Central Administrative Tribunal
Jaipur Bench, Jaipur

O.A. No.222/2018
M.A. No.538/2020

Reserved on :02.12.2020
Pronounced on:07.12.2020

Hon'ble Mr. Dinesh Sharma, Member (A)
Hon'ble Mrs. Hina P. Shah, Member (J)

Permanand Sharma S/o Late Shri Laxminarayanan Sharma, aged 69 years, (Senior Citizen) resident of 345, Shri Gopal Nagar, Gopalpura Bye-pass Jaipur retired from the post of CSS (ST 296) from SDO Phons Triveni Nagar BSNL Jaipur and presently as an Advocate of Rajasthan High Court, Jaipur.

…Applicant.

(Applicant in person)

Versus

1. The Chairman & Managing Director, BSNL 12 Khamba Road, New Delhi-110001.

2. The Principal General Manager, Telephones Distt. BSNL M.I. Road, Opp. GPO Jaipur-302001.

…Respondents.

(By Advocates: Sh.T.P.Sharma)

ORDER

Per: Dinesh Sharma, Member (A):

In this OA, the applicant has prayed for directing the respondents to restore his outdoor medical facility and to quash the order dated 07.05.2016(Annexure-1) by which this facility was withdrawn. He has also prayed for payment of all pending outdoor medical bills, from 06.03.2013 till now (Annexures-12 to 18), and for compensation on account of damages and harassment due to mental agony caused on account of illegal withholding of payment of medical bills of Rs.5,00,000/-.

2. The case of the applicant, in brief, is as follows: the applicant was an employee of the respondents (BSNL) who retired on 31.08.2009. He is covered under the scheme of outdoor medical facility and reimbursement of outdoor medical bills after retirement. He had submitted bills for the year 2012-2013 about which certain objections were raised. The applicant satisfied these objections but the bills were not paid nor was he given any reason for withholding the payment. His further medical bills, submitted by him after that, were also kept in waiting. The applicant was informed about 6 bills (of 12.06.2013) not found fit for payment. This

matter was completely closed by way of written communication dated 2.12.13 (Annexure-19). The impugned order of 07.05.2016, (Annexure-1) regarding withdrawal of outdoor medical facility is without following the prescribed procedure, law and authority, is illegal, in violation of fundamental right under Article 21of the Constitution and therefore should be quashed. The applicant has also stated that the vigilance inquiry (w.r.t. the submission of false bills) which was started from 22.08.2013 (Annexure-21) is concluded by order at Annexure-19 (and therefore he cannot be punished for the same alleged offence twice). The respondents did not give him the records and documents repeatedly sought by him during the vigilance inquiry and thus he was given no opportunity (to defend himself). The applicant has annexed copies of internal communications of the respondent department in support of his claim that there is no specific legal provision for withdrawal of outdoor medical facility (and the department was itself not sure of what action could be taken against the applicant). The applicant had filed an application (on the same issue as is being raised in this OA) before the District Consumer Forum, which was rejected by order dated 18.10.2016(Annexure A/9), on ground of jurisdiction. The applicant filed an appeal before the State Commission, which was also rejected, on

the same ground, on 17.10.2017 (Annexure A/10), and hence this OA.

3. The respondents, in their reply, have denied the claims of the applicant. An instance of punishment of "censure" is quoted to counter the claim of the applicant about having an unblemished career. It is stated that the applicant submitted medical bills which were found to be fictitious. Under Para 19 of the BSNL MRS Policy, 2003 (reproduced inthe reply, at Page 77 of the Paper Book), if an employee is found to have misused the medical facility, the competent authority is empowered to withdraw it. The reply also quotes para 1.3.1(iii) of BSNL Corporate Office letter dated 23.08.2006 regarding procedure for reimbursement of medical claim for retired employee of BSNL stating that facilities under the MRS shall be liable to be withdrawn at any time for misuse or abuse of the facility. Such facility shall not be restored without approval of Corporate Office. The applicant has already approached the District Forum and the State Forum for redressal of his grievance and failed. This case, now filed before the Tribunal,is barred by period of limitation prescribed in Section 21 of the Administrative Tribunals Act. The Vigilance Branch had conducted an investigation regarding the bills submitted by the applicant in the month of June 2013. The applicant was called many times to

submit his statement/explanation regarding these bills but he did not submit any. The concerned Doctor, (on whose prescription the reimbursement was sought), denied having written or signed that prescription (Annexure R/3). A number of notices were issued to the applicant (Annexure R/4), which the applicant did not respond to. For all these reasons, the respondents have prayed for dismissing the OA.

4. A rejoinder has been filed by the applicant stating that the reply of the respondents is not maintainable and cannot be taken on record as it is filed by an officer not competent to file it (Annexures A/31 to A/33 to support this claim). He has reiterated his case that he was not given proper opportunity (to defend himself) before issuing the impugned order (Annexure-1) and also during the inquiry by the Vigilance Cell. The proceedings before the District Consumer Forum and the Appeal before the State Commission were disposed of only on account of lack of jurisdiction and therefore the case before the Tribunal is within the period of limitation prescribed under Section 21 of the Administrative Tribunals Act. The applicant has listed 16 matters of litigation between him and the department in various Courts/Tribunal (as instances of personal animosity against the applicant). The applicant also annexed documents showing how he had been useful to the department due to

his special legal abilities (Annexure A/35) and a decision of the Hon'ble High Court of Rajasthan (Annexure A/36) in a case where the Hon'ble High Court decided in his favour (in an apparently unrelated case of payment of interest for delayed release of retirement benefits).

5. We have gone through the pleadings and heard the arguments (through video conferencing) of the party (appearing in person) and the counsel of the respondents. Both of them reiterated what is stated in the pleadings. The applicant cited the decisions of the Hon'ble Supreme Court in **Shiva Kant Jha** vs **Union of India** (WP (Civil) No 694 of 2015, dated 13.4.2018) and **Kirloskar Brothers Ltd.** Vs. **Employees' State Insurance Corpn.** (1996 (5) Supreme 241) to support his claim to treat medical facilities as an employee's fundamental right. He also cited AIR 1953 Supreme Court 325, RLR 1987 (II) 848 (Rajasthan High Court), 1982 (1) SLR 241 (Punjab and Haryana), and 1986 (4) SLR 117 (CAT All.) to support his argument about double jeopardy.

6. To resolve the case before us, the issue that we need to decide is, very briefly put, whether a retired personfrom BSNL can be permanently deprived of a facility to claim medical reimbursement, on ground that a claim made by

him is found to be fictitious or based on forged documents. Before handling that issue, we have to first decide on the two technical issues raised by the respondents (in their reply) and the applicant (in his rejoinder). The first is whether the OA is barred by period of limitation prescribed under the Administrative Tribunals Act. The second issue is : whether the reply of the respondents cannot be taken on record as it is not allegedly signed by an authorised person.

7. On the first technical issue, it is very clear that the applicant has come before us more than one year after the impugned order (Annexure-1) was issued. He stlll considers it to be within the period of limitation since he had gone to a forum, which had no jurisdiction. We do not think that the fact, of approaching a wrong forum, itself gives him a right to file an application beyond the period of limitation and claim it to be within the period of limitation. It may, at best, give him a reason to ask for condonation of delay, if his approaching the wrong forum was based on a bona-fide mistake, arising from an ignorance excusable in some cases (e.g of persons likely to be ignorant for reasons of poverty, illiteracy, etc). Here, we have a person, who may almost qualify to be a habitual litigant (going by the list of cases given in his rejoinder, which include a number of cases before this Tribunal also), who is not likely to be ignorant of

the fact that his case comes squarely within the competence of this Tribunal. He not only fought it before a wrong forum (consumer forum), butalso refused to accept the verdict that gave him the liberty to file it before a competent forum. Instead, he filed an appeal against that decision, only to be told what, we believe, he should have already known. Thus, we find this to be a case filed beyond the period of limitation, for which not even a petition for condonation of delay is filed, and for this reason alone, it deserves to be dismissed.

8. The second technical issue deserves much lesser consideration. The reply has been filed through an advocate of the respondents, duly authorised. Whether the person signing it has been properly authorised by his principals, is part of their indoor management, and we do not think it is necessary for us to go into that issue so long as the respondent department (Corporation) does not disown their responsibility before this Tribunal.

9. Though we could have dismissed this OA on the basis of our aforementioned findings on the two technical issues, we have still gone into the prima-facie merits of the issue raised by the applicant. This is mainly because the applicant is a senior citizen in his seventies and we do not want this

Tribunal to appear totally heartless in matters concerning health of a senior citizen. There is no denying the fact that the applicant's claims for medical reimbursement made on 12.06.2013 were found to be based on documents whose genuineness could not be proved. The applicant was given various opportunities to explain his conduct but taking one or the other excuse, he refused to appear before the respondent authorities and did not offer any explanation or reply. He himself is apparently satisfied with the closure of that matter and does not want to claim reimbursement of those bills and is asking for reimbursement of bills raised thereafter. The respondents have denied reimbursement quoting the provision under which the facility can be discontinued under their policy. The letter communicating this decision itself indicates that that the facility can be restored but not without the concurrence of their Corporate Office. The applicant has produced nothing to show that he requested for restoration of this facility (except by way of a legal notice dated 17.02.2018), and has only repeatedly questioned the cancellation of it in the first place, stating that it has been done illegally. We find that enough opportunities were given to the applicant to explain his side by the respondents, but instead of putting up his case before them, he has chosen to litigate, first before a wrong forum and now before us. We do not deny that right to life is a

fundamental right, but it cannot be stretched to mean a right to get outdoor medical reimbursement, since this is a facility given only to the retired employees of the respondents and employees have to play their part correctly to claim reimbursement under the policy. If the conditions allow this facility to be withdrawn in case of misuse, it cannot, *ipso facto*, be called a violation of the constitutional right to life. We have also gone through the decisions of the Hon S.C. cited by the applicant and find that these are in a totally different context. The first decision (shiv Kant Jha, supra) relate to the hospital treatment where the decision of the doctor should carry the most weight. The second one is about contribution for coverage of health insurance and cannot be considered to be an authority in the context of outdoor medical reimbursement. The general observations made in these decision regarding the importance of life and health cannot be applied on the case where a lenient facility (of reimbursing outdoor medicine purchases) has been stopped after observing fraudulent behaviour. The other cases cited by the applicant relate to the principle of avoiding "double jeopardy". In the present case, the only punishment, which has been inflicted on the applicant is of the stoppage of outdoor medical reimbursement facility. The earlier decision, (conveying him the fact of not passing his bill unsupported by correct document) cannot, by any

stretch of logic, be termed as a punishment. That act only amounts to failure of the applicant in successfully reaping the benefit of his alleged malfeasance.

10. For reasons mentioned in the previous paragraph, we do not find the order of the respondents conveyed through Annexure-1 as violative of any fundamental constitutional or any other legal right of the applicant. Though it is true that no specific notice for discontinuance of the facility was given, it was done after giving enough opportunity to the applicant to appear before them and explain his conduct. It is obvious that no disciplinary proceedings (by way of issuing charge sheet etc), as is done in case of a serving employees, could have been done with respect to a retired employee.

11. In conclusion, we cannot grant the prayers in this OA, since the OA is barred by period of limitation and since,as discussed in previous paragraphs,it also lacks prima-facie merit. However, we are mindful of the age of the applicant and the fact that the impugned order itself provides scope for restoring of medical reimbursement facility. Hence, in the interest of justice, we dispose of this matter with a direction that if an application for restoration of facility is made by the applicant, with sufficient reasons, within one month from the date of receipt of a copy of this order, the competent

authorities will consider such application, and convey their decision to the applicant within a period of two months after receiving such application. No costs.

12. MA No.538/2020 for early hearing of the matter is disposed of accordingly.

(Hina P. Shah)
Member (J)

(Dinesh Sharma)
Member (A)

/kdr/