

CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH,
JA BALPUR

Original Application No. 1047 of 2005

Jabalpur, this the 3rd day of October, 2006.

Hon'ble Dr.G.C.Srivastava,Vice Chairman
Hon'ble Shri A.K.Gaur, Judicial Member

Sumer Chand Jain S/o Ummedi Lal Jain, Aged 74 years,
Occupation-Retired, R/o 136, G-Mayur Nagar, Thatipur,
Gwalior.

-Applicant

(By Advocate – Shri J.P.Shrivastava)

V E R S U S

1. The Comptroller & Auditor General of India, 10,
Bahadur Shah Jafar Marg, New Delhi.

3. The Accountant General (Audit) Madhya Pradesh, 53,
Arera Hills, Bhopal (MP)

-Respondents

(By Advocate – Shri M.Rao)

O R D E R

By Dr.G.C.Srivastava,VC.-

This OA has been filed by the applicant, who retired as Senior Audit Officer, Grade-I from the office of the Accountant General Madhya Pradesh, against non-reimbursement of his medical claim. The applicant has prayed for the following main relief:-

- "i) ...the respondents be directed to consider and allow medical claims Annexure A/1 set up by the applicant together with reasonable interest for delete (sic-delayed) payment.
2. The facts of the case are that the applicant retired as a Senior Audit Officer on 31.1.1991 from the office of the AG (Audit) II



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Madhya Pradesh, Bhopal and is presently settled at Gwalior where Central Government Health Scheme (for short 'CGHS') facilities are not available. The applicant had developed heart problems in January, 2005 for which he had to undergo coronary angiography on 10.1.2005 and a by-pass surgery on 17.1.2005 at CHL Apollo Hospital, Indore. The applicant had to pay Rs.13,000/- for coronary angiography and Rs.1,36,065/- for the by-pass surgery. The applicant submitted his two medical claims (annexure A/1) for medical reimbursement to respondent no.2 together with a copy of the order passed by this Tribunal in the case of **Laxmi Chand Vs. Comptroller and Auditor General of India & ors**, OA 112/2004 decided on 4.11.2004 by Circuit Bench Gwalior of this Bench [2005 (1) ATJ 31], but the claim of medical reimbursement was rejected by the respondent no.2 (annexure A/2) on the ground that medical reimbursement was not permissible for pensioners under the Central Services (Medical Attendance) Rules, 1944 (for short 'CS(MA)Rules'). Hence, the applicant has approached this Tribunal through this OA mainly on the ground that this Tribunal has in the aforesaid OA allowed the claim for a similarly situated case and this order of the Tribunal has been confirmed by the Hon'ble High Court in WP(S)No.135/2005 vide order passed on 4.5.2005 (annexure A/5).

3. We have considered the arguments advanced by the counsel of both the parties and have also gone through the respective pleadings and judgments cited by them.

4. It is a fact that this Tribunal has allowed medical reimbursement in the OA cited by the applicant and the said order has also been confirmed by the Hon'ble High Court. A perusal of the order passed by this Tribunal in the aforesaid OA shows that it is based on the order of the Ahmedabad Bench of the Tribunal in the case of **Prabhakar Sridhar Bapat Vs. Union of India and others** in OA No205/2003, which has been upheld by the Hon'ble

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High Court of Gujarat in Special CA No.3843/2004 vide order dated 2.4.2004, but this judgment of the Hon'ble High Court of Gujarat has been challenged before the Hon'ble Supreme Court in SLP No.10659/2005. This SLP along with 8 others' SLPs filed in respect of other similar cases, are still pending before the Hon'ble Supreme Court.

5. An identical case had recently come before this Tribunal for consideration in O.A. No.472/2005 (**Sadashiv Gopal Chiplunkar Vs. Union of India and others**) which was disposed of on 14.9.2006 by an order, the relevant paragraphs of which are reproduced below:

"3. In their written reply, the respondents have stated that although the Ministry of Health and Family Welfare has been in favour (vide OM dated 5.6.1998 - annexure R/I) of extending the benefits under the CS(MA) Rules to the pensioners also on the basis of recommendations made by the Fifth Central Pay Commission, the proposal was not finally agreed to vide OM dated 20.8.2004 (annexure R/II). In view of this, pensioners are entitled to medical facilities only under the CGHS provided they have enrolled themselves under the CGHS scheme by paying the requisite contribution. It has also been stated by the respondents that in accordance with OM dated 19.12.1997 (annexure R/IV) a pensioner residing in an area not covered under the CGHS is entitled to a fix^{ed} medical allowance of Rs.100/- per month in lieu of OPD facilities and in accordance with OM dated 7th July, 1987 (annexure R/III) such a pensioner can also get his name registered in any of the CGHS dispensaries for availing of indoor medical facilities like any serving employee. The respondents have averred that since the applicant did not register himself for availing of CGHS facilities from any of the existing CGHS dispensaries, and since the CS(MA) Rules specifically provide that these rules are not applicable to pensioners, the question of reimbursement of medical expenses does not arise.

"4. The learned counsel for the applicant drew our attention to the following judgments passed by various Benches of this Tribunal in similar matters:

- (1) **Shri Ratanchand T. Shah Vs. Union of India & others**, OA No.216/2001 decided on 21.10.2002 by the Ahmedabad Bench (copy filed as annexure A/2)

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- (2) **Shri A.G.Narayanaswami, IA&AS Vs. Union of India and others**, decided on 14.12.2004 by the Chennai Bench (copy filed as annexure A/4).
- (3) **Laxmi Chand Vs. Comptroller and Auditor General of India & ors**, OA 112/2004 decided on 4.11.2004 by Circuit Bench Gwalior of this Bench [2005 (1) ATJ 31].

The learned counsel for the applicant submitted that despite non-existence of any provision under the CS(MA) Rules for reimbursement of medical expenses to pensioners and despite the provision that a pensioner can get himself registered with a nearby CGHS dispensary, reimbursement was allowed by this Tribunal in the above cases on the ground that these conditions are illogical and unacceptable. The contention of the applicant's counsel is that the aforementioned judgments are squarely applicable to the instant case and, therefore, following the decisions in those cases, this OA should be allowed.

"5. Opposing the above contention, the learned counsel for the respondents argued that the order passed in the case of Laxmi Chand (supra) is based on the order of the Ahmedabad Bench of the Tribunal in the case of Prabhakar Sridahar Bapat Vs. Union of India and others in OA No.205/2003, which has been upheld by the Hon'ble High Court of Gujarat in Special CA No.3843/2004 vide order dated 2.4.2004, but this judgment of the Hon'ble High Court of Gujarat has been challenged before the Hon'ble Supreme Court in SLP No.10659/2005. This SLP along with 8 other similar SLPs were called on for hearing on 26.9.2005, whereupon the Hon'ble Supreme Court condoned the delay in filing the process fee and ordered these matters to be called after six weeks (vide annexure R/7). The learned counsel for the respondents stated that those SLPs are still pending before the Hon'ble Supreme Court and, therefore, the applicant can not be given any relief based on the judgment in the aforementioned OAs.

"6. We have considered the arguments advanced by the counsel of both the parties and have also gone through the respective pleadings and judgments cited by them.

"7. It is an admitted fact that the applicant has not registered himself under the CGHS, and under the CS(MA) Rules pensioners are not eligible to get reimbursement of medical expenses. Accordingly, if the existing rules and provisions are applied strictly in letter and spirit, the applicant is not entitled to get reimbursement of the medical expenses that he has claimed. But, it is also an admitted fact that this Bench as well as other Benches of this Tribunal as

also different High Courts have taken a view that merely because of these rules and provisions, pensioners should not be deprived of the facility for reimbursement of medical expenses. At the same time, it is also a fact that all such orders have been challenged by the Union of India before the Hon'ble Supreme Court where SLPs are still pending. Thus the basic issue involved in this OA, namely, notwithstanding the specific provision under the CS(MA) Rules that pensioners are not entitled to get reimbursement of medical expenses under these rules, whether medical reimbursement can be allowed to a Central Government pensioner even if he is not a CGHS beneficiary, is subjudice with the apex Court, and it may not be appropriate for this Tribunal to pass any order in such a matter. We are, therefore, of the considered view that the subject matter being under consideration of the Hon'ble Supreme Court, the ends of justice will be met if we direct the respondents to apply the judgment and order as may be passed by the Hon'ble Supreme Court in the aforesaid SLPs to the present OA at the appropriate time. We issue direction accordingly. Further, we give liberty to the applicant that after the aforesaid SLPs are disposed of by the Hon'ble Supreme Court and the applicant makes a representation to the competent authority for disposal of his representation in accordance with the directions as may be issued by the Hon'ble Supreme Court, the applicant can approach this Tribunal afresh without any consideration of limitation or delay and laches, after his representation is disposed of by the competent authority, in case he still feels aggrieved and so advised.

"8. In the result, the OA is disposed of with the above directions. No costs.

After a careful perusal of the aforesaid order dated 14.9.2006 passed by this Tribunal, we find that the subject matter of the present case is fully covered by the aforesaid order. Accordingly, we are of the considered view that the present case can also be disposed of in similar terms as ~~directed in~~ the said case.

6. Accordingly, we direct the respondents to apply the judgment and order as may be passed by the Hon'ble Supreme Court in the aforesaid SLPs to the present OA at the appropriate time. Further we give liberty to the applicant that after the aforesaid SLPs are disposed of by the Hon'ble Supreme Court and

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the applicant makes a representation to the competent authority for disposal of his representation in accordance with the directions as may be issued by the Hon'ble Supreme Court, the applicant can approach this Tribunal afresh without any consideration of limitation or delay and laches, after his representation is disposed of by the competent authority, in case he still feels aggrieved and so advised.

7. In the result, the OA is disposed of with the above directions. No costs.

A.K. Gaur
(A.K. Gaur)
Judicial Member

G.C. Srivastava
(Dr. G.C. Srivastava)
Vice Chairman

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प्रमाणित सं ओ/न्या... जलपुर, दि...

प्रमाणित अथवा प्रमाणित:-

- (1) सचिव, राज्य न्यायालय नगर प्रवेशिका, जलपुर
- (2) आदेशिका (1/2) दि/न... के काउंसल
- (3) प्रवर्ती (1/2) दि/न... के काउंसल
- (4) न्यायालय, कोषाध्यक्ष, जलपुर न्यायालय

सूचना एवं आवश्यक कार्यवाही के लिए

उप रजिस्ट्रार

J.P. Srivastava
DAV GWH
M. Rao D26
GWH

Issued
on 4/10/06

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