

(2018) 07 BOM CK 0120
In the Bombay High Court
Case No : Writ Petition No. 598 of 2017

Subhash Agarwal

APPELLANT

Vs

Chief Medical Director (Cmd) And Ors

RESPONDENT

Date of Decision : 25-07-2018

Acts Referred:

Citation : (2018) 07 BOM CK 0120

Hon'ble Judges : V. K. TAHILRAMANI, J;M. S. SONAK, J

Bench : Division Bench

Advocate : Seema Sarnaik, A. S. Tamhane, Suresh Kumar

Final Decision : Dismissed

Judgement

[1] Heard the learned counsel for the parties.

[2] Rule. With the consent of and at the request of the learned counsel for the parties, Rule is made returnable forthwith.

[3] The challenge in this petition is to the judgments and orders dated 28th August 2014 and 15th June 2016 made by the Central Administrative

Tribunal (CAT) dismissing Original Application No. 511 of 2012 and Review Petition No. 51 of 2014 seeking for reimbursement of an amount of

Rs.8,28,111/- towards medical expenses incurred by the petitioner on account of his wife's treatment at the Jaslok Hospital, Mumbai.

[4] Ms Sarnaik, the learned counsel for the petitioner submits that in the present case, there is no serious dispute that the treatment which the

petitioner's wife availed at Jaslok Hospital was not available at the Railway Hospital. She submits that there is also no dispute that Jaslok Hospital is

one of the private hospital recognized by the Railways for taking treatment. She submits that 'real emergency situation' had arisen in the matter and

therefore, in terms of, Railways own reimbursement of medical expenses policy dated 31st January 2007, the petitioner was entitled to undertake

medical procedures in respect of his wife at the Jaslok Hospital and there was no justification whatsoever on the part of the respondents in refusing to

reimburse the amounts expended by the petitioner for such treatment. Ms Sarnaik submits that the view taken by the CAT is too technical and ignores

railway's policy dated 31st January 2007. For all these reasons, she submits that the impugned judgments and orders warrant interference.

[5] Mr. Suresh Kumar, the learned counsel for the respondent submits that the petitioner's wife was diagnosed with her ailment on 15th April 2010.

The so-called emergency procedure at Jaslok Hospital was undertaken only on 6th August 2010. In such circumstances, the CAT, has correctly held

that this was not a case of 'real emergency situation'. Mr. Suresh Kumar points out that the petitioner had in fact accepted the medical reimbursement

at admissible rates as if the treatment was taken at Railway / Government Hospital. He submits that now it is not open to the petitioner to pursue the

present petition. For all these reasons, Mr. Suresh Kumar submits that the present petition be dismissed.

[6] Rival contentions now fall for our determination.

[7] Paragraph 20 of the impugned judgment and order dated 28th August 2014 records the following :

â??20. In the course of hearing, on a query by the Bench, the respondents conceded that the claim for reimbursement can be granted, as per

admissible rates, as if the treatment was done in a Railway / Government hospital. The applicant also accepted the same.â??

[8] There is no dispute that the respondents have in fact reimbursed the petitioner as per the admissible rates, as if the treatment was taken in a

Railway / Government Hospital. No doubt, Ms Sarnaik contended that such amounts were accepted by the petitioner without prejudice to his rights

and contentions in the present petition.

[9] The statement in paragraph 20 of the impugned judgment and order is that the petitioner accepted the proposal for reimbursement at admissible

rates as if the treatment was undertaken in a Railway / Government Hospital. Such a statement, cannot be challenged in writ courts. Ms Sarnaik

however points out that a review petition was instituted before the CAT. From the

perusal of the review petition, it is clear that there is no statement made on an affidavit or otherwise to the effect that the petitioner had never accepted that he be paid at admissible rates, as if the treatment was undertaken at a Railway / Government Hospital. In paragraph 4 of the Review Petition, all that is stated is that the petitioner had acceded to the fact that expenses can be reimbursed on the basis of Jaslok Hospital rates. This is certainly not a manner in which the solemn statement which is recorded in the judgment and order of the CAT can be disputed. In view of what is recorded in paragraph 20 of the impugned judgment and order, ordinarily this petition was required to be dismissed without examination of the petitioner's contentions on merits. However, we proceed to examine the petitioner's contentions on merits as well.

[10] The Reimbursement of medical expenses policy in Railway Board's communication dated 31st January 2007 clearly provides that as per extant

rules, a railway beneficiary must report to Authorized Medical Officer for his / her and dependent's medical treatment. The Authorized Medical

Officer will make necessary arrangements for medical treatment through Railway Hospital / Govt. Hospital / Pvt. Recognized Hospital. In exceptional

situations, CMDs of Zonal Railway can obtain special permission from Railway Board for treatment in any Private Hospital on case to case basis.

Hence, there is no scope available for any railway beneficiary to go to any private hospital himself / herself or their dependants on their own volition,

except in case of real emergency situation. The expression 'emergency' has been defined as :

“Emergency” shall mean any condition or symptom resulting from any cause, arising suddenly and if not treated at the early convenience, be

detrimental to the health of the patient or will jeopardize the life of the patient. Some examples are “ Road accidents, other type of accidents, acute

heart attack etc. Under such conditions, when the Railway beneficiary feels that there is no scope of reporting to his / her authorized Railway Officer

and avails treatment in the nearest and suitable private Hospital, the reimbursement claims are to be processed for sanction, after the condition of the emergency is confirmed by the authorized Railway Officer ex-post facto.

In order to establish the emergency condition, following parameters are to be examined on record :-

(a) Admission details :-

(i) Date and time of admission.

(ii) Admitted through OPD service / emergency service.

(iii) Admitted to an ICU bed or general bed or cabin bed.

(b) Clinical findings at the time of admission. Following findings should be made available and critically evaluated :-

(i) Pulse rate.

(ii) B.P.

(iii) Level of consciousness.

(iv) Any convulsive feature.

(v) Urine output.

(vi) Any other feature of shock.

(vii) Body temperature (viii) Extant of external wound

(ix) Extant of active bleeding.

(x) Extant of Chest pain or pain in other part/s of the body.

(c) Types of medical treatment given immediately after admission.

(i) List of Emergency medicines used immediately after admission.

(ii) Type of surgical procedure done immediately after admission.â??

11] In the present case, there is no dispute that though on 15th April 2010, a lump was noticed in certain part of the petitioner's wife's body and

investigation commenced. Upon diagnosis that this was malignant, certain treatment procedures including chemotherapy commenced. These

procedures were undertaken at Breach Candy Hospital, which is admittedly, not even one of the recognized private hospital in so far as railways are

concerned. The last chemotherapy was administered on 13th July 2010. The medical certificate issued by Consultant Onco-Surgeon Dr. R. K.

Deshpande states that when the petitioner's wife was examined on 2nd August 2010, there was over 50% disease bulk reduction. However, in view

of 'superficial skin ulceration and bleeding of the skin she was admitted at Breach Candy Hospital in a semi-emergency situation on 5th August 2010.'

On 6th August 2010 the petitioner's wife was subject to right Modified Radical Mastectomy and discharged on 11th August 2010.

[12] Upon consideration of the aforesaid, the CAT has held that this was certainly not some case of 'real emergency situation' as contemplated in the reimbursement of medical expenses policy dated 31st January 2007. There was ample time available to the petitioner to follow the procedure prescribed in the policy document dated 31st January 2007. The petitioner, who is a senior officer, was aware of this position. Therefore, in the Original Application there are some pleadings to the effect that the petitioner and his wife did visit Jagjivan Ram Hospital (Railway Hospital) but, the doctors verbally advised her to proceed with the treatment at Breach Candy or Jaslok Hospital. The CAT has quite correctly disbelieved this statement in the Original Application. There is a procedure provided in the policy document dated 31st January 2007 and the petitioner, who is the senior officer, cannot claim that he had reported to the Authorized Medical Officer along with his wife and the Authorized Medical Officer, verbally informed the petitioner that his wife may continue with her treatment at Breach Candy Hospital or Jaslok Hospital.

[13] From the material procedure on record by the petitioner himself, including Dr. R. K. Deshpande's certificate, it is clear that this was not a case involving 'real emergency situation'. Even Dr. Deshpande in his certificate relied upon by the petitioner has stated that there was superficial skin ulceration and bleeding of the skin. He has described this condition as 'semi-emergency situation'. In any case, since, the lump was discovered on 15th April 2010 and several procedures were undertaken between 15th April 2010 and 5th August 2010, it cannot be said that the admission and surgical procedures undertaken on 6th August 2010 arose in some real emergency situation. There was ample time to comply with the predicates of the policy document dated 31st January 2007.

[14] Mr. Suresh Kumar pointed out that Railways have no less than 121 hospitals established for the benefit of their employees and family members. He points out that considerable investment has been made not only to establish these hospitals but also to operate them.

[15] In the aforesaid circumstances, we are not persuaded to hold that the view taken by the CAT is in excess of jurisdiction or otherwise warrants interference.

[16] Accordingly, this petition is dismissed. Rule is discharged. There shall be no

order as to costs.