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**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

**O.A. NO. 2346 of 2004**

New Delhi, this the 15<sup>th</sup> day of August, 2005

**HON'BLE SHRI M.K. MISRA, MEMBER (A)**

Shri S.K. Saxena  
S/o Shri B.S. Saxena,  
F-23/A, Nehru Nagar,  
Ghaziabad – 1011002.

...Applicant.

(By Advocate : Shri Gyan Prakash)

VERSUS

1. Director General  
Employees State Insurance Corporation,  
Panchdeep Bhawan,  
Kotla Road,  
New Delhi-110001.
2. The Chairman,  
Employees State Insurance Corporation,  
Panchdeep Bhawan,  
Kotla Road,  
New Delhi-110001.

....Respondents.

(By Advocate : Ms.Anantmala Potdar)

**O R D E R**

The applicant - Shri S.K. Saxena, retired as Deputy Director {an Employee of State Insurance Corporation (in short 'ESIC')} on 30.4.1997 on superannuation. Thereafter, he unfortunately fell ill in the year 1999 and was treated by way of medical treatment from Safderjung Hospital, Indraprastha Apollo Hospital and All India Institute of Medical Sciences. He incurred expenditure of Rs.23678/- for diagnostic laproscopy and exploratory laproscopy and other treatments etc. at Indraprastha Apollo Hospital, New Delhi. He further incurred expenditure of Rs.27321/- at All India Institute of Medical Sciences, New Delhi for major surgery, hospitalization, cost of medicines and other medical expenses and thus

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making a total expenditure amounting to Rs.50,999/-. The medical claim was made by him in this regard to his parent department, i.e., ESIC, which was rejected by the respondents vide order dated 20/23.03.2001 (Annexure A-4) on the ground that retired employees of the ESIC residing in Uttar Pradesh were not entitled for such reimbursement. In an appeal before the Chairman of ESIC, his claim was also rejected vide order dated 28.11.2001/5.12.2001 (Annexure A-6). Against these orders, the applicant filed OA 3112/2002 and the Tribunal vide its order dated 30.6.2003 quashed the impugned orders in view of the decisions of the Hon'ble High Court of Delhi in the cases of *V.K. Gupta Vs. Union of India and others* (CW No.4305/2001 decided on 5.4.2002) and *B.R. Mehta Vs. Union of India and others*, 79 (1999) DELHI LAW TIMES 388, wherein it was held that the applicant was entitled for reimbursement of medical expenses. Accordingly, the respondents were directed to reconsider the claim of the applicant in the light of the decisions of the Hon'ble Delhi High Court in the above two cases in the following manner:-

"9. In view of what has been stated in the preceding paragraphs, the impugned order dated 20/22.3.2001 read with orders dated 28.11.2001/5.12.2001 are quashed. The respondents are directed to reconsider the case of the applicant in the light of the observations made in the preceding paragraphs. The decision should be communicated to the applicant by a speaking order within a period of three months from the date of receipt of a copy of this order. In case, it is necessary to obtain the sanction of the competent authority for relaxing the conditions, the respondents will be free to approach such authority during the above period."

2. The respondents vide order dated 6.10.2003 passed a speaking and reasoned order and also communicated the same to the applicant in the manner as under:-

"(v) The case of Shri S.K. Saxena is identical to the case of Shri J.R. Sood, retired Superintendent, ESI Corporation. After retirement from the services of ESI Corporation, Shri Sood Settled at Panchkula where ESIC does not have any medical

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scheme for its pensioners. The medical reimbursement claim for Rs.1,49,232/- submitted by Sh. Sood towards heart treatment (Angioplasty) taken during the year 1998 at PGI Hospital Chandigarh was not accepted by ESIC on the ground that the medical scheme was not available for ESIC pensioners at Panchkula and contribution was not paid by Shri Sood. Shri Sood had filed an O.A. No.776-HR2000 before Hon'ble CAT of Chandigarh Bench. The Hon'ble Tribunal upheld the grounds given by the ESI Corporation. The Hon. Tribunal also cited a recent judgement dated 21.3.2002 of Hon'ble Punjab & Haryana High Court in the case of U.O.I. v/s T.N. Mahagan and others, CWP No.1969-CAT-2002 decided on 21.3.2002 quoting that the retired officials are not entitled to reimbursement of medical expenses incurred on their treatment after retirement. The Hon. Tribunal had dismissed the O.A. filed by Shri J.R. Sood vide its judgement dated 7.8.02.

For the above reason, I, Dr. Ajay Dua, Director General, ESI Corporation reject the claim of Shri S. K. Saxena, retired Dy. Director and further direct that Sh. S.K. Saxena is entitled to medical allowance @ Rs.100/- p.m. as per Government of India instructions."

3. The applicant also submitted that ESIC is a statutory body established by Central Govt. under Employees State Insurance Act, 1948. Section 17 of the Act ibid lays down conditions of service of the staff of the ESIC. As per this provision, salary, allowances and other conditions of service of the staff of ESIC shall be in accordance with the rules and orders applicable to the employees of the Central Government. Medical facilities were also provided during the period of service to the applicant, but these facilities were taken back after his retirement. As stated by the applicant, the pensioners of the Central Govt. living at Ghaziabad are entitled to medical treatment both indoor and outdoor, thus the applicant is also entitled to the medical facilities. But the medical facilities have been denied to him after his retirement. Hence, this OA. In support of the contention, learned counsel for the applicant referred to OM dated 5.6.1998 regarding extension of such facilities under CS (MA) Rules, 1994 to pensioners

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residing in areas, which are not covered by the Central Govt. Health Scheme. The same OM should have been made applicable to the applicant also. The ESIC issued latest OM dated 22.11.2000 regarding medical facilities to the pensioners of ESIC which covers areas contiguous to National Capital Territory of Delhi, i.e., Gurgaon, Faridabad, Noida etc. and the case of the applicant is fully covered by this OM and accordingly, an identity card was issued to him for this purpose. The contention of the applicant is that since ESIC has taken a decision after a lapse of considerable period on the basis of the Health Ministry's OM dated 5.6.1998, as referred to above, the applicant was deprived of the medical benefits for the treatment of the diseases during the period from the date of retirement to the date 22.11.2000 on which date the OM was issued by the ESIC for providing medical facilities to the pensioners. The applicant suffered disease similar to Cancer in 1999 and he incurred certain expenditure on his treatment but the reimbursement of the same was rejected on the ground that during the period in which he took the treatment, the medical facilities were not made applicable to the pensioners. In support of the contention, learned counsel for the applicant referred to the decision of the Hon'ble Delhi High Court in the case of *V.K. Gupta* (supra), wherein vide order dated 5.4.2002 the petitioner was held to be entitled for reimbursement of the actual expenditure incurred for taking indoor treatment from Escort Hospital, Delhi. The employee was working in Delhi High Court. Similar view was expressed in the following decisions:-

- (i) *Laxmi Chand Vs. Comptroller and Auditor General of India & Ors.*, 2995 (2) (CAT) 145;

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(ii) **Mr. Laxmidas T. Vasani & Anr. Vs. Union of India and Ors.**, 2004 (2) ATJ 90; and

(iii) **Shreedharan Kallat Vs. The Union of India and others**, 1995 (2) SC SLJ 83.

4. Learned counsel for the respondents submitted that reimbursement of the medical expenditure to the applicant was not permissible since neither any contribution has been paid by the applicant nor any medical card was issued to him. Since no medical scheme was operating during the year 1999 to ESIC pensioners residing in Uttar Pradesh, the expenses incurred by the applicant would, therefore, not to be reimbursed. As per the direction of the Hon'ble Tribunal in the aforesaid OA filed by the applicant, the case of the applicant was considered and the speaking order was passed and communicated to him rejecting his claim of medical reimbursement. However, w.e.f. 22.11.2000, the retirees of ESIC including the applicant, are eligible to avail medical facilities under the provisions of Memorandum dated 22.11.2000. The retirees were also authorized to claim medical allowances at the rate of Rs.100/- per month where such facilities are not available. Similarly CS (MA) Rules, 1945 are not applicable in the case of the applicant. The case of the applicant is identical to the case of Shri J.R. Sood retiree of ESIC and who settled at Panchkula where medical facilities are not available to the pensioners. Shri Sood took his treatment from PGI Hospital, Chandigarh during the year 1998 and his claim was also rejected for medical reimbursement. Shri Sood filed the case being OA NO.776/HR/2000 before the Chandigarh Bench of the Tribunal and the Tribunal rejected the claim of Shri Sood the Applicant therein.

5. Applicant has also filed his rejoinder. In the rejoinder, the applicant has reiterated the same pleas raised in the OA.

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6. I have heard the learned counsel for the parties and perused the material available on record.

7. Chandigarh Bench of the Tribunal in OA 776/HR/2000 had considered and decided the similar issue in the case of Shri J.R. Sood retired superintendent of ESIC, who settled at Panchkula (Haryana) which is adjacent to Chandigarh (UT). In the above case, the Hon'ble Tribunal decided the issue in the following manner:-

“4. From the pleadings it becomes clear that the employee of ESI, Scheme at Annexure R-1 known as ESI Medical Scheme is in existence. However, the same has not been extended to areas falling under U.T. of Chandigarh and Haryana, which would include Panchkula also. There is no rebuttal to the plea of respondents that applicant was not a member of the said Scheme and he had never shown any Card which may indicate that he had become its Member at any point of time.

5. Since plea of both the parties is that for employees working in ESI, Central Services (Medical Attendance) Rules, 1944, apply, we take judicial notice of rule 1 (2) Note (ii), (iv) which in very unambiguous terms mention that these rules do not apply to retired Government officials. The issue raised in this O.A. is no longer res-integra. In a recent judgement of Division Bench of the Punjab and Haryana High Court in the case of UOI Vs. T.N. Mahajan & Another, C.W.P. No.1969-CAT-2002, decided on 21.3.2002, it has been authoritatively held that retired officials are not entitled to medical reimbursement of claims for expenses incurred on their treatment after the date of their retirement.”

From the above decision, it is quite clear that CS (MA) Rules, 1945 are not applicable in the case of the employees of ESIC, which are only applicable to Central Govt. employees and this is an admitted fact that the employees of ESIC are not Central Govt. employees.

8. I observe from the Memorandum dated 22.11.2000 that the medical facilities have been provided to the pensioners of ESIC, even to those pensioners who are residing in contiguous places to Delhi. The relevant provisions as laid down in the above Memorandum are as under:-

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“2. In regard to the States where the above medical facility has not been extended to the ESIC Pensioners, the Standing Committee of the ESI Corporation, in its meeting held on 13.05.2000 has approved that the pensioners residing in such areas of these States which are contiguous to the States/Union Territories where medical facilities has already been extended to the ESIC – Pensioners through the ESI (Medical) Institutions directly run by the ESI Corporation, viz., Director (Medical) Delhi, Directorates (Medical) Noida, ESI Hospital K.K. Nagar (Chennai), ESI Hospital Thakurpukur (West Bengal), ESI Hospital Nagda (M.P.) may also be allowed this facility on the same terms and conditions as are applicable to the ESIC Pensioners in Delhi etc., from time to time, subject to the condition that they will not be entitled to claim any expenses incurred by them for visiting the ESI Dispensaries/Hospitals etc.

3. In view of the above, decision of the Standing Committee, the ESIC Pensioners residing in areas contiguous to the areas covered under the ESI (Medical) Institutions mentioned above (Para 2) may now exercise their option for availing of this facility on the terms and conditions referred to above. They may apply in the prescribed form available from the ESI Directorate (Medical) Delhi in case of pensioners residing in areas contiguous to N.C.T. of Delhi i.e., Gurgaon, Ghaziabad, Faridabad, Noida etc., and from the concerned Regional Director in case of ESI Hospital K.K. Nagar (Chennai), ESI Hospital, Thakurpukur (West Bengal) and ESI Hospital, Nagda (M.P.).

4. The rates of contribution as applicable w.e.f. 01.04.2004 were circulated vide Memorandum No.D-12/16/1/76-E.II (B), dated 14.12.1995 (Annexure-I). The rates of contribution payable by ESIC – Pensioners have been revised vide O.M. No.D-12/12/1/87-Estt.II (B) dated 27.9.2000 (Annexure-II) w.e.f. 1.5.98 and the arrears of contribution, if any, will be chargeable from the beneficiary – Pensioners accordingly.

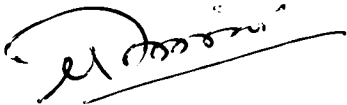
5. These instructions will come into force from the date of issue this Memorandum.”

The applicant has become member of the Scheme and also he has been issued an identity card for the purpose of availing medical facilities. This Memorandum came into force with effect from its date of issuance, i.e., 22.11.2000. I also notice from the above Memorandum that it has not specifically denied the medical facilities to the pensioners whose cases are pending for medical claim on that date, i.e., 22.11.2000. The impugned

order was passed by the respondents on 6.10.2003, i.e., much after the issue of above Memorandum. Therefore, I am of the considered view that the case of the applicant is covered by this Memorandum, particularly, in the light of the fact that it does not specifically prohibit the claim of medical reimbursement of the pensioners, which were pending before the competent authority from the date of issue of this Memorandum. Since it is a welfare activity and the persons who were in non-active service of the Corporation and were already availing these facilities, therefore, pensioners should also get the same benefit without any discrimination.

9. In view of the above, the applicant is entitled to medical reimbursement as claimed by him subject to prescribed rules.

10. In the result, OA is allowed without any order as to costs.

  
(M.K. MISRA)  
MEMBER (A)

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