

(2018) 10 CAT CK 0141
In the Central Administrative Tribunal
Case No : Original Application No. 798 Of 2016

Ambika Prasad Singh

APPELLANT

Vs

General Manager, Northern Railway And Ors

RESPONDENT

Date of Decision : 04-10-2018

Acts Referred:

Citation : (2018) 10 CAT CK 0141

Hon'ble Judges : Nita Chowdhury, Member (A)

Bench : Single Bench

Advocate : S.K. Das, Rahul Pandey

Final Decision : Dismissed

Judgement

1. The applicant has filed this OA seeking the following reliefs:-

"A. quash the impugned order dated 19.02.2015 (Annexure:A-1) and dated 25.03.2014 (Annexure:A2) declaring the same to be illegal and unsustainable both on facts and law;

B. pass an appropriate order directing the Respondents particularly the Respondents particularly the Respondent No.2 to pay to the Applicant the balance amount of his claim for reimbursement which has been rejected by the impugned order along with the subsequent claim for medical reimbursement of the expenses incurred post-surgery by the Applicant; and

C. award cost of the present litigation to the Applicant as he has been compelled by the Respondents to approach this Hon'ble Tribunal; and

D. pass such further or other orders as may be deemed fit and proper in the facts and circumstances of the case and also in the interest of justice."

2. Brief facts of the case, as stated by the applicant, are that he applicant is a retired Assistant Financial Adviser of the respondents- Northern Railway. On 27.12.2012, he went to the OPD, Northern Railway Central Hospital, New Delhi

complaining about his problem in urination. Thereafter despite treatment given in the hospital, the situation aggravated resulting in complaint of stoppage of urination and therefore he rushed to the clinic of a doctor situated near to his resident for immediate medical relief/assistant on 1.3.2013. Thereafter on 24.3.2013, he consulted in Balaji Hospital situated near to his residence because of emergency and the doctor recommended biopsy of his prostate. On 2.4.2013, the applicant went to the Northern Railway Central Hospital for Biopsy of his prostate and because of lack of facility, he was advised to get the Biopsy done from M/s Dewan Chand Diagnostic Imaging Centre, K.G. Marg, New Delhi. Thereafter on 5.4.2013, the applicant gone to the said Diagnostic Centre, where MRI was done but biopsy was not done due to non-availability of doctor. On 10.4.2013, applicant contacted Sir Gangaram Hospital, New Delhi for the biopsy and the same was done. On 12.4.2013, report of biopsy was made available to him, which revealed suspected prostate cancer at an advanced stage. Thereafter on 13.4.2013, the applicant consulted the doctors in Northern Railway Hospital, who after seeking the Biopsy report advised surgery of the prostate. Applicant went through the Bone scanning process as per the advice of the doctor on 17.4.2013 and the same revealed spreading of cancer to other parts of the prostate. On 20.4.2013, the case of the applicant was referred to AIIMS and the doctors over there asked the applicant to come on 22.4.2013. On 22.4.2013, the applicant was examined in the OPD of Urology Department of AIIMS and was advised to get the slides from Sir Gangaram Hospital for further examination in its pathology department. The doctors also advised surgery to be done 6 weeks thereafter. On 24.4.2013, because of emergency, applicant went to Sir Gangaram Hospital and on 28.4.2013, the applicant got admitted to Sir Gangaram Hospital as an indoor patient on the basis of advice tendered by the doctors for immediate surgery of the prostate to check the spreading. On 29.4.2013, surgery was done. The applicant was discharged on 2.5.2013 from the said hospital. On 13.8.2013, after his recovery, the applicant submitted bills for reimbursement of medical expenses of Rs.2,61,968/-incurred in the surgery of prostate.

2.1 On 20.8.2013, the claim of the applicant was rejected by the Chief Medical Superintendent, Divisional Railway Hospital, Delhi.

2.2 Applicant submitted his appeal on 6.9.2013 against the said rejection order dated 20.8.2013 to the Chief Medical Director, HQ, Baroda House, New Delhi and on 5.2.2014 the applicant submitted appeal to respondent no.2 against the decision of respondent no.3. On appeal of the applicant, respondent no.2 gave its approval for reimbursement of Rs.1,58,625/- out of the total claim amount of Rs.2,61,968/- on 5.2.2014. However, communication to this effect was received to the applicant on 25.3.2014. Thereafter on 17.4.2014, the applicant submitted a representation to the respondent no.2 claiming balance amount of the total reimbursement claimed by him. He also visited on 17.4.2014 and subsequently but without any result. However, he was told that no further reimbursement would be paid to him.

2.3 Feeling aggrieved by inaction of the respondents on his aforesaid representation, the applicant filed OA 231/2015 before this Tribunal and this Tribunal disposed of the same vide Order dated 19.1.2015 with the following directions:-

"4. In the circumstances, this OA is disposed of at the admission stage itself without going into merits of the case, but with a direction to the respondents to consider the aforesaid representation (Annexure A7) dated 17.4.2014 and pass appropriate speaking and reasoned order thereon within a period of 60 days from the date of receipt of a copy of this order. There shall be no order as to cost."

2.4 Pursuant to aforesaid Order of this Tribunal, respondents have passed the order dated 19.2.2015 rejecting the claim of the applicant which is impugned in this OA. The applicant alleges that respondents have failed to meet the points raised in the representation dated 17.4.2014; the impugned order is nothing but repetition of earlier order dated 20.8.2013 passed by the respondents; said surgery in a private hospital was not considered to be an emergent one, but this is contrary to Railway Board circular; the impugned order is mechanical and cryptic order; and the action of the respondents is arbitrary and discriminatory while assessing the genuine grievance of the applicant who because of fear of spreading of cancer to other parts of his body and acting bonafide on the advice of the doctors treating him, agreed for surgery of his prostate in private hospital as there was some emergency.

3. Pursuant to notice issued to the respondents, they have filed their reply in which they stated that at the time of admission as per Sir Ganga Ram Hospital records, patient was admitted on 28.4.2013 when his physical condition was within normal limits with B.P. (Blood Pressure) - 110/80, Pulse - 80 per minutes. Patient was admitted as a planned case for robotic prostatectomy. As per the records presented by the applicant on 24.4.2013, patient had been shown to a private practitioner. The medical examination slip of Dr. Arun Mohanty shows that the patient condition on that day was stable with B.P. 120/80. Patient's condition was such that he did not need any urgent indoor admission or management.

3.1 They further stated that the claim of the applicant was rightly rejected on the ground that the said surgery was a planned surgery and there was no emergency inconsonance with Railway Board Policy No.2005/1-1/6-4/Policy-II dated 31.01.2007 (Annexure R-2). However, the case was reviewed sympathetically by the competent authority, i.e., Chief Medical Director, Northern Railway and the reimbursement claim recommended and was calculated at CGHS rates as per the Railway Board Policy dated 31.1.2007. This policy clearly states that reimbursement should be made at CGHS rate of that city or nearest city. The CGHS (Central Govt. Health Scheme) approved rates are to be recommended/processed as an upper limit for sanction. On the basis of Railway Board Policy, the reimbursement amount was calculated as Rs.1,58,620/- out of claimed amount of Rs.2,61,968/-. Accordingly, the amount of Rs.1,58,620/- was reimbursed to the applicant.

3.2 They further stated the OA 231/2015 filed by the applicant was disposed of by this Tribunal vide Order dated 19.1.2015 and in compliance of the said Order, the respondents have passed the order dated 19.2.2015, which is impugned in this OA by the applicant.

4. In the rejoinder filed by the applicant, he has reiterated the averments made by him in his OA.

5. Heard learned counsel for the parties and perused the material placed on record.

6. During the course of hearing both the counsel reiterated the averments made by them in their respective pleadings. However, counsel for the applicant further referred to the judgment of the Hon'ble Supreme Court in the case of Writ Petition (Civil) No.694/2015 (Shiva Kant Jha vs. Union of India) decided on 13.4.2018 in support of his claim.

7. It is admitted fact that on the basis of Biopsy report submitted by the applicant to the Northern Railway Hospital, which referred the applicant to AIIMS on 20.4.2013 and the doctors over there asked the applicant to come on 22.4.2013. On 22.4.2013, the applicant was examined in the OPD of Urology Department of AIIMS and was advised to get the slides from Sir Gangaram Hospital for further examination in its pathology department. The doctors also advised surgery to be done within 6 weeks thereafter. On 24.4.2013, applicant went to Sir Gangaram Hospital and on 28.4.2013, the applicant got admitted to Sir Gangaram Hospital as an indoor patient on the basis of advice tendered by the doctors for immediate surgery of the prostate to check the spreading and on 29.4.2013 surgery was done. The applicant was discharged on 2.5.2013 from the said hospital. On 13.8.2013, and after his recovery, the applicant submitted bills for reimbursement of medical expenses of Rs.2,61,968/- incurred in the surgery of prostate.

8. This Court also perused the discharge summary issued by the said Sir Gangaram Hospital (pages 131-132 of the paperbook) and found that nowhere it is written that the applicant was admitted in emergency condition. 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. The respondents have reimbursed the amount to the applicant to the extent as stated in the impugned order, which reads as under:-

"Scrutiny statement has been prepared accordingly and cancer surgery charges category IV were recommended in accordance with policy No. MH&FM-OM No. RCE 1/2008/JD/(GRC)/CGHS/(P) dated 12.09.2011 (Copy attached). These rates were for surgery charges + Anaesthesia charge and OT charges. No deduction was made from these rates as claimed was entitled to Semi Private Ward

charges. Investigation charges were given as per CGHS rates. Medicine and Medical consumable charges were given after deduction of the cost of non-reimbursable item. All bills pertaining to investigation, procedures and Medicine before the above mentioned treatment period i.e. 28.04.13 to 02.05.13 were rejected on the ground that they could have been carried out at or through MD/NRCH/NDLS. New Delhi."

9. The judgment of the Hon'ble Supreme Court in the case of Shiva Kant Jha (supra) relied upon by the applicant in support of his claim is not of any help to him as the same pertains to the case in which the petitioner took treatment in emergency condition, which is not the case in hand. It is further mentioned that on the basis of Biopsy report submitted by the applicant to the Northern Railway Hospital, which referred the applicant to AIIMS on 20.4.2013 and the doctors over there asked the applicant to come on 22.4.2013. On 22.4.2013, the applicant was examined in the OPD of Urology Department of AIIMS and was advised to get the slides from Sir Gangaram Hospital for further examination in its pathology department. The doctors also advised surgery to be done within 6 weeks thereafter. However, the applicant never went back to AIIMS after 22.4.2013 and neither sought any further treatment in AIIMS, which is one of the most reputed medical centre in India.

Instead on 24.4.2013, 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 AIIMS or any other 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 his entitlement 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.

10. 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.