

(2023) 03 CAT CK 0067

In the Central Administrative Tribunal

Case No : Original Application No. 705 Of 2016

Malti Devi

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 31-03-2023

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Constitution Of India, 1950 — Article 14, 16

Citation : (2023) 03 CAT CK 0067

Hon'ble Judges : Dr. Sanjiv Kumar, Member (A)

Bench : Single Bench

Advocate : Ashish Srivastava, Vinod Mishra

Final Decision : Disposed Of

Judgement

Dr. Sanjiv Kumar, Member (A)

1. By way of the instant original application filed under section 19 of Administrative Tribunals Act 1985, the applicant has prayed for a direction to the respondent No. 4 for medical reimbursement of Rs. 99,187/- submitted by her on 19.09.2015 and for payment of 18% thereupon.

2. The facts of the case of the applicant, in brief, are that the husband of the applicant Shri R.C. Gupta was retired from the post of Deputy Postmaster, Gorakhpur, and is beneficiary of medical facilities available to the retired central government employees. The applicant suddenly suffered with neurological disorder and on advice of MO Incharge, Postal Dispensary, Gorakhpur, was admitted to SGPGI, Lucknow for neuro surgery where she was admitted on 27.05.2015 and discharged on 19.08.2015. It is stated that during the treatment, the applicant had to spent Rs. 1,30,511.92 for different kind of tests, medicines and equipments. On 10.09.2015, the husband of the applicant submitted claim for reimbursement of Rs. 99,187/- as per the medical entitlement after due attestation and counter signature by the Medical

Superintendent of SGPGI, Lucknow. It is further stated that the aforesaid claim of the applicant has been denied by the respondents on the ground that the applicant is residing at Gorakhpur and the CGHS hospital is not available at Gorakhpur, therefore, the amount cannot be reimbursed. The applicant claims that the ground of denial is illegal, arbitrary and violative of Article 14 & 16 of the Constitution of India as similarly situated central government employees in other districts and Headquarter are provided the facilities. The applicant claims that Article 14 of Constitution of India entitles equality before law and the State shall not deny any person equality before law or equal protection of law within the territory of India. It is submitted that the applicant resides at Gorakhpur from where she was referred to SGPGI and as such the aforesaid amount is liable to be reimbursed to her with admissible interest.

3. The respondents have filed counter affidavit wherein they did not contest genuineness of the claim referred by the departmental dispensary to SGPGI and treatment at SGPGI and the quantum of claim, which the applicant is claiming. But the respondents emphatically say that during service period, the applicant's husband was availing all medical facilities as per rules and after retirement, he and his wife are availing the facility from Postal Dispensary, Gorakhpur except reimbursement of medical bill. It is stated that at Gorakhpur there is no CGHS hospital, therefore, the applicant including her husband are not the member of CGHS and there is no contribution to CGHS on their part. The facility as per rule is being availed by the applicant and she had gone under treatment as indoor patient at SGPCI, Lucknow from 27.07.2015 to 19.08.2015 and after treatment, her husband submitted medical bill for amounting Rs. 99,187/- on 29.10.2015. It is also stated that as per rules, after retirement, such reimbursement is not admissible to the applicant as at Gorakhpur, there is no CGHS hospital and the applicant is not subscriber of CGHS. Accordingly, the applicant was informed vide office letter no. E-4/6/Medical Bill/Corr dtd. 07.01.2016 against which the applicant has preferred the instant OA. The respondents claim that only CGHS subscriber is entitled for reimbursement of medical claim and the applicant's claim is not covered by CGHS, hence she is not entitled for any reimbursement and all similarly placed persons are treated in the same way hence, there is no violation of Article 14 and 16 of the Constitution of India. As the applicant is residing in the serving area of Postal dispensary and is availing medical facilities of postal dispensary which is OPD treatment, therefore, she is not entitled for indoor facilities and reimbursement of medical claim under CS (MA) rules. The respondents further say that as the CGHS facility is not available at Gorakhpur and the applicant's husband is not CGHS subscriber, therefore, the claim of the applicant is liable to be rejected by dismissing the OA.

4. Rejoinder has been filed by the applicant wherein she has repeated the facts as in the OA, but it is stated that there are several judgments of this Tribunal wherein the similar controversy has been resolved. In this regard, the applicant has placed reliance on order dated 17.11.2016 of CAT, Allahabad Bench passed in OA No. 857/2008 – Ram Charitra Gupta Vs. UOI & Ors. It is stated that the

above OA was filed by the husband of the applicant, wherein similar controversy was involved and the Tribunal had directed the respondents to sanction and release the admissible amount to the applicant as medical reimbursement. The applicant has further relied on the order passed by CAT, Chandigarh Bench in the case of H.S. Malik and others Vs. Union of India and others. She has also relied on the order passed in Laxmi Das T. Vasanu Vs. Union of India and others – 2004(2) ATJ (90) where the Tribunal has held that the applicant was working as Assistant Director Postal Service, who was suffering from severe heart disease, should be entitled for claiming the indoor treatment. It is stated that in that case, the applicant was also referred by the postal dispensary and the case of the applicant is similar. The applicant further relied upon the judgment of CAT, Jabalpur Bench in the case of Laxmi Chand Vs. UOI & Ors – 2005 (1) ATJ (31) where the Tribunal has held that the medical expenses to a retired employee for their indoor treatment has to be reimbursed and it cannot be denied or distinguished on the ground that the retired government employee is not a member of CGHS.

5. Supplementary Counter Affidavit has been filed by the respondents wherein they reiterate their stand as in the counter affidavit. However, they have filed Civil Service (Medical Attendant) Rule and quoted the Government of India order No. 5.14025/23/2013-MA EHSS dated 29.09.2016, which reads as under: -

“(a) Pensioner residing in CGHS Covered Areas: -

(1). They can get themselves registered in CGHS Dispensary after making requisite contribution and can avail both OPD and IPD facilities.

Or

(2). Pensioners residing in CGHS area cannot opt out of CGHS and avail any other medical facility i.e. fixed Medical Allowance. Such pensioners, if they do not choose to avail CGHS facility by depositing the required contribution, can not be granted Fixed Medical Allowance in lieu of CGHS.

(b). Pensioners residing in Non-CGHS Areas:

(1). They can avail the facility of Fixed Medical Allowance @ 1000/- pm.

(2). They can also avail the benefit of CGHS (OPD and IPD) by registering themselves in the nearest CGHS city, after making requisite subscription.

(3). They can also have the option to avail FMA for OPD treatment and CGHS for IPD treatment after making the requisite subscription as per CGHS guidelines.”

The respondents have further emphasized in the context of above, there is no provision for reimbursement of bill of retired government servant and prayed that the OA may be dismissed.

6. The case came up for hearing on 17.03.2023. Shri Ashish Srivastava, learned counsel for the applicant and Shri Vinod Mishra, learned counsel for the

respondents were present and their arguments were heard.

7. I have gone carefully through the record and rival contentions. From the record, it is evident that the facts of the case are not contested. It is the fact that the applicant's husband was working in the postal department and residing at Gorakhpur where CGHS facility was not available and they were provided the medical facility by the departmental dispensary at Gorakhpur for OPD purposes. Strictly, as per rules, the husband of the applicant was not the member of CGHS and had not contributed to CGHS and therefore, she was not entitled for reimbursement for inpatient and other facilities, as contended by the respondents. But the facts of the case are clear that the departmental dispensary had referred the applicant to SGPGI where, as inpatient candidate, the applicant was attended and she made necessary payments of Rs. 1,30,511.92/- out of which admissible claim of Rs. 99,187/- was filed for reimbursement on 10.09.2015. The respondents have rejected the said claim strictly on the ground that her husband is not a member of CGHS hence inpatient service was not admissible for her as per rules. But, in the counter or suppl. counter, the respondents have not contested the existence of various judgments passed by different Benches of this Tribunal, as quoted by the applicant in support of her claim. In the case of Laxmi Chand passed by the Jabalpur Bench of this Tribunal (Supra) the following has been held: -

"10. In the instant case, the applicant's case reveals that the applicant having suffered heart attack was immediately rushed to the Apollo Hospital, New Delhi and was subjected to Bypass heart surgery within two days of his admission in the hospital. It clearly suggests that his condition was serious and required immediate treatment. It is an undisputed position that the Apollo Hospital, New Delhi is a recognized hospital for heart surgery so far the heart treatment is concerned and as such, the applicant was very much entitled to claim the reimbursement of the expenses incurred by him for his treatment in Apollo Hospital. The contention that the applicant could have become the member of the CGHS and having not become the member of CGHS after retirement, cannot claim the medical reimbursement is quite illogical and unacceptable. Even if the CGHS facility was available in certain areas, could not have extended the benefit of heart treatment. Merely because the applicant was not the member of the CGHS cannot deprive him of his entitlement for reimbursement of the medical expenses incurred by him. We therefore, have no hesitation in concluding that the claim of the medical reimbursement of expenses incurred by the applicant is denied on untenable grounds and therefore, the OA deserves to be allowed and the respondents are required to be directed to entertain the claim of reimbursement of medical treatment expenses of the applicant and reimburse the same.

11. For the reasons discussed above, we directed the respondents to entertain the medical reimbursement claim of the applicant and reimburse the admissible amount spent by the applicant for the treatment taken by him in Apollo Hospital,

New Delhi. We also direct that if the amount is not reimbursed to the applicant within three months, the same would be payable with interest at the rate of 9% per annum. The OA stands disposed of with the above direction. No order as to costs."

8. Considering the facts of the present case as being identical to the case mentioned supra, I pass following order: -

"For the reasons discussed above, I direct the respondents to entertain the medical reimbursement claim of the applicant and reimburse the admissible amount for the treatment taken by her at SGPGI, Lucknow. I further direct that if the amount is not reimbursed to the applicant within three months from the date of this order, the same would be payable with interest at the rate of 9% per annum. The OA stands disposed off with the above direction."

9. No order as to costs.