

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No.517/2016

Dated this Wednesday the 6th March, 2019

CORAM: RAVINDER KAUR, MEMBER (J)

Shri R.D. Deharia
Age 81 years, Occu - Retired S.P.O.
(L&W) C.P.O.'s Office,
Central Railway, CST, Mumbai.
R/at. Flat No.B/305, Third Floor,
Narayan Darshan CHS Ltd., Shivajinagar,
Ambernath Road, Waldhuni,
Kalyan (W)-421 301
Dist- Thane (M.S.) . . . **Applicant**

(By Advocate Shri D.N. Karnade)

VERSUS

1. Union of India
Through the General Manager,
Head Quarter's Office,
Central Rly.,
C.S.T. Mumbai - 400 001.
2. The Chief Medical Director
Head Quarter's Office,
Annex Building, Central Railway,
C.S.T., Mumbai - 400 001.
3. The Chief Medical Superintendent
Central Railway Hospital,
Kalyan (W) - 421 301,
Dist. Thane. **Respondents**

(By Advocate Shri S.C. Dhawan)

O R D E R

The present OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

- "8(i) To allow the Original Application.*
- (ii) To direct the Respondent Nos.2 and 3 to reimburse to the applicant a sum of Rs.1,55,577/- disallowed by the Respondents even though the applicant has incurred the Expenditure by paying to the PHONEIX Health Care, APEX Multi-Speciality Hospital Parnaka, Kalyan (W).*
- (iii) To grant such other and further reliefs as expedient in the interest of justice.*
- (iv) The cost of the Application may be awarded in favour of the applicant.*

2. The applicant retired as Senior Personnel Officer (L&W) of Railways on 30.06.1993. He is a Member of Retired Employees Liberalised Health Scheme - 1997 (hereinafter referred as RELHS). As per Railway Board's letter No.97/H/28/1 dated 23.10.1977 (Annexure A-2) relevant para (ii) (eligibility of the said letter), he is eligible for the benefits of the scheme. As per para 2.4 of Ministry of Railways (Railway Board), the order No.97/H/28/1 dated 17.05.1999, the applicant and his wife are eligible to get the medical facilities. Since the applicant retired on 30.06.1993 and opted for the original scheme

of benefits, the new Rules under reference automatically applied to him. It is stated that under the Scheme reimbursement of the medical treatment necessitated in emergency cases is permissible to retired employees as it is permissible to serving employees.

2.1 The applicant has stated that as per Railway Board's letter dated 05.04.2000 (Annexure A-4), the retired Railway employees who are RELHS card holders are duly empowered to take treatment from a Non-Railway Private Hospital in case of emergency to save their life. The relevant extract of the letter is reproduced as under:-

"Railway Board's letter No.98/6-4/60 dated 05.04.2000

Earlier, all matters connected with reimbursement of Medical Expenses incurred by Railway Employees were dealt by the Personnel Department of the Zonal Railways/Production Units. For more speedy disposal of claim for reimbursement, Railway Board has decided that all the work relating to such claims, should be handled by the Medical Departments of the Zonal Railways/Production Units and by the Health Directorate in the Railway Board's Office.

RELHS card holders, in case of high emergencies can rush to Non-Railway Hospitals for taking emergency treatment to save life, without first going to a Doctor in a Railway Hospital and can thereafter apply and get his Medical Expenses reimbursed."

2.2 The wife of the applicant was unwell and on 04.03.2015 she was taken to PHOENIX Health Care, APEX Multi-Speciality Hospital, Kalyan (W) for treatment where the Doctor advised that since her condition was serious, she required the hospitalisation immediately. Consequently, she was admitted in the said hospital for treatment. She remained admitted there till 16.03.2015, from where she was shifted to Railway Hospital, Kalyan. She was kept in ICCU but since no ventilation facility was available, she was given ordinary oxygen facility and died on that date itself.

2.3 The applicant preferred his claim for medical reimbursement for a sum of Rs.2,64,834.30 incurred for the treatment of his wife in the PHOENIX Health Care, Apex Multi-Speciality Hospital, Kalyan vide Annexure A-5. However, the respondent No.3 vide letter No.4/M/KYN/Med./Reim/Sanc/47/15 dated 24.09.2015 advised for the sanction of Rs.1,09,257/- only against the actual medical claim on the ground that the reimbursement can only be made at the rate fixed by the Government under CGHS Rules or the expenditure incurred whichever is less. The

sanction order is Annexure A-6. It is this order which has been challenged by the applicant on the grounds that the denial of payment of reimbursement of Rs.1,55,577/- towards expenses for the treatment of his wife is illegal, arbitrary and violative of the respective rules of the Ministry of Railways, particularly, para 2.4 of the Railway Board's letter dated 17.05.1999 (Annexure A-3) which is reproduced as under:-

“2.4 Benefits under the RELHS -97 Scheme : RELHS beneficiaries will be provided full medical facilities as admissible to serving employees in respect of medical treatment, special investigations, diet and reimbursement of claims for treatment in government or recognised non railway hospitals. They will also be eligible, inter alia, for (a) ambulance services (b) medical passes (c) home visits (d) treatment for first two pregnancies of married daughters at concessional rates and (e) treatment of private servant, as applicable to serving railway employees.”

2.4 The applicant has relied upon the case of State of Punjab and Ors. vs. Mohinder Singh Chawla etc. reported in SCSLJ 1997 (1) 204, wherein the Hon'ble Apex Court has held as under:-

“4. Government has constitutional obligation to provide the health facilities. If the Government Servant has suffered an ailment which requires treatment at a specialized approved hospital and on reference where at the Government Servant had undergone such treatment therein, it is but the duty of State to bear the expenditure incurred by the Government Servant, Expenditure, thus

incurred, requires to be reimbursed by the State to the employee.

5. Having had the constitutional obligation to bear the expenses for the Government Servant while in service or after retirement from service, as per policy of the Government, the Government is required to fulfill the constitutional obligation. Necessarily, the state has to bear the expenses incurred in that behalf."

2.5 The applicant has further relied upon the judgments of this Tribunal in the following cases:

- (i) *N.B. Rao through LR's Vs. UOI through G.M. Western Railway Bombay reported in ATJ, 1995 (2) 542 (Annexure A-8)*
- (ii) *Shri Jawed Ahmed Vs. UOI reported in ATJ 2005 (2) 108 (Annexure A-9),*
- (iii) *Venkrai Sriniwasan Raghavan Vs. Union of India and Others reported in ATJ 2006 (3) 414 (Annexure A-10).*

3. The respondents in their reply have admitted all the facts of this case and have stated that though the applicant has claimed medical reimbursement for a sum of Rs.2,64,834/-, however only a sum of Rs.1,09,257/- has been sanctioned as per Rule of CGHS fixed by the Government CMS, Kalyan vide letter dated 29.09.2015. The respondents have relied upon Exhibit R-1 i.e. Advance correction slip to para 648 of IRMM 2000 which defines the term 'Emergency' that unless the case of the applicant fulfills the parameters as contained in said para 648, he is not entitled to any

reimbursement. Further, that the wife of applicant was admitted for breathlessness in private hospital on his own on 04.03.2015. On 06.03.2015 she was intubated and was put on ventilator. On 13.03.2015 CPAP and Extubated i.e. ventilator was removed and patient was breathing on her own. She was transferred to Railway Hospital Kalyan and even at that time she was breathing on her own and was not on ventilator. There she was admitted in ICCU and was given necessary treatment. As per the respondents, the applicant's claim dated 30.03.2015 was rightly rejected by respondent No.3 vide letter dated 24.09.2015. It is submitted that as per Railway Board's letter No.2005/H/6-4/Policy-II dated 31.01.2007 (Exhibit R-II), the treatment taken in recognised private hospital, reimbursement should be made at CGHS rate of that city or the nearest city.

4. I have heard the arguments addressed by Shri D.N. Karande, Ld. counsel for the applicant and Shri S.C. Dhawan, Ld. counsel for the respondents and perused the material available on record.

5. The short question to be decided in the present case is as to whether there was any emergency that the applicant had to admit his wife at PHOENIX Health Care, APEX Multi-Speciality Hospital, Kalyan (W) (a non empanelled hospital) for treatment and if so whether he is entitled to reimbursement of the entire expenditure incurred on the treatment of his wife at the said hospital.

6. The relevant portion of Exhibit R-2 i.e. the Railway Board letter No.2005/H/6-4/Policy-II dated 31.01.2007 is reproduced as follows:-

"As per extant rules, a railway beneficiary must report to Railway Medical Officer for his/her and dependents medical treatment. The Authorized Medical Officer will make necessary arrangements for medical treatment through Railway Hospital/Govt. Hospital/Pvt. Recognised Hospital in serious situations, CMDs of Zonal Railways can obtain special permission from the Board for treatment in any Private Hospital on case to case basis. Hence, there is no scope available for any Railway beneficiary to go to any private hospital himself/herself or their dependents on their own bolition expect in case of real emergency situation.

"Emergency" shall mean 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. Some examples are Road accident, other types of accidents acute heart attack etc. under such condition when the railway beneficiaries feels that there is no scope of reporting to his/her authorised Railway Medical Officer and avails treatment in the nearest and suitable private Hospital, the reimbursement claims are to be processed for sanction, after the condition of the emergency is confirmed by the authorized Railway Medical Officer ex-postfacto."

7. As per the above Rule, in normal circumstances, the Railway beneficiary has to first approach the Railway Medical Officer for medical treatment for self or dependents. It is the Authorised Medical Officer who will make necessary arrangements for his/dependent treatment either at Railway Hospital or Government Hospital or private recognised Hospital in serious situations. The CMDs of Zonal Railways can obtain special permission from the Board for treatment in any private Hospital on case to case basis. This clearly shows that the Railway beneficiaries have no choice to go to any private Hospital for himself/herself or their dependents on their own except in case of real emergency situation. In case of emergency when there is a threat to the life of the patient, the Railway beneficiary can avail treatment in the nearest and suitable private hospital.

8. In the present case, the respondents have not denied the fact that the wife of the applicant was admitted in PHOENIX Health Care, APEX Multi Speciality Hospital, Kalyan in emergency. Even her relevant medical record

shows that she was admitted at the said Hospital in emergency and was put on ventilator. She remained on ventilator till 13.03.2015. Emergency certificate issued by Hospital clearly finds mention that the wife of the applicant was admitted in the said hospital in emergency on 04.03.2015. On 06.03.2015 since she was desaturating, hence intubated c640 Endotracheal tube and put on ventilator. She was extubated only on 13.03.2015. She was transferred to Central Railway Hospital, Kalyan on 16.03.2015. It is admitted fact that after discharge from PHOENIX Health Care, Apex Multi Speciality Hospital, Kalyan, she was admitted to Central Railway Hospital, Kalyan. As per the discharge cum death certificate issued from the said Hospital, the wife of the applicant was admitted in the said hospital at 1.15 pm on 16.03.2015 and on the same date, she died at 4.10 pm due to cardio respiratory arrest with general debility with encephalopathy. All these facts are not disputed by the respondents. The contention of learned counsel for the respondents that after the applicant was extubated on 13.03.2015, she was breathing on

her own and even at the time when she was transferred to Central Railway Hospital, Kalyan she was breathing on her own and was not put on ventilator and therefore there was no such emergency condition of the wife of the applicant which necessitated her earlier treatment at private Hospital. The said contention of the respondents seems to be insensitive in nature and is not acceptable.

9. The Hon'ble Apex Court in the case of

Shiva Kant Jha Vs. Union Of India, Writ Petition (Civil)

No.694/2015 decided on 13.04.2018 has interpreted the CGHS Scheme vis-a-vis CS(MA) Rules, 1944, it was specifically ruled as under:-

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.

10. The aforesaid judgment of the Hon'ble Apex Court is fully applicable to the facts and circumstances of the present case. The applicant has claimed medical reimbursement for a sum of Rs.2,64,834/-. However, vide letter dated 29.09.2015 he was sanctioned only a sum of Rs.1,09,257/- as per CGHS rate. The respondents

Nos.2 & 3 are directed to pay the actual medical expenses incurred by the applicant on the treatment of his wife after adjusting the amount already reimbursed, within a period of one month from the date of receipt of copy of this order.

11. With these directions, the Original Application stands allowed. No order as to costs.

(Ravinder Kaur)
Member (J)

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