
(2018) 12 CAT CK 0150
In the Central Administrative Tribunal
Case No : Original Application No. 362 Of 2017

Jasjeet Kaur.

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 19-12-2018

Acts Referred:

Constitution Of India, 1950 — Article 14

Citation : (2018) 12 CAT CK 0150

Hon'ble Judges : A.K. Bishnoi, Member (A)

Bench : Single Bench

Advocate : Priyanka Bhardwaj, M.K. Bhardwaj, Satish Kumar

Final Decision : Partly Allowed

Judgement

1. The applicant has filed the present OA seeking the following relief:-

"(i) To quash and set aside the impugned order dated 20.10.2016 and 11.08.2015 and direct the respondents to reimburse the medical claim as raised by the applicant.

(ii) To declare the action of the respondents in not clearing the medical claim amounting to Rs. 5,40,115/- of applicant as illegal, arbitrary and unjustified and direct the respondents to reimburse the medical claim to the tune of Rs.5,40,115/- to applicant along with 18% interest.

(iii) To direct the respondents to release the medical claim as submitted by the applicant and not by reducing the same by applying CGHS rates.

(iv) To pass such other and further orders which their lordships of this Hon'ble Tribunal deem fit and proper in the existing facts and circumstances of the case.

(v) To allow the OA with exemplary cost".

2. The brief facts of the case are that the applicant was working as UDC in CPWD and remained a CGHS beneficiary. The applicant's husband suffered seizure and

as an emergency case, he was admitted in National Health Institute on 28.07.2013. As the applicant's husband did not show any improvement, he was again shifted to Max Healthcare Super Speciality Hospital on 03.08.2013 in an emergency. After undergoing treatment for about 11 days, he expired on 13.08.2013. After his expiry, discharge summary and bill for the treatment were raised by the hospital, which the applicant submitted to the respondents with all necessary documents for reimbursement. The applicant had submitted that though she and her spouse did not have separate CGHS Card since she was depositing the CGHS contribution, the benefit would accrue to both the applicant and her husband.

2.1 However, the claim of the applicant was not settled and payment was not made. She sent representations to the respondents from time to time. In reply to the same, she received several communications seeking clarifications. The required information was duly submitted by the applicant. Despite this, the medical reimbursement was not made. The applicant was retiring in July, 2015 and she continued making her claim for medical reimbursement. The claim of the applicant was finally rejected by the respondents vide letter dated 11.08.2015. The ground given for rejection of the claim was that the applicant did not have a CGHS card and in the absence of it she could not avail of the facility of CGHS for medical reimbursement

2.2 Aggrieved by the said action of the respondents, the applicant sent legal notice dated 22.06.2016 to the respondents and when the same was not even considered by them, she filed OA No.2848/2016 before this Tribunal. The said OA was disposed of with the following directions to the respondents:-

"....to reconsider the matter and pass detailed and speaking order, after giving an opportunity to the applicant to be heard, as to why the claim for reimbursement has been rejected, especially making it clear under what circumstances the husband's name was not included in the list of family members."

2.3 The applicant was called for personal hearing and asked to provide certain documents. The case of the applicant was rejected vide the impugned order dated 20.10.2016 (Annexure A-1) by raising two objections, i.e., non-availability of CGHS Card and that after retirement a person can avail medical facility only from one source. The applicant has submitted that the matter in relation to the CGHS Card has already been dealt with by the order of this Tribunal dated 23.08.2016 and the second objection relating to availing of medical facility from only one source is not based on correct appreciation of facts. It has been submitted in the grounds that:-

- i) OM dated 04.08.1994 has been misinterpreted in the impugned order;
- ii) Respondents have failed to consider that as per the OM No. S-6252/2003-2004-R&H/CGHS/CGHS (P) dated 15.06.2004, claim of applicant was required to be recommended. In para 4 of the OM it has been clearly

provided ".....it would be unfair to deny the Govt. servant the benefit of CGHS facilities merely on the ground that he/she had not applied to the Administrative Branch for getting a CGHS card....".

iii) The ruling given by the Hon'ble High Court of Delhi in Smt. Shyama Malhotra & Ors. v. Union of India & Ors.[138 (2007) DLT 210] in which it was held that if medical treatment is availed, whether a Govt. employee is card holder or not is irrelevant and full reimbursement is to be given. The order of the Punjab & Haryana High Court in Vasu Dev Bhanot Vs. Union of India & Ors. [2008 (4) SLR 114], has been cited in which it has been held that if a Govt. servant or his dependent has suffered an ailment requiring emergency treatment, it is the duty of the State to bear the expenditure incurred by the Govt. servant.

iv) The issuance of CGHS is merely a procedure. When the entitlement of the applicant to avail of CGHS benefit was not disputed and she was paying CGHS contribution, the mere non-availability of the card of the husband cannot be taken as a plea for denying medical reimbursement.

v) The applicant's husband did not avail of full medical facility from Punjab & Sind Bank of which he was an employee and was beneficiary of a different scheme. Also, the applicant is also seeking medical reimbursement only for that amount, which was never claimed by the applicant or her husband from Punjab & Sind Bank or from any other source.

vi) The respondents have in their own letters mentioned that the claim of the applicant is justified and had given a specific calculated figure. This contention of the applicant, however, is not backed by a specific mention of any such communication.

2.4 The applicants have submitted the following OMs and Judgments in support of their averments:-

"i) [G.I., M.H., OM No. S. 11011/4/2003-CGHS (P) dated the 19th February, 2009.];

ii) [G.I., M.H., O.M. No. S-11011/4/2003-CGHS (P), dated the 27th February, 2004.];

iii) G.I., M.H., O.M. No. S-11011/4/2003-CGHS (P), dated the 8th January, 2004;

iv) Vasu Dev Bhanot (supra); and

v) Shiva Kant Jha vs. Union of India [AIR 2018 SC 1975];

vi) Shyama Malhotra & Ors. (supra)."

3. The respondents in their counter affidavit have contended as follows:-

3.1 The applicant submitted a claim stating that an amount of Rs.8,45,865/- was incurred in the National Heart Institute and then in Max Super Speciality Hospital, New Delhi, out of which a sum of Rs. 2,92,255/- was reimbursed and

paid by the Insurance company under medical claim policy for Punjab & Sind Bank employees. The balance amount of Rs. 5,53,610/- was submitted to the respondents for reimbursement under the CGHS facility. It was rejected by the respondents on the ground that the same was not as per rules. Thereafter, in compliance of the order of this Tribunal dated 23.08.2016, the respondents have given a personal hearing and after obtaining further clarification from CGHS Headquarters in which it was mentioned that the husband of the applicant was not holding a CGHS card and he was employed in some Bank and was availing of medical facility in the form of Group Medical Claim Policy. Hence, as per CGHS OM dated 04.08.1994 he cannot avail medical reimbursement facility from both sources. In view of the same, the respondents through a speaking order dated 20.10.2016 rejected the claim of the applicant for medical reimbursement. It was also stated that as per the CGHS rules, merely depositing the CGHS contribution by the applicant does not allow medical facility for the spouse who is employed in other organization and availing of medical facilities from there.

3.2 It was clarified that as per CGHS OM dated 04.08.1994, a Central Government employee whose spouse is serving in any organization mentioned in the said OM, which provides medical facilities to its employees and members of their family can opt out of the CGHS and avail of medical facilities from the organization in which his/her spouse is working, provided that neither of the two and members of their family shall avail medical facilities from both the sources at a time. An undertaking in this regard shall have to be given by the Central Government employee concerned to the authority issuing the CGHS card. As the applicant's husband was not holding the CGHS card and the applicant did not consider to get CGHS card issued by the respondents for availing medical facilities for her husband under CGHS, the claim was not found reimbursable.

4. The applicant has filed a rejoinder and an additional affidavit in which the same points as in the OA have been reiterated. OM dated 20.10.1997 regarding opting out of CGHS has also been filed along with the additional affidavit.

5. Learned counsel for the applicant while advancing her arguments relied on OMs dated 27th February, 2004 and 8th January, 2004 of the Department of Health, the relevant provisions of which read as under:-

"Payment/Reimbursement of medical expenses to the Central Govt. pensioners from two sources viz. from the Insurance companies and the CGHS -The undersigned is directed to refer to Department of Health's O.M. of even number dated 8.1.2004 on the subject mentioned and to state that the provisions contained in the said O.M. would also be applicable to the serving Central Govt. employees covered under the Central Government Health Scheme (CGHS) and the Central Services (Medical Attendance) Rules, 1944.

2. This issues with the concurrence of Insurance Division (Department of Economic Affairs) vide their U.O.No.64(86)-Ins.I/2003, dated 3.11.2003 and concurrence of the Department of Expenditure vide their U.O. No.147/E.V/2004

dated 17.2.2004."

[G.I. M.H. O.M. No. S-11011/4/2003-CGHS (P), dated the 27th February, 2004]

[Copy of G.I. M.H. O.M. No. S-11011/4/2003-CGHS (P) dated the 8th January, 2004]

"The undersigned is directed to say that the question of Payment/Reimbursement of medical expenses to the Central Government Pensioners from two sources, viz., from the Insurance Companies and the CGHS against the same bills wherein the Government pensioner would give the original vouchers/bills to one organization and photostat copies of the vouchers/bills to the second organization has been engaging the attention of the Government for quite sometime.

2. The issue has been examined in consultation with the Insurance Division of the Department of Economic Affairs and also the Department of Expenditure. It has been decided that the beneficiaries of CGHS who hold a CGHS Pensioner Card would be allowed to claim reimbursement of medical expenses both from Insurance companies as well as the CGHS in case such pensioners have taken a Mediclaim policy. However, medical claim against the original vouchers/bills would be raised by the pensioner first on the Insurance Company who would issue a certificate to the Director, CGHS of the amount reimbursed to the pensioner holding the Mediclaim policy. The concerned Insurance Company would retain the original bills in such cases. The CGHS pensioner cardholder would then prefer his/her medical claim along with photocopies of the vouchers/bills duly certified, in ink along with stamp of the Insurance Company on the reverse of the bills, to the concerned Additional Director of CGHS. The CGHS would then reimburse to the pensioner beneficiary only the balance of the admissible amount (that is the admissible amount minus what has been reimbursed to the CGHS Pensioner cardholder by the Insurance Company). The CGHS Pensioner cardholder would be subject to the further condition that the total amount reimbursed by the two organizations does not exceed the total expenditure incurred by the pensioner."

6. Reliance has also been placed on OM dated 19.02.2009, which relates to payment/reimbursement of medical expenses to beneficiaries of CGHS Scheme from two sources viz; from the Insurance Companies and the CGHS. In essence it is the same as OM of 08.01.2004.

7. Learned counsel for respondents during the arguments relied on OM dated 04.08.1994, which reads as under:-

"Government Servant can opt out of CGHS to Avail Medical Facilities provided by the spouse's organization The undersigned is directed to say that according to existing rules the Central Government Health Scheme was compulsory for all the Central Government employees residing in CGHS covered areas and a Central Government employee could not opt out of the Central Government Health

Scheme. However, spouse of the eligible Government servant employed in Defence or Railway services, State Government or corporation or bodies financed partly or wholly by the Central Government or State Government, local bodies and private organizations which provide medical facilities had the option to choose either of the two.

2. It has been decided that a Central Govt. employee whose spouse is serving in any organization mentioned above, which provides medical facility to its employees and members of their family can opt out of the CGH Scheme and avail of medical facilities from the organization in which his/her spouse is working, provided that neither of the two and members of their family shall avail medical facility from both the sources at a time. An undertaking in this regard shall have to be given by the Central Government employee concerned to the authority issuing the CGHS Card.

3. This issues with the approval of Secretary (Health) and concurrence of JS&FA vide U.O. No. 4850, dated the 19th July, 1994".

8. I have gone through the pleadings and heard the arguments advanced by the learned counsel for both the parties.

9. The impugned order dated 11.08.2015 reads as follows:

"The remark of Chief Engineer Office on your request for reimbursement of expenditure spent on the medical treatment of your late husband is as follows:-

".....According to the rules, to avail CGHS facility, it is mandatory to have Card. Since Smt. Jasjeet has not got the CGHS Card of her husband, therefore, in absence of CGHS Card, she can not avail the facility of CGHS."

This is for your information".

10. Through the order dated 20.10.2016 in compliance of the order of this Tribunal dated 23.08.2016, the respondents have passed the following orders:-

"Whereas, before rejecting the MRC of Smt. Jasjeet Kaur, a clarification was sought from CGHS (HQ), R.K. Puram, New Delhi regarding the CGHS facility in absence of CGHS card and subsequently the CGHS authorities vide their letter No. S-8624/2014/R&H/CGHS (HQ) 2468 dated 22.09.2014 clarified that for the purpose to avail CGHS facility, CGHS card is mandatory element and further mentioned that since Smt. Jasjeet Kaur did not apply for CGHS card for her husband, therefore, she is not entitled to avail CGHS facility for her husband in the absence of the same. Accordingly, the MRC of the applicant has been rejected.

Now as per the direction of Hon'ble CAT, after giving a hearing and submission made by the applicant, a further clarification was sought from the CGHS (HQ) and as per CGHS (HQ) clarification vide their letter No. S.8684/2014/R&H/CGHS(HQ)/2060 dated 19.10.2016, she is not entitled to claim CGHS facility for her husband in the absence of CGHS card and the provisions contained in

Ministry of Health & Family Welfare OM No. S. 11011/6/92-CGHS Desk-1/CGHS(P) dated 04.08.1994, which provides that after retirement, a person can avail the medical facility only from one source either from CGHS or from the bodies financed partly or wholly by the Central Government or State Government, irrespective to the amount involved. In this case Shri Ravinder Singh was availing medical facility from the Punjab & Sing Bank. Therefore, the medical reimbursement claim of Smt. Jasjeet Kaur has been rejected".

From this, it can be seen that the two main issues on which the respondents have relied for rejecting the claim of the applicant are that:

i) CGHS card is mandatory element and that the applicant did not apply for CGHS card for her husband and hence she is not entitled to avail of CGHS facility for her husband;

ii) After retirement, a person can avail the medical facility only from one source either from CGHS or from the bodies financed partly or wholly by the Central Government or State Government as per the provisions contained in Ministry of Health & Family Welfare OM dated 04.08.1994.

11. The Hon'ble Delhi High Court in Shyama Malhotra & Ors. (supra) has passed the following orders:-

"8. In view of these decisions, this court, at the interim stage, passed an order on 12.12.2006 requiring the respondent to reconsider the petitioners' claim and issue an appropriate order within four weeks. The respondent was also directed to communicate the same to the petitioner directly. It appears that the matter was reconsidered and an order was passed on 15.2.2007. A photo copy of which is handed over by the learned counsel for the petitioner and the same is taken on record. Mr Kait, who appears on behalf of the respondent (Union of India), submits that such an order was passed. In my view, the order has, unfortunately, not proceeded in the right direction. The court, while passing the order dated 12.12.2006, had clearly indicated the view taken by this court consistently in several decisions. Despite this, the order dated 15.2.2007, rejecting the claim of the petitioners, continues evince the same ideology on the part of the respondent which has been negated by this court on several occasions. This can be easily noted by referring to the following portion of the order dated 15.2.2007:-

"Facilities under CGHS can be availed only from the date from which a card is issued in favour of a person after payment of the requisite charges. For any treatment/expenditure incurred before the acquisition of a card. CGHS facilities cannot be availed and post-facto-facility cannot be claimed under CGHS, without the availability of the card."

9. This approach is clearly contrary to what has been held by this court repeatedly and the consequent order passed on the basis of this requires to be set aside. Accordingly, this writ petition is disposed of with the direction that the impugned order dated 26.6.2006 as well as the order dated 15.2.2007 are set

aside. The respondent is directed to process the reimbursement claim of the petitioner No.1 in accordance with the directions given above and the view taken by this court as also the CGHS scheme. This exercise is to be carried out within two weeks. Insofar as the prayers a, c and d are concerned, the petitioners have not pressed the same at this juncture and liberty is granted to the petitioners to agitate the same, if need be, at an appropriate stage."

(Emphasis supplied)

12. From the referred judgment of the Hon'ble Delhi High Court, it is sufficiently clear that the mere absence of CGHS Card cannot be a ground for denying benefits under the Scheme. It has not been denied by the respondents that the applicant was covered by the CGHS and under such coverage, a spouse is included. Hence, the absence of CGHS Card cannot take away any right of coverage under the CGHS.

13. The applicant in the pleadings had referred to OM dated 15.06.2004, which also mentions that it would be unfair to deny the Govt. servant the benefit of CGHS facilities merely on the ground that he/she had not applied to the Administrative Branch for getting a CGHS card.

14. In the impugned order dated 20.10.2016, as also in the counter reply, the respondents have relied on OM dated 04.08.1994. The said OM speaks about opting out of medical facilities under CGHS, which clearly is not the case in the instant matter.

15. Further, subsequent OMs of the Ministry of Health & Family Welfare dated 08.01.2004, 27.02.2004 and 19.02.2009 are sufficiently clear on the point that the medical facilities can be availed under Medical Insurance Policy as also under the CGHS subject to the condition that the reimbursement from the two sources will not exceed the amount admissible under the CGHS as also the total expenditure incurred by the pensioner.

16. It has been admitted in the counter reply that applicant's husband was covered under the mediclaim policy while working in Punjab & Sind Bank. Hence, the position explained through the OMs referred above totally covers the case of the applicant.

17. The applicant has also cited the decision of the Hon'ble Supreme Court in the case of Shiva Kant Jha (supra), the relevant portions of which are reproduced below:-

"14) This is hardly a satisfactory state of affairs. The relevant authorities are required to be more responsive and cannot in a mechanical manner deprive an employee of his legitimate reimbursement. The Central Government Health Scheme (CGHS) was propounded with a purpose of providing health facility scheme to the central government employees so that they are not left without medical care after retirement. It was in furtherance of the object of a welfare State, which must provide for such medical care that the scheme was brought in

force. In the facts of the present case, it cannot be denied that the writ petitioner was admitted in the above said hospitals in emergency conditions. 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. The doctors did his operation and had implanted CRT-D device and have done so as one essential and timely. Though it is the claim of the respondent-State that the rates were exorbitant whereas the rates charged for such facility shall be only at the CGHS rates and that too after following a proper procedure given in the Circulars issued on time to time by the concerned Ministry, it also cannot be denied that the petitioner was taken to hospital under emergency conditions for survival of his life which requirement was above the sanctions and treatment in empanelled hospitals.

15) In the present view of the matter, we are of the considered opinion that the CGHS is responsible for taking care of healthcare needs and wellbeing of the central government employees and pensioners. In the facts and circumstances of the case, we are of opinion that the treatment of the petitioner in non-empanelled hospital was genuine because there was no option left with him at the relevant time. We, therefore, direct the respondent-State to pay the balance amount of Rs. 4,99,555/- to the writ petitioner. We also make it clear that the said decision is confined to this case only."

18. The judgment of the Hon'ble Apex Court makes it abundantly clear that the CGHS is responsible for taking care of healthcare needs and wellbeing of the central government employees and pensioners and that the treatment can be taken even in non-empanelled hospitals in emergency conditions. This being the clear direction in the pronouncement of the Hon'ble Apex Court, it is totally wrong on the part of the respondents to deprive the applicant of the reimbursement of the expenditure incurred on the treatment of her late husband.

19. The applicant has also cited the judgment of the Hon'ble High Court of Punjab & Haryana in the case of Vasu Dev Bhanot (supra). The relevant part of the judgment reads as under:-

".....If the Government servant or his dependant has suffered an ailment which requires emergency treatment, it is but the duty of the State to bear the expenditure incurred by the Government servant. Expenditure thus incurred by the Government servant, while in service or after retirement, requires to be reimbursed by the State to the employee....."

9. In view of the above, we hold that refusal of claim of the petitioner for reimbursement of medical expenses incurred for the treatment of his wife is unreasonable, unjust and arbitrary. (The impugned order is violative of Article 14 of the Constitution of India. We, accordingly, allow this writ petition and set aside the order whereby claim of the petitioner for medical reimbursement has been rejected. The respondents are directed to reimburse to the petitioner the amount equal to the rates of P.G.I., Chandigarh."

It has been clearly held that it is the duty of the State to bear the expenditure incurred by a Government servant in the emergency treatment of self or any of his/her dependent family members.

20. In the light of the judgments referred above and the Rules made by the respondents themselves through the aforementioned OMs regarding reimbursement from two sources subject to certain conditions, the action of the respondents in rejecting the claim is totally contrary to law.

21. Hence, the impugned orders dated 20.10.2016 and 11.08.2015 are set aside. The respondents are directed to release the balance amount payable to the applicant, i.e., after making deduction of what has already been reimbursed to the applicant by the Insurance Company. The claim of the applicant shall be settled as per rules and as per the judgments of the Hon'ble Supreme Court in Shiva Kant Jha (supra) and of the Hon'ble High Court of Punjab and Haryana in Vasu Dev Bhanot (supra). The respondents are also directed to pay interest on this amount at the prevailing GPF rates from the date this amount became due after the applicant submitted the claim. All payments are to be made within two months of the receipt of a certified copy of this order.

22. The O.A. is partly allowed with directions as above. No order as to costs.