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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH  
NEW DELHI

O.A. No.288 of 1999 decided on 25.5.1999.

Name of Applicant : Virendra Prasad

By Advocate : Shri Gyan Prakash

Versus


Name of respondent/s Secy to GOI & others

By Advocate : Shri V.S.R.Krishna

Corum:

Hon'ble Mr. N. Sahu, Member (Admnv)

1. To be referred to the reporter - Yes
2. Whether to be circulated to the other Benches of the Tribunal. - No

  
(N. Sahu)  
Member (Admnv)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.288 of 1999

✓ New Delhi, this the 25th day of May, 1999

Hon'ble Mr. N. Sahu, Member(Admnv)

Virendra Prasad, S/o Shri Ram Sunder Lal, resident of M-14, Greater Kailash II, New Delhi, Retired Regional Provident Fund Commissioner, West Bengal. - APPLICANT

(By Advocate Shri Gyan Prakash)

Versus

1. The Secretary to the Government of India, Ministry of Labour, Shram Shakti Bhawan, New Delhi, 110001.
2. Central Board of Trustees, Employees' Provident Fund, Shram Shakti Bhawan, New Delhi-110001.
3. Central Provident Fund Commissioner, Bhavishya Nidhi Bhawan, 14 Bhikaji Cama Place, New Delhi-110066 - RESPONDENTS

(By Advocate Shri V.S.R.Krishna)

O R D E R

By Mr. N. Sahu, Member(Admnv)

The prayer in this Original Application is for a direction to respondent no.3 Central Provident Fund Commissioner, New Delhi to reimburse to the applicant Dialysis charges in connection with the treatment of his wife of Rs.1,93,285/- for the period from 6.12.1996 to 23.6.1998 along with interest at 12% per annum. He also prayed for reimbursement of cost of injections.

2. The applicant relies on the provisions of Section 5-D(7) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the EPF Act'). Sub Section 7 states that the method of recruitment, salary and

allowances, discipline and other conditions of service of the officers of the Central Board shall be such as may be specified by the Central Board in accordance with the rules and orders applicable to the officers and employees of the Central Government drawing corresponding scales of pay. The proviso to the said sub-section adds that where departure from the said rule becomes necessary, the prior approval of the Central Government has to be taken. The pensioners of the Central Government are allowed full medical benefits under CGHS.


3. As the earlier Scheme expired on 6.12.1996 there was a void for the intervening period between 6.12.1996 to 23.6.1998. Several deficiencies were pointed out in the earlier Scheme and after rectifying the defects, it was only reintroduced on and after from 23.6.1998. During the interregnum the applicant's wife suffered acute urinary problems rendering it necessary for her to undergo an expensive dialysis treatment. It is also stated that the respondents reimbursed hospitalization charges earlier to pensioners of the Provident Fund Organisation but they have denied the same benefits to those who were hospitalized between 6.12.1996 to 23.6.1998. The next ground taken is that respondent no.1 who is also the Chairman of the Central Board of Trustees, Employees' Provident Fund directed

respondent no.3 to render financial assistance to the applicant by his letter dated 19.5.1998. The relevant paragraph of his letter reads as under -

"2... this issue was discussed with Secretary (Labour) when you were also present. It was agreed that pending approval of the scheme, some financial assistance could be immediately extended to Shri Prasad on receipt of the bills. You are, therefore, requested kindly to have the needful done at the earliest."

4. The learned counsel for the applicant relied on the decision of the Supreme Court in the case of State of Punjab Vs. Mohinder Singh Chawla, JT 1991 (1)SC 416 wherein it is held "it is now settled law that right to health is integral to right to life. Government has constitutional obligation to provide health facilities to the employees".

5. In the counter reply it is submitted that the Central Government has not provided any medical scheme for retired employees who are not availing CGHS benefits. Such retired employees are only paid a fixed medical allowance of Rs.100/- per month with effect from 1.12.1997. Thus, the applicant can also be paid as a retired employee of the Employees' Provident Fund Organisation, not availing the CGHS facilities, at the rate of Rs.100/- per month as fixed medical allowance.



6. The sum and substance of the argument of the respondents is extracted from para 17 of the counter affidavit -

"That the EPFO as a welfare measure has made all sincere efforts to provide medical benefits to the retired employees. The Mediclaim Scheme of Oriental Insurance Co. Ltd. was not renewed after 6.12.96 due to deficiencies in the Scheme as noticed by the Executive Committee, CBT, EPF and as a comprehensive Medical Scheme to be administered by EPFO was on the anvil. The detailed Medical Benefit Scheme for retired employees of EPFO as approved by the Executive Committee, CBT, EPF has already been submitted to the Government for obtaining its approval as it is a statutory requirement under proviso to Section 5-D(7)(a) of Employees Provident Funds and Miscellaneous Provisions Act 1952 (19 of 1952). Only as an interim measure the Mediclaim Policy of Oriental Insurance Company has been introduced w.e.f. 24.06.98 with certain modifications by eliminating unfavourable clauses earlier pointed out in the Policy."

7. The learned counsel for the respondents relied on the subsequent decision of the Hon'ble Supreme Court in the case of State of Punjab Vs. Ram Lubhain Bagga and others, 1998 SCC (L&S) 1021 = (1998) 4 SCC 117. Interpreting Article 21 in terms of Articles 41 and 47 of the Constitution, the Hon'ble Supreme Court held that right to healthy life is no doubt an obligation of the State but Government is justified in limiting facilities to the extent permitted by its financial resources. In that case it was held that the decision of the State to restrict financial assistance to its employees for medical treatment within the resources of the State is not violative of Art.21. Therefore, the deletion of the list of designated private hospitals and

payment made at private hospitals at specified rates fixed by the Government are not violative of Art. 21.

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8. In the present case if the hospitalisation charges were incurred before 6.12.1996 or after 23.6.1998 full allowance would have been made for the same. The respondents' claim that the applicant was paid Rs.100/- by way of allowances, in my view, is irrelevant in the sense that even according to the terms of the grant it does not cover hospitalisation charges. The wife of the applicant has been suffering from the End Stage Renal Failure and is undergoing Dialysis. Along with Dialysis, twice a week, she is being administered costly Epirex injection.

9. Let us notice some other decisions on this subject. In the case of Ravikant Vs. State of Haryana 1999 (1) ATJ 1 the Punjab & Haryana High Court was called upon to decide the adequacy of fixed medical allowance and for this purpose it was interpreting Rule 2(3) of the Punjab Services (Medical Attendance) Rules, 1940. The petitioner in that case like the applicant in the present case was facing chronic renal failure and was under constant medication at a cost of Rs.300/- per day. He was denied reimbursement of medical expenses on the ground that these expenses are incurred by him as an outdoor patient and he was in receipt of a fixed medical allowance of Rs.100/- per month under the rules. The High Court held that the fixed medical

allowance is meant to compensate the employee/his family only for the treatment of a casual disease. The claim of the Government in that case was that only a person who receives treatment as an indoor patient is entitled to be reimbursed. The High Court refused to go by the strict definition of 'indoor' and 'outdoor' patient. It is for the employer to keep the petitioner in good health so that he is able to perform duties expected of him. In this view of the matter as the disease can prove fatal if it is not regularly treated, the High Court ordered reimbursement of substantial amount of Rs.1,13,400/-. In the case of Renu Sehgal Vs. State of Haryana, 1999 (1) ATJ 125 the same Rule 2(3) was interpreted. There was an instruction dated 11.8.1992 restricting the amount of reimbursement for an out door treatment in Government hospital to Rs.550/- only per month. No distinction has been made under the rules between indoor and outdoor patients with regard to reimbursement of medical expenses. Para 3 of the instruction which denies the benefit of full reimbursement of medical expenses to an outdoor patient was quashed being violative of Articles 14 and 21 of the Constitution.

10. In another decision of the Supreme Court which is relevant for our purposes, Devindar Singh Shergil Vs. State of Punjab, (1998) 8 SCC 552 -  
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 appellant being informed by PGI MS, Chandigarh, about non-availability of accommodation, proceeding to UK for immediate treatment of malignant growth in kidney - On return, claiming reimbursement of Rs.3,73,174,

out of which respondent-State sanctioning only Rs.20,000/- as per rates prevalent in PGI MS, Chandigarh - Admittedly, the appellant, if treated in India, would have been entitled to reimbursement of expenses on surgery, medical consumable and pharmaceutical items - Appellant producing xerox copy of bill from Dendin Hospital, UK and also filing an affidavit giving details of expenses incurred on various items - Rs.73,000 spent on medical consumables and pharmaceuticals items, held, reimbursable - This was in addition to the appellant's entitlement to Rs.22,000 as surgery charges in accordance with AIIMS rates (total Rs.95,000) - Rs. 20,000 having already been paid to the appellant, respondent-State directed to reimburse Rs.75,000/- with further liability to pay interest @ 15% if payment not made within specified time of four weeks. <sup>v</sup> Head-note extracted.

11. In the present case before me the respondents were statutorily required under Section 5D (7) of the EPF Act to provide same medical facilities as are given to a Central Government employee. It is very clear that the payment of a sum of Rs.100/- is not meant for reimbursement of hospitalization charges. They are meant for meeting day to day medical expenses for common, simple ailments that do not require hospitalization. That apart, the Medicare scheme reintroduced w.e.f.24.6.1978 leaving a gap of 18 months proves that the gap was unintended and was a mere chance. In fact if the deficiencies in the Scheme were not

pointed out the scheme would have continued and the applicants would have got the medical reimbursement. The respondents are required to extend medical facilities equivalent to CGHS to the applicant and other pensioners living in Delhi. Thus, there can be no distinction whatsoever between the Central Government pensioner on the one hand and the applicant on the other. Both are on the same footing and can demand as of right reimbursement of medical facilities. The Medicare Scheme introduced with effect from 6.12.1994 required the employer to pay a premium of Rs.17 lakhs per year to the Insurance Company and the Company paid hospitalization charges to the pensioners of Employees Provident Fund and their spouses.

12. There is considerable force and merit in the applicant's contention that respondent no.2 is to explain and is responsible for the delay in renewing the Scheme after proper modification and the applicant should not suffer for this delay. Another point raised was that respondent no.2 had saved Rs. 34 lakhs which it would have otherwise <sup>paid</sup> by way of collective Insurance premia to the Oriental Insurance Company and on that premise should not grudge reimbursement of applicant's hospitalization charges.

13. I have no doubt in my mind that hospitalization includes Dialysis. The Insurance Company is only paying in full the Dialysis charges with effect from 26.6.1998. Respondent no.1 agreed and advised respondent no.3 to give to the applicant

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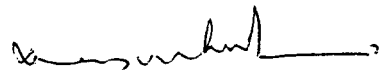
reimbursement on submission of his bill. The bill was submitted but the amount was not reimbursed. Under the above circumstances I have absolutely no doubt in my mind that the applicant is entitled to reimbursement of the amount claimed for the Dialysis charges only subject to one condition. This condition is relevant because the applicant is no longer the beneficiary as per the terms of the Insurance coverage, but he has to be treated at par with a Central Government employee under CGHS. If that be the case, the restriction applying to such a category of Central Government employees must also apply to him. Hence the condition to be imposed is that the respondents can limit the charges to the rates prevalent in All India Institute of Medical Sciences for such Dialysis treatment. For this purpose respondent no.1 can make a reference to the Director General of Health Services whose opinion/finding on the subject shall be final. This restriction I am imposing by respectfully following the decision of the Hon'ble Supreme Court in Ram Lubhaya Bagga's case (supra) because in that decision their Lordships held that the State has a right to restrict the financial assistance to its employees for medical treatment within the resources of the State. We do not know as to whether the Dialysis charges of I.P.Appollo Hospital, Delhi are unconscionably higher than those prevalent in AIIMS which is regarded as a premier model Government health-care organization. The reference made to the



DGHS would not include the expenditure incurred by the applicant for the injections/medicines, because cost of the injections is only a question of fact and has to be fully reimbursed. The cost of those injections shall be reimbursed within two weeks from the date of receipt of a copy of this order. The Secretary, Govt. of India, Ministry of Labour, respondent no.1, shall seek the information about AIIMS rates on Dialysis from the DGHS within a period of four weeks from the date of receipt of a copy of this order and shall strictly abide by the said opinion in making the reimbursement.

14. In the peculiar facts and circumstances of this case, I do not think that this is a fit case for award of interest, if the reimbursement is made within the time frame stipulated above. If there is delay, beyond the limit prescribed, then interest shall be paid to the applicant at the rate of 15% per annum.

15. The OA is disposed of as above. No costs.

  
(N. Sahu)  
Member(Admnv)

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