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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No.357/2017

Dated this _____ the 1st July, 2019

CORAM: R. VIJAYKUMAR, MEMBER (A)

Hemant Moreshwar Deshpande
Age 53 years, employed as
Senior Section Officer,
(Accounts), Office of
Senior Divisional General
Manager, Central Railway,
Bhusawal Division,
Bhusawal-425 201.
(R/at. Seema Park,
Tukaram Nagar, N.H.6,
Behind Mali Bhawan,
Bhusawal-425 201).

...Applicant.

(By Advocate Sh. S. P. Saxena)

VERSUS

1. The Union o India, through
The Secretary, Ministry of
Rail Bhawan, New Delhi-01.
2. The General Manager,
Central Railway, C.S.T.M.,
Mumbai-400 001.
3. The Sr. Divisional Finance
Manager, Bhusawal Division,
Central Railway,
Bhusawal-425 201.
4. The Divisional Railway Manager
Central Railway, Bhusawal-425 201.

...Respondents.

(By Advocate Ms. Sangita Yadav)

O R D E R

The present OA has been filed on 19.04.2017 under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

- "(a) To allow the application.
- (b) To hold and declare that, the Applicant is entitled for full and complete reimbursement of his medical expenses incurred by him for his own emergent treatment, at Indo-American Super Specialty Hospital, at Jalgaon and the Kokilaben Dhirubhai Ambani Hospital, Andheri, Mumbai, so as to save his life,
- (c) To direct the Respondents to reimburse the balance of the medical bills which remains to be reimbursed to him immediately along with 12% interest on the total amount,
- (d) To pass any other order which may be considered necessary in the facts and circumstances of the case,
- (e) To award the cost of application."

2. This is a 2nd stage application by which the applicant had previously filed an OA No.81/2016 and following directions issued by this Tribunal, the respondents have passed speaking order no. AC/BSL/ADMN/Court/Med./HMD dated 09.06.2016 discussing the medical reimbursement

claim of the applicant.

3. The applicant is employed in Railways at Bhusawal as Senior Section Officer (Accounts) in the office of Senior Divisional Financial Manager, Central Railway and he had gone to Jalgaon to meet his son who was studying in a college there, when he fell ill and took admission in Indo-American Hospital, Jalgaon on 27.02.2013. This is a private hospital which is also empaneled with railways for cardiac treatment. He remained as an in-patient at this hospital till 06.03.2013 and it is noted that he had low grade fever during this period with normal vital signs. Meanwhile, he also informed CMS, Bhusawal on 04.03.2013 about his condition and treatment. On 07.03.2013 he was again re-admitted to the same hospital where certain diagnostic procedures including MRI were done and he was referred by that hospital as an emergency case to Kokilaben Dhirubhai Ambani Hospital, Andheri on 08.03.2013. Based on their diagnosis of diabetic Ketoacidosis (DKA) with Septicemia.

That hospital performed a 'Cerebral Angio and Coiling of Aneurysm' and the applicant was discharged on 22.03.2013. This KD Ambani Hospital was not empaneled with the Railways. The Jalgaon Hospital charged Rs.68,197/- while the Mumbai hospital charged Rs.9,20,899/- against which the respondents paid Rs.1,46,641/- in addition to previous reimbursement of Rs.18,319/-.

4. The applicant submits that after he filed his bills on 05.08.2013, full reimbursement has not been received. Considering that his was an emergency condition, he, therefore requests full reimbursement along with interest.

5. The respondents in their speaking orders have stated that non-cardiac cases cannot be considered at Indo-American hospital despite its tie-up for cardiac cases with the Railways. They had followed the package rates prescribed under the CGHS and have fully paid the applicant on this basis. In their reply, the respondents have specifically denied that

the applicant obtained any clearance or informed the Medical Officers of Railways after getting admitted with low grade fever on 27.02.2013 and only informed the CMS Bhusawal on 04.03.2013. Further, after being seen by private doctor at Jalgaon, the applicant came to Mumbai for further treatment and did not approach the Central Railway Hospital, Byculla which has a tie-up with private hospitals and Government hospitals. They submit that the applicant, being part of the system, knows very well the process of approval of medical expenditures and that reimbursement will be done at CGHS rate only after establishment of emergency. However, a sympathetic view was taken in his case considering the emergency position of his medical condition. They have accordingly reimbursed him to the extent feasible under the rules.

6. The applicant has filed a rejoinder stating that it has been held by various courts that in the case of medical emergency, the concerned patient/employee can also go to the

nearest hospital or another hospital which is a super-specialty and such medical cases are to be fully reimbursed. He asserts that the Byculla Railway Hospital does not provide such treatment as was required by the applicant. He refers to the rulings of the Hon'ble Apex Court in Shiva Kant Jha Vs. Union of India decided on 13.04.2018, reported in AIR 2018 SCC 1975, in which the petitioner was granted full reimbursement and the respondents Ministry of Health was directed to devise a Committee for timely and hassle-free disposal of claim during the period of 07 days. He also refers to Suman Rakhiya Vs. State of Haryana and Another reported in 2004(13) SCC, as well as in SLJ 2009(3) page 320 (CAT) Dr. D. K. Jain Vs. Union of India. Based on these judgments, applicant submits that in cases of medical emergency, no permission is required for getting treatment at a recognized or unrecognized hospital.

7. The learned counsel for the applicant and respondents have been heard and the pleadings on record have been carefully

studied.

8. A variety of court rulings including the reference cited by the applicant have indisputably held that there is no need for obtaining specific prior approval or referral for getting admitted in hospital in cases of emergency. In the present case, the applicant was admitted with low grade fever while on tour on private absence and this continued for a period of nearly 07 days and upon being discharged, he was re-admitted on the next day. Meanwhile, he had contacted the CMS, Bhusawal on 04.03.2013. It is also clear that the applicant's condition was not diagnosed during the initial stage and only on his re-admission, was an MRI done and his condition diagnosed adequately for making a referral to a competent, although private, non-empanelled hospital. At this stage of emergency on 08.03.2013, it cannot be argued as respondents have attempted, that the applicant could have proceeded to the Byculla Railway Hospital to obtain a referral when, as he has submitted,

they had no facility for this purpose of treating a cerebral condition that required angiography and associated treatment. However, the circumstances and choices that led the applicant to select KD Ambani Hospital for this procedure are unclear nor whether such a choice was forced on him by the doctors of Indo-American hospital. What remains as an available document for scrutiny are the bills for the claim of Rs.9,20,899/- as billed by the KD Ambani Hospital, Andheri.

9. In this regard, the settled legal position has been established by the rulings of the Hon'ble Apex Court in the case of Shiva Kant Jha Vs. Union of India (Supra) and are extracted below:

"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 settled legal position that the Government employee during his life time or after 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."

10. In that case, after granting full reimbursement of the writ petitioner, the Hon'ble Apex Court directed the formation of a Secretary-level, high-powered Committee for grievance redressal of such cases and the retired pensioners. Adopting the same strategy, this Tribunal in OA No.2018/2016 decided on 30.11.2018 considered the case of an applicant who had left Sub-Arachnoid Haemorrhage (LSAH) and directed the Railway Authorities as follows:

"9. The case of the railway employee, in the case of the railway administration where the respondent in the present matter, an organisation which is an autonomous organisation of the Government of India, falls within

the similar category as with government servants who take the privileges of medical attention from the Central Government Health Scheme. Therefore, it would be, but natural that any rulings of the Hon'ble Apex Court are applicable mutatis mutandis to the respondents. The scheme advised by the Hon'ble Apex Court would take into account a number of volunteered features of the circumstances of the emergency, the access available to the patient and the alternative options available for the patient including the issues relating to relevance and reasonableness of the charges raised by the concerned hospital to the patient and which has been directly paid by the patient in question. The rulings also balances the outcome of this examination that the interest of the exchequer to ensure that the public interest is served in the best manner possible. In this regard, the Hon'ble Apex Court also records the affidavit filed by the Union of India in which it was state that CGHS patients occasionally received reimbursement from two sources viz. Insurance Company and CGHS and the claims over and above the settlement by Insurance Company was made by the CGHS.

10. In the circumstances, it is considered appropriate to direct respondent no.1 to create a Committee at the National level and at the level of each Zonal Railways, suitably formed and equipped with relevant powers including administrators, accountants and specialists to ensure monthly meetings and to dispose of claims within 7 days. The respondent

no.1 is accordingly directed to form these Committees within a period of one month and, in the case of applicant's claim to consider the claims within a period of two weeks thereafter and to reimburse his dues for which he has also provided at the final hearing, a detailed break up of the bills."

11. The decision in that OA for creating an institutional mechanism to promptly examine and decide cases such as and including the applicant shall apply to the present OA as well. The respondents are, therefore, directed to form the said Committee within four weeks and dispose of the case of the present applicant on priority within ten days and communicate their final decision to the applicant within a week thereafter. The respondents shall do well to adhere to the time schedule set out.

12. This OA is accordingly allowed as in the above directions and without any order as to costs.

(R.Vijaykumar)
Member (A)

V.