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CENTRAL ADMINISTRATIVE TRIBUNAL JODHPUR BENCH

Original Application No.207/2013

Jodhpur this the 11th day of February, 2014

Reserved on 29.01.2014

CORAM :

Hon'ble Ms. Meekshi Hooja, Member (A)

Vinod Kumar Bohra S/o Late Dr. Yagy Dutt Bohra aged 60 years by caste Brahmin retired Sr. Engineering Assistant (Non-Gazetted) at Prasar Bharti (Central Government employee) Akashvani Jodhpur Resident of 468, Pal Link Road, Jodhpur at present residing at 34 Sector - C, Yagya Krishan, Sri Ram Nagar, Jodhpur.

.....Applicant
(Through Adv. Mr. N.K.Joshi)

Versus

1. Union of India through Secretary, Information & Broadcasting Ministry, Shastri Bhawan, New Delhi.
2. Director General Akashvani, Akashvani Bhawan, Parliament Street, New Delhi.
3. Head of the Office Akashvani Paota 'C' Road, Jodhpur.
4. Union of India through Secretary, Department of Personnel, Public Grievances & Pension, New Delhi.

.....Respondents
(Through Adv. Smt. Kausar Parveen,)

ORDER

This O.A. has been filed under Section 19 of the Administrative Tribunals Act, 1985 and is directed against the impugned order No.13 (3) Pension/2011/dated 02.04.2013 vide which the claim of reimbursement of medical bill of the applicant was denied by the respondent No.3.

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2. The brief facts of the case as averred by the applicant are that the applicant entered in the service of Akashvani at Jodhpur as an employee of Ministry of Information and Broadcasting on 26.09.1995 and got voluntary retirement on 01.10.2010, after completing 35 years. The PPO No. 277521001445 was issued by the C.P.A.O. on 01.12.2010. The applicant sought retirement because he was suffering from heart-ailment and at the same time his wife was suffering from Br. Asthma and DM Type-2 problem in the year 2010 and both these diseases required day to day care as well as medicines which require huge quantum of money every month. The applicant, however, is getting only 300/- rupees per month towards medical claim reimbursement. It has been further averred that there are two schemes prevailing in the department; one is for those who are residing at places where CGHS facility is available and another is for those who are residing at places where C.G.H.S. facility is not available. The places where CGHS facility is not available, Rs.300/- per month for outdoor treatment is provided and as regards the indoor treatment the incumbent though entitled for reimbursement of medical claims as per Central Services (Medical Attendance) Rules, 1944 the applicant is not being given the same whereas the previous category get the reimbursement of complete amount incurred in the treatment of the outdoor and for the indoor treatment cashless facility is available to them. The applicant, annoyed by this action of the department made correspondence with his Head Of Office at Jodhpur and the same was replied to by the Office on 02.04.2013 (Annex.A/2) in which it has been

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stated that the department does not have any direction regarding reimbursement of medical claims with respect to the pensioners like the applicant's category. Aggrieved by this reply, the applicant wrote a letter to the Director General, All India Radio, Prasar Bharti, which was replied vide letter dated 11.04.2013 (Annexure-A/3) and the reply referred to certain provisions regarding the claim of the pensioners and the relevant rules were also enclosed. It has been further averred that the applicant got a heart attack in the month of February 2013 and at the relevant time he was not in a position to go to the place where the C.G.H.S. facility was available, therefore, he got his treatment at the Government Hospital i.e. MDM Hospital, Jodhpur as he is a permanent resident of Jodhpur. The quantum of expenditure incurred for the same was to the tune of Rs. 1,76,663/- as at Annex.A/4. The applicant personally met with the Head of Office at Jodhpur but he did not receive any satisfactory reply for the reimbursement of his medical claim and hence, the applicant has filed the present O.A. claiming the following reliefs :-

“(1)“Respondent No. 3 shall be directed to act in the light of Annexure – 3 i.e. as per direction imparted in the CS(MA) Rules, 1944 (Extension) and accept the regular medical claim of applicant and process them at his end and arrange the payment of the same to the applicant who is senior citizen and person suffering from heart ailment and is in dire need of funds. The wife of the applicant is also suffering from Br. Asthama and Diabetes. As both husband and wife are suffering from such kind of ailment which require regular expenditure to remain fit in life. Specifically applicant pray that the bill of Rs. 1,76,663/- enclosed as Annexure – 4 which he has already paid shall be processed at the earliest so that he may get release from present financial crisis caused by payment of huge amount.

(2)That applicant also pray that he shall be paid interest @ 12% per annum on the amount which he has taken as loan from some of his relative so he shall be awarded interest also in this case on Rs. 1,76,663/-.

(3)Any other order or direction which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case may kindly be passed in favour of the humble applicant.

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(4)The cost of this original application may also be awarded to the applicant.”

3. By way of reply , the respondents have denied the relief claimed and it has been submitted that as per the Sub Title “Short Title and Extent of Application” (iv) of Note 2, under Rule 1 (2) of the Central Services (Medical Allowance) Rules, 1944, the aforesaid rules do not apply to the retired Government servants and a copy of the rules has been placed as Annexure-R/1. It has been further submitted that the pensioners are given option for medical coverage under the C.G.H.S. facility. Further, for availing the CGHS facility, an individual pensioner, living in a non-CGHS covered area would have to get himself/herself enrolled in the nearest CGHS city on payment of requisite contribution. In the present case, the applicant opted for Fixed Medical Allowance and, therefore, he is being paid Rs. 300/- per month by the pension authority. The Form of Option as given the applicant has been filed along with the reply as Annex.R/3. It has been further averred that the respondents are not empowered to make any payment under the CS(MA) Rules, 1944 to the pensioners and the same has been conveyed to the applicant vide office letter dated 02.04.2013 (Annexure-A/2). In the reply to the grounds, it has been averred that the matter of medical reimbursement claim of the pensioners are under consideration of the Hon'ble Supreme Court as per the Swamy's news for the month of May-2013 page 77 annexed at R/4. It has been reiterated that the applicant did not join CGHS facility and opted for Fixed Medical Allowance and, therefore, the applicant is being paid Rs. 300/- per month by the pension authority. The respondents have



acted in accordance with the prescribed rules and regulations and the relief sought by the applicant is not tenable or sustainable in the eyes of law and have therefore prayed for the dismissal of the O.A.

4. Heard the learned counsel for both the parties and perused the record.

5. The counsel for the applicant contended that, though he had opted for Fixed Medical Allowance (presently Rs.300/- per month) as he was residing in a area where no CGHS facility was available, but being a pensioner residing in a non-CGHS area, he is entitled to get reimbursement of the treatment which he has undergone for his heart- ailment that, too in a Government Hospital i.e. MDM Hospital, Jodhpur. He referred to Annex.A/3 i.e. the letter issued by the Directorate General, All India Radio dated 11.04.2013, in which communication dated 05.06.1998 has been enclosed, wherein the CS(MA) Rules, 1944 were extended to pensioners residing in the area which are not covered by the CGHS and which states inter alia "*the pensioners could be given a one-time option at the time of their retirement for medical coverage under CGHS or under the CS(MA) Rules, 1944. In case of a pensioner opting for CGHS facilities he/she would have..... himself/herself registered in the nearest CGHS city for availing hospitalization facilities.*

In such cases, the reimbursement claims would be processed by the Additional Director, CGHS of the concerned city. For those opting for medical facilities under the CS (MA) Rules, the scrutiny of the claims

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would have to be done by the parent office as in the case of serving employees and the payment would also have to be made by them. The of AMAs to be appointed under CS(MA) Rules would be decided Ministry, Department-wise as provided under the rules. The beneficiaries of the CS (MA) Rules, 1944 would be entitled to avail of hospitalization facilities as provided under these rules."

6. The counsel for the applicant stated that a Fixed Medical Allowance of Rs. 100/-, initially accorded vide OM No.45/57/97-P& PW (C) of Ministry of Personnel, Public Grievances & Pensions (Department of Pension & Pensioners Welfare) dated 19th December, 1997, was increased to Rs. 300/- per month vide OM No. 4/25/2008-PNPWD dated 26.05.2010. It is clear from the perusal of the OMs' that the Fixed Medical Allowance is granted to the Central Government pensioners / family pensioners residing in areas not covered under the Central Government Health Scheme administered by the Ministry of Health and Family Welfare and corresponding health schemes of other Ministries or departments for retired employees for meeting expenditure on their day to day medical expenses that do not require hospitalization (emphasis supplied). Thus, it is clear that the fixed medical allowance of Rs. 300/- per month takes care only of day to day medical expenses that do not require hospitalization and, is therefore not meant to cover hospitalization expenses, which clearly have to be paid separately.



7. The counsel for applicant further contended that as the CS (MA) Rules have now been extended to the pensioners residing in areas not covered by the CGHS as per M.H.& F.W., OM No.S-14025/4/96-MS dated 05.06.1998, therefore, his claims are required to be reimbursed by the respondents. In this context, he placed reliance upon the orders of the Hon'ble High Court of Karnataka delivered on 16.09.2006 in the Writ Petition No. 39031/2003 wherein it was held that the Note 2 (iv) sub-Rule (2) of Rule 1 of the Central Services (Medical Attendance) Rules, 1944 is unconstitutional, invalid and unenforceable against the petitioner and he has been declared entitled to get post-retirement medical reimbursement facility or medical allowance both towards hospitalization and non-hospitalization expenses from the respondents. He also referred the judgment of High Court of Delhi dated 23.05.2002 in Civil Writ Petition No.4873/2000 and of High Court of Ahmedabad in Special Civil Application No.7895/2004 dated 06.07.2004 in support of his arguments.

8. On the other hand, the counsel for the respondents contended that the claim of the applicant is not valid as he has given the option as per Annex.R/3 for getting Fixed Medical Allowance and the same are being paid in accordance with OM of Ministry of Personnel, Public Grievance & Pensions (Department of Pension & Pensioners' Welfare) dated 19th December, 1997 and as increased from Rs.100/- to Rs.300/- as per their OM dated 26.10.2010. The CS(MA) Rules, are not at all applicable to the retired Government officials as is clear from provision at Note 2 (iv) of



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Sub Rule (2) of Rule 1 of the Rules. She further argued that the judgment of the Hon'ble High Court of Karnataka cited by the applicant relates to entitlement of a Government servant vis-à-vis a Coffee Boards' employee but in this case the applicant has himself taken the option for a Fixed Medical Allowance which is being paid as per rules and no claim for treatment by a retired official can be made as per the CS(MA) Rules as the same are not applicable to them.

9. Counsel for the respondent also referred to Annexure -R/4 Swamy's News of May-2013 (page 77) which states that the matter of medical reimbursement claim of the pensioners is under consideration of the Hon'ble Apex Court.

10. Considered the rival contentions of the parties and also perused the record. It is an admitted fact that the applicant took voluntary retirement, while on the post of Senior Engineering Assistant from Akashvani, Jodhpur, as an employee of Ministry of Information & Broadcasting (Central Government) on dated 01.10.2010. Prior to retirement, he also filled up his form of option as at Annexure-R/3 for Fixed Medical Allowance and this option, as stated therein, was exercised as no CGHS medical facilities are available in the area of his residence i.e. Jodhpur. A bare perusal & reading of the OM No.45/57/97-P & PW(C), Government of India, Ministry of Personnel, Public Grievances & Pension (Department of Pension & Pensioners Welfare) New Delhi, dated 19th December, 1997, brings out that the Fixed Medical Allowance of Rs.100

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per month was accorded 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 Scheme administered by other Ministries/Departments for their retired employees, for meeting expenditure on day-to-day medical expenses that do not require hospitalization. The same was revised vide OM No.4/25/2008-P&W (D) dated 26.05.2010 to Rs.300/- per month. There is thus force in the contention of the counsel for the applicant that as per the aforesaid OM's Fixed Medical Allowance is only for treatment for meeting expenditure on day-to-day medical expenses that do not require hospitalization and the mere amount of Rs.300/- cannot be said to cover hospitalization also.

11. Further, it is also the contention of the counsel for the applicant that the CS (MA) Rules, 1944, though initially not applicable to retired government officials were extended to the Central Government pensioners residing in areas not covered by CGHS vide M.H.& F.W., OM No.S-14025/4/96-MS dated 05.06.1998. The copy of this OM has been provided to the applicant as at Annexure-A/3 by the office of the Director General All India Radio itself vide letter dated 11.04.2013. In this context, the Hon'ble High Court of Gujarat at Ahmedabad in Special Civil Application No.7895/2004 while deciding a similar case upheld the claim of the pensioner relying upon the decision in earlier Special Civil Application No.4539 of 2004 decided on 12.04.2004 (Union

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of India vs. Janakprasad J. Dave S/o Jaishankar Dave), in which para 3 the Hon'ble Court had held and directed as under:-

“3. The question whether the pensioner in the Postal Department, Government of India, is entitled to reimbursement of amount spent on treatment has been decided by the Division Bench of this Court in the context of Office Memorandum dated 5.6.1998 in Union of India v. SY Ganpule (SCA No. 9704 of 2002) vide its judgment dated 30.9.2002, followed by subsequent Division Bench decision in Union of India v. Ratanchand T. Shah (SCA No. 5591 with SCA No. 9302 of 2003). We also considered this matter in Union of India v. Prabhakar Sridhar Bapat-retired Sr. Supdt. of Post Office (SCA No. 3843 of 2004 decided on 2.4.2004 decided on 2.4.2004) and upheld the claim of the pensioner for reimbursement of medical claims. Therefore, there has been consistent view of this Court holding that in absence of statutory rules, the Office Memorandum dated 5.6.1998 holds the field and covers the case of pensioners seeking reimbursement of medical claims. This being a similar case, therefore, we find no substance in the plea raised once again by the appellant. Consequently, there is no merit in these petitions and the same are dismissed.”

Thus, the OM dated 05.06.1998 has been upheld as holding the field and covering the cases of pensioners seeking reimbursement of medical claims.

12. The Hon'ble High Court of Delhi in Civil Writ Petition No.4873/2000 decided on 23.05.2002, held in the above judgment that *material factor is status of the person as the retired pensioner and not merely being the card holder of the CGHS scheme on payment of some nominal amount. This has also to be appreciated taking into consideration the fact that certain areas are not CGHS areas. After retirement a Government servant may reside in different parts of the country and it cannot be expected that the government should discriminate between the officers who happen to stay in one or other part of the country.* It has been also stated that *it would be a travesty of justice if a retired pensioner is deprived of reimbursement of medical expenses*

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only on the basis that he is not a member of the CGHS scheme and in my considered view any differentiation between person who are also government pensioners and some of whom are living in CGHS areas and some are in non-CGHS areas would be violative of Article 14 of the Constitution of India.

13. It has been the contention of the counsel for the respondents that the applicant has given his option for Fixed Medical Allowance and therefore he is being paid due amount of Rs.300/- per month and as the CS (MA) Rules, 1944 do not apply to retired officials, no medical reimbursement can be paid under the said rules. In this context, the Hon'ble High Court of Karnataka at Bangalore in Writ Petition No.39031 of 2003 decided on 16.09.2006, held that the note 2 (iv) sub-Rule (2) of Rule 1 of the Central Services (Medical Attendance) Rules, 1944 is unconstitutional, invalid and unenforceable against the petitioner (in that case) and it has been further held that the petitioner is entitled to Post-retirement Medical reimbursement/ facility or medical allowance both towards hospitalization and non-hospitalization expenses from respondents Nos. 1 to 4 under the Central Services (Medical Attendance) Rules, 1944 as applicable to him while in service.

14. Further, with regard to the contention of the counsel for the respondents that the matter of payment of medical claims to the retired Government servants/employees should wait till the disposal of SLP of 2004, 10207 of 2004, 22812 of 2004, 4193-94 of 2005, 3714 of 2005,



5291 of 2005 and 8539 of 2005 by the Hon'ble Apex Court to get medical reimbursements by CGHS, it appears that these directions, annexed as Annexure-R/4 (Swamy's News May-2013 Page 77), appear to relate to medical reimbursements by CGHS, and in the present case the applicant is residing in non-CGHS area.

15. It is also clear from the OM No.45/57/97-P&PW (C) dated 19th December, 1997 that the fixed Medical Monthly Allowance is given for meeting expenditure on day-to-day medical expenses that do not require hospitalization. In this case, the applicant is claiming expenditure on account of treatment at MDM Hospital regarding heart ailment, therefore, it cannot be said that no other claim besides the Fixed Medical Allowance of Rs.300/- per month is admissible to the applicant and this case hospitalization also.

16. Therefore, in my considered view in the light of OM dated 05.06.1998, which has been sent by the respondent themselves to the applicant as at Annexure-A/3 and by which the CS (MA) Rules have been directed to be extended to retired Government officials and the same has been upheld to hold the field as per judgment of the Hon'ble High Court of Gujarat at Ahmedabad in Special Civil Application No.7895/2004 and also in the light of the judgment of the Hon'ble High Court of Karntaka at Bangalore in Writ Petition No.39031/2003 wherein rule regarding non-applicability of CS (MA) Rules, 1944 to retired Government servants has been declared unconstitutional, and in the spirit of judgment of the



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Hon'ble Delhi High Court in Civil Writ Petition No.4873/2000 that discrimination cannot be made on the basis of the pensioners residing in CGHS area or non-CGHS area, the applicant is entitled to reimbursement of his medical claims for expenditure in a hospitalization case. Accordingly, the respondents are directed to consider the claim of the applicant for reimbursement of medical expenditure for treatment in the Government Hospital (as at Annexure-A/4) and decide the same within a period of four months from the date of receipt of a copy of this order.

17. The OA is thus allowed with no order as to costs.

Meenakshi Hooja
(MEENAKSHI HOOJA)
MEMBER (A)

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