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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO. 1023/2003

New Delhi, this the 20th day of July, 2004

HON'BLE MR. SARWESHWAR JHA, MEMBER (A)

Shri H.C. Bhandari,
Retired Sr. Section Officer (Accounts),
Northern Railway,
Baroda House, New Delhi
(By Advocate : Shri B.S. Mainee)

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Applicant

Versus

Union of India : Through

1. Director General Health Services,
Ministry of Railways,
Rail Bhawan, New Delhi
2. Chief Medical Director,
Northern Railway,
Baroda House, New Delhi
3. Medical Director,
Northern Railway,
Central Hospital, Paharganj,
New Delhi
(By Advocate : Shri Rajinder Khatter)

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Respondents

ORDER (Oral)

By Sarweshwar Jha, A.M. :

The applicant has been denied reimbursement of medical expenses vide the impugned order of the respondents dated 28.8.2002. Hence this OA.

2. The applicant, who retired as a Sr. Section Officer (Accounts) on 31.8.1993 on superannuation availed himself of medical treatment at Escorts Heart Institute and Research Central, New Delhi in January, 2002 after having been advised by the Northern Railway Central Hospital and the Physician there for 'Dobutamine Stress Thallium Test'. Earlier, he had consulted the Northern Railway Central Hospital after having suffered chest pain on 7.12.2001 and further on 8.12.2001 where he was admitted in the ICCU and from where he was discharged on 14.12.2001 after having been prescribed some medicines and with instructions to visit them after two weeks. As a corollary, angiography was conducted on him by the Escorts Heart Institute and Research Centre and thereafter a Coronary Angiography Bypass Graft Surgery (CABG) was performed on him on 7.1.2002.

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He was discharged from the said Hospital on 12.1.2002. The applicant has claimed that he informed the authorized Medical Attendant Sr. D.M.O., Anand Vihar, Delhi, to further refer him to the Central Hospital, Northern Railway and where some medicines were prescribed.

3. The applicant submitted a claim of Rs.1,81,500/- for reimbursement along with relevant documents including medical record of the Northern Railway Central Hospital and the medical bill issued by the Escorts Heart Institute & Research Centre. But his claim has been rejected on the ground that the applicant did not approach the Railway Hospital before availing himself of the medical treatment at the Escorts Heart Institute. He filed an appeal to the Director General, Health Services, Ministry of Railways on 11.11.2002. His case was also taken up by the recognized Trade Union. This led to a reference having been made to the Escorts Heart Institute and Research Centre to find out whether the case of the applicant was an emergency case. The position in regard to what was conveyed by the Escorts Heart Institute in this regard has been given in paragraph 4.18 of the OA. The respondents, however, have not released the amount even after having received a reply from the Escorts Heart Institute. The applicant has alleged that the impugned order of the respondents rejecting his case is in violation of the rules and law as laid down by the Hon'ble Supreme Court on the subject. He has reiterated his claim, making reference to the fact that several similarly placed cases have been allowed by the respondents. He had laid emphasis on the fact that the law is quite well settled by the various judgements of the Tribunal as well as the Hon'ble Supreme Court that in an emergency when the life of the patient is in danger, Government/Railway Servant is duty bound to save his life by seeking treatment at the appropriate hospital where the requisite facilities are available, without waiting for the approval of the competent railway medical attendant and without waiting for any queue in the Government Hospital.

4. The respondents have, however, not admitted the facts as submitted by the applicant. They are not convinced that the applicant had been admitted for treatment on the first day itself due to emergency. They have argued that day care treatment is given to only those cases where there is no emergency. According to them, the applicant did not follow the advice of the doctor at the Central Railway Hospital regarding Stress Thallium Test on 29.12.2001 and 1.1.2002. The respondents have, however, taken their argument to the extreme when they have said that the applicant purposely acted in contravention of the Doctor's advice when he did not undergo Stress Thallium Test as advised. They have further hypothetically argued that the surgery could have been performed on the applicant if it was a case of emergency on 3.7.2003 itself. This kind of logic in the realm of medical intervention is somehow difficult to appreciate. While the respondents have

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referred to the dates when the applicant availed treatment of different medical attendants, they have stressed the argument to say that there was no essentiality or emergency in the case of the applicant so as to get CABG performed on him in the Escorts Heart Institute and Research Centre. It is quite easy to appreciate that nobody would get a CABG performed on him just for the fun of it. There must have been a need and essentiality for the same.

5. The applicant, in his rejoinder, tried to drive home the point that he went to the Escort Heart Institute and Research Centre and was admitted there on 3.1.2002 whereafter Angiography was conducted on him leading to subsequent C.A.B.G. only when he fell unconscious on 7.1.2002.

6. The learned counsel for the applicant has referred to the decisions of the Hon'ble Supreme Court in the case of Surjit Singh v. State of Punjab & Others as reported in (1996) 2 SCC 336 and has claimed that he had a right to approach the said Hospital to protect his life. It has also been argued that the Writ Petition against the decision of the Tribunal in OA No. 978/2002 has been dismissed by the Hon'ble High Court and, therefore, the decision of the Tribunal as given in regard to medical reimbursement has attained finality and has thus become a law. On perusal of the order of the Tribunal in the said OA, it is observed that the respondents have been directed to reimburse medical expenses to the applicant with simple interest. In the said case also the applicant had received treatment at the Escorts Heart Institute and Research Centre. However, in the said case, the applicant had been duly referred to the said Institute for specialized treatment and the matter under dispute was payment of the actual expenses. Incidentally, the present case is different to the extent that the applicant received treatment at the Escorts Heart Institute & Research Centre without any reference from the competent authority as alleged by the respondents.

7. A reference has also been made to the decisions of the Full Bench of the Tribunal at its Chandigarh Bench in the case of Ram Dev Singh etc. etc. v. Union of India & Ors in OA No.686/HR/1999 and other OAs as passed on 17.3.2003 in which the respondents had been directed to frame a Scheme for reimbursement of medical expenses incurred by retired Govt. employees for indoor treatment. In the said decisions, it had also been observed that till such time the Scheme is not framed, a retired Govt. employee who enrolls himself under CGHS initially but in fact resides in an area not covered under the Scheme will not be entitled to claim reimbursement immediately. This does not appear to be the issue in the present case. The learned counsel for the applicant has also referred to the Ministry of Railways (Railway Board)'s letter dated 23.11.2000 in which clarifications

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have been issued that the medical bills as submitted by the beneficiaries of private medical attendants need to be scrutinized by the Zonal Railways with a view to their admissibility and who should recommend only the amount that could have been charged by the Govt. Hospital/Railway Hospital from non-Railway patients or the expenditure of Railway recognized Hospital in such non-referred cases depending on merits of clinical compulsion. The letter lays emphasis on better appreciation of the claims to avoid further litigation.

8. The learned counsel for the respondents have cited the following decisions in support of their contentions:

- i) State of Punjab & Ors. Vs. Mohan Lal Jindal {2002 SCC (L&S) 189 } in Civil Appeal No.5206 of 1998 decided on 26.10.1998 in which it has been held that medical reimbursement is allowed only on AIIMS Hospital rates. It has also been held in the said case that respondent's representation on compassionate grounds in respect of reimbursement of additional amount permitted to be considered by appellant authorities on merits.
- ii) OA No.2516/2002 decided by the Principal Bench of this Tribunal on 14.7.2003 in Nirupam Pahwa vs. Union of India & Others, in which, among other things, it has been held that "Applicant seems to have chosen the private hospitals for treatment of his wife as he wanted her to be treated by certain doctors who were working for the private hospitals chosen by the applicant for treatment of his wife." Accordingly, finding no merit in the case, the OA was dismissed.
- iii) CWP No.6717 of 1999 decided on 1.5.2002 by Delhi High Court in the case of M.L. Kamra vs. Lt. Governor & Ors reported at 2003 AISLJ (Vol.III) 304 in which medical reimbursement for treatment from a private unrecognized hospital was not allowed as it is not permitted by rules. The request made for reimbursement of the amount as admissible at the authorized hospital rate was also not accepted for the reason that it would open flood gates of demands.
- iv) In another decision as given by the Hon'ble Supreme Court in Civil Appeal of 1999 decided on 22.1.1999 in Secretary, Irrigation & Power, Govt. of Punjab & Ors. V. Surjit Singh {(1999) 9 SCC 219} held that medical reimbursement be made at AIIMS rates has been accepted.

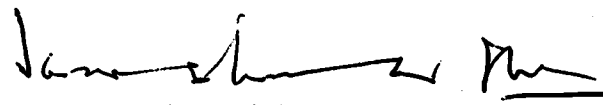
9. On careful perusal of the decisions of the Hon'ble Apex Court and also the Tribunal in different cases as have been relied upon by the respondents, it is thus observed that private medical attendance as availed by the applicants in private hospitals, which are

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generally recognized for the purpose, has been reimbursed at the AIIMS rates/approved rates and it has been clearly held that the policy laid down on the subject cannot be sought to be changed as it will open the flood gate of such demands. While the cases which have been referred to by the respondents to support their contention not to allow medical reimbursement in the case of the applicant on the basis of there being no emergency or essentiality in the case of applicant are not squarely relevant to the case of the applicant, the fact remains that in the cases referred to by them, medical reimbursement had been allowed at the AIIMS rates/Govt. approved rates, whereas in the present case reimbursement of medical expenses has not been allowed. While I do not appreciate the argument of the respondents that there was no emergency in the case of the applicant forcing him to get C.A.B.G. performed on him in the Escorts Heart Institute & Research Centre, I strongly feel that no one would like to have surgery performed on him without there being an essentiality for the same. In the present case, the Escort Heart Institute is a recognized institution for the Central Government employees when an employee is referred to this Institute by the competent authority. But there have been numerous instances where there has been no time to seek reference to the Institute and the employees have gone ahead with treatment at the said Hospital and reimbursements have been allowed at the AIIMS rates/approved Govt. rates. It would, therefore, be quite reasonable and rational to allow the same dispensation to the applicant.

10. Under these circumstances and after having heard the learned counsel for the parties, I partly allow this OA with a direction to the respondents to consider the request of the applicant for reimbursement of medical expenses as sought by him at the rates of the AIIMS, as directed by the Hon'ble Apex Court and the Tribunal in some other cases as cited and mentioned above. The respondents are further directed to complete the exercise in the matter within a period of three months from the date of receipt of a copy of this Order.

11. With the above directions, the OA stands disposed of.


(Sarweshwar Jha)
Member (A)