
(2003) 03 DEL CK 0062
In the Delhi High Court
Case No : CWP. 4213 of 1998

Bishnu Ram

APPELLANT

Vs

The Secretary, GOI and Others

RESPONDENT

Date of Decision : 07-03-2003

Acts Referred:

Citation : (2003) 2 AD 769 : (2003) 104 DLT 1 : (2003) 71 DRJ 509 : (2003) 3 SLJ 424

Hon'ble Judges : B.N. Chaturvedi, J;B.A. Khan, J

Bench : Division Bench

Advocate : Jyoti Singh, for the Appellant; Rajiv Aneja, for the Respondent

Judgement

B.N. Chaturvedi, J.—The petitioner, a Head-Constable in Central Reserved Police Force(CRPF), underwent an operation for abdominal Hernia on 10th of October, 1986 at Safdarjung Hospital, New Delhi. Again, on 2nd February, 1988, he had to undergo another surgery for removal of his cancerous right kidney at the same very hospital. He continued his post-operative treatment over a period of time. He purchased medicines from the market on both the occasions as the same were not available with the Safdarjung Hospital, New Delhi or the Base Hospital-I, CRPF. He submitted following medical claims to COY A/71 BN/PK for reimbursement thereof:

- (i) M-III -1/87-A-A-711 dated 15.1.1987 for Rs.10,000/-
- (ii) M-III-88 PKE dated 12.3.1988 for Rs.35,000/-.
- (iii) M-III-90 PKE dated 30.11.1988 for Rs.11,000/-.
- (iv) M-III-1/90 PKE dated 25.4.1990 for Rs.17,000/-.

2. The amounts of the aforesaid medical claims were, however, not released in spite of various representations in that respect made by the petitioner from time to time. In addition to representations, a legal notice dated 10.3.1998 and second one dated 18.5.1998 to the respondents regarding non-payment of his

medical claims also did not yield any result.

3. Apart from non-payment of aforesaid medical claims, it is stated, the respondents incorrectly fixed the pay of the petitioner at Rs.1330/- on his promotion as Head Constable while the pay of other Head-Constables, including those junior to him, were fixed at Rs.1390/-.

4. The petitioner filed the present writ petition in August, 1998 seeking release of all his medical claims, correct fixation of his pay and interest @ 18% per annum on the amount with-held by the respondents.

5. In November, 2001, the petitioner filed an additional affidavit along with photocopies of certain papers concerning his medical claims and re-fixation of his pay at par with other Head-Constables, especially those junior to him.

6. In the counter-affidavit and reply to the additional affidavit, the respondents pleaded that the relevant records pertaining to the alleged medical claims of the petitioner with 71 BN. CRPF and the Officer Commanding, PKE, CRPF stand weeded out by burning the same after expiry of five years, and the petition having been filed so belatedly, it is not possible to state the factual position relating to the petitioner's alleged medical claims with reference to the records. In relation to the averments concerning pay fixation, it is claimed that the pay of the petitioner on his promotion as a Head-Constable w.e.f. 12.9.83 was correctly fixed as on 1st of January, 1986 and 1st of January, 1996. It is alleged that the petitioner has not indicated from which date he has been given less pay than his juniors and that if he furnishes the requisite details, the same can be re-examined in the Office of Additional Dy. IGP, Group Centre, New Delhi, where his service records are being maintained.

7. Regarding legal notices, it is stated that no reply thereto was sent to the petitioner in view of opinion conveyed by the Ministry of Law, Government of India, to ignore the same.

8. In the context of copies of papers filed along with the additional affidavit, in reply to the additional affidavit, it is stated that unless the original documents purported to have emanated from the Office of Assistant Commandant, Group Centre, CRPF, New Delhi/Additional Deputy Inspector General of Police, Group Centre, CRPF, New Delhi are placed on record, it is difficult to comment on the genuineness thereof. It is claimed that the letters purported to have been signed by the Assistant Commandant(Adm) CC, CRPF, New Delhi, appear to have been manipulated by the petitioner as in terms of procedure and practice, such correspondences are signed by the Additional DIGP-CC, CRPF, New Delhi only or by officers authorised by him in this behalf. It is submitted that as per procedure, personnel of Group Centre are normally informed about the progress of their complaint/grievances through their concerned Company Commander by the Additional DIGP and such information is not given directly to the person concerned.

9. Perusal of record apart, we have heard the oral submissions of the counsel for the respective parties.

10. Assertion of the petitioner that he underwent surgery for abdominal Hernia on 10th of October, 1986 and later on 2nd of February, 1988 for removal of his cancerous right kidney at Safdarjung Hospital is not specifically denied by the respondents. Absence of relevant records, in view of weeding out thereof, is being used by the respondents as umbrage to justify its posture of general denial with respect to each and every fact alleged in the petition. Certificates issued by Chief Medical Officers of Safdarjung Hospital and Base Hospital-I, CRPF J/Kalan New Delhi - 110 007 respectively indicate that the petitioner was operated upon and treated at Safdarjung Hospital and that the medicines/injections advised by the doctors of the Safdarjung Hospital, were not available with the Base Hospital-I CRPF, New Delhi and no medicines were given to the petitioner by Safdarjung Hospital either. Thus, the petitioner was obviously left to purchase the medicines and injections from the market only. The petitioner submitted his medical claims to Coy A/71 BN/PK for reimbursement on 15.1.1987 for Rs.10,000, 12.3.1988 for Rs.35,000/-, 30.11.1988 for Rs.11,000/- and 25.4.1990 for Rs.17,000/- . A letter dated 29.10.1991 purported to have been issued under the Signatures of Assistant Commandant, CRPF, New Delhi, addressed to the petitioner, clearly indicates that the said four medical claims were duly received in the office of the respondents and transmitted to the concerned Battalion. In reply to a representation from the petitioner, inter alia, complaining about non-payment of his medical claims, a letter dated 17.10.1990 is found to have been issued from the Office of the Additional Deputy Inspector General of Police, Group Centre, CRPF, New Delhi, stating that reimbursement of his claims was being processed. It appears that this letter was sent to the concerned battalion where the petitioner was posted with the direction to inform the petitioner of the progress in the matter. Thus, so far as submission of medical claims is concerned, there is enough material in support thereof. Though the respondents have questioned the genuineness of the documents relied upon by the petitioner, the plea of the respondents in this respect, being not based on official record, cannot be taken into account to brush aside the petitioner's claims on account of medical expenses. In the absence of anything to justify the inaction on the part of the respondents to reimburse the medical claims of the petitioner, the same cannot be treated to its advantage simply on the plea that due to lapse of time the relevant records having been destroyed are no longer available for reference.

11. The petitioner submitted his last medical claim on 25th of April, 1990. Though he claims to have made several representations to the respondents for reimbursement of his medical claims, he has been able to place the copy of only one representation dated 24.7.1995 on record. In the letter dated 2.10.1990 from the Office of Additional Deputy Inspector General of Police, Group Centre, CRPF, New Delhi, there is, however, indication that the petitioner had earlier in the year 1990 also complained of non-payment of his medical claims. In the year 1996 also, he represented to the higher authorities in this respect. In reply vide

letter dated 22.7.1996 from the office of Additional Deputy Inspector General of Police, Group Centre, CRPF, New Delhi, it was, however, intimated for the first time to the petitioner that his medical claims had not been received in the office. Before being so informed, the petitioner appears to have been kept under the impression that his medical claims were being processed and that reimbursement thereof was likely to follow in due course of time. This was probably the reason which made the petitioner to keep on waiting for all these years. Surprisingly, while in the letter dated 7.10.1990 receipt of all the medical claims had been admitted by the office of Additional Deputy Inspector General of Police, Group Centre, CRPF, New Delhi, after six years, it was completely denied. Prior to July, 1996, when the Office of the Additional Deputy Inspector General of Police, Group Centre, CRPF, New Delhi, informed the petitioner that his medical claims had not been received in the office, the petitioner had all long been waiting for reimbursement of his medical claims, and it was only when he lost his hopes in that regard, that he approached this Court in August, 1998. No doubt an element of delay in filing the petition is there, but in the facts and circumstances of the case, the petition cannot be declined simply on the ground of being delayed one.

12. Admittedly, no record pertaining to the said four medical claims of the petitioner is now available with the respondent and the petitioner is also not in a position to submit fresh papers relating to his aforesaid four medical claims as he cannot be expected to produce the relevant cash memos against which he would have had purchased the medicines/injections way back in 1987 to 1990. It appears to have been a case of casual and inept handling of the petitioner's case relating to reimbursement of medical claims on the part of the respondents, for which the petitioner cannot be penalised by declining him the relief, as prayed for. In the given circumstances, the petition in regard to the release of Rs.73,000/- on account of medical claims deserves to be allowed.

13. Apart from seeking release of medical claims, the other relief which the petitioner has sought is in relation to re-fixation of his pay at par with other Head-Constables, particularly those junior to him. The petitioner has not mentioned the particular period during which he has been denied pay equal to the other Head-Constables, including those junior to him. In the counter-affidavit, the respondents have stated that the case of the petitioner regarding pay fixation on promotion as Head-Constable w.e.f.12.9.1983 can be re-examined in detail if the petitioner makes a proper application in that regard to the Additional Deputy Inspector General of Police, Group Centre, CRPF, New Delhi, who is maintaining his service records. As the petitioner has omitted to mention all necessary details concerning his pay fixation on promotion as Head-Constable, it is left open for re-examination by the respondents on a representation in that respect being made by the petitioner to the Additional Deputy Inspect General of Police, Group Centre, CRPF, New Delhi.

14. In the result, the petition is allowed. A writ of mandamus is issued directing the respondents to release payment of Rs.73,000/- to the petitioner on account

of his medical claims within four weeks from the date of this judgment. The respondent is further directed to re-examine the pay fixation of the petitioner on his promotion as Head-Constable with reference to the pay being drawn by other Head-Constables, particularly those junior to him on his making a representation in that respect to the Additional Deputy General of Police, Group Centre, CRPF, New Delhi, and revise the same, if need be, within a period of six weeks.

15. The petition stands disposed of in the aforesaid terms with costs quantified at Rs.10,000/-.