

**Central Administrative Tribunal
Principal Bench, New Delhi**

MA No.5137/2018

RA No.0254/2018

O.A.No.4183/2016

New Delhi this the 13th day of December, 2018

Hon'ble Mr. K.N. Shrivastava, Member (A)

The Chief Medical Supdt.
Northern Railway
Near Old Delhi Railway Station
Delhi.

..Review Applicant

Shri S K Gujrati, aged 85 years, Group A
s/o late Shri S S Gujrati
retired Chief Mechanical Engineer (Planning)
South Eastern Railway, Garden Reach
Kolkatta (West Bengal)
r/o Flat No.D-129, Rohit Coop,
Group Housing Society,
Plot No.30, Sector 10, Dwarka
New Delhi – 110 075

..Respondents

O R D E R (BY CIRCULATION)

MA No.5137/2018

This Miscellaneous Application (MA) has been filed by the review applicant/respondent no.5 in OA seeking condonation of delay of 105 days in filing the RA. For the reasons mentioned in the MA and in the interest of justice, delay of 105 days in filing the RA is condoned. MA is allowed.

RA No.254/2018

This Review Application (RA) has been filed by the respondent no.5, seeking review of this Tribunal's order dated 23.07.2018 in OA No.4183/2016. The Tribunal vide the *ibid* order disposed of the OA in the following terms:

"I, therefore, direct the respondents to grant medical reimbursement to the applicant to the extent of the prescribed CGHS rates for Primus Super Speciality Hospital, Chanakya Puri, New Delhi."

2. The review applicant has pleaded the following important grounds for seeking review of the Tribunal's order dated 23.07.2018 in OA No.4183/2016:

2.1 The Railway Board have issued specific guidelines on the issue of reimbursement of medical expenses which postulate that most of the medical procedures are available in Railway hospitals and thus the treatment may not be taken in private hospitals. In case the specialised treatment is not available in railway hospitals necessary reference is made for taking treatment on recognized empanelled railway hospitals only. In the present case the respondents did not get himself operated in railway hospitals which had the requisite facilities to conduct knee replacement surgery.

2.2 The Tribunal failed to appreciate that the original applicant/respondent in RA, without any emergent situation, chose

a hospital i.e., Primus hospital on his own volition and for his personal choice *de hors* the policy guidelines framed in this behalf. Hence the question of the review applicant bearing the burden of surgery does not arise since it has invested huge sums of money in railway hospital for retired railway employees as well.

2.3 The original applicant/respondent in RA cannot be allowed a specialised treatment over and above which is available to other retired railway employees. Any such specific stipulation in favour of the respondent would immediately attract the discrimination doctrine under Articles 14 and 16 of the Constitution of India.

2.4 The Hon'ble Tribunal erred in not taking into account the fact that the original applicant is also covered under the railway policy guidelines just as others.

2.5 The Hon'ble Tribunal has erred in not taking into consideration the impugned orders challenged in the OA. The impugned order was issued by the competent authority in the Railways, who is the competent authority and a doctor by profession vested with the responsibility for reimbursement of medical expenses. As a matter of fact the entire case was placed before the competent authority which on detailed examination found that TKR is not an emergency condition which can endanger the life of the patient. Moreover, Sir Ganga Ram hospital advised

for TKR and the original applicant/respondent in RA approached Primus hospital for operation and claimed the reimbursement which is not maintainable.

2.5 The Hon'ble Tribunal passed the impugned order dated 23.07.2018 without taking into account the policy decision of the Government. It is submitted that there are errors apparent on the face of order dated 23.07.2018.

2.6 The original applicant/respondent in RA on his own without any referrals went on to get the treatment done on his own volition and hence cannot be allowed to seek reimbursement of such treatment.

2.7 It is settled law as enunciated by the Hon'ble Supreme Court that the Courts would not interfere with policy decisions of the Government since they are issued after due deliberation and in public interest and applicable to all concerned, as held by the Hon'ble Apex Court in the case of **Basic Education Board, UP v. Upendra Rai**, [(2008) 3 SCC 432].

3. A mere reading of these grounds and other points raised in the RA would give an impression as though the review applicant has tried to re-argue the case. As a matter of fact, the RA appears to be in the nature of an appeal, which is not permissible under law. The

grounds raised herein were also raised by the review applicant in the OA. If in the opinion of the review applicant, the order is erroneous, remedy lies elsewhere and certainly review is not the remedy.

4. The *sine qua non* for reviewing any order of the Tribunal is existence of an apparent error on the face of the record. The review applicant has failed to point out any error apparent on the face of the order under review.

5. On the power of the Tribunal to review its own orders, the Hon'ble Supreme Court has laid down clear guidelines in its judgment in the case of **State of West Bengal & others Vs. Kamal Sengupta and another**, [2008 (3) AISLJ 209] stating therein that *"the Tribunal can exercise powers of a Civil Court in relation to matter enumerated in clauses (a) to (i) of sub-section (3) of Section (22) of Administrative Tribunal Act including the power of reviewing its decision."*

At Para (28) of the judgment, the principles culled out by the Supreme Court are as under:-

"(i) The power of Tribunal to review its order/decision under Section 22(3) (f) of the Act is akin/analogous to the power of a Civil Court under Section 114 read with order 47 Rule (1) of CPC.

(ii) The Tribunal can review its decision on either of the grounds enumerated in order 47 Rule 1 and not otherwise.

(iii) The expression "any other sufficient reason" appearing in Order 47 Rule 1 has to be interpreted in the light of other specific grounds

(iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as a error apparent in the fact of record justifying exercise of power under Section 22(2) (f).

(v) An erroneous order/ decision cannot be corrected in the guise of exercise of power of review.

(vi) A decision/order cannot be reviewed under Section 22(3) (f) on the basis of subsequent decision/judgment of a coordinate or a larger bench of the Tribunal or of a superior court

(vii) A decision/order cannot be reviewed under Section 22(3)(f).

(viii) While considering an application for review, the Tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/ decision as vitiated by an error apparent.

(ix) Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence the same could not be produced before the Court/Tribunal earlier.”

6. For the reasons discussed in the foregoing paras, I do not find any merit in the RA. Accordingly, the RA is dismissed in circulation.

(K.N. Shrivastava)
Member (A)

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