
(2005) 09 P&H CK 0061
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 17131 of 2004

Harbans Singh Col. (Retd.)	Vs	APPELLANT
Union of India (UOI) and Another		RESPONDENT

Date of Decision : 06-09-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2005) 141 PLR 841

Hon'ble Judges : S.S. Nijjar, J; Nirmal Yadav, J

Bench : Division Bench

Advocate : Amit Rawal, for the Appellant; Daya Chaudhary, Assistant Solicitor General, for the Respondent

Final Decision : Allowed

Judgement

Nirmal Yadav, J.—The petitioner through this petition under Article 226/227 of the Constitution of India is seeking issuance of a writ in the nature of certiorari quashing the decision of the respondents conveyed to him vide letter dated 12.8.2003 (Annexure P-9) issued by Kendriya Sainik Board, Government of India, Ministry of Defence declining the petitioner's claim for medical assistance. He also seeks issuance of a writ of mandamus directing the respondents to consider the petitioner's claim to the tune of Rs. 37, 182/- on account of medical reimbursement;

2. The petitioner retired as Colonel from the Indian Army on 19.6.1974. He suffered heart attack in the month of October 1998. The Command Hospital, Chandimandir referred the petitioner to P.G.I., Chandigarh as a critical case where the pace-maker was inserted in his body on 23.10.1998. The total expenses incurred on the said treatment were to the tune of Rs. 1,49,675/-. Since the petitioner was a member of Army Group Insurance Fund (in short "AGIF"), out of the aforesaid expenses, a sum of Rs. 1,15,455/- was paid by the National Insurance Company as the petitioner had obtained a policy from the said Company. The balance amount of Rs. 34,220/- was paid out of the AGIF.

3. The petitioner again suffered heart attack and Angioplasty was performed on him on 23.1.2000. He incurred medical expenses to the tune of Rs. 1,47,962/-. The petitioner being a member of AGIF, was entitled to medical reimbursement upto a maximum limit of Rs. 1.15 lacs. Since an amount of Rs. 34,220/- had already been paid out of AGIF at the time of first treatment when pace-maker was inserted, only a sum of Rs. 80,780/- was paid for the Angioplasty treatment out of AGIF. The remaining amount of Rs. 67,182/- was not reimbursed by the authorities out of the AGIF as maximum limit of Rs. 1.15 lacs had been exhausted. On 7.1.2001, Managing Committee of the Armed Forces Flag Day Fund circulated its decision taken in the meeting held on 8.11.2000 that all the ex servicemen who were members of AGI/AFGI Medical Benefit Schemes, but had exhausted the benefit from those agencies during the earlier treatment, would be provided financial assistance from Armed Forces Flag Day Fund for subsequent treatment in respect of any of the serious diseases covered under the Schemes as per recommended rates. According to the petitioner, his case is fully covered under Sub-clause (d) of para 2 of the aforesaid letter dated 7.1.2001 (Annexure P1) which reads as under:-

"2(d) The Committee also decided that all these ESM, who were members of AGI/AFGI Medical Benefit Schemes, but had exhausted the benefit from those agencies during the earlier treatment would be provided financial assistance from AFFDF from subsequent treatment, in respect of any of the serious diseases, covered under the schemes as per recommended rates. Also, if there is some disease which is not covered by AGI/AFGI Medical Benefit Scheme, but is catered for by the KSB, the same will be entertained for providing relief from AFFDF."

4. The petitioner approached the respondents vide letter Annexure P5. Thereafter, financial help to the tune of Rs. 30,000/- was given to the petitioner by the Ceremonial and Welfare Directorate, Accounts Branch, Army Headquarters. Therefore, the petitioner Civil Writ Petition No. 17131 of 2004. now requested for financial assistance only to the tune of Rs. 37, 182/-. Accordingly, the petitioner submitted another request to the respondents vide letter dated 8.4.2003 (Annexure P-8) seeking reimbursement of the aforesaid amount. The respondents, however, vide letter dated 12.8.2003 have turned down the request on the ground that petitioner has already received assistance under the AGIF Medical Benefit Scheme for his treatment, therefore, he is not eligible for assistance again for the same treatment.

5. In the written statement filed by the respondents, a preliminary objection has been taken that the petitioner is seeking financial assistance which is given to ex-service men/their dependants and not the medical reimbursement. This assistance is being provided out of the Armed Forces Flag Day Fund, which is a non-Governmental fund made up of public contributions. The distribution of the said fund is vested with the Managing Committee of the Armed Forces Flag Day Fund and guidelines approved by the Managing Committee have been followed and implemented by Kendriya Sainik Board. The petitioner can not get the

financial assistance for a "subsequent treatment". It is further stated that the Kendriya Sainik Board only provides financial assistance in the form of grant and not reimbursement of expenses. It is also stated that a sum of Rs. 80,780/- has already been reimbursed to the petitioner for the second time treatment in the year 2000 out of AGIF. Hence, he is not entitled to any assistance from the Armed Forces Flag Day Fund. It is further stated that the financial help given by the Ceremonial and Welfare Directorate, Accounts Branch, Army Headquarters to the tune of Rs. 30,000/- has no concern with the Kendriya Sainik Board.

6. We have heard learned counsel for the parties and perused the material on record.

7. On careful consideration of the rival submissions and the facts on record, we are of the view that this petition deserves to be allowed in view of Sub-clause (d) of para-2 of the decision taken by the Managing Committee of the Armed Forces Flag Day Fund in its 6th meeting, which was conveyed to the Directors/ Secretaries, Department of Sainik Welfare/Rajya Sainik Boards in all the States and Union Territories vide letter dated 7.1.2001 (Annexure PI). As per the above Clause, it was decided by the Committee that all the ex-servicemen who were members of AGIF or AGIF Medical Benefit Scheme and have exhausted the benefits from those agencies during the earlier treatment, would be provided financial assistance from the Armed Forces Flag Day Fund for subsequent treatment covered under the Scheme as per rules. Learned counsel for the respondents lays emphasis on the words "subsequent treatment" and wants us to interpret the same as "treatment of some other disease subsequently". We are afraid we cannot agree with the interpretation projected by the learned Counsel. The words "subsequent treatment" would certainly mean "treatment for any subsequent ailment". Admittedly, the petitioner suffered heart attack for the second time in January 2000 and therefore, he would be entitled to financial assistance from the Armed Forces Flag Day Fund for his treatment when he suffered heart attack for the second time.

8. Accordingly, the writ petition is allowed. We hold that petitioner is entitled to financial assistance for his treatment on account of heart attack suffered by him in the year 2000 out of the Armed Forces Flag Day Fund. The respondents are directed to make the payment within a period of one month from the date of receipt of a certified copy of this order.