
(2018) 12 CAT CK 0157
In the Central Administrative Tribunal
Case No : Transfer Application No. 11 Of 2017

Krishna Devi And Ors

APPELLANT

Vs

Secretary And Ors

RESPONDENT

Date of Decision : 28-12-2018

Acts Referred:

Constitution Of India, 1950 — Article 21

Citation : (2018) 12 CAT CK 0157

Hon'ble Judges : Praveen Mahajan, Member (A)

Bench : Single Bench

Advocate : M.L. Sharma, Vidhi Kumar, Subhash Gosain, Dr. Ch. Shamsuddin Khan

Final Decision : Disposed Off

Judgement

1. This case has been received on transfer from the Hon'ble High Court of Delhi vide order dated 13.02.2017 in WP(C)-5991/2016, CM-24644/2016 and has been numbered in the Tribunal as TA-11/2017.

2. The facts of the case, in brief, are that the applicant Sh. Krishan Lal joined Indian Army on 21.06.1963. He retired from the post of Gunner on 01.07.1978. After retirement, he was employed as Staff Car Driver (on 16.02.1979) with the Department of Culture, Ministry of Culture, Government of India, from where he retired on 30.06.2005.

3. The applicant states that due to ill health (shortness of breath), he was admitted in Sri Balaji Hospital, Paschim Vihar, New Delhi on 29.01.2016 and discharged on 01.02.2016. During his illness, he incurred an expenditure of Rs. 1,79,950/-. The applicant submitted an application in the prescribed format to respondents No. 1 to 3 along with details of medical treatment, bills and payment receipts. Respondent No.3 vide order dated 27.04.2016 rejected his medical reimbursement on the ground that the applicants' CGHS Card was not valid during the period of treatment.

4. The applicant avers that it is a settled legal position that Government employees in their lifetime, during and after retirement are entitled to get the benefits of medical facilities. No fetters can be placed on this right on the pretext that he had not opted to become a member of the Scheme or had paid the requisite subscription after having undergone the operation or such other medical treatment. Under Article 21 of the Constitution of India, the State has a Constitutional obligation to bear the medical expenses of Govt. employee while in service and also after they retire, hence the denial of his valid claim by the respondents is legally untenable.

5. The applicant has placed reliance on the following judgments of the Hon'ble High Court:-

(i) Ram Kumar Kaushik Vs. GNCTD & Ors., 229(2016)DLT 219.

(ii) Govt. of NCT Vs. S.S. Sharma, 118(2005) DLT 144.

(iii) Mahinder Pal Vs. UOI, 117(2005) DLT 204.

(v) Randeep Kumar Rana Vs. UOI, 111(2004) DLT 473.

(vi) P.N. Chopra Vs. UOI, 111(2004) DLT 190.

(vii) S.K. Sharma Vs. UOI, 2002(64) DRJ 620.

(viii) B.R. Mehta Vs. UOI, 79(1999) DLT 388.

(ix) Narender Pal Singh Vs. UOI, 79(1999) DLT 358.

6. The applicant has filed this O.A. seeking the following relief:-

"(i) Direct the respondents no.1 to 4 to reimburse medical expenses/claim of the petitioner on account of medical treatment of the petitioner at Sr Balaji Hospital, Paschim Vihar, New Delhi without any delay.

(ii) Impose appropriate cost on the respondents on account of harassment cause to petitioner by illegally and arbitrarily rejecting the medical reimbursement claim of the petitioner."

7. In the counter affidavit filed on behalf of the respondents, it is stated that the claim of the applicant was rejected on 27.04.2016 on the ground that CGHS beneficiary card was not valid during the period of his treatment (from 29.01.2016 to 01.02.2016). It is submitted that as per the CGH Scheme, if the CGHS token card is not issued within the grace period of three months from the date of retirement, the pensioner (s) will not be entitled for any medical reimbursement of expenses and CGHS facilities. Hence, the medical claim of the applicant was rejected purely as per the CGHS policy enumerated in O.M. No. S-120155/2/93-CGHS(P) dated 05.11.1993.

7.1 The respondents have relied on the decision dated 14.03.2008 of Hon'ble High Court of Delhi in the case of Dal Chand Vashisht Vs. Govt. of NCT of Delhi,

relevant para of which stipulates that:-

"20. Often Health schemes, including the DGEHS are contributory in nature, and are structured on the same lines as the insurance schemes, where the burden is shared by all the contributories collectively for the benefit of those who may need to draw from the common pool thus created. If such contributions were permitted to remain contingent on the employee/pensioner first suffering illness, and incurring substantial expenses (which are more than the contribution he would be liable to make under the Scheme, because only then the employee/pensioner will find it worthwhile to become a member of the Scheme), the entire scheme may collapse. No employee/pensioner would feel the need to get covered by such a scheme in advance, to cover the risks which the scheme protects against. Only such persons who see it as a profitable proposition, i.e., those who have incurred more expenses and are in a position to claim more reimbursement than the contribution required under the scheme would then become members under the scheme at their own convenience. The concept of a large body of employees/pensioners contributing a very small fraction of the costs to meet the expenses of a few who actually suffer large amounts of expenses on medical treatment would be completely defeated. No doubt, even in contributory schemes for employees/pensioners, the Government may provide funds from its coffers as well to top up the expenses/out go from such schemes, but essentially they are contributory schemes. "

7.2 Further, Hon'ble Supreme Court in the case of Confederation of Ex-Servicemen Associates and Ors. Vs. Union of India and Ors.,(2006)8 SCC 399 has held as under:-

"In our opinion, such a contributory scheme cannot be held illegal, unlawful or unconstitutional. Ultimately, the State has to cater to the needs of its employees past and present. It has also to undertake several other activities as a 'welfare' State. In the light of financial constraints and limited means available, if a policy decision is taken to extend medical facilities to ex- defence personnel by allowing them to become members of contributory scheme and by requiring them to make 'one time payment' which is a 'reasonable amount', it cannot be said that such action would violate fundamental rights guaranteed by Part III of the Constitution."

7.3 It is averred that the judgment of Hon'ble High Court of Delhi in the case of Ram Kumar Kaushik Vs. GNCTD & Ors., 229(2016)DLT 219 relied upon by the applicant has been overruled by the judgment in the case of Dal Chand Vashisht Vs. GNCTD & Ors.

8. The applicant in O.A. Sh. Krishan Lal expired on 28.11.2017. Hence, MA-92/2018 filed on behalf of his legal heirs for substitution as legal representatives of the deceased applicant was allowed by the Tribunal on 20.02.2018.

9. I have gone through the facts of the case carefully and rival submissions made

by both sides. The medical reimbursement claim of the applicant was for the expenses incurred for medical treatment for himself at Sri Balaji Action Medical Institute, New Delhi. The treatment period was from 29.01.2016 to 01.02.2016. The medical claim of the applicant has been rejected on the ground that the deceased Sh. Krishan Lal did not possess a valid CGHS Card during the period when he undertook the treatment and hence cannot be granted the benefit of CGH Scheme.

10. During the course of hearing, both sides relied upon citations decided in their favour from time to time, and reiterated their respective stance raised in the OA and counter affidavit, respectively.

11. It is not disputed that the applicant was not in possession of a valid CGHS card at the time he under took the treatment. The Government of India, Ministry of Health has issued OM's dated 05.11.1993 (Annexure R-1) and 01.07.1999 (Annexure R-2) allowing grace period of one month to the pensioners from the date of their retirement for the purposes of admitting medical claims for reimbursement of medical expenses under CGHS for the treatment taken by them immediately after retirement. This grace period (for getting the card issued) was enhanced from one month (OM dated 05.11.1993) to three months (O.M. dated 01.07.1999). However, the benefit of this extension cannot be claimed by the applicant since he retired way back in 2005 (30.06.2005).

12. The applicant in the OA has relied upon the judgment of Hon'ble High Court of Delhi in the case of Shyama Malhotra & Ors. Vs. UOI & Ors. in WP(C) No. 11843/2006 decided on 20.02.2007 wherein a similar issue arose. The applicant therein did not have a CGHS card in her own name. Her name had been included as dependent in her son's card. The applicant (petitioner) in Shyama Malhotra (supra) got issued a separate card in her own name on 20.03.2006, though she had undertaken the treatment during 25.05.2005 to 18.08.2005. Her claim for medical reimbursement was rejected on the ground that CGHS can be availed only from date from which the card is issued in favour of the person, after payment of requisite charges etc. The respondents had averred that post facto CGHS facilities cannot be availed without availability of a valid card during the period of treatment. The Hon'ble Single Bench, vide their order dated 20.02.2007 allowed the petition holding that what is relevant is not whether the applicant was a card holder of the CGHS Scheme at the time of treatment, rather, the material factor for grant of the benefit under the CGH Scheme is the status of the person that he was an eligible retired pensioner.

12.1 This decision of Single Bench was challenged in UOI & Ors. Vs. Shyama Malhotra & Anr., 2007(98)DRJ 367(DB) before a Division Bench of Hon'ble High Court of Delhi, who on 07.09.2007, upheld the order dated 20.02.2007, observing that:-

"17. CGHS is a beneficial and benevolent scheme, a welfare measure to provide for medical treatment of government servants and family members who are

"mainly dependent" on the Government servant. The scheme recognises and accepts that a Government servant must take care of his old and aged parents residing with him. A narrow construction may well be self defeating and contrary to the object behind the provision. Dependency for the purpose of the clause will mean dependency for purpose of medical treatment and aid. It is ironical that when medical treatment (even in government hospitals) can land you with bills in lacs, as in the present case, for the deeming clause monthly income of Rs. 1500/- has been prescribed. This apparent contradiction, refutes and negates the primary objective. We need not go into these aspects in great detail in view of the interpretation given by us.

18. One important and relevant factor is that the respondent No. 1 is entitled to benefit under CGHS in her own right being a retired government servant and also in case she is "mainly dependent" on her son, the respondent No. 2. In fact the name of respondent No. 1 was included in the CGHS card issued in favor of the respondent No. 2 and therefore, she had not initially applied for an individual card in her personal capacity, as a retired Government servant but consequent to some doubts being raised, she applied for and was issued a CGHS card.

19. In view of the peculiar facts of the present case and since the respondent No. 1 is entitled to benefit under the CGHS in her own right and she was "mainly dependent" on the respondent No. 2, who is a Government servant, we feel that the appellant should pay and reimburse the medical expenses as per rules. In view of the above, we dismiss the present Appeal but without costs. "

12.2 The respondents challenged the aforesaid order dated 07.09.2007 in Civil Appeal No. 2675/2010 before the Hon'ble Supreme Court. The same was also dismissed on 28.07.2015 with the following observations:-

"No one appears on behalf of the appellants, in spite of second call.

We have heard learned counsel for the respondents.

This appeal by special leave is directed against the judgment and order dated 7.9.2007 passed by the High Court of Delhi at New Delhi in L.P.A. No. 257 of 2007, wherein the High Court dismissed the LPA of the appellants.

Having regard to the concurrent finding recorded by the two Courts below, we do not find any reason to interfere with the impugned order.

This appeal is, accordingly, dismissed."

13. The respondents, on the other hand, have relied upon the decision of the Hon'ble High Court of Delhi in the case of Dal Chand Vashisht Vs. GNCTD in WP(C) No. 539/2007 dated 14.03.2008. In the aforementioned judgment, it has been held that:-

"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. However, where he 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-Writ Petition dismissed."

They further submit that the Hon'ble Division Bench, while deciding the case of Dal Chand Vashisht took cognizance of earlier judgments on the issue and dismissed the petition.

14. The respondents contend that the judgment of Dal Chand Vashisht (supra) is subsequent to Shyama Malhotra (supra) and hence the law laid down in Dal Chand Vashisht (supra) should prevail.

14.1 During the course of hearing, the learned counsel for the applicants Sh. M.L. Sharma argued that if there are two divergent judgments on the same issue, then law laid down earlier, shall prevail. To support this contention, he relied upon the judgment of Hon'ble Supreme Court in the case of New India Assurance Co. Ltd. Vs. Hilli Multipurpose Cold Storage Pvt. Ltd., AIR 2016 SC 86 in which it was held that judgment delivered earlier in point of time must be respected and followed. Their Lordships held that "Law laid down by Bench of larger strength is binding on any subsequent Bench of lesser or equal strength. Law laid down earlier by larger Bench shall prevail over law laid later by larger Bench i.e. Bench of same strength. (Paras 17, 18, 19)

14.2 Even in the case of Sundeep Kumar Bafna Vs. State Of Maharashtra & Anr., [(2014) (16) SCC 623] the Hon'ble Apex Court held that:-

"15..... It is often encountered in High Courts that two or more mutually irreconcilable decisions are cited at the Bar. We think that the inviolable recourse is to apply the earliest view as the succeeding ones would fall in the category of per incuriam. "

In view of these facts I am convinced that the law laid down by Hon'ble Supreme Court in the case of Shyama Malhotra (supra) prevails over the principle enunciated in Dal Cahnd Vashisht (supra).

15. The applicant in his rejoinder has also submitted that he was residing in an area which was outside the purview of CGHS. No rebuttal in this regard has been filed by the respondents. The applicant has submitted that he was permanently residing in an area, which is not covered by CGHS, therefore, he had not chosen to become a member of the Scheme but was certainly entitled to reimbursement of the medical claim coupled with the fact that there is no dispute regarding his entitlement under the Scheme.

16. Keeping in view the facts of the case and aforementioned discussions, I set aside the impugned order dated 27.04.2016. The respondents are directed to reimburse the medical expenses incurred by the applicant (since deceased) on

medical treatment of Rs. 1,79,950/- taken at Sri Balaji Hospital, Paschim Vihar, New Delhi, to his legal heirs, as per law. This must be done within two months from the date of receipt of a certified copy of this order. No costs.