CENTRAL ADMINISTRATIVE TRIBUNAL,

CHANDIGARH BENCH

O.A.NO.060/00668/2018 Decided on: 18.10.2018

CORAM: **HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &**
HON'BLE MS. AJANTA DAYALAN, MEMBER (A)

Baldev Raj Sharma son of Late Sh. Anant Ram Sharma, aged about 85 years R/o B-1-678/8-B, Sr. No. 195, Street No.3, Upkar Nagar, Civil Lines, Ludhiana (Group C).

Applicant

(By: **MR. M.K. BHATNAGAR, ADVOCATE)**

Versus

1. Union of India through the Secretary to the Government of India, Ministry of Communication and I.T. Department of Post, Dak Bhwan, New Delhi.
2. Post Master General, Area-II, Sector-17, Chandigarh.
3. Senior Supdt. Of Post Offices, Ludhiana, Civil Division, Ludhiana.

Respondents

(By: **MR. RAM LAL GUPTA, SR.CGSC)**

O R D E R (oral)
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. The applicant has filed this Original Application (OA) under section 19 of the Administrative Tribunals Act, 1985, for quashing the order dated 14.6.2016 (Annexure A-1) and 12.7.2017 (Annexure A-2), vide which his claim for medical reimbursement on account of Essential Hypertension benign prostatic hepertrophy fracture left neck femur has been declined only on the ground that the Central Services (Medical Attendance) Rules, 1944, are not applicable to the retirees.

2. The facts are largely not in dispute. The applicant, who is 85 years of age, had retired from Postal Department and is settled at Ludhiana. a non-CGHS area. He was treated at DMC,

Ludhiana, for indicated disease during the period 4.5.2015 to 13.5.2015 and incurred a sum of Rs.1,45,740/- on his treatment. On denial of claim, he filed O.A.No.060/00375/2016, which was disposed of with direction to the respondents to take a view. On rejection of claim, he again filed O.A. No. 060/00669/2016, which was disposed of on 6.4.2017 to re-consider the issue. However, his claim was again rejected vide order dated 12.7.2017. Hence the O.A.

3. The respondents have opposed the Original Application by filing a detailed reply. In short, the plea is that CS (MA) Rules, 1944, do not apply to retirees, so they are not entitled to reimbursement of medical expenses. Certain other pleas have also been taken by them.

4. When the matter was taken up for hearing today, learned counsel for the applicant vehemently argued that the objection raised by the respondents with regard to non-applicability of C.S.(M.A) Rules, 1944, to retirees has already been negated by this Court, and further the jurisdictional High Court has approved the view taken by this Court granting similar benefit to retirees like the applicant vide judgment dated 17.01.2018 in the case of **UNION OF INDIA & ORS.** VS. **MOHAN LAL GUPTA & ANOTHER,** 2018 (1) SCT 687. He further averred that since the issue has been settled up to the Hon'ble Supreme Court by dismissing the petition filed by Union of India and upholding the order of the High Court, which has upheld view taken by this Court, therefore, respondents cannot deny the benefit to those retirees for getting medical reimbursement as an

indoor patient, who are getting fixed medical allowance residing in non-CGHS area.

5. Learned counsel further relied upon order of this Court in a bunch of cases, leading one being O.A. NO. 060/00396/2014 titled **YASH PAL BHAMBRI** VS. **UNION OF INDIA & OTHERS**, decided on 06.12.2014 and also a latest decision of this Court in O.A. NO. 060/00737/2017 and connected matters titled **DHARMINDER SHARMA** VS. **UNION OF INDIA & ORS. etc. etc.** rendered on 07.05.2018, wherein similar plea of the respondents has been rejected, in view of the ratio of law laid down by the Hon'ble Supreme Court in the case of **SHIVA KANT JHA VS. UNION OF INDIA,** W.P. (Civil) No. 695/2015 decided on 13.04.2018. Therefore, he prayed that the respondents be directed to reimburse his in the light of the latest judicial pronouncement of this Court, as if direction is issued to them to re-consider the issue, they are likely to pass same order, as has happened on previous two occasions. Learned counsel for the respondents was not able to cite any law contrary to the one pressed into service by learned counsel for the applicant.

6. The pleas taken by respondents in this O.A. to reject the claim of the applicant were also taken by them in a number of review petitions, which were dismissed by a common order dated 14.9.2018 leading one being R.A. No. R.A. No.060/00040/2018 IN O.A. No.060/00621/2016 titled **UNION OF INDIA & OTHERS VS. SUDARSHAN SHARMA ETC**. The relevant part of the order is reproduced as under :-

> "7. A lot of hue and cry was raised by learned counsel for the Review Petitioners that in the absence of any challenge to legality of Rules of 1944, the same could not be declared as illegal or arbitrary by this Tribunal, more so when the same were held to be legal by Full Bench of this Tribunal. It is not in dispute that this Tribunal in

para 26 of its decision has clearly held that import and applicability of CS (MA) Rules, 1944, and clarification dated 20.8.2004 were re-examined and were held to be arbitrary and illegal by the Hon'ble Punjab and Haryana High Court, leading case being CWP No. 26270 of 205 titled **UNION OF INDIA & OTHERS VS. MOHAN LAL GUPTA & OTHERS**, 20018 (1) SCT, 686. We have perused that decision.

8. In fact it is apparent that the Hon'ble Jurisdictional High Court noticed the plea taken by department therein that there is a clear distinction between retired and the serving employees whose perks cannot be equated on the ground of any legitimate principle or any touch stone of law. He has placed reliance on judgments of the Hon'ble Supreme Court rendered in cases titled as **'CONFEDERATION OF EX-SERVICEMEN ASSOCIATIONS AND OTHERS VS. UNION OF INDIA AND OTHERS**' reported as 2006(4) SCT 128, **'STATE OF PUNJAB VS. RAM LUBHAYA BAGGA**' reported as 1998(1) SCT 716 and **'UNION OF INDIA AND OTHERS VS. S.K.SAIGAL AND OTHERS**' reported as 2007(1) SCT 286. After noticing the history of cases on the issue, the Court has held "We are thus of the opinion that given the judicial finality accorded in an identical petition which is not even remotely deviant from the present one, there is no reason for us not to take a similar view. The judgment relied upon by the learned counsel for the petitioners does not in any way enhance their case. It is pertinent to mention here that we are dealing with the cases of persons who have retired and are in dire need of medical attention in their old age. It is also an accepted fact by the petitioners themselves that CGHS facilities are not available in most of the areas where the respondents reside including an important town like Ambala. If that be so, then the observations extracted above would be attracted to the present cases in all ferocity." In fact, the Hon'ble High Court also relied upon decision of Hon'ble H.P. High Court in the case of **'UNION OF INDIA AND ANOTHER VERSUS SHANKAR LAL SHARMA'** reported as 2016(1) SCT 413, in which it was held that "Note 2 appended to Rule 1 is read down to extend the benefit of CS (MA) Rules, 1944 to retired Government officials residing in non-CGHS areas to save it from unconstitutionality and to make it workable". Despite, this the respondents did not woke up and kept on placing reliance on said decision to reject the claim of the pensioners / retirees. The finding of this Tribunal is in consonance with the view taken by the Hon'ble High Court that any instructions, clarification of 2004 or the redundant rules, framed before enforcement of Constitution, are illegal, inoperative and deserve to be "ignored". In other words, these rules have not been quashed by the Tribunal. These are only to be ignored by the respondents. The Bench has only quashed the impugned orders. The declaration of rule as inoperative does not mean, that the same stands deleted from the statute book. If that makes the respondents happy, it can be kept therein as an ornament only in so far as the entitlement of retired employees to medical reimbursement is concerned. Moreover, the rules were also considered by Hon'ble Apex Court in the latest decision in **SHIVA KANT JHA VS. UNION OF INDIA & OTHERS**, W.P. (C) No. 694 of 2015 decided on 13.4.2018 and the Lordships have upheld entitlement of retired / pensioners to the medical reimbursement. Thus, in view of the higher courts of law having taken a view on the issue including the apex dispensation as well, this Tribunal had no other option but to concur with the same.

9. One fails to understand the plea taken by learned counsel for the respondents that the matter should have been referred to a Full Bench. Once, there is a decision of Hon'ble Jurisdictional High Court on the issue and that of Hon'ble Apex Court of the country, can a Tribunal, ignore the same and refer its earlier Division Bench decision to a Full Bench. The plea taken by the respondents on this issue, to say the least, is beyond the comprehension of a prudent man and most unreasonable. The reliance placed by them on certain other decisions on judicial discipline and that it is a matter of policy decision and as such could not be interferred by this Tribunal or in the absence of two Ministries not being a party before this Tribunal are too farfetched and have to be rejected with full ferocity. Therefore, no ground, much less cogent, is made out to review the indicated order, in the obtaining circumstances of the case".

7. A similar claim has been allowed by this very Bench of the Tribunal in O.A. No. 060/00928/2018 titled **J.K. KAPOOR VS. UNION OF INDIA & OTHERS**, decided on 15.10.2018.

8. After going through the pleadings available on record and on a thoughtful consideration of the matter, we are in agreement with the learned counsel for the applicant that his claim is squarely covered by the law laid down by this Court in the aforementioned decisions and by the Hon'ble Supreme Court in the case of **SHIVA KANT JHA** (supra).

9. In the wake of the above position under the law and for the parity of reasons given in indicated decisions, we are left with no other option but to allow this O.A. Impugned orders, Annexure A-1 and A-2 are quashed and set aside. The respondents are directed to reimburse the admissible amount of medical claim of the applicant within a month from the date of receipt of a certified copy of this order. No costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(AJANTA DAYALAN)
MEMBER (A)

Place: Chandigarh.
Dated: 18.10.2018

HC*