
(2019) 08 RAJ CK 0330
In the Rajasthan High Court
Case No : Civil Writ Petition No. 625 Of 2019

Madan Mohan Purohit

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 20-08-2019

Acts Referred:

Citation : (2019) 08 RAJ CK 0330

Hon'ble Judges : Sangeet Lodha, J;P.K. Lohra, J

Bench : Division Bench

Advocate : Anirudh Purohit, Vijay Kumar Vyas

Final Decision : Allowed

Judgement

1. By way of this writ petition, the petitioner has questioned legality of order dated 30.10.18 passed by the Central Administrative Tribunal, Jodhpur Bench, Jodhpur ('the Tribunal'), whereby the original application preferred by the petitioner questioning the legality of the action of the respondents in rejecting his claim for medical reimbursement, has been dismissed.

2. The facts relevant are that the petitioner, a retired employee of respondent-Railway, opted for availing the medical facilities for himself and for his wife free of cost throughout his life, by depositing a month's salary. The petitioner's wife suffering from knee joint pain, was advised for total knee replacement by the doctors of Railway Hospital, Jodhpur. The Railway Hospital, Jodhpur is not equipped for performing the surgery of total knee replacement. The Chief Medical Superintendent referred the petitioner's wife for investigation and other ancillary purposes to the Railway Hospital, Jaipur. On account of unavoidable circumstances, the petitioner's wife did not undergo the treatment of her knee joint pain at Railway Hospital, Jaipur. The condition of the petitioner's wife deteriorated and she was not able to walk and therefore, she undergone surgery at Krishna Shalby Hospital, Ahmedabad, which is known for specialized treatment of orthopaedic surgery. She was admitted to the hospital on 25.3.16; undergone

operation on 26.3.16 and was discharged from the hospital on 1.4.16. The petitioner submitted the claim for reimbursement of admissible expenses incurred for treatment of his wife alongwith necessary documents duly signed by the Medical Officers. The claim of the petitioner was rejected by Chief Medical Superintendent, North Western Railway, Jodhpur Division, Jodhpur, vide order dated 3.8.16, stating that total knee replacement is a planned surgery and therefore, the emergency having not been established, the claim made cannot be reimbursed.

3. Aggrieved by the order dated 3.8.16 issued by the respondents as aforesaid, the petitioner preferred an original application before the Tribunal, which has been dismissed by the order impugned. Hence, this petition.

4. Learned counsel appearing for the petitioner contended that the controversy involved in the present writ petition is squarely covered by a decision of this court dated 6.4.18 rendered in .B.C.Writ Petition No.962/14 "N.K.Khandelwal vs. Union of India & Ors.", wherein in identical fact situation, this court disposed of the writ petition directing the respondent to reimburse the petitioner therein such amount as would be reimbursable as per CGHS rates. Learned counsel submitted that even if entire claim as made by the petitioner cannot be reimbursed, then too, the petitioner cannot be denied the reimbursement of the claim which is reimbursable as per the CGHS rates.

5. On the other hand, the counsel appearing for the Railway submitted that without there being any emergency situation, keeping in view the circulars issued by the Railway, the Tribunal was absolutely justified in upholding the order issued by the competent authority, rejecting the claim of the petitioner.

6. We have considered the submissions of the learned counsel for the parties and perused the material on record.

7. Indisputably, the petitioner, a retired employee of Railway, is entitled to claim reimbursement of medical expenses incurred for total knee replacement surgery of his wife, as per the scheme of medical reimbursement notified, however, his claim for reimbursement has been rejected solely for the reason that the conditions wherein the petitioner's wife undergone the surgery at Krishna Shalby Hospital, Ahmedabad, is not covered by emergent situation as specified.

8. In 'Shiv Kant Jha vs. Union of India' AIR 2018 SC 1975, the Supreme Court while discussing the approach to be adopted by the Government in the matter of reimbursement of medical claim of the Government employees during their lifetime and after retirement, observed:

"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. Speciality 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 Speciality 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." (emphasis added)

9. In N.K.Khandelwal's case (supra), where the medical claim of the petitioner therein for his aging wife, who was under medical treatment at the Railway Hospital, Jodhpur and had undergone surgery at Shalby Hospital, Ahmedabad, was rejected by the Railway on the ground that it was not a case of emergency, a Bench of this court relying upon Railway Board Policy No.2005/H/6-4/Policy-II, dated 31.01.2007, issued directions to the respondent to reimburse the petitioner such amount as would be reimbursable as per CGHS rates.

10. A similar view is taken by this court in the matter of 'Shri Shiv Ratan Sharma vs. The Chairman and Managing Director, Bharat Sanchar Nigam Limited & Ors.' (D.B.C.Writ Petition No.18553/18), decided on 29.7.19.

11. In the considered opinion of this court, even if the emergent situation for the petitioner's wife undergoing surgery at the Krishna Shalby Hospital, Ahmedabad, was not established, the respondent-Railway was not justified in rejecting the claim to the extent of the claim at CGHS rates applicable for a particular hospital recognized by the Railway. In this view of the matter, the writ petition deserves to be allowed.

12. In the result, the petition succeeds, it is hereby allowed. The order impugned dated 30.10.18 passed by the Central Administrative Tribunal, Jodhpur Bench, Jodhpur is set aside. The order dated 3.8.16 issued by the respondent no.3, rejecting the medical reimbursement claim of the petitioner is quashed. The respondent-Railway is directed to reimburse the medical claim of the petitioner as would be reimbursable as per CGHS rates. The amount payable to the petitioner in terms of the directions issued by this court as aforesaid, shall be paid within a period of six weeks from today, failing which the amount payable shall carry interest @ 6% per annum. No order as to costs.