

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A. NO. 316/90
T.A. NO.

DATE OF DECISION 20-7-94

Mr. V.N. Kachru Petitioner

Party in Person. Advocate for the Petitioner (s)

Versus

Union of India and Others Respondent

~~Mr. K.J. Thakker~~ Advocate for the Respondent (s)
Mr. S.R. Shah ✓

CORAM

The Hon'ble Mr. K. Ramamoorthy Member (A)

The Hon'ble Dr. R.K. Saxena Member (J)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

} No

V.N. Kachru s/o
 Late of Shri S.K. Kachru
 resident of 29, Swi Park,
 Ghatlodia, Ahmedabad and
 retired Vigilance Officer of the
 Employees State Insurance Corpora-
 tion, New Delhi

Applicant.

Advocate Party in Person

Versus

1. Employees State Insurance Corporation
 Statutory Corporation established under
 section 3 of the Employees State Insurance
 Act, 1948 (Act 34 of 1948) ESIC Bhavan Kotla
 Road, New Delhi.
2. Director General Employees State Insurance
 Corporation, ESIC Bhavan Kotla Road, New Delhi
3. Regional Director, Employees State Insurance
 Corporation, Ashram Road, Ahmedabad.

Respondents.

Advocate ~~Shri K.J. Thakker~~
 Shri S.R. Shah

J U D G M E N T

In

Date: 20-7-94

O.A. 316/1993

Per Hon'ble Dr. R.K. Saxena

Member (J)

This application was originally filed by
 Shri V.N. Kachru and four others but vide order dated 25-6-93,
 the names of applicants no.2 to 5 were deleted. As such this
 application is now confined to the matter only of Shri Kachru.

2. Shri Kachru who is a retired Vigilance Officer of E.S.I. Corporation and who was hospitalised in Civil Hospital Ahmedabad and All India Institute of Medical Sciences, New Delhi where he was treated for heart ailment and had spent money totalling Rs. 70,932-24-00, came with the prayer that the respondents be directed to reimburse the amount. The ground of claim is that the Standing Committee of ESI Corporation had approved the proposal of extension of medical facilities to its retired employees. In view of this decision, the Regional Director Ahmedabad wrote to retired employees on 30-1-1990 to go through the scheme and to fill in the form and sent to him before 31-3-1990 so that the benefits may be started with effect from 1-7-1990. Accordingly the applicant agreeing to the schemes deposited six monthly subscription in May 1990. He therefore, became entitled for medical — relief.

3. It is also contended by the applicant that he had repeated heart attacks in July 1992 and was hospitalised at Civil Hospital, Ahmedabad for three weeks. He then went to All India Institutes of Medical Sciences, New Delhi where angiography and angioplasty were performed. He spent Rs. 62464-24 at both the hospitals whereas the amount of Rs. 8468-00 related to the expenditure of fare, lodging and boarding. The applicant submitted that the bills of the amounts spent by the applicant were sent to the Director General ESI Corporation New Delhi but the claim had been rejected vide Memo No. D-12/13-6-1987 Estt (B) dated 18-5-1993. The relief sought is that the respondents be directed to make payment of the bills alongwith interest at the rate of 12 %.

4. The respondents contested the case on the grounds that the proposed scheme^s of medical help to the employees including pensioners of ESI Corporation was a benevolent scheme which was not acceptable to Gujarat State Government and thus it was not implemented in the State of Gujarat. It is also averred that this scheme was proposed after the retirement of the applicant and therefore this facility cannot be included in service matter or a service condition and thus no legal right accrued to the applicant. It is also urged that Central Services (Medical Attendance) Rules which — were made ^{applicable} for other Central Government employees are equally [^] to the employees of ESI Corporation; and since there is no provision for reimbursement in the said medical rules, the applicant is not entitled for the claim. It is also urged that the State Government of Gujarat was necessary party but it was not impleaded and therefore application is liable to be rejected for non-joinder of necessary party. The case of the respondent is also to the effect that even if any liability is made out, it is of the State Government of Gujarat.

5. The applicant argued his case himself while Shri S.R. Shah advocate for the respondents argued the matter, for the respondents.

6. The fact that the applicant is a pensioner of ESI Corporation and on account of heart attacks, he was treated at Ahmedabad and Delhi and spent some money, are not disputed to the respondents. The dispute is centred on the implementation of proposed scheme and if deemed the scheme ^{as} operative, whether it is a condition of service. We, therefore, take up this issue. The ² applicant

has filed the copy of the proposed scheme and some letters of correspondence with the Government of Gujarat State. There are some letters of ESIC Pensioners Association of 19-11-1992 and 7-5-1993 in which it was emphasised that the approval of Gujarat State Government be obtained to extend the medical facility to ESIC employees. These letters are Annexure A-5 and A-6 filed by the applicant. It appears that the proposed scheme of medical facility which was to be implemented with the approval of the State Government, could not be implemented in Gujarat because the modalities of reimbursement of expenditure — could not be worked out. The letter dated 30-1-1990 Annexure A-2 written by the Regional Director Ahmedabad will have to be read alongwith the proposed scheme Annexure A-1. Para 1 of the scheme which makes the position clear is :

- "(1) The Standing Committee at its meeting held on 11th April 1967 decided that arrangements for medical attendance and treatment of employees of the Employees State Insurance Corporation may be made in the existing ESI Dispensaries in consultation with the State Government on such terms and conditions as may be agreed upon between the State Government and the Director General. It was further decided that a trial may be made in Kanpur and Andhra Pradesh. In pursuance of this decision of the Standing Committee arrangements have since been finalised with the Government of Andhra Pradesh for providing medical attendance and treatment."

It shows that the ESI Corporation wanted to take up Welfare measure but without opening new hospitals or centres of medical health, ^{the} The facility was to be extended through ESI Dispensaries

alone provided the concerned State Government agreed. According to the respondents State Government of Gujarat did not approve of it because of some practical problems about settlement of expenditure. This fact finds corroboration from the Annexures 3, 5 and 6 filed by and relied upon by the applicant himself.

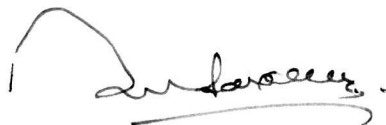
7. The applicant drew our attention towards the fact that in pursuance of the proposed scheme, he had deposited six monthly contribution and was accepted by the respondents and thus it was the duty of the respondents to have extended the medical facility much less reimbursing the — bills. In this connection, we will have to see the contents of the scheme again. It was a proposed scheme and could be implemented only on approval of the State Government. Besides, the employees of ESI Corporation were in all the States of the country; and thus instructions were required to be sent in all States. The Government of Andhra Pradesh had agreed and thus it could be implemented there immediately. Thus by sending a letter to the employees of ESI Corporation to participate in the scheme and to contribute, did not mean that the scheme became operative. These were the steps so that if the scheme ~~is~~^{is} approved by the State Government, there would be no delay in its implementation in that State. The condition precedent that the scheme should be approved by the State Government, is predominant one. Since the Government of Gujarat State did not give consent to the scheme, it was not implemented in this State, and thus mere contribution for six months will not give him any justiciable right.

8. The learned counsel for the respondents also argued that it was a benevolent scheme and even if it were implemented, it gave no right to the applicant for claim because it could not be a condition of service. We are unable to agree on this point. In case, the scheme had been implemented in this State, the position would have been different. No doubt the term used under section 4 of Administrative Tribunals Act 1985 is "service matters" but has been defined under section 3 (q) as matters relating to the conditions of service. The expression "conditions of service" has been interpreted by Supreme Court in Pradyat Kumar Vs. Chief Justice of Calcutta, AIR 1956 SC 285 and I.N. Subba Reddy Vs. Andhra University, (1977) 1 SCC 554, to mean all those conditions which regulate the holding of a post by a person right from the time of appointment till his retirement and even beyond it. Moreover, para 6 of the proposed scheme indicates that it would be applicable to retired employees also. Thus there remains no doubt that if the scheme were implemented in Gujarat State, the applicant who is living in this State would have ^{got} a right to seek help ² in accordance with the terms and conditions thereunder.

9. The scheme which has been brought on record by the applicant does not spell out the details. It is, therefore, not clear as to what was the procedure and conditions for reimbursement. It has been submitted on behalf of the respondents that the service conditions of the employees of ESI Corporation, according to section 17 of ESI Act 1948, are similar to those as are provided to the Central Government employees, and Central Services (Medical Attendance) Rules do not provide for reimbursement, so the

applicant is not entitled even for the relief on that count. The applicant has not controverted this situation. Before going to any Medical Institute or Medical College, reference ^{of} approved medical officer is necessary so that it may be indicated that the treatment could not have been done at any other level. The applicant does not produce any such document.

10. On the consideration of the facts and circumstances, we come to the conclusion that there is no merit in the case of the applicant. The application is, therefore, rejected. Cost is made easy.



(Dr. R.K. Saxena)
Member (J)



(K. Ramamoorthy)
Member (A)

*AS.

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

Application No. 04/316/93 of 19

Transfer Application No. _____ Old W. Pett.No

CERTIFICATE

Certified that no further action is required to be
taken and the case is fit for consignment to the
Record Room (Decided)

Dated : 22/07/94

Countersigned :

cecelaf
Signature of the Dealing
Assistant

Bhajan 9894
Section Officer/Court officer

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