

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Dated: This the 07th day of November 2019

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER – J

Original Application No.330/00623 of 2016

Smt. Sobha Rani Rajvanshi aged about 70 years, W/o Shri A.P. Rajvanshi Resident of 174/8 New Mehdauri, Teliarganj, Allahabad.

..... Applicant

By Adv: Shri Swayamber Lal/Shri I.C Mishra

V E R S U S

1. Bharat Sanchar Nigam Limited through Chief Managing Director (BSNL), B- 148 Statesman House New Delhi 110001.
2. Chief General Manager, Tele Com (BSNL) CGMT House, U.P East Telecom Circle, Hazratganj, Lucknow 226601.
3. General Manager, Telecom District (BSNL) C.T.O. Building, Nawab Yusuf Road, Allahabad 211001.

..... Respondents

By Adv: Shri Rishi Kant Singh

O R D E R

1. The present O.A. has been filed by applicant Smt. Sobha Rani Rajvanshi seeking following reliefs:-
"(i) To issue a writ, order or direction in the nature of mandamus directing the respondents to pay the reimbursement claim submitted to the respondents amounting to Rs.131,374/- along with interest @ 18% p.a. from the date of submission of the claim to the date of actual payment.

- (ii) to issue another writ, order or direction in favour of the applicant as deem fit and proper in the circumstances of the case.
- (iii) Award the cost of application in favour of the applicant".

2. Case of applicant Shobha Rani Rajvanshi is that she superannuated from the respondents department (B.S.N.L.) on 31.1.2006. Her husband A.P. Rajvanshi while visiting Gurgaon developed serious stomach illness on 26.10.2013 and admitted in the nearest hospital 'Medanta The Medicity Global Health Private Limited Gurgaon' in emergency. Applicant accordingly informed A.G.M. (Administration), B.S.N.L. Allahabad vide application dated 26.10.2013 (Annexure A-1). The said A.G.M. on receipt of aforementioned application, wrote letter dated 12.11.2013 (Annexure A-2) to respondent No.2. Applicant paid the medical charges of her husband amounting to Rs.131374/- and submitted the medical claim (Annexure A-3) to respondent No. 3 in March 2014 for reimbursement.

3. It is the further case of applicant that despite lengthy correspondence, the respondents did not disburse the medical claim and on filing application under R.T.I. she was informed by the Information Officer vide letter dated 15.2.2016 that as per letter No. Medical Cell/M-1/Indoor/Medical Bill/Smt./Shobha Rani Rajvanshi, Sr. T.O.A Allahabad/05/02 dated 14.08.2015 received from Assistant Director (Medical), Office of CGM, BSNL East U.P Telecom Circle Lucknow, the claim is not payable under BSNL, M.R.S Guide Lines (Annexure A-11). It is the case of applicant that the treatment took place in the approved hospital, as per, the list of empanelled private hospital in Delhi/N.C.R. (Annexure A-13) and that her claim for medical reimbursement has been illegally and arbitrarily denied by the respondents. Hence, the present O.A.

4. It be noted that nobody appeared on behalf of respondents when the case was fixed in the Court on 08.10.2019. Nobody appeared on behalf of respondents on the next date i.e. 31.07.2019 when it was directed that the case be listed for hearing as the pleadings are complete. On the next date i.e. 23.09.2019 nobody was appeared for the respondents and the case was fixed for 25.09.2019 for

appearance of the respondents and it was made clear that if nobody appears on behalf of respondents, proceedings under Rule 16 of C.A.T., Rules 1987 would be resorted to. On the next date i.e. 25.09.2019, nobody appeared for the respondents and as per order dated 23.09.2019 argument of applicant's counsel was heard and case reserved for orders for being decided on merits.

5. Respondents filed their counter affidavit wherein specific plea has been taken that husband of applicant was suffering from right upper abdominal pain since 6/7 months, as such, it was not a case of emergency. It is further averred in the counter affidavit that payment has been made as per M.R.S. Guidelines and C.G.H.S. rates vide letter dated 11.7.2017 (Annexure CA-1). Though the husband of applicant has been treated in a private non-empanelled hospital, payment has been made as per C.G.H.S. rates.
6. In the rejoinder affidavit, it has been averred that due to the severe ailment, husband of applicant was admitted in the said hospital in emergency, which has been referred to by the doctor of the hospital (page 32 of the O.A.). The deduction made from the medical claim filed by the applicant is not permissible under rule and the respondents have not given any justification for the said deduction which is arbitrary and that applicant is entitled to reimbursement of full medical claim made by her, as per Rule 3 (vii) of Reimbursement of Medical Claim for Retired Employees of B.S.N.L.
7. I have heard and considered the argument of learned counsel of the applicant only and gone through the pleadings of the parties.
8. During the course of hearing both the counsel reiterated the averments made by them in their respective pleadings. Learned counsel for the applicant further referred to the following judgments in support of her case:-
 - I. Smt. Rekha Saxena v/s Union of India, 2006 (3) ATJ 50
 - II. Manharlal v/s Union of India, 2014 (1) ALSLJ 98
 - III. Dr. G.P.Srivastava v/s Union of India, 1997 (2) ATJ 200
 - IV. Union of India v/s M.A.Haque, 2016 (20 ALSLJ 36

9. The limited question in the present O.A. is whether applicant is entitled to reimbursement of the total expenditure incurred by her in the medical treatment of her husband in a non-empanelled hospital on account of emergency treatment.
10. It is settled legal proposition that if treatment is taken from non-empanelled hospital in emergency the expenses incurred be reimbursed in full or otherwise to the extent as permissible under the Rules on the subject. However, if the treatment taken is not in emergency, the same has to be dealt with in accordance with the rules and instructions on the subject.
11. The decisions referred to by the applicant are confined to the facts of the cited cases only and based on the fact that patient was taken to hospital under emergency conditions for survival of her husband life and there was no option left with her at the relevant time. The question a begging in the present case is whether the petitioner was taken to the hospital under emergency conditions and there was no other option but to go to the non-empanelled hospital.
12. In the aforesaid context, it has been submitted by learned counsel appearing for the applicant, that the medical claim was raised by the applicant in accordance with the rules, and the respondent BSNL acted illegally and arbitrarily in making part payment of Rs.20950/- as against the applicant's total claim of Rs. 131374/- and in disallowing the balance amount without any rhyme or reason. Therefore, the respondent-BSNL should be directed to make payment of the balance amount of medical claim with interest, as prayed for in the O.A.
13. On the other hand, as per the case set up by the respondents, in their counter affidavit is that the applicant has been given the medical claim, as per, CGHS package even though the treatment was taken in a non-empanelled hospital. Based on the averments made in the present O.A. and the medical report (page 32 of the OA) filed by the applicant, the case of respondents as coming out in the counter affidavit is that on the own showing of the applicant, her husband was having medical problem since last 6/7 months, and

therefore, should have taken immediate medical treatment in the panel hospital of CGHS and not wait for the emergency to happen since the medical problem was known to the applicant and after all, applicant or her husband are not illiterate persons and know fully well that the seriousness of the medical condition, which could occur at any moment and since medical facility is available in Allahabad itself.

14. This Court also perused the discharge summary issued by the said Medanta hospital (pages 32 of the paperbook) to see whether it was a case of emergency for the patient to have an operation or not and found that nowhere it is written that the applicant was admitted in emergency condition. The relevant part of Discharge Summary reads as :

"Medical History & Presenting Complaints

: Presented to emergency with complaints of on and off right upper abdominal pain since 6/7 months and a swelling in left groin since 3 months which bulges out in coughing and abdominal straining and reduces itself on lying down.

No h/o fever/jaundice/constipation

Diagnosed with symptomatic gallstone disease on ultrasound abdomen examination of swelling s/o left reducible indirect inguinal hernia

PMHx-Hypertension, on medical management

PSHx-Nil

Admitted here for cholecystectomy and surgical repair of hernia".

15. The judgments relied upon by the applicant in support of her claim is not of any help to her as the same pertains to the case in which the petitioner took treatment in emergency condition, which is not the case in hand.

16. So, the facts of the case would show that the patient was having the medical symptoms for the last 6/7 months for which he suo moto got admitted to a non-empanelled hospital as an indoor patient and has

not been able to show on what basis/medical advice he went to a non-empanelled hospital. Accordingly, he has not been able to show any emergency or any medical advice of empanelled hospital for seeking treatment in a non-empanelled hospital. Accordingly, this treatment cannot be held to be coming within the category of emergency. Quite clearly, the respondents have reimbursed all medical expenses as per the entitlement of applicant and I do not find either any adequate reason given by the applicant for going to non-empanelled facility for treatment and hence, as there was no emergency, the said medical reimbursement has been done as per rules and instructions on the subject.

17. In view of the above facts and circumstances of this case, this Court does not find any illegality in the impugned order and it is not liable to be interfered with. Accordingly, the present OA is dismissed being devoid of merit. There shall be no order as to costs.

(RAKESH SAGAR JAIN)

Member (J)

Manish/-