

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 1950/2018

Reserved on: 24.04.2019

Pronounced on: 17.05.2019

Hon'ble Mr. A.K. Bishnoi, Member (A)

Mrs Asha Sahai, w/o late Sh. D.N. Sahai,
Retired Audit Officer,
o/o Principal Accountant General (Audit), Patna,
R/o 15 B, Ashok Nagar, New Delhi-110018
Aged about 68 years.

-Applicant

(By Advocate: Sh. A.K. Srivastava)

Versus

1. Union of India,
Through Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan, New Delhi-110011.
2. Director General of CGHS, CGHS III
Ministry of Health & Family Welfare
Nirman Bhawan, New Delhi-110011.
3. The Secretary,
Ministry of Personnel, Public Grievances and Pension,
Department of personnel and Training,
New Delhi-110001.
4. Principal Accountant General (Audit)
Office of Principal Accountant General (Audit)
Virchand Patel Marg,
Patna (Bihar), Pin 800001.

-Respondents

(By Advocate: Sh. Krishna Kumar)

O R D E R

The present OA has been filed by the applicant seeking the following reliefs:-

- “(a) Declare the impugned orders/ letters dated 21.03.2018 (Annexure A-1) impugned) as illegal, arbitrary and discriminatory, and quash/set aside the same.
- (b) Declare that the Applicant is entitled for reimbursement of Medical Claim of Rs 20 lakhs and direct the respondents to reimburse the same 1 with all the consequential benefits.
- (c) Impose appropriate cost on the respondents on account of the harassment cause to the applicant.
- (d) May also pass any further orders/ directions as this Hon'ble Tribunal may deem fit proper and necessary to meet the ends of justice.

2. Briefly, the facts of the case, as stated by the applicant are as follows:-

2.1 The husband of the applicant, late Sh. D.N. Sahay was working as an Auditor in the office of Principal Accountant General at Patna. He superannuated on 30.11.2009.

2.2 On 14.05.2015, he met with a road accident at Gaya and suffered brain injury and was rushed to a hospital and thereafter because of his condition, which was serious, he was shifted to a specialized hospital in Patna but his condition did not improve and he expired on 07.07.2015. The applicant submitted a medical reimbursement claim amounting to Rs. 20,00,000/- (Rupees

twenty lakhs only) incurred on the treatment to Director General, CGHS. The claim was, however, rejected vide letter dated 21.03.2018 on the ground that late Sh. D.N. Sahay (applicant's husband) was not a member of the CGHS Scheme at the time of availing treatment.

2.3 The applicant has submitted that her husband was a member of CGHS Scheme but after superannuation, decided to discontinue it as he had shifted to Gaya where CGHS facilities were not available.

2.4 The applicant contends that differentiation cannot be made between pensioners staying in different parts depending upon whether they are in CGHS or non-CGHS areas and a retired Government officer is entitled to the benefit of CGHS Scheme. It is the status as a Central Government pensioner which is material and not being a CGHS card holder or otherwise, especially since the applicants husband was residing outside a CGHS area.

2.5 In support of her contentions, the following cases have been cited in the OA:

- i) **Ram Kumar Kaushik vs. Govt. of NCT of Delhi and Ors.**, [WP(C) No. 7978/2012 dated 04th March, 2016];
- ii) **S.K. Sharma vs. Union of India & Anr.**, [CWP No. 4873/2000 dated 23.05.2002];
- iii) **Laxmi Chand vs. Comptroller and Auditor General**, [2005(2) SLJ 145 CAT dated 04.11.2004].

3. The respondents in their counter reply have referred to the CGHS rules and regulations and have stated that the applicant had the option of applying for CGHS card from the nearest CGHS city. A grace period of three months is provided for reimbursement of expenditure after superannuation and before the CGHS pensioner card is made. If no CGHS card is made within four months of superannuation, then CGHS card shall be valid for consideration for reimbursement only from the date on which application for such grant has been made. It is further submitted that late Sh. D.N. Sahay had not applied for CGHS pensioner card during the period of treatment. CGHS is a voluntary Scheme and late Sh. D.N. Sahay did not exercise the option to join it nor did he pay the requisite subscription and therefore his medical claim has been rejected.

3.1 The respondents have referred to the following decisions in support of their contention:

- (i) **State of Punjab vs. Ram Lubhaya Bagga** [AIR 1998 SC 1703;]
- (ii) **Confederation of Ex-Servicemen Association & other vs. Union of India** [(2006) 8 SCC 399];
- (iii) **Dal Chand Vashisht vs. Govt. of NCT of Delhi & Ors.** 2008 VI AD (Delhi) 44.

4. The applicant has filed a rejoinder generally reiterating the facts submitted in the OA. In further support of their contention, they have cited the following judgments:

- i) **Prithvi Nath Chopra vs. Union of India and Anr.** [2004 (74) DRJ 175];
- ii) **Shri Prakash Chand vs. Union of India**, [2007 (3) SLJ 312 CAT];
- iii) **Union of India and Anr. vs. Shanti Devi Sharma**, [W.P. (C) No. 12711/2008 decided on 12.07.2010]
- iv) **MCD vs. Chander Prakash Gupta & batch**, [W.P. (C) No.3368/2010 dated 30.07.2010]

5. During the course of the arguments the learned counsel for the applicant also referred to the following judgments:-

- i) **Kishan Chand vs. Govt. of NCT & Ors.**, [W.P. (C) No.889/2007 dated 12.03.2010];
- ii) **V.K. Jagdhari vs. Union of India and Ors.**, [125 (2005) DLT 636];
- iii) **Union of India vs. R. Rangarajan & Another** [W.P. (C) No.32770/2004 dated 29.09.2008 (Madras High Court)].

6. Heard Sh. A.K. Srivastava, learned counsel for the applicant and Sh. Krishna Kumar, learned counsel for the respondents.

7. Having gone through the pleadings on record as also the arguments advanced by the learned counsel for the two sides, the main point of determination reduces to the question whether any pensioner who has not opted for coverage under the CGHS Scheme is entitled to reimbursement of claims as per the Scheme

or not. This question has to be addressed in the context of the fact that the pensioner is living in an area which does not have CGHS coverage.

8. The respondents have cited the judgment of the Division Bench of the Hon'ble High Court of Delhi in **Dal Chand Vashisht** (supra).

Regarding the judgement in **V.K. Jagdhari** (supra), the Court has specifically observed as follows:-

“14. That apart, **we find ourselves in respectful disagreement with the conclusion drawn by the learned Single Judge in the case of V.K. Jagdhari (supra)** that in all cases, irrespective of the terms of the concerned scheme, the retired employees who become members of health schemes at any point of time would be treated as **covered by the scheme retrospectively from the date of their superannuation**. We are also unable to agree with the reasoning of the learned Single Judge that irrespective of the terms of a given scheme, which is optional and the option has to be positively exercised by the retired employee by paying the subscription, the mere status as a retired employee entitles such retired employee to get covered by the scheme from the date of his retirement irrespective of the fact that he has not opted to become a member of the said scheme and the fact that he has not paid his subscription that he is required to pay in terms of the scheme.....”.

(emphasis supplied).

While referring to the decision in **S.K. Sharma** (supra), the Court has observed as follows:-

“25. The decision in S.K. Sharma v. Union of India and Anr., was rendered in a situation where the Petitioner who earlier was a member of the CGHS decided not to continue as a member of the scheme when he shifted to Bareily, since benefit of the CGHS was not extended to Bareily. The court was therefore guided by the consideration that the retired officer should not suffer on account of the failure on the part of the Government to extend CGHS to all areas of the Country.

This decision proceeds on the foundation that the retired government servant has a fundamental right to unconditional medical aid, irrespective of the fact whether the retired servant is a member of a health scheme or not, and whether or not he has paid the subscription therefore. This is contrary to the decision of the Supreme Court in *Confederation of Ex-Servicemen Association* (supra). Both S.K. Sharma (supra) and B.R. Mehta (supra) proceed on the basis that if the retired government servant lives in an area which is not served by the CGHS he need not become a member of the scheme and still would be entitled to the benefits thereof i.e. for reimbursement under the scheme. **We do not agree with the reasoning of the Court in these decisions.** In case the retired government employee is situated in a location not serviced by CGHS, or the concerned scheme the retired government servant can legitimately claim reimbursement for any emergency treatment even from a non-recognised hospital at the maximum of the rates prescribed under the scheme. **In our view, nothing stops the retired government employee from contributing to the scheme and obtaining treatment in a CGHS area even though he resides in a non CGHS area. Even while living in such non CGHS/other scheme covered area, he is entitled to be compensated for any treatment obtained in an emergency situation at the prescribed rates.** This has been held in Narendra Pal Singh v. Union of India and Ors.

26. To be able to obtain the benefit of a scheme, it is essential that the person/claimant is a member of the said scheme. If the membership is automatic i.e. it comes with the status of the person, the person would be entitled to the benefits thereof, unless he expressly, or by his conduct evinces his intentions not to participate in the scheme- e.g. where he does not pay the subscription due from him. However, where has an option,-whether or not to subscribe to the scheme and the scheme is contributory and voluntary in character, he cannot claim any benefits under the scheme unless he exercises his option to get covered by the scheme and also takes the necessary steps by paying the subscription therefore.

27. We may now refer to the decision in Shyama Malhotra v. Union of India and Ors. . The said decision relies upon the decision in S.K. Sharma (supra), V.K. Jagdhari (supra) and B.R. Mehta (supra). Since in our opinion, they do not lay down the correct proposition of law, this decision also, to that extent, stands overruled.”

(emphasis supplied)

9. Thus the issue in the present case is squarely covered by the law laid down by the Division Bench of the Hon'ble High Court of Delhi in **Dal Chand Vashisht** (supra) and no order of a higher court has been cited which overrules or negates it. In view of this there is no occasion to discuss the findings in the other cases cited. In addition, the facts and circumstances of many of the cases cited by the applicant are also not on the same footing.

10. In view of the above, taking note of the fact that the husband of the applicant had not opted for the CGHS Scheme, the applicant cannot be granted any benefit under the said Scheme. The OA is accordingly dismissed. No order as to costs.

(A.K. Bishnoi)
Member (A)

/ns/