contentions made in the O.A.

7. Heard Mr.Harikumar G. Nair, learned counsel for the applicant and Mr.Thomas Mathew Nellimoottil, learned counsel for the respondents at length and perused the documents.

8. During the course of argument, learned counsel for the applicant has drawn my attention to Indian Railways Medical Manual 648, wherein it is stated that in case of emergency, applicant can have treatment without waiting for prior approval. Indian Railways Medical Manual Clause 648(1) & (b) reads as follows:

“ 648(1) Where in an emergency, a Railway employee or his dependant has to go for treatment (including confinement) to a Government Hospital or a recognised hospital) or a dispensary run by a philanthropic organisation, without prior consultation with the Authorised Medical Officer, reimbursement of the expenses incurred, to the extent otherwise admissible, will be permitted. In such a case, before reimbursement is admitted, it will be necessary to obtain, in addition to other documents prescribed, a certificate in the prescribed form as given in part C of certificate B of Annexure III to this Chapter from the Medical Superintendent of the hospital to the effect that the facilities provided were the minimum which were essential for the patient's treatment. In such cases, the General Managers/Additional General Managers are delegated with powers to allow:

(b) Upto a limit of Rs.5,00,000/-(Rupees Five Lakh only) in each case where treatment is taken in Recognized/non-recognised private Hospitals and

dispensaries run by philanthropic organisations without proper referral by Authorised Medical Officer (AMO) in emergent circumstances. However, in case of treatment taken in emergent conditions in Government hospitals/autonomous bodies, there shall be no limit. All cases above rupees five lakh in private hospitals should be referred to Railway Board along with the Proforma as given in Annexure VI to this Chapter duly filled in all the columns. The above delegation to Zonal Railways and Production Unit is subject to the norms delegation to Zonal Railways and Production Unit is subject to the norms prescribed in Railway Board's letter No.2005/H/6-1/Policy-II dated 31.1.2017.”

9. He has further relied upon judgment passed by Hon'ble Supreme Court in the case of *Shiva Kant Jha v. Union of India 2018 (5) SCALE 551* hereby the Hon'ble Supreme Court held as follows:

“ 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. ”

10. As observed, the employees are entitled to be treated by an expert Doctor of the field. Very little scope is left to the patient or his relative to decide as to the manner in which the ailment should be treated. Specialty 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. Hence the medical claim cannot be denied because the name of the hospital is not on the Government order. Learned counsel for the respondents has heavily relied upon the Rules and submit that emergency as per Rule 648 of IRMM means any condition or symptom resulting from any cause, arising suddenly and if not treated at the early convenience, be detrimental to the health of the patient or will jeopardize the life of the patient. This is not the case where the applicant could not have waited for the approval for the treatment from the Medical Board.

11. It is true that emergency situation as described in the manual are not to be seen in this matter but once a doctor opined this as an emergency case to be operated upon, then there is no second thought over to it neither it can be questioned by the administrative authorities unless it is referred to the Medical Board. Taking shelter of the judgment passed by the Hon'ble Supreme Court referred above, this Tribunal is of the view that this is a fit case where the applicant is entitled for reimbursement of the medical expenses incurred by him. The technical rule procedure should not be come in the way of treatment wherein emergent cases and the hospital has already been described the present case as an emergent case.

12. In view of this, it is concluded that the respondents is hereby directed to reimburse expenses incurred by the applicant within a period of 60 days from the date of receipt of a copy of this order subject to the package available for the same. In view of this, the Original Application is allowed. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

List of Annexures

- Annexure A1 A true copy of letter seeking permission dated 23.11.2015 submitted by the applicant
- Annexure A2 A true copy of the medical report issued by the 3rd respondent dated 24.11.2015
- Annexure A3 A true copy of Order No.J/MD.84 dated 07.1.2016 of the 3rd respondent
- Annexure A4 A true copy of certificate issued by the Kare Centre dated 5.8.2017
- Annexure A5 - A true copy of covering letter along with the application dated 2.7.2016 and supporting documents
- Annexure A6 Order No.J/MD.84/Reim/83/16 dated 21.12.2016 issued by the 4th respondent
- Annexure R1 True copy of Railway Board circular No.2014/H/6-31VF Policy dated 1.7.2014
- Annexure R2 - True copy of the Office Memorandum No.Z.15025/5/2011-CGHS III/CGHS(P), dated 22.11.2011
- Annexure R3 - True copy of Chief Medical Director's letter No.MD/34/1/IVF dated 8.9.2017

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