

**Central Administrative Tribunal
Ernakulam Bench**

OA/180/00067/2019

Thursday, this the 20th day of June, 2019.

CORAM

Hon'ble Mr.Ashish Kalia, Judicial Member

V.Radhakrishnan, aged 58 years,
S/o Velayudhan Pillai,
Crew Controller, Quilon,
Trivandrum Division,
Southern Railway,
Residing at R.V.Nivas,
K.B.Nagar 61, Eravipuram P.O.,
Kollam District.

Applicant

[Advocate: M/s.Varkey & Martin]

versus

1. Union of India represented by
the General Manager,
Southern Railway,
Park town P.O., Chennai -3.
2. The Chief Medical Superintendent,
Southern Railway, Trivadrum Division,
Trivandrum – 14.

Respondents

[Advocate: Mr.Sunil Jacob Jose]

The OA having been taken up on 20th June, 2019, this Tribunal delivered the following order on the same day:

ORDER (oral)

O.A 180/00067/2019 is filed by Mr.V.Radhakrishnan, retired Crew Controller of Southern Railway. The reliefs prayed for in the Original Application are as follows:

- “i) Call for the records leading to the issue of Annexure A6 and quash the same.
- ii) Declare that the applicant is entitled to get full reimbursement of the medical expenses incurred by him for his treatment and to direct the respondents accordingly.
- iii) Award costs of and incidental to this application.
- iv) Grant such other relief, which this Hon'ble Tribunal may deemed fit and proper in the circumstances of the case.”

2. Applicant prays for reimbursement of the medical expenses incurred by the applicant for his treatment in an emergent measure consequent upon an accidental fall. On 8th January 2014, applicant accidentally fell down from the stairs and as a result he became partially unconscious with severe pain on his left leg. Immediately, his wife taken him to the Bishop Benziger Hospital, Kollam where x-ray was taken and it was confirmed that the applicant has suffered a fracture on left heel bone. Since, the Orthopedist Surgeon is not available in the said hospital, on medical advice applicant was admitted in KIMS hospital, which is not CGHS empaneled hospital, on 9.1.2014 with heavy swelling and severe pain. In those position, surgery was conducted to mend the fracture and discharged from the hospital on 13.1.2014. The discharge certificate issued from the hospital and the medical bill showing the expenses the applicant incurred for treatment as inpatient is produced herewith as Annexures A-1 and

A-2 respectively. The applicant had approached this Tribunal earlier for non-grant of medical expenses incurred through Original Application No.466 of 2015. During the pendency, an amount of Rs.20,799/- was credited to the applicant's account towards discharge of the reimbursement claim of the applicant in terms of CGHS applicable rates. Finally the matter was heard and disposed of by this Tribunal (Annexure A-5). It reads:

“The dispute is with regard to the quantum i.e, whether a full reimbursement of the claim is to be made or whether it should be at the rate prescribed by the CGHS. As respondents could not show any document that the Railway in such cases has to follow CGHS rates, the General Manager has to take a decision on the applicant's claim *de hors* the CGHS rates. Hence while quashing and setting aside the reimbursement made as per Annexure R2 documents, this Tribunal directs respondent no.1 to reconsider the claim made by the applicant, less the amount already paid, independent of and untrammelled by the CGHS rates. This exercise shall be completed within one month from the date of receipt of a copy of this order. O.A is disposed of accordingly. No order as to costs.”

3. Despite this fact, the respondents have failed to reimburse any amount to the applicant except which was paid earlier and passed Annexure A-6 impugned order. It reads:

“I have perused the case in detail. From the records it is seen that Sri.V.Radhakrishnan Crew Controller/CCRC/Office/QLN had submitted a claim for reimbursement of expenditure incurred towards the medical expenses for taking treatment at Kerala Institute of Medical Sciences, Trivandrum, 695029 from 09.01.2014 to 13.01.2014. He had incurred an expenditure of Rs.90,864.53/-. His application was processed at Office of Chief Medical Superintendent, Trivandrum and an eligible amount of Rs.20,799/- was sanctioned and paid to the employee. This amount of Rs.20,799/- was arrived at as per the prevalent CGHS 2014 rates for Trivandrum, as per the policy laid down by Railway Board vide letter No.2005/H/6-4/Policy-II dated 31.01.2007. The Central Administrative Tribunal had directed the undersigned to consider the appellant's claim based on Para 648

of Indian Railway Medical Manual Volume I. However, it is signified that the Railway Board Letter No.2005/H/6-4/Policy-II dated 31.1.2007 has been issued on 31.1.2007 (Folios 25-27) and an advance correction slip has been issued to Para 648 of Indian Railway Medical Manual 2000 which currently holds good and which supersedes Para 648 of IRMM 2000. As all reimbursement claims have to be finalised based on this policy decision of Indian Railways, I concur with the quantum of reimbursement of Rs.20,799/- made to Sri.V.Radhakrishnan Crew Controller/CCRC/Office/QLN. ”

Feeling aggrieved by this, applicant has re-approached this Tribunal for redressal of his grievances.

4. Notices were issued. Mr.Sunil Jacob Jose, Standing Counsel for the Railways put appearance and filed a detailed reply statement. Reiterating the stand taken by the respondents, it is stated therein that the reimbursement is permissible for treatment in Govt. Hospitals including Medical College Hospitals, whereas CGHS rates only are permissible for private hospital treatment. The applicant, a resident of Kollam having come to Trivandrum, could have reported to the second respondent instead of getting treatment directly from KIMS, Trivandrum, which is also situated in Trivandrum. He had gone to hospital of his own choice on his own and is now demanding full reimbursement. A fracture of left heel bone cannot be treated as dire emergency and he could have very well attended the Railway hospital for suitable management. The decision of the Supreme Court mentioned by the applicant is not applicable to the facts and circumstance of the case due to the above reasons and other facts. The applicant cannot have any grievance against Annexure A6 which is fully in consonance with rule provisions and directions of the Hon'ble Tribunal contained in Annexure A5. There is no legal or factual basis for the claim which is therefore only to be dismissed.

5. Heard Mr.Martin G Thottan, learned counsel for the applicant and Mr.Sunil Jacob Jose, learned counsel for the respondents. Perused the records.

6. During the course of argument, learned counsel for the applicant Mr.Martin has drawn this Tribunal's attention to Annexure R-2, whereby the respondent Railways has passed the bill at the lumpsum rate of Rs.13,800 plus Implant charges Rs.6999.20, which comes to Rs.20,799.20 only. Learned counsel for the applicant submits that there is no description given as to how they have arrived at this amount. The respondents should have given at least the details of the same. He has also pointed out that the applicant was taken to the private hospital in an emergent situation and he had been taken by his relatives. Lastly, it is submitted that he is relying upon the judgment of the Hon'ble Supreme Court in **Shiva Kant Jha v. Union of India** in Writ Petition (Civil) No.694 of 2015. It reads:

“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. 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. Can it be said that taking treatment in Specialty 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.

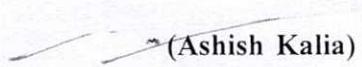
14) This is hardly a satisfactory state of affairs. The relevant authorities are required to be more responsive and cannot in a mechanical manner deprive an employee of his legitimate reimbursement. The Central Government Health Scheme (CGHS) was propounded with a purpose of providing health facility 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. "

7. On the contrary, learned Standing Counsel for the respondent Railways has vehemently opposed the Original Application by submitting that this was not an emergent case. The applicant could have very well attended the Railway Hospital which is available at Trivandrum itself, but the applicant had chosen on his own to go to the private hospital. Respondents had considered his case in terms of CGHS guidelines. Though this Tribunal had directed that the CGHS rules are not applicable which were not placed on record by the respondents themselves in the previous O.A 466/2015, I am of the view that the contention of the respondents that this is not an emergent case has force since emergency certificate is not produced in this matter. Thus, the claim of the applicant has been decided in accordance with law. The Supreme Court judgment cited by the learned counsel is not applicable in the present case for the simple reason that the same was given by the Hon'ble Supreme Court where an emergent case was dealt with, which is not the case on hand. Thus, the Original Application lacks merit and accordingly, it is dismissed. No costs.


(Ashish Kalia)
Judicial Member

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Annexures filed by the applicant:

Annexure A1: Copy of the discharge certificate issued from the KIMS hospital.

Annexure A2: Copy of the medical bill dated 13.01.2014.

Annexure A3: Copy of the working sheet of the applicant.

Annexure A4: Copy of the schedule of CGHS rates valid up to 16.11.2014.

Annexure A5: Copy of the order dated 01.11.2017 in OA No.466 of 2015.

Annexure R1: Copy of the (Attested) Railway Boards letter No.2007/H/6-4/ Policy-1 dated 08.12.2009.

Annexure R2: Copy of the (Attested) tabulation sheet.
