

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: July 05, 2013*

+ **W.P.(C) 4153/2013**

UNION OF INDIA & ORS ..... Petitioners

Represented by: Mr.J.K.Singh, Advocate

versus

NAU NIHAL SINGH RANA ..... Respondent

Represented by: None

**CORAM:**

**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**

**HON'BLE MR. JUSTICE V. KAMESWAR RAO**

**PRADEEP NANDRAJOG, J. (Oral)**

CM No.9738/2013

Allowed subject to just exceptions.

W.P.(C) No.4153/2013

1. Having heard learned counsel for the petitioner we are not inclined to interfere with the impugned order.
2. Our reason for so doing.
3. The undisputed position is that having superannuated from service after serving Indian Railways the respondent suddenly suffered a complete loss of vision in his left eye and was diagnosed as a case of '*Retina detachment*'. It required immediate emergent operation. In a state of emergency the respondent went to Sir Ganga Ram Hospital which is not on the panel of Hospitals notified by the Northern Railway and on January 17, 2011 underwent surgical intervention, and we use the language in the medical record by Dr.S.N.Jha who conducted the operation, the same was '*L/E pras plana vitrectomy with 360 degree band buckle with silicone oil*

*injection with endolaser under local anaesthesia*'. As we understand this means after repairing the retina some silicone based oil being injected which required to be removed later on. The doctor concerned issued a certificate explaining the seriousness of the retina detachment and the requirement for an emergency operation and the reason why a normal operating procedure was not followed. As we understand, the reason was that it was not a case of only retinal detachment but one accompanied by a problem requiring sclera buckling. The hospital raised a bill in sum of ₹71,414.57. The respondent had a limited medical reimbursement policy which he had obtained from the Oriental Insurance Company which reimbursed him in sum of ₹33,529/- and thus being a member of the '*Retired Employees Liberalized Health Scheme*' of the Indian Railways, the respondent claimed reimbursement in sum of ₹38,084.00. For unexplainable reasons, and probably the same is an erroneous mathematical calculation by him, the sum of ₹38,084/- claimed towards reimbursement was arrived at by the respondent as : ₹71,413 – ₹33,529 = ₹38,084/-. As against ₹71,414.57 which he had paid to Sir Ganga Ram Hospital the respondent took as having paid ₹71,413/- and subtracted therefrom ₹33,529/- which was received by him by way of Health Insurance Claim from the Oriental Insurance Company.

4. The competent authority of the petitioner was of the opinion that it was not a case of emergency, but later on changed the opinion and conceded to the point that it was a case of emergency. The difference in the two situations being that a member of the Health Scheme in question was not entitled to go to a private hospital and avail medical treatment unless the member was referred to a private hospital by a panel doctor in a hospital established by the Railway authorities. In case of emergency a member of

the Scheme could avail the benefit of medical treatment at a private hospital. Yet in spite thereof the claim was disallowed on the ground that reimbursement had to be as per Government Approved rates, which for retina detachment surgery would be ₹19,300/- and since the respondent had been reimbursed ₹33,529/- by the Oriental Insurance Company with whom respondent had obtained a medi-claim policy, it was opined that as the claim allowed was less than what was obtained as medical reimbursement from the Insurance Company, nothing had to be paid.

5. The Tribunal has noted an Office Memorandum dated February 27, 2004 issued by the Government of India as per which a health scheme beneficiary would not be entitled to full reimbursement under the health scheme if the member had availed a medi-claim benefit. The member would be compelled to raise an insurance claim at the first instance and if the member receives an amount from the insurance company which is less than what the member has incurred towards medical costs, the balance has to be paid from out of the Health Insurance Scheme Fund. Thus, the respondent would be entitled to make a claim for the short amount received by him with respect to medical expenses incurred by him after adjusting the amount which the insurance company paid to him.

6. This would mean that the respondent was entitled to lay a claim in sum of ₹38,084/- from the Railway authorities, who would be obliged to pay such amount as is payable as per their Scheme.

7. It may be true that as per the Scheme the respondent would be entitled to such amount as is payable under the Scheme and this would mean the amount which requires to be reimbursed as per schedule fixed by the Government and since AIIMS is a premier centre for Ophthalmology, we

find rates prescribed towards reimbursement by AIIMS.

8. At first blush there may be merit in the contention advanced by the petitioner that since applying the rates prescribed by AIIMS the reimbursement would be ₹19,300/- the respondent having already received ₹33,529/- from the Insurance company would not be entitled to any further amount, but the argument overlooks the fact that each and every case of retina detachment may not be of the same kind. The certificate issued by Dr.S.N.Jha to which we have made a reference above brings out that it was not a simple case of retinal detachment requiring a simple retinal detachment surgery. It was a case requiring retinal detachment surgery with scalar buckling. This has resulted in extra-expenditure incurred by the respondent. As regards whether it was a case of emergency, the petitioner has accepted the same to be a case of emergency.

9. These are our reasons not to interfere with the impugned order and we highlight that a petty sum of ₹33,529/- is in issue. The respondent is a pensioner and is currently around 70 years of age. The least he is entitled to is peace.

10. The writ petition is dismissed in limine but without any order as to costs.

CM No.9737/2013

Dismissed as infructuous.

**(PRADEEP NANDRAJOG)**  
**JUDGE**

**(V. KAMESWAR RAO)**  
**JUDGE**

**JULY 05, 2013/skb**