

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI**

ORIGIN AL APPLICATION No.684/2015

This the 06th day of March, 2019

CORAM: R.N. SINGH, MEMBER (JUDICIAL)

B.G. Shinde,
Age 73 years,
Retired as C.D. Man CQASV,
Dehu Road,
R/at C-6 Friend Enclave Society,
Mundhwa, Pune-411036.

... **Applicant**

(By Advocate Shri Vicky Nagrani)

VERSUS

1. Union of India,
Through the Secretary,
Ministry of Health and Family
Welfare, Directorate General of CGHS,
CGHS III, Nirmamn Bhawan,
New Delhi-110001.
2. The Additional DDG (Hq)
CGHS Nirman Bhawan,
New Delhi - 110 011.
3. The Additional Director,
Office of the Joint Director,
CGHS, Swasthy Sadan,
Mukundnagar, Pune 411037.

... **Respondents**

(By Advocate Shri R.R. Shetty)

Reserved on: 13.02.2019

Pronounced on: 06.03.2019

O R D E RPer: R.N. Singh, Member (J)

This OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

"(A). This Hon'ble Tribunal may graciously be please to call for the records of the case from Respondent and after examining the same, quash set side impugned orders dated 05.05.2015 and 06.07.2015 with all consequential benefits.

(B). The Hon'ble Tribunal may further be pleased to direct the Respondents to pay to the Applicant amount of Rs.4,25,000/- towards reimbursement of medical expenses along with interest @ 12 % p.a. w.e.f. 05.04.2015.

(C). Costs of the Application be provided for.

(D). Any other and further orders as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed."

2. The case of the applicant is that he retired from Central Govt. Service in the year 2000 as a C.D. Man from CQASV Dehu Road and after his retirement he started living at his native place in Ahmednagar and there was no CGHS facility. After 12 years of his retirement on 10.01.2015 the applicant suffered with chest pain as such he approached the local doctor who prescribed some medicines to him. Thereafter, the applicant had approached his office to issue a CGHS card. He again suffered with same

problem and at this time the local doctor recommended urgent hospitalization as such the applicant got admitted in emergency to the Columbia Asia Hospital which is near to his residence at Mundhwa. After requisite tests they diagnosed the Acute Anterior Wall Stemimyocardial infarction of anterior wall and accordingly the doctors had done the procedure of PCTA stenting on 10.01.2015.

3. On 13.01.2015, the applicant's son approached the office and submitted the application for issuing CGHS card in the name of his father. On 14.01.2015, as stated by him was Makar Sankarnt (Pongal) and holiday at the office of CGHS as such the card was issued on 15.01.2015 which is annexed at Annexure A-3. The applicant was discharged on 14.01.2015. The discharge summary is annexed at Annexure A-4 of total expenses incurred on medical treatment amounting to Rs.4,25,000/-. It is stated that amount is beyond his earnings as such he had taken loans. It is stated that he is unable to pay the interest from his pension as he has not been getting any medical allowance with his pension. Moreover, from the date of his retirement more than Rs.40,000/- towards medical allowances were

outstanding with the government. It is stated that he has submitted his medical claim amounting to Rs.4,25,000/- for reimbursement on 05.04.2015 (Annexure A-5) followed by representation dated 06.04.2015 (Annexure A-6) requesting therein to reimburse his claim. The Emergency Certificate issued by the Doctor was also annexed at (Annexure A-7) to this OA.

4. However, the Respondent No.3 vide order dated 05.05.2015 (Annexure A-1) rejected the claim of the applicant stating therein as "Please refer to your medical reimbursement claim dated 5.4.15. It is observed from the claim papers that you were admitted at the hospital w.e.f. 10.1.15 to 14.1.15 and applied for CGHS card on 15.1.15. Treatment was availed before issue of CGHS Card is not permissible for reimbursement under the extant rules". It is stated that he had preferred an appeal dated 11.06.2015 (Annexure A-8) to the Respondent No.2 which was allowed by the respondent vide order dated 06.07.2015 (Annexure A-2) for reimbursement for the period of stay in hospital during 13.01.2015 to 14.01.2015. However, procedure of PCTA stenting which was done on 10.01.2015 will

not be admissible. It is stated that the orders dated 05.05.2015 and 06.07.2015 are cryptic and non-speaking as such they deserve to be quashed and set aside.

5. The learned counsel for the applicants argues that the respondents have failed to appreciate that the applicant had tried his best to apply for CGHS Card on 10.01.2015 and on being Saturday the office was only half day working and next day is Sunday as such he immediately applied on 13.01.2015 for CGHS card by sending application through his son as he was hospitalized. It is stated that the respondent had failed to apply mind and rejected the request of the applicant for medical reimbursement and allowed the claim only for the period of stay in hospital during 13.01.2015 and 14.01.2015 as per CGHS rates. The only reason for not considering the case for reimbursement is that he was not having CGHS Card at the time of treatment which is not at all the actual fact. The applicant placed reliance on the judgment of this Tribunal in the case of **Union of India vs. Prabhakar Shridhar Bapat** wherein it has been held that medical reimbursement cannot be

refused on the ground that the applicant is not a CGHS beneficiary. However, the learned counsel for the applicant has neither given a copy of this judgment nor has given the details of the case no, court/ Tribunal , etc and hence I do not have occasion or opportunity to peruse the same . He has further relied on the judgment of Hon'ble High Court of Delhi in **S.K. Sharma vs. Union of India & Another reported in ILR (2002) 1 Delhi 709.**

6. The respondents have contested the claim of the applicant by filing a detailed Counter reply wherein it has been stated that the applicant is not entitled for any reimbursement of medical expenses incurred by him prior to his becoming a CGHS beneficiary. The aforesaid scheme is an optional health scheme for pensioners and pensioners residing anywhere in India can become CGHS beneficiaries from the nearest CGHS irrespective of the place of residence. Further, after retirement, the pensioners have the option to become CGHS beneficiary by obtaining a CGHS Card or get a fixed Medical Allowance of Rs.500/- per month with pension payment. However, if the pensioner opts CGHS scheme in that case CGHS provides

comprehensive medical care facilities through its Wellness Centers, Polyclinic and empanelled private hospitals and if pensioners opts not to take a CGHS Card in that case a fixed Medical Allowance of Rs.500/- per month will be paid to the pensioner and he/she has freedom to take medical facilities wherever he/she wants but at his/her own expenses. It is contended that the applicant has retired on 30.11.2002 and has applied for CGHS Card only on 15.01.2015 after about twelve years from his retirement and the CGHS Card bearing No.235882 has been issued to him on 15.01.2015 as such technically the applicant has become eligible for CGHS facilities from the date of issue of the CGHS Card i.e. 15.01.2015.

7. The respondents have placed reliance on the following judgments:-

(i). Dated 14.03.2008 of the Decision of the Hon'ble Delhi High Court in ***Dal Chand Vashisht vs. Government of NCT of Delhi and Others*** wherein it is held as under:-

"29. The decision in *Promlesh Bhatnagar v. ESIC and Anr.*, though based on the decision of *S.K. Sharma (supra)* and *B.R. Mehta (supra)*, the facts of the case were that the Petitioner's husband, who was ailing took voluntary retirement. He was admitted to AIIMS and subsequently referred

to Sir Ganga Ram Hospital. The CGHS card, for which he has made an application was issued to him only on 10.10.2002. He died on the next day. The court found that there was nothing on record to show when the Petitioner's husband had applied for the issuance of the card, and why the same was not issued to him earlier. In these circumstances, the court extended the benefit to the Petitioner, as the denial of the claim was grounded on the non-payment of the subscription and, as aforesaid, there was hardly any time available for the deceased retired employee to make the payment, since the card had been issued only a day prior to his death. This decision is therefore clearly differentiable on facts.

30. In view of our aforesaid discussion, we dismiss this petition leaving the parties to bear their respective costs."

(ii). Dated 12.07.2010 of the Division Bench of the Hon'ble Delhi High Court in **Union of India & Another vs. Shanti Devi Sharma** wherein it is held as under:-

"11. In the instant case, Late Sh. Tara Chand Sharma has nowhere stated that after he retired, he settled in a town where CGHS Medical facilities were not available. On the contrary, pleadings show that Late Sh. Tara Chand Sharma, after retirement, settled in Delhi. CGHS dispensaries and medical treatment under Central Health Scheme has been available in the town of Delhi since the inception of the scheme.

12. The writ petition is accordingly allowed and as result impugned order dated 14.01.2008 allowing the O.A.No.1662/2007 is set aside. O.A.No.1662/2007 is dismissed.

13. The amount deposited by the petitioner pursuant to the orders passed in W.P.(C)6567/2008 is directed to be returned to the petitioners by drawing out a cheque in the name of the petitioners together with interest which may have accrued on the said deposit.

14. No costs."

(iii). Dated 07.07.2015 of Ahmedabad Bench of this

Tribunal in O.A.No.323/2014 inre: **Mr.Hemaji S. Prajapati vs. Union of India & others.**

8. The respondents have admitted that the applicant was admitted in the Columbia Asia Hospital, Pune on 10.01.2015. He had applied for CGHS Card on 15.01.2015 and the card was issued on the same date. The one time subscription towards CGHS Card was paid by the applicant by way of DD No.263759 dated 15.01.2015. However, as a special case, on his appeal to the CGHS Headquarters, New Delhi vide letter No.12022/19/2015/Pune-CGHS.iii dated 06.07.2015 (Annexure A-2 to the OA), the medical reimbursement claim of the applicant for the treatment taken from 13.01.2015 and 14.01.2015 were considered by the respondents, even the CGHS Card was issued on 15.01.2015. They have submitted that the applicant could have obtained a CGHS Card after retirement irrespective of where he is residing. The pensioners residing in Maharashtra can obtain a CGHS Card either from CGHS Mumbai or CGHS Pune or CGHS Nagpur whichever is nearest and convenient for them. The applicant had retired from service on 30.11.2002 and from 2002 till 2015, the applicant avoided for becoming a CGHS beneficiary

although he was living within the covered area of CGHS Pune and nobody barred him from becoming a CGHS beneficiary. Rather the applicant had chosen to go with other option of choosing to get a fixed medical allowance of Rs.500/- per month. Moreover, the applicant is not entitled for any reimbursement of medical expenses from CGHS for the period prior to his becoming a CGHS beneficiary. It is submitted that there is no merit or substance in any of the contentions of the applicant and the OA deserves to be dismissed.

9. The applicant has also placed reliance upon the judgment of the Hon'ble Supreme Court in S.K. Sharma Vs. Union of India and Anr. Relevant paras No.9, 10, 11, 12, 14 & 15 are reproduced here:-

"9. It is in this context that the Supreme Court in **State of Punjab and Ors. Vs. Mohinder Singh Chawla etc.** observed as under:

"it is now settled law that right to health is integral to the right to life. Government has a constitutional obligation to provide health facilities. If the Government servant has suffered an ailment, which required treatment at, a specialized approved hospital and on reference whereat the government servant has undergone such treatment therein, it is but the duty of the State to bear the expenditure incurred by the government servant. Expenditure, thus, incurred requires to be reimbursed by the State to the employee".

10. The Supreme Court was thus of the view that the State having had the

constitutional obligation to bear the medical expenses of Government servants while in service or after the retirement from service as per the policy of the Government. The Government is required to fulfill the constitutional obligation.

11. In **Surjeet Singh Vs. State of Punjab and Ors.** The Supreme Court held that a person is entitled to take steps for self-preservation and does not have to stand in a queue before a medical board before availing of medical facility. This was specially so when State itself had brought the Escorts Hospital on a recognised list.

12. The Petitioner does not cease to be a Central Government pensioner merely because he is not covered by the CGHS scheme. A differentiation cannot be made between the pensioners staying indifferent parts of the country depending upon whether they are in CGHS area or non-CGHS area. In this behalf in case of **B.R. Mehta Vs. Union of India and Ors.** on the basis of material placed before the court it was noted that the Government had not worked out any criteria for reimbursement in cases of persons who are settled in non-CGHS area but were still considering the question. In such a situation it would be a travesty of justice if a retired pensioner is deprived of reimbursement of medical expenses only on the basis that he is not a member of the CGHS scheme and in my considered view any differentiation between persons who are all 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.

14. It may be noted that in another case of **Narender Pal Singh Vs. Union of India and Ors., 1999 (2) CLR 904** it was observed as under:-

3. The petitioner has admittedly suffered the ailment and required urgent and immediate treatment in an emergency. The plea of the Government that he has not taken prior sanction for treatment in non-CGHS Hospital is clearly erroneous and cannot be entertained. Moreover, the law does not require that prior permission has to be taken in such situation where the survival

of the person is the prime consideration. It is always open for the Government to grant ex-post facto sanction subject to verification of the claim which has not been denied in the present case.

5. The law is therefore, well settled that right to health is an integral part of life and the Government has constitutional obligation to provide the health facilities to its employees or retired employees and in case an employee requires a specialised treatment in an approved hospital it is the duty of the Government to bear or reimburse the expenses. The petitioner in this case had to be operated in an emergency as he suffered a heart problem and in case he had waited for a prior sanction he might not have survived. Therefore, in this situation it is the duty of the Government to grant ex-post facto sanction and not deny the claim of the petitioner on technical and flimsy grounds."

15. I am thus of the considered view that the petitioner cannot be discriminated against merely because he is not a member of the CGHS scheme as he is staying in a non-CGHS area. The petitioner had made claim in August, 1998 and on the basis of the fact stated therein ex post facto approval could have been granted but instead the claim of the petitioner was rejected. The subsequent letter of the petitioner dated 01.06.1999 to make him a card holder has also not evoked any response. The right to appropriate medical assistance cannot be denied on technicalities and flimsy grounds. The petitioner has spent almost 2/3rd of his retiral benefits on the treatment of his wife and himself and that too, in a Government recognised hospital for heart diseases. It would be extremely unfair and unjust to deny the petitioner the reimbursement in respect of the same."

10. I have gone through the O.A. along with Annexures A-1 to A-8 accompanying the O.A.

11. I have also gone through the Reply filed on behalf of the respondents, along with Annexure R-1 and R-4 annexed thereto.

12. I have heard the learned counsels on behalf of the applicant and respondents and have considered the facts and circumstances and law points involved in the case.

Findings

13. The issue for consideration in this OA is whether applicant is eligible for reimbursement of medical expenses prior to the date of issue of CGHS card i.e. 15.01.2015. At the outset, the respondents are also well within their rights to consider the case of applicant as per the CGHS Scheme. It is an admitted case of the applicant that he had retired from service on 30.11.2002 and after retirement he started living at his native place in Ahmednagar. After about 12 years of his retirement on 10.01.2015 the applicant suffered with chest pain and got admitted in emergency to the Columbia Asia Hospital thereafter the applicant had approached his office to issue a CGHS card. After requisite tests the doctors had done the procedure of PCTA stenting on 10.01.2015.

14. On 13.01.2015, the applicant's son approached the office and submitted the application for issuing CGHS card and the card was issued on

15.01.2015. The applicant was discharged from the hospital on 14.01.2015. He submitted his medical bills for reimbursement amounting to Rs.4,25,000/- on 05.04.2015 (Annexure A-5) followed by representation dated 06.04.2015 (Annexure A-6) requesting there in to reimburse his claim. The Emergency Certificate issued by the Doctor was also annexed at (Annexure A-7) to this OA. The Respondent No.3 vide order dated 05.05.2015 (Annexure A-1) rejected the claim of the applicant stating there in that emergency could not be certified and the treatment was availed before issue of CGHS Card is not at all permissible for reimbursement under the rules. Thereafter, he had preferred an appeal dated 11.06.2015 (Annexure A-8) to the Respondent No.2 which was partially allowed by the respondent vide order dated 06.07.2015 (Annexure A-2) for reimbursement for the period of stay in hospital during 13.01.2015 to 14.01.2015. However, procedure of PCTA stenting which was done on 10.01.2015 was not found to be admissible.

15. It is an admitted case from his retirement and the CGHS Card bearing No.235882 has been issued to him on 15.01.2015 as such technically the

applicant has become eligible for CGHS facilities from the date of issue of the card i.e. 15.01.2015. The one time subscription towards CGHS Card was paid by the applicant by way of DD No.263759 dated 15.01.2015. However, as a special case, on his appeal to the CGHS Headquarters, New Delhi vide letter No.12022/19/2015/Pune-CGHS.iii dated 06.07.2015 (Annexure A-2 to the OA), the medical reimbursement claim of the applicant for the treatment taken from 13.01.2015 was considered by the respondents, even though CGHS Card was issued on 15.01.2015. In view of the above applicant is not entitled for any reimbursement of medical expenses from CGHS for the period prior to his becoming a CGHS beneficiary.

16. The CGHS Scheme under the Ministry of Health and Family Welfare (MOHFW) provides comprehensive medical care facilities to Central Government employees, pensioners and their dependents residing in CGHS covered cities. Under the Scheme, even the pensioners residing in non-CGHS areas may obtain CGHS card from the nearest CGHS covered city and avail the services of CGHS. The Central Government has empanelled certain

hospitals in order provide the intended medical aid to the beneficiaries.

17. Though, the applicant vehemently contends that medical facility is a fundamental right of a Government employee. The Government is bound to take care of the employees even after retirement. Hence, the denial of his rights, despite the settled laws and as provided for under the Constitution of India is illegal. However, the fact remains that the applicant himself preferred not to be the member of CGHS beneficiaries and had chosen to go with fixed medical allowance of Rs.500/- per month in lieu thereof and continued all along for more than 10 years of his retirement. Besides, the reliance of the applicant on the judgment of Hon'ble High Court in **S.K. Sharma (supra)** also does not help the claim of the applicant inasmuch as mere perusal of para 15 of the same, it is evident that the facts were clearly different in that case. Moreover, the same has been considered by the DB of Hon'ble Delhi High Court itself in **Dal Chand Vashisht (supra)**, relied by the respondents. Moreover, the reliance made by the respondents on the judgments of Hon'ble Delhi High Court in **Dal**

Chand Vashisht (supra) and also in *Shanti Devi Sharma (supra)* strengthens the stand of the respondents

18. Hence, the plea of the applicant is not admissible as far as CGHS is concerned as he enrolled under CGHS only on 15.01.2015. Expenses, if any, incurred after enrollment under CGHS can be scrutinized by CGHS in case they are claimed by the applicant, but CGHS cannot entertain any bill prior to that period. As per the rules the Government servants are required to furnish one time option at the time of retirement to avail medical facilities under the CGHS. Without opting for CGHS facility, he incurred expenses on medical treatment, hence his claims cannot be considered for reimbursement of expenses. He incurred the medical expenses after retirement and before enrollment under CGHS. Hence, the claim of applicant is not permissible under the CGHS Scheme.

19. From the aforesaid, it is clear that the present Original Application preferred is for reimbursement of medical bills for the period prior to issue of the CGHS Card as such, the claim of the applicant is not permissible under the CGHS Scheme

and hence the same is liable to be rejected on this ground alone. I do not find any infirmity or illegality in the orders dated 05.05.2015 and 06.07.2015 (Annexure A-1 and A-2) respectively as such, I do not think it proper to interfere with the impugned orders. In view of the facts and law as above, the OA deserve to be dismissed and accordingly dismissed. No order as to costs.

(R.N. Singh)
Member (J)

amit/-