
(2019) 04 RAJ CK 0066
In the Rajasthan High Court
Case No : Civil Writ No. 3565 Of 2019

Union Of India And Ors

APPELLANT

Vs

Jai Singh Sankhla

RESPONDENT

Date of Decision : 09-04-2019

Acts Referred:

Constitution Of India, 1950 — Article 227

Citation : (2019) 04 RAJ CK 0066

Hon'ble Judges : Sangeet Lodha, J;Dinesh Mehta, J

Bench : Division Bench

Advocate : Kamal Dave

Final Decision : Dismissed

Judgement

The petitioners - Union of India and others have preferred the present writ petition under Article 227 of the Constitution of India laying challenge to the orders dated 10.08.2018 and 23.10.2018 passed by the Central Administrative Tribunal, Jodhpur Bench, Jodhpur (hereinafter referred to as 'the Tribunal').

The facts appertain to the present writ petition are that the original applicant, the respondent herein, filed an Original Application before the Tribunal, inter alia seeking quashment of the order dated 24.05.2016. A direction to reimburse the balance of amount of his medical claim, amounting to Rs.23,083/- along with interest, was also sought.

The respondent pleaded in his Original Application (O.A. No.408/2016) that before being superannuated from the post of Male Driver on 31.0.1993, he had deposited one month's salary with his employer towards membership of Central Government Health Scheme (hereinafter referred to as 'the CGHS') and thus, was entitled to the medical facilities for himself and his wife under the scheme.

The respondent asserted in his original application that while going from Merta Road to Pal Balaji Temple, Jodhpur, with his relatives, he suffered severe stomach-ache and became unconscious for which, he was immediately taken to

nearby private hospital, viz., Sri Ram Hospital. Looking to the emergency of his case, he was admitted in Intensive Care Unit on 20.05.2014 and was later diagnosed with Calculous Cholecystitis, commonly known as stones in gall bladder. He was operated successfully and was thereafter discharged on 23.05.2014, upon payment of the hospital charges to the tune of Rs.43,977/-.

The respondent in turn lodged a claim for reimbursement of the aforesaid amount of Rs.43,977/- on 13.06.2015 in prescribed form along with requisite documents.

The petitioner - Department of Railways, however, paid a sum of Rs.20,894/- only to the respondent as against his claim of Rs.43,977/-. On receiving a substantially reduced sum of Rs.20,894/-, the respondent made an application under the Right to Information Act and solicited details of the payment. Pursuant to the application, vide a communication dated 25.05.2016, the respondent was informed that since his case was a non-referred case, the amount has been paid as per the CGHS Rates, as sanctioned by the General Manager.

In response to the original application, filed by the respondent, the petitioners herein filed a reply and pleaded that the medical claim of the respondent was examined by the competent authority and reimbursement of Rs.20,894/- had been made in accordance with law while maintaining that the respondent's demand for full reimbursement of his medical claim was not justified, because as per the policy, if a patient takes treatment in any private hospital, the reimbursement is to be made as per the CGHS Rates only.

The Tribunal, after considering the matter, disposed of the original application vide order dated 10.08.2018 and directed the Railways to re-examine the claim of the respondent and pass appropriate, reasoned and speaking order.

The Railways, petitioner herein, thereafter preferred a review petition for review/recall of the order dated 10.08.2018, which was rejected by the learned Tribunal vide its order dated 23.10.2018. While rejecting the review petition, the learned Tribunal observed that in view of the Office Memorandum dated 06.06.2018, issued by the Ministry of Health and Family Welfare, Government of India, in compliance of the judgment dated 13.04.2018 of Hon'ble the Supreme Court, rendered in the case of Shiv Kant Jha Vs. Union of India [WP(Civil) No.694/2018], the Railways was required to refer the case of the original applicant to the Expert Committee for its recommendation/decision.

Feeling aggrieved with the order dated 10.08.2018, vide which the Original Application filed by the respondent was allowed and so also the order dated 23.10.2018 rejecting their review petition, the petitioners have preferred the present writ petition under Article 227 of the Constitution of India.

Mr. Kamal Dave, learned counsel for the petitioners, vehemently argued that the learned Member of the Tribunal has erred in passing the impugned orders and directing the petitioners to refer the matter to the Expert Committee, as

stipulated in the Office Memorandum dated 06.06.2018.

While inviting attention of this Court towards the above referred Office Memorandum, which has been filed along with affidavit dated 29.03.2019, learned counsel contended that the respondent's case is not covered by the Office Memorandum, as his matter was not sent to the High Power Committee. It was submitted that the respondent got surgery of Gall Bladder in a private hospital, without there being an emergency. While reading the Office Memorandum dated 06.06.2018, he contended that the full reimbursement is allowed only in cases of the diseases mentioned in sub-clause (a) of Clause (2). As the disease of the respondent was not covered in any of the diseases mentioned in sub-clause (a), the respondent was not entitled for full reimbursement, argued Mr. Dave.

It was also asserted that since the respondent's disease was not covered by the Scheme, the department was justified in reimbursing the amount as per the rates prescribed by the Railways and the Tribunal has erred in directing the petitioners to refer the matter to the High Power Committee.

We have heard Mr. Dave, learned counsel for the petitioners, and perused the material available on record.

There is no dispute as far as entitlement of the respondent under the CGHS is concerned. The contentious issue is, as to whether the respondent is entitled for full reimbursement of his claim or partial amount as per the rates prescribed by the petitioners/CGHS or not.

A perusal of the letter dated 24.05.2016, impugned in the present writ petition, reveals that the Chief Medical Superintendent of the Railways informed the respondent that the reimbursement of the medical expenses has been made as per the recommendation of Chief Manager, based on the CGHS Rates, as the case of the respondent-employee was a non-referred case. As against this, a perusal of the respondent's representation and pleadings in the Original Application reveals that he had specifically highlighted the circumstances and the emergent situation for which he had to be operated in a private hospital.

The Office Memorandum dated 06.06.2018, in relation to full reimbursement case, provides following two categories:

- (a) Full reimbursement - Non-HPC (Non-High Power Committee) cases;
- (b) Full reimbursement - HPC (High Power Committee) cases.

As far as full reimbursement of Non-HPC Cases are concerned, they provide that an employee shall be entitled for full reimbursement, even without referring the matter to the High Powered Committee, in certain diseases and situations. We find that even if a case is not covered under sub-clause (a), an employee is entitled to full reimbursement under sub-clause (b), subject of course to the consideration by the High Powered Committee in the following conditions:-

"1. Approval for air-fare with or without attendant on the advise of treating

doctos for treatment in another city even though he is not eligible for air travel/ treatment facilities are available in city of residence.

2. Representations from CGHS beneficiaries seeking full reimbursement under special circumstances.

3. Relaxation of Rules."

A reading of the Office Memorandum makes it explicitly clear that if a case falls under the categories mentioned in sub- clause (a) of Clause (2), the patient shall be entitled to full reimbursement. However, if the case does not fall in the category of sub-clause (a), he still cannot be denied full reimbursement outrightly and the matter is required to be referred to the High Power Committee in the above quoted contingencies enumerated in sub-clause (b) of Clause (2) of the Memorandum.

In the present case, the respondent had sought full reimbursement of his claim inter alia indicating that he had to be operated in a private hospital in wake of emergent situation, arising out of sudden acute pain in his stomach while he was going to visit Pal Balaji Temple of Jodhpur. As per the pleadings, the case of the respondent fell within the ambit of Conditions No.2 and 3 of sub-clause (b) and, hence, his matter was required to be referred to the High Power Committee to ascertain as to whether the emergency existed or not. The Railway Administration has committed an error in rejecting the respondent's claim for full reimbursement on the ground that his case was non-referred case.

While rejecting the review petition filed by the petitioners, the learned Tribunal has required the Railways to refer the case of the respondent to the High Power Committee, constituted vide Office Memorandum dated 06.06.2018.

According to us, the petitioners were also required to refer the case of the respondent for full reimbursement to the High Power Committee, instead of rejecting the same at its own level. Hence, the learned Member of the Tribunal has committed no error of law in rejecting the petitioners' review petition and directing them to refer the matter to the Expert Committee (sic High Power Committee), for its recommendation/decision on the "emergent" case.

In view of discussion aforesaid, the writ petition, being devoid of merit, is dismissed.

In case, the High Power Committee recommends full reimbursement/relaxation of rules, the petitioners shall make reimbursement of the remaining amount within a period of two months from receipt of such recommendation.