(2023) 05 CAT CK 0074

In the Central Administrative Tribunal

Case No : Original Application No. 330, 00503 Of 2021

Rameshwar Prasad APPELLANT

Vs

Union Of India & Ors RESPONDENT

Date of Decision : 16-05-2023

Acts Referred:

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

Citation : (2023) 05 CAT CK 0074

Hon'ble Judges : Om Prakash VII, Member (J)

Bench : Single Bench

Advocate : Saumya Mandhyan, P.K. Rai

Final Decision : Allowed

Judgement

Om Prakash VII, Member (J)

1. The present O.A has been filed by the applicant under section 19 of Administrative Tribunal Act, 1985 seeking following reliefs:-

"i to issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 09.09.2019 passed by respondent No.3;

ii. to issue a writ, order or direction in the nature of mandamus commanding the respondents to grant medical allowance under RELHS to the tune of Rs. 500/- per month as per the VI CPC for the period 31.12.2009 to 09.05.2019.

iii. to issue a writ, order or direction in the nature of mandamus commanding the respondents to grant interest @ 18% PA or as this Hon'ble Court may deem fit on the delayed payment of medical allowance;

iv. Award cost of the petition to the applicant'.

2. The brief facts of the case are that the applicant was appointed on Class IV post in the Railways as casual labour in the year 1969. Applicant was regularized

on 21.05.1973 as Line Clear Porter. Thereafter he was promoted as Pointsman and further promoted as Shunting Master. Applicant retired from service on 31.12.2009 after completing 35 years, 3 months, and 15 days in the respondents' department. Railways issued a scheme for retired employees in the name of the Retired Employees Liberalized Health Scheme (hereinafter referred as a RELHS) to grant medical assistance to the retired railway employees It is submitted that when the applicant received the PPO dated 08.01.2010, no deduction was made towards RELHS, hence he was not issued a medical card. Consequently, the applicant personally met with the respondent Nos. 3 and 4 and thereafter he moved representation followed by several reminders. When no decision was taken by the respondents on the representation of the applicant, the applicant is compelled to file RTI application. In pursuance to the RTI application, the applicant received the reply dated 07.05.2018 whereby respondents admitted that due to departmental error, no deduction was made towards the RELHS from the pension of the applicant. Thereafter, the applicant was further directed to deposit an amount of Rs. 70,712/-. Applicant vide representation dated 10.9.2018 opposed the amount of Rs. 70,712/-and stated therein that since he retired from service on 31.12.2009, hence at the relevant time, therefore, the pension etc., was being governed by the 6th CPC therefore, the applicant should deposit the amount according to 6th CPC. Respondent No.3 vide its order dated 17.08.2018 stated that at the time of retirement of the applicant, he was given a choice between medical facility or medical allowance under the RELHS to which the applicant chose medical facility, therefore, medical allowance is not attributable to him. Thereafter respondent No. 3 vide his order dated 29.03.2019 intimated the applicant that due to departmental error deduction towards RELHS was not made at the time of his retirement, therefore, now a sum of Rs. 23,075/- which is the amount calculated as on 31.12.2009 as per the 6th CPC, to be deposited by the applicant to the Divisional Treasurer, Varanasi and in compliance of the above, applicant deposited the aforesaid amount. Thereafter respondents made medical card in favour of the applicant. Applicant by his representation dated 05.07.2019 requested to grant medical allowance under RELHS for the period from 31.12.2009 to 09.05.2019. Respondent No. 3 vide the impugned order rejected the request of the applicant for grant of medical allowance to the applicant on the ground that at the time of retirement, the applicant chose medical facility under RELHS and not medical allowance.

3. I have heard Ms. Saumya Mandhyan, learned counsel for the applicant and Shri P.K. Rai, learned counsel for the respondents and perused the records.

4. Learned counsel for the applicant argued that the action of the respondents for not granting medical allowances is against the RELHS scheme. He further argued that respondents have themselves admitted in the letter dated 29.03.2019 that "your application was presented before the Competent Authority on 17.10.2017, on which the competent authority has been directed to take action as per rules considering the non-deduction under RELHS scheme at the

time of retirement as an administrative error". Hence according to the admission of respondents that due to departmental error, the applicant was not given benefit of medical facilities under RELHS just after his retirement resultantly he had to suffer from financial difficulties, hence applicant is entitled for grant of medical allowance for the period of 31.12.2009 till 09.05.2019. Learned counsel also argued that the applicant has submitted an option form for the benefit of medical facility under RELHS.

5. On the other hand, learned counsel for the respondents argued that at the time of retirement of the applicant, he has not submitted his option form for providing medical allowance, therefore, medical allowance cannot be provided to the applicant. Learned counsel argued that applicant has not deposited one time contribution equal to the basic pay of last month at the time of retirement, therefore, the medical card was not issued under the RELHS 1997 in favour of the applicant. It is pertinent to mention here that subsequently the applicant has moved application dated 11.07.2017 along with copy of first information report dated 10.07.2017 requesting therein that his medical card has been lost, therefore, medical card may be issued in favour of the applicant. Learned counsel contended that aforesaid action of the applicant is self-contradictory statement in order to mislead the authorities to any how obtain the medical card despite the fact that he was very well aware that he has not deposited required money in terms of RELHS- 1997.

6. I have considered the rival submissions advanced by the learned counsel for the parties.

7. The core issue involved in this case is that whether applicant is entitled for medical allowance or medical facility.

8. According to the applicant and respondents both at the time of retirement, applicant chosen to adopt medical facility. By the letter dated 29.03.2019 respondents has stated that

If there are mistakes and lapses or fault on the part of the respondents then the employee should not be allowed to suffer as it is violative of Article 14 of the Constitution of India. Hon'ble Supreme Court in the case of Mohd. Ghazi Vs. State of M.P. 2000(4) SCC 342 has held that "no one should be penalized for no fault of his".

9. From the perusal of record, it is evident that medical card was made in favour of the applicant in the year 2019 though applicant was retired from service in the year 2009. it is unjust and unfair to the applicant that neither respondents are paying medical allowance from 31.12.2009 to 09.05.2019 nor respondents paid heed to the request of the applicant for grant of medical facility. Although applicant submitted several representations and also he met with the higher authority for his grievance but respondents continued to ignore the request of the applicant. It is also important to mention here that respondents when realized their mistake/error, they issued medical card to the applicant on

10.05.2019. It is also observed that if on account of negligence/error on the part of respondents, applicant was facing financial hardship, then decision against the applicant should not be passed because he was not responsible for delay for grant of medical facility. Hence, I am of the view that respondents are duty bound either to pay medical allowance or grant medical facility to the applicant.

10. In view of admission on the part of respondents that due to departmental error, respondents could not deduct an amount under RELHS scheme from the applicant at the time of his retirement and in the light of observation made by Hon'ble Supreme Court in the case of Mohd. Ghazi (supra) that "no one should be penalized for no fault of his", I am of the considered opinion that the OA is liable to be allowed and applicant is entitled for the reliefs claimed in the OA.

11. Accordingly, OA is allowed. Impugned order dated 09.09.2019 is quashed and respondents are directed to grant medical allowance from 31.12.2009 to 09.05.2019 with a simple interest of 6% per annum to the applicant within a period of three months from the date of receipt of a certified copy of this order. No order as to costs. All associated MAs stand disposed of.