

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

...

OA No.290/00421/2016

Pronounced on : 27.04.2021
Reserved on : 23.03.2021

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CORAM: **HON'BLE MRS. JASMINE AHMED, MEMBER (J)**
HON'BLE MS. ARCHANA NIGAM, MEMBER (A)

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Gyan Chand s/o late Shri Bhool Chand, aged about 63 years, resident of House No.715, Dilip Nagar, Lal Sagar, Jodhpur, last employed on the post of Section Officer/Court Officer in the office of Central Administrative Tribunal, Jodhpur Bench, Near Rajasthan High Court, Post Box No.619, Jodhpur-342006.

...APPLICANT

BY ADVOCATE : Mr. J.K. Mishra.

VERSUS

1. Union of India through Secretary to Govt. of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, North Block, New Delhi-110 001.
2. The Principal Registrar, Central Administrative Tribunal, Principal Bench, 61/35, Copernicus Marg, New Delhi-110 001.
3. Jt. Registrar, Head of the Office, Central Administrative Tribunal, Jodhpur Bench, Near Rajasthan High Court, Post Box No.619, Jodhpur-342006.

...RESPONDENTS

BY ADVOCATE: Mr. K.S. Yadav.

ORDER

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Per Hon'ble Smt. Archana Nigam, Member (A):-

1. The present Original Application (O.A.) has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, wherein the applicant is seeking the following reliefs:

- "8(i) That impugned order No.9-10/2010-11/DDO/1020 dated 29/30.8.2016, (Annexure-A/1) passed by office of 3rd Respondent, rejecting medical reimbursement claim of the applicant may be declared illegal and the same may be quashed.
- (ii) The respondents may be directed to make payment of due amount towards the medical reimbursement claim along with interest @ 9% pa, from the date of claim to the actual date of reimbursement, as per the verdict/ratio of Hon'ble High Court of HP in case Shankar Lal Sharma, supra.
- (iii) That any other direction, or orders may be passed in favour of the applicant, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- (iv) That the costs of this application may be awarded."

2. The brief facts of the case as narrated by the applicant are that while holding the post of Section Officer in C.A.T. at Jodhpur Bench, the applicant retired on attaining the age of superannuation on 31.01.2014. He has been granted his due pension and other pensionary benefits. The Central Government took a conscious decision on the recommendations of the 5th CPC to grant fixed medical allowance @ Rs.100/- per month to Central Government

pensioners/family pensioners residing in areas not covered by Central Government Health Scheme administered by the Ministry of Health & Family Welfare and corresponding Health Schemes administered by other Ministries/Departments for their retired employees for meeting expenditure on day to day medical expenses that do not require hospitalization vide notification dated 19.12.1997.

3. It is further stated that the applicant was faced/met with heart attack on 08.06.2016. He was immediately taken to MDM Hospital, Jodhpur (Rajasthan Government Hospital) and was admitted as an emergency case vide certificate dated 17.06.2016 (Annexure A2). He was subjected to various tests and was surgically operated on 12.09.2016. An amount of Rs.81,536/- was spent on medicines and an amount of Rs.3950/- was spent on testing. Thus, a total amount of Rs.85,436/- was incurred by the applicant on same. Thereafter, the applicant submitted his claim amounting to Rs.85,436/- along with certificate to respondent no.3 vide letter dated 15.07.2016 for medical reimbursement. The claim of the applicant for reimbursement of medical expenses has been abruptly rejected vide order dated 29/30.8.2016 (Annexure A1). It has been said that the applicant is being paid an amount of

Rs.500/- as Fixed Medical Allowance and it is not feasible to reimburse the medical expenses.

4. It is further added that the High Court of Himachal Pradesh, Shimla, has been pleased to elaborately deal with the issue involved in this case and adjudicated the same in case of Union of India and Anr. Vs. Shankar Lal Sharma, CPW no.4621 of 2011 vide judgment dated 28.12.2015. The applicant is residing in a non-CGHS scheme area and his case is fully covered by the aforesaid judgment. It was incumbent upon the respondents to have allowed the claim of applicant by applying the ratio of the above judgment but he is being compelled to approach this Tribunal. He is left with no option to except to knock the doors of judiciary.

5. Respondents in their counter have stated that the applicant after attaining the age of superannuation was retired from services w.e.f. 31.01.2014 from the post of Section Officer. It is contended by the Respondent that for the purpose of availing the medical facility Retired employees are required to exercise an option to avail indoor treatment same which applicant did not do.

Therefore as per option exercised by the applicant, he was authorized to receive Rs.300/- as medical allowance which was later on increased by Rs.500/- per month. A copy of the option dated

15.01.2014, exercised by the applicant is placed on record and marked as Annexure R1. In the present case, the applicant has neither opted for CGHS to avail the medical facility under the same nor paid the contributions to CGHS to avail medical facility under CGHS. Therefore the claim of the applicant is not admissible in the absence of any option to avail facilities under CGHS or any contribution/subscription to CGHS.

It is further submitted in the reply that the medical facility after retirement are in the supervisory control of Ministry of Health and Family Welfare and after retirement for the purpose of indoor treatment and medical expenses incurred thereon can only be made/entertained by Additional Director/Joint Director of CGHS. Thus it is clear that the medical reimbursement can only be granted within the frame work of Scheme/Rules on the subject and various Hon'ble High Courts. As the applicant has neither opted nor contributed to avail the medical facilities under CGHS Scheme thus he is not entitled for any medical reimbursement as claimed. Therefore, the respondents pray that the OA deserves to be dismissed.

6. In rejoinder, the applicant while reiterating the submissions made in the OA states that it is immaterial as to whether, one has opted for CGHS Scheme benefits or for grant medical allowance,

most importantly, the CGHS facilities are not available at Jodhpur.. He further submits that the respondents have themselves stated that pensioner is residing in a Non-CGHS area, where under the Rules one can either opt for CGHS scheme benefits or avail fixed medical allowance.

The applicant has opted for fixed medical allowance and there is nothing wrong in it. The fixed medical allowances only cover the expenses for outdoor treatment and not the expenditure of indoor treatment. The applicant was admittedly indoor patient.

In support of his submissions, he also relied on the judgment of **Shankar Lal Sharma and the case of Vinod Kumar Bohra, vs. Union of India & ors, decided on 11.02.2014 by the CAT.**

7. In additional reply to the rejoinder, the respondents while reiterating the submissions made in the OA states that as the applicant has not deposited his contribution at the time of retirement by non-opting for indoor medical facility, is not entitled for any medical reimbursement.

8. Heard learned counsels for both sides and perused the material available on record.

9. Learned counsel for the applicant states that it is immaterial as to whether one has opted for CGHS scheme benefit or for grant

of medical allowance as the CGHS facilities are not available at Jodhpur and the applicant is out of any such area. The applicant has opted for fixed medical allowance and there is nothing wrong on it. The fixed medical allowances only covers the expenses incurred by the Pensioner for outdoor treatment and not the expenditure of indoor treatment. The applicant was admittedly an indoor patient.

It is the contention of the learned counsel or the applicant that the applicant had to take medical treatment in emergency and he is fully entitled for the expenses incurred by him on his treatment as the applicant fulfilled all the requisite formalities and requirements and submitted his claims.

10. Learned counsel for the respondents states the applicant with open eyes opted for CGHS scheme but did not opt nor pay his contribution for indoor medical facility as required under CGHS scheme. Thus, at this stage, applicant cannot claim that without paying his contribution for medical facility he is entitled for reimbursement for indoor treatment taken by him. As the applicant has not deposited his contribution at the time of retirement, thus, he is not entitled for medical reimbursement for indoor medical facility without paying his contribution as required under CGHS Scheme.

11. We have considered the submissions made by both the parties and also perused the judgments and pleadings available on record.

We have perused the judgment of Hon'ble High Court of Madras in the case of **Union of India vs. R. Rangarajan & Anr.** We have also perused the judgment of Hon'ble Delhi High in **Kishan Chand Versus Govt. of NCT & Others**, WP(C) 889/2007, decided on 12th March, 2010 in which the Hon'ble Delhi while dealing with the similar controversy has held as under:-

"6. The issue is no more res integra as in the case of S.K. Sharma (supra), this Court clearly **held that the petitioner after getting retired cannot be denied the benefit of the medical reimbursement simply because of the fact that he did not opt for the said scheme.** In this case also the claim of the employee was rejected on the ground that he was not covered under the CGHS Rule not being a part of the scheme but still a retired Central Government employee residing in non-CGHS area can make a CGHS card for himself and his dependent family members from the nearest centre where CGHS is functional. Further placing reliance on some authoritative pronouncements of the Apex Court, this Court in the above case took a view that the petitioner cannot be discriminated against, merely because he is not a member of the CGHS scheme as he was staying in a non- CGHS area. In this case also the employee had applied to become a card holder later in the period.

7. In the case of V.K. Jagdhari (supra), which has been relied by the petitioner, a similar question arose before the Court and objection was taken that since the employee had opted for the CGHS card after his surgery, therefore, he was clearly disentitled to the claim of reimbursement. Answering the said question in negative, **the Court clearly held that the pensioner cannot be discriminated against merely because he has not opted for CGHS scheme or he resides outside a non-CGHS area.** Taking into consideration the ratio of the judgments in the S.K Sharma (supra) and Som Dutt Sharma (supra) case, this court consolidated the legal position and held that:

"The position emerging from various decisions of this Court may be summarised as follows:

1) Even if employee contributes after availing medical facilities, and becoming member after treatment, there is entitlement to reimbursement ([DB\) Govt. of NCT v. S.S. Sharma](#) : 118(2005)DLT144

2) Even if membership under scheme not processed the retiree entitled to benefits of [Scheme - Mohinder Pal v. UOI](#) : 117(2005)DLT204 .

3) Full amounts incurred have to be paid by the employer; reimbursement of entire amount has to be made. It is for the Government and the hospital concerned to settle what is correct amount. [Milap Singh v. UOI](#) : 113(2004)DLT91 ; Ran deep [Kumar Rana v. UOI](#) : 111(2004)DLT473

4. The pensioner is entitled to full reimbursement so long the hospital remains in approved list [P.N. Chopra v. UOI](#), (111) 2004 DLT 190

5) Status of retired employee not as card holder: [S.K. Sharma v. UOI](#), : 2002(64)DRJ620 ;

6) If medical treatment is availed, whether the employee is a cardholders or not is irrelevant and full reimbursement to be given, [B.R. Mehta v. UOI](#) : 79(1999)DLT388 .' The status of a retired Government Employee was held to be independent of the scheme and rules in so far as the entitlement to medical treatment and/or CGHS benefits were concerned (ref. [V.K. Gupta v. Union of India](#), : 97(2002)DLT337). Similarly in [Narender Pal Singh v. Union of India](#), : 79(1999)DLT358 , this Court had held that a Government was obliged to grant ex-post factor sanction in case an employee requires a specialty treatment and there is a nature of emergency involved.

In the light of the aforesaid, the present petition is allowed.

The respondents are directed to pay the said medical claim of the petitioner along with 18% interest from the date of submission of his bill. The said payment shall be made by the respondent within one month from the date of this order. Additional costs of Rs. 10,000/- is also imposed on the

respondents for causing delay in making the said payment to the petitioner. (emphasis supplied)"

12. From perusal of the aforesaid case and the other cases on this issue, it is quite shocking that despite various pronouncements of this court and of the Apex Court the respondents in utter defiance of the law laid down have taken a position that the pensioner is not entitled to the grant of medical reimbursement since he did not opt to become a member of the said health scheme after his retirement or before the said surgery undergone by him. **It is a settled legal position that the government employee during his life time or after his retirement is entitled to get the benefit of the medical facilities and no fetters can be placed on his rights on the pretext that he has not opted to become a member of the scheme or had paid the requisite subscription after having undergone the operation or any other medical treatment.** Under [Article 21](#) of the Constitution of India, the State has a constitutional obligation to bear the medical expenses of Government employees while in service and also after they are retired. The [Article 21](#) of the Constitution of India is relating to right to life to lay down the obligation on the part of the Department to reimburse medical expenses incurred by retirees. [Article 21](#) says no person shall be deprived of his life or personal liberty except

according to procedure established by law. Right to life enshrined in this Article has been held to mean something more than survival or animal existence. This right would include right to live with human dignity, a right to minimum subsistence allowance during suspension. This right would include all those aspects of life, which go to make a man's life meaningful, complete and worth living. An aspect which alone can make it possible to live must be declared to be an integral component of right to life. Right to livelihood would also be a facet of right to life. Even right to good health has been held to be inclusive of right to life. That being the wide scope and ambit of this Article, right of the petitioner to seek reimbursement of medical expenses incurred by him to ensure his right to health would fall within the ambit of right to life. The responsibility of the Government towards pensioners cannot be left at the whims of the officials. The Government cannot be permitted to escape responsibility to reimburse pensioners for medical expenses incurred on the support of some technicalities.

13. It is quite apparent from the reply of the respondents as well as the order of rejection of the reimbursement claim of the applicant that the reimbursement claim of the applicant is rejected by the respondents on the ground that the applicant being a retired

Govt. officer was not entitled to reimbursement of charges on indoor medical treatment.

The question is no more res integra as in several decisions of various Benches of this Tribunal as well as of Hon'ble High Courts it is categorically upheld that a retired Govt. employees is entitled to claim medical reimbursement. **Even the Central Govt. in O.M. dated 5.6.98 of Ministry of Health and Family Welfare pursuant to the O.M. dated 15.4.97 of the Deptt. of Pension and Pension Welfare has stated in unequivocal terms that it was decided by the Ministry that the pensioners should not be deprived of medical facilities from the Govt. in their old age when they require them most and that the Ministry has no objection to the extension of the CS (MA) Rules to the Central Govt. pensioners residing in non-CGHS areas.**

The benefits were not extended to the pensioners only because of some procedural tangle or lethargic attitude on the part of the relevant ministry or department. This was considered in the case of Prabhakar Sridhar Bapat v. Union of India and Ors. in O.A. 205/2003 by the Ahmedabad Bench of this Tribunal and while allowing the claim of the reimbursement vide order dated 10.11.2003, the Tribunal had directed the respondents to sanction the admissible amount of the medical claim and pay the same within specified period. This order of the Ahmedabad Bench of the

Tribunal was challenged before the Hon'ble High Court of Gujarat at Ahmedabad in Special C.A. No. 3843/2004. The Hon'ble High Court vide order dated 2.4.2004 while dismissing the special C.A. No. 3843/2004 and upholding the claim of the pensioner relied on the decision of the High Court in another S.C.A. No. 9704/02 decided on 30.9.2002. It is observed as under:

"By the said order dated 5th June, 1998, the Govt. of India took a decision that. "pensioners should not be deprived of medical facilities from the Govt. in their old age when they require them most." By the very wordings of this decision it is clear that it was intended to apply to all the pensioners and therefore, there was no need to exclude Postal Department from the ambit of the application of these orders. As a corollary to the said decision, it was specifically stated in the order that there was no objection to extension of the said Rules to the Central Govt. pensioners not residing in CGHS areas as recommended by the Pay Commission. The responsibility of administering the said Rules was however, left to the respective Ministries/ Departments. It was suggested that the pensioners could be given one time option at the time of their retirement for medical coverage under the scheme or under the Rules. It is evident from these orders that the benefit of the said Rules was extended to the pensioners who were not covered under CGHS area. The contention that since there were no rules for the pensioners and that the said rules applied only to the employees during the tenure of their service and, therefore, the respondent could not claim reimbursement of medical bills, is misconceived. Even though the said Rules applied to the employees and there were no statutory Rules applicable to the pensioners, and it is by virtue of the said administrative orders that the pensioners became entitled to the benefits similar to those which the employees were given under the statutory rules. The pensioners who were not covered by the statutory rules were now sought to be covered by the administrative instructions extending the benefit of the Rules applicable to the employees for medical reimbursement to the pensioners."

14. In the instant case, the applicant's case reveals that the applicant having suffered heart attack was immediately rushed to the MDM Hospital, Jodhpur (Rajasthan Government Hospital) and was subjected to heart surgery on dated 12.09.2016 and an amount of Rs.81,536/- was spent on medicines and an amount of Rs.3950/- was spent on testing. It clearly suggests that his condition was serious and required immediate treatment. It is an undisputed position that the MDM Hospital, Jodhpur is a recognised Government hospital and as such, the applicant was very much entitled to claim the reimbursement of the expenses incurred by him for his treatment in MDM Hospital. The contention that the applicant could have become the member of the CGHS and having not become the member of CGHS after retirement, cannot claim the medical reimbursement is quite illogical and unacceptable. Even if the CGHS facility was available in certain areas, could not have extended the benefit of heart treatment. Merely because the applicant was not the member of the CGHS cannot deprive him of his entitlement for reimbursement of the medical expenses incurred by him.

We therefore have no hesitation in concluding that the claim of the medical reimbursement of expenses incurred by the applicant is denied on untenable grounds and therefore, the O.A. deserves

to be allowed and the respondents are required to be directed to entertain the claim of reimbursement of medical treatment expenses of the applicant and reimburse the same.

15. For the reasons discussed above, we direct the respondents to accept the medical reimbursement claim of the applicant and reimburse the amount spent by the applicant for the treatment taken at MDM Hospital, Jodhpur. We also direct that if the amount is not reimbursed to the applicant within three months, the same would be payable with interest at the rate of 9% per annum. Accordingly, the OA is allowed as stated above. No order as to costs.

(ARCHANA NIGAM)
MEMBER (A)

(JASMINE AHMED)
MEMBER (J)

Sv/rss