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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.3038 of 2002

New Delhi, this the 13th day of October, 2003

HON'BLE MR.KULDIP SINGH, MEMBER(JUDL)

Shri Sunder Lal Manocha
S/o Shri Jawala Das
retired Assistant Postmaster Rohtak
Head Post Office,
R/o House No.930/20 Green Road Shakti Nagar,
Rohtak-I,
Address for service of notices
C/o Shri Sant Lal, Advocate
C-21 (B), New Multan Nagar,
Delhi-110 056.Applicant

(By Advocate: Shri Sant Lal)

Versus

1. Union of India through the Secretary,
Ministry of Communications, Department
of Posts,
Dak Bhawan,
New Delhi-110 001.
2. The Senior Supdt. of Post Offices,
Rohtak Division,
Rohtak-124001.
3. The Chief Postmaster General,
Haryana Circle,
Ambala-133001. -RESPONDENTS

(By Advocate: Shri K.R. Sachdeva)

O R D E R

The applicant has filed this OA under Section 19 of the AT Act, 1985 seeking reimbursement of his medical claims.

2. The applicant had retired as Assistant Post Master and after superannuation settled at Rohtak under an area which is not covered under CGHS scheme. The applicant had availed an option given under orders dated 17.12.1997 issued by the Government and the applicant did exercise his option and he had been in receipt of medical allowance at the rate of Rs.100/- per

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month for day to day medical expenditure.

3. It is not disputed that the applicant had first consulted FGMIS, Rohtak for his heart problem and he was advised to take treatment either from Appolo, Escorts or AIIMS and the applicant had taken such treatment from Escorts and thereafter submitted his claim. His medical claim was returned along with his medical bill as it was stated that the medical bill of the pensioner is not admissible under the Central Services Medical Attendance Rules so the applicant has challenged the impugned order and submitted that this impugned order is illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India but rather it is submitted that the case of the applicant is fully covered under the judgment of the Delhi High Court in the case of Narender Pal Singh Vs. U.O.I. and B.R. Mehta Vs. U.O.I. & Others reported in 1999 (79) DLT 388 and since the applicant is also similarly placed so he is entitled to the benefit of those judgments.

4. It is further submitted that the department had not applied their mind to the facts and circumstances of the present case and had just returned the bill without any application of mind.

5. The respondents who are contesting the OA submitted that applicant has not come with clean hands as he has suppressed the material facts that he had been receiving Rs.100/- per month under the orders dated 19.12.1997, so the question to be examined in this case

is whether the applicant who had retired as an employee of Central Government from the Postal Department and who after his retirement is residing in an area to which the CGHS scheme does not cater; whether entitled to the reimbursement of the medical claim or not. The learned counsel for the applicant has referred to a judgment of Hon'ble Delhi High Court in B.R. Mehta Vs. U.O.I and Others reported in 1999 (79) Delhi Law Times wherein it has been held as follows:-

" Constitution of India, 1950 - Article 226 - Medical Reimbursement : Heart By-Pass Surgery : CGHS Scheme not Operating : No Denial - Contention that petitioner was not covered by CGHS Scheme and not entitled to any reimbursement - Repelled - Government itself framed no regulations or laid any criteria to decide case of pensioner staying in non-CGHS areas - Government not clear with regard to applicability of rules - Authorised Medical Attendant referred matter to Escorts Heart Institute and Research Centre for by-pass surgery at New Delhi - Approval accorded by Directorate General, Health Services, Haryana - Petitioner retired Central Government employee could not be deprived of reimbursement of medical charges incurred for heart by-pass surgery, though did not hold CGHS Card staying in non-CGHS area, Karnal - Serious cases of ailment and accidents - Rules relaxation - Government recognised certain Hospitals including Escorts Heart Institute and Research Institute - Retired Government servant entitled to be treated in these specialised hospitals - Question as to amount to be reimbursed left open as memorandum dated 18.9.96 not impugned".

6. Relying upon this judgment the learned counsel for the applicant submitted that in case of B.R. Mehta (Supra) the petitioner was residing in Karnal which was also not covered under the CGHS Scheme and since the applicant therein was referred to Escorts by the Principal Medical Officer of the Civil Hospital, Karnal so the High Court had directed that in the case of the applicant also the applicant first gone to PGMIS, Rohtak wherefrom he has been referred to Escorts so applicant is entitled for reimbursement.

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7. On the contrary Shri Sachdeva appearing for the respondents submitted till 1997 when options were given to the pensioners under an order dated 19.12.1997 for payment of Rs.100/- per month and the applicant has exercised his option so the applicant cannot claim reimbursement since the reimbursement scheme does not apply to the area where the applicant is residing. The learned counsel for the respondents then referred to a Full Bench judgment of this Tribunal decided on 17.3.2003 wherein the Full Bench of this Tribunal has recognised that no rules exist for reimbursement of medical claim of those pensioners who are residing in an area which are not covered under the CGHS rules of reimbursement do not apply in that area that is why the Full Bench had observed that the scheme with respect to indoor treatment of the retired Government servant must be drawn because right to health is a basic feature of constitution. Similarly it was also observed by the Hon'ble High Court of Delhi in case of B.R. Mehta (Supra) where after referring the OM dated 17.12.1997 regarding facilities available for retired Government officials the Hon'ble High Court in Para 10 has found that "the Government has, therefore, on the above basis does not seem to have worked out any criteria for reimbursement in such cases but are still examining the question of granting medical facilities to the beneficiaries who are settled in non-CGHS areas".

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8. The learned counsel for the respondents submitted that it has been recognised even by the Delhi High Court that the Government has not yet framed any scheme for reimbursement of medical reimbursement of retirees not residing in non CGHS area.

9. I have given my thoughtful consideration to the issue involved in this case.

10. As regards the rule position is concerned it emerges from the pleadings of the respective parties that after a Government employee retires he can continue to avail the facility of CGHS including reimbursement of his medical claims but certain payments as per rules are to be made to continue to avail CGHS facility even after retirement but this facility is available only in those areas where CGHS facility were available. However, pensioners residing in a non-CGHS area were not eligible for medical claim. Representation was made to the Vth Pay Commission and they made certain observations regarding medical facilities which should be made available to pensioners residing in non-CGHS but thereafter the Government came out with an order dated 17.12.1997 and sought an option of those pensioners and the pensioners opting for the same were paid Rs.100/- per month for their day to day purchase of medicine. However, still the reimbursement with regard to indoor treatment was not covered under the said scheme that is why the Hon'ble High Court of Delhi found that even after 1997 the Government does not seem to have worked out any criteria for reimbursement but are still examining the question of granting of medical facilities. Similarly

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the Full Bench of this Tribunal recently in a decision rendered on 17.3.2003 observed that a scheme with regard to indoor treatment of the retired Government servants must be drawn because right to health is a basic feature of the Constitution and it appears that till date no scheme has been drawn as suggested by the Full Bench of this Tribunal, meaning thereby that no scheme till date exists for reimbursement of medical claim of retired pensioners who are living in non-CGHS area.

11. In the present case the applicant after exercising his option is also being paid Rs.100/- per month in terms of the order dated 19.12.1997 issued by the Government so in the absence of any scheme reimbursement of medical claims no directions can be issued to the respondents to reimburse the medical claim.

12. It may not be out of place to mention that the applicant has started drawing Rs.100/- per month for day to day medical expenses and besides that since his wife was working under the Government of Haryana the applicant probably thought that he can get his medical reimbursement from State of Haryana, therefore, he preferred his claim first with Government of Haryana for his medical reimbursement and when the Government of Haryana rejected his claim on the plea that he is retired pensioner of the Central Government so he is not entitled for medical reimbursement from Government of Haryana so he put up his claim with the Central Government. This shows that the applicant when preferred his claim with

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the State Government of Haryana he was fully conscious that he is not entitled for reimbursement of his claim from CGHS.

13. As regards judgment of B.R. Mehta (Supra) is concerned applicant in that case was not getting Rs.100/- per month as pensioner under CGHS because his claim is prior to 1997. The Government had a full liability in respect of the applicant since he was not being paid Rs.100/- p.m. even; whereas applicant by exercising option had accepted Rs.100/- p.m. so he cannot claim the benefit of reimbursement under the existing CGHS Rules.

14. Thus I am of the considered opinion that the applicant has failed to establish his claim. No interference is called for.

15. In view of the above, OA has no merits and the same is dismissed. No costs.



(KULDIP SINGH)
MEMBER(JUDL)

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