
(2014) 12 AHC CK 0046
In the Allahabad High Court
Case No : Special Appeal No. 464 of 2014

Rameshwar Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 18-12-2014

Acts Referred:

Constitution of India, 1950 — Article 21, 39(e)

Citation : (2015) 1 ADJ 123 : (2015) 2 ALJ 107 : (2015) 2 ESC 635 : (2015) 1 UPLBEC 705

Hon'ble Judges : Amreshwar Pratap Sahi, J; Aditya Nath Mittal, J

Bench : Division Bench

Advocate : I.H. Farooqui and Sandeep Sharma, Advocates for the Respondent

Judgement

1. The appeal arises out of the judgment of a learned Single Judge in Writ Petition No. 4313 of 2009 whereby the claim of the appellant-petitioner has been rejected. The relief sought in the writ petition was for quashing of the order dated 3rd June, 2009 whereby the medical allowance claimed by the petitioner in respect of the medical expenses for the treatment of his wife was turned down as demanded and it was informed that a medical assistance to the wife of retired employee under the Central Reserve Police Forces was admissible only to the extent of Rs. 20,000/- only. Torn by Parkinson's, defeated by age and depressed by the loss of his life-partner, the appellant driven by the desire to receive a just treatment, has filed this intra-Court appeal questioning the correctness of the judgment of the learned Single Judge on several grounds.

2. Narrating his long years of exemplary services as a member of the CRPF, the appellant is aggrieved by the unwanted "red-tapism" in the processual inaction of extension of medical assistance to his wife, who died on account of non-receipt of funds. She died out of heart ailment, the treatment whereof was not made available due to the want of financial aid inspite of the entitlement of the appellant. The question is, whether the stand of the respondents that there was failure on the part of the appellant to complete paper formalities, was so fatal so

as to deny him any medical assistance which he otherwise was entitled. The issue of relief is intertwined, as fate would have it, with the evident reality that the wife of the appellant died without receiving treatment of surgery for repair of heart valves. The question is, if there was no treatment, then there cannot be a possible reimbursement as per rules, but what if such a situation was brought about due to a possible resisting attitude on the part of the respondents that can be described as unjust? The answer can be found on the basis of the material on record on sifting of the communication between the respondents and the appellant.

3. The initial facts that are required to be addressed to is the background of the claim and the entitlement as per rules coupled with the background of the constitutional guarantees under Article 21 and the Directive Principles under Article 39(e) thereof.

4. The short facts that have led to the filing of the present appeal are that the appellant was a Head-Constable in the Central Reserve Police Forces and after having acquired an ailment of parkinsons disease, he sought retirement which was granted on 1st December, 2003. His wife suffered from a heart ailment which was ultimately diagnosed by the Post Graduate Institute, Lucknow, and she was advised replacement of the valve of her heart. An estimate of Rs. 1.40 lacs for such replacement was informed to the petitioner, who submitted his application before the competent authority for sanction of medical assistance, alongwith the said estimate given by the Sanjay Gandhi Post Graduate Institute, Lucknow.

5. Since no action was taken, the petitioner filed Writ Petition No. 7886 of 2007 which was disposed of on 11th December, 2007 calling upon the competent authority to decide his application. Before his application was decided, he was also informed on 11th January, 2008 that in respect of the ailment of his wife, the petitioner is only entitled to a maximum of Rs. 20,000/- and the same shall be paid after requisite documents of the treatment of his wife are submitted before the office.

6. Immediately thereafter on 11th February, 2008, the representation filed by the petitioner that had been directed to be disposed of by the High Court, came to be disposed of with the observation that only Rs. 20,000/- can be granted as per the Standing Order No. 07 of 2004 and that too after submission of medical documents. Since the petitioner had not submitted the required documents duly filled and attested by a Gazetted Officer and also been apprised of the same, therefore no action was taken as the petitioner himself was responsible for having not responded to the intimation given earlier.

7. It was however observed in the order that on receipt of relevant material documents from the petitioner by the Group Commandment, CRPF, Lucknow, the case for financial assistance would be processed for consideration.

8. It is also to be noted that the son of the petitioner who was employed in the

CRPF had also applied for advance for the treatment of his mother keeping in view the rules that were applicable, but it appears that he was also denied the said facility on the ground that the amount of advance sought could not be given as it might not be possible for him to reimburse the said amount back to the department. This fact is mentioned in the order passed by the respondent dated 11th February, 2008.

9. The petitioner then has stated that he came to know that the Pension Payment Order of the petitioner contained a condition of payment of medical allowance of Rs. 100 per month and if the same is being received, the petitioner will not be able to avail of the Central Government Health Scheme (CGHS) facilities, and therefore, he moved an application alongwith an option certificate making a request to the competent authority of the Pension Department to withdraw this medical allowance from his Pension Payment Order so that he may be able to avail of this facilities and medical assistance to which he was otherwise entitled.

10. The application dated 17.3.2008 was processed and vide letter dated 21st of July, 2008, the Assistant Director (Pensions), requested the concerned authority to issue a necessary direction to cease the medical allowance with immediate effect. This was implemented by modifying the Pension Payment Order vide order dated 15th October, 2008.

11. The petitioner thereafter again got his wife examined at the SGPGI and since the double valve replacement expenses had enhanced, a fresh revised estimate for the surgery was given by the Hospital on 17.3.2009 i.e. 2.5 lacs. On receipt of the said estimate and other related documents with regard to the treatment of the wife of the petitioner, an application was again filed before the competent authority for providing medical assistance in view of the aforesaid exigency. The said estimate was appended alongwith the other documents in the application dated 19.3.2009 which has been filed on record in the writ petition itself.

12. The respondents appear to have received the said application which is evident from the averments made in the supplementary counter-affidavit sworn by Sri D.K. Tripathi, DIG(P), CRPF, Group Centre, Bijnor, Lucknow, dated 14th February, 2012, which is on record of the writ petition. It is stated by the respondents in Para-3 of the said supplementary-counter-affidavit that all medical documents under information to the petitioner were received. However, Para-7 of the same affidavit incoherently denies submission of any medical document.

13. We are not inclined to accept the denial of the respondent in the light of the application of the petitioner dated 19.3.2009 which is evident of the fact that receipts of the medical treatment alongwith the estimate of operation costs were submitted by the petitioner with the application itself.

14. The said application was processed and then the impugned order was passed on 3rd of June, 2009 intimating the petitioner that in view of the Standing Order No. 07 of 2004 dated 7th January, 2005, the petitioner would be entitled to a

sum of Rs. 20,000/- only with a further indication that this payment will be made only after the petitioner gets his wife treated and then submits the documents for payment.

15. The petitioner challenged the said order contending that he is entitled for further full medical assistance to which a counter-affidavit was filed again reiterating the same stand as taken in the order dated 3rd June, 2009. The petitioner also filed an amendment application for questioning the order dated 11th February, 2008 and bringing on record other facts, which amendment application was rejected on 9.5.2012. The petitioner preferred a Special Appeal No. 491 of 2012 which was allowed to be withdrawn with liberty to file a fresh application vide order dated 8.10.2012, quoted hereinunder:

"Hon"ble Uma Nath Singh, J.

Hon"ble Virendra Kumar Dixit, J.

Order (Oral)

After some arguments, learned counsel for appellant prays for and is permitted to withdraw the special appeal with liberty to file fresh application for amendment in respect of prayer for grant of compensation in the pleadings as well as in the prayer clause.

Hence, it is dismissed as withdrawn with liberty as aforesaid.

Order Date: 8.10.2012"

16. The petitioner thereafter filed a fresh application before the learned Single Judge seeking amendments.

17. In between during the pendency of the writ petition the petitioner's wife unfortunately died on 8.5.2011. After exchange of affidavits, the petition was taken up and which has been dismissed. Hence, this appeal.

18. Sri Rameshwar Singh has argued the appeal in person and has urged that this amount of Rs. 20,000/- already stands enhanced to Rs. 50,000/- for which he has invited the attention of the Court to the pleadings on record. He further submits that this denial is absolutely unjustified and the wife of the appellant waiting for treatment for about five years, ultimately expired on account of an alleged red tape bureaucratic method adopted by the respondents that ultimately resulted in a severe loss of the life partner of the appellant that deserves to be compensated.

19. He contends that there arose no occasion for any actual surgery and then submissions of bills, inasmuch as, the estimate had been forwarded to the authorities and for want of funds the surgery could not be carried out even though medicines were being administered to her. It is only after undertaking the surgery, that the respondents were promising to pay the amount and which was not possible for a meagre pensioned Head Constable to meet the financial

situation that resulted in the loss of his wife. He therefore submits that had the respondents tendered the amount that was permissible on time, there was a possibility of he having saved the life of his wife.

20. It is further submitted that the appellant's son also came to be employed in the Forces, and he was also otherwise entitled for the medical facilities to his mother as he was then unmarried but inspite of many welfare schemes being available, the respondents stuck to their obstinate attitude without making any payments being allowed to the petitioner's wife. The entitlement to the son for advance was denied on erroneous considerations as noted in the order dated 11.2.2008. It is in this background that the present appeal has now come up for hearing before us.

21. We had passed an order at the interim stage calling upon the respondents to file a counter-affidavit or to make payment of Rs. 50,000/- to which a response has been given by the learned counsel for the respondents informing the Court that they have already filed a counter-affidavit in the writ petition and their stand remains the same. It is also further urged on behalf of the respondents that the petitioner himself did not respond so as to receive the amount which was payable and in such circumstances, no compensation can be awarded to him. Learned counsel for the respondents therefore urges that the learned Single Judge was justified in dismissing the writ petition and no ground is made out for interference in this appeal.

22. The present Special Appeal No. 464 of 2014 is filed against Writ Petition No. 4313 (S/S) 2009, wherein, petitioner has challenged the impugned order dated 3 June 2009 of the respondents, which is reproduced hereinunder:

"Admittedly, the petitioner is drawing medical allowance @100/- per month with his pension and therefore he is not entitled for reimbursement of his medical claims after retirement. However, as per para-04 of Standing order No. 07/2004 retired personnel of CRPF can be paid Rs. 20000/- as financial assistance for self or his wife once. Accordingly, the petitioner was requested to submit all the papers after completion of medical treatment of his wife to ADIGP, GC, CRPF, Lucknow for providing Rs. 20000/- as financial assistance from SRF/CWF vide this letter No. CWF-06/07-08 dated 12/10/07. Further, had the petitioner submitted the medical documents his case for financial assistance could have been considered but the petitioner instead approached the Court. Financial assistance of Rs. 20000 can granted only if the petitioner submits the required documents duly filled in and attested by a Gazetted Officer."

23. In this order dated 03 June 2009, respondents had denied the entitlement of the petitioner for medical assistance in the very beginning of the order on the ground that, since petitioner was already drawing medical allowance of Rs. 100 per month, he was not entitled to get medical reimbursement. It was also further stated that moreover only Rs. 20,000 can only be granted as medical assistance, and that too only after all the medical documents were submitted by the

petitioner in that regard i.e. after medical treatment of his ailing wife.

24. It must be noted at this juncture that the cap of medical assistance has been increased from Rs. 20,000 to Rs. 50,000 by the respondent department itself vide CRPF Samachar published on 31 August, 1999, yet they suppressed this fact before this Court.

25. Respondents have alleged that even after repeated requests petitioner failed to submit requisite documents regarding, medical treatment of his wife. And therefore, it was failure on the part of the petitioner himself that deprived him of the medical assistance to which he may have been entitled and that, fault was not on the part of the respondents.

26. However, none of the orders passed by the respondents nor their pleadings, specify as to what all documents were actually required to be submitted by the petitioner in order to avail the medical assistance. As noted above, the medical treatment undertaken and supporting documents apart from the revised estimate was tendered alongwith the application dated 19.3.2009. The contradictions in the supplementary counter-affidavit dated 14.2.2012 of the respondents has been already noted and commented upon by us hereinbefore.

27. Petitioner on the other hand, pleaded that on receiving the impugned order of the respondents and realising that by opting for Rs. 100 per month medical allowance he is not to gain much, he immediately applied before the respondents to stop the medical allowance per month and give him medical assistance so that he can save his ailing wife from succumbing to her illness.

28. Therefore, by an application dated 17/03/2008, petitioner applied before the respondents to deduct the medical allowance of R. 100/- per month drawn by him with immediate effect and give him necessary medical assistance i.e. bringing him within the ambit of CGHS facilities. On receiving the application of the petitioner, respondents took no time in accepting the same and stopping medical allowance to the petitioner henceforth vide letter No. PA-6 DT: 21/ July/2008. However, even thereafter petitioner was not granted any medical assistance to treat his wife.

29. Further, petitioner had already submitted the document of CRPF hospital to the respondents, whereof petitioner's wife was referred to SGPGI for her treatment and also documents related to estimated cost of her operation, which was calculated to be Rs. 1,40,000 in the year 2007 and Rs. 2,50,000 in the year 2009. Her medical conditions were deteriorating day by day, but, he could not get her operated in SGPGI because of non-availability of financial resources.

30. Petitioner was asking for medical assistance and respondents were denying him medical reimbursement. There is a substantial difference between the terms, "Assistance" and "Reimbursement". Assistance can be given at any point of time either before or after treatment. On the other hand, reimbursement is always given after completion of treatment and after submission of the receipts of the

actual expenses borne in the treatment. But, it is pertinent to note here, that on a plain reading of the impugned order it is evident that the term used by the respondents is "Assistance" and not "reimbursement". Also, as per CRPF Samachar published in the year 1999, retired CRPF personnel's can get up to Rs. 50000 as "medical assistance". Thus, in light of the above facts, respondents wrongly denied medical assistance to the petitioner, when as per the rules adopted by the CRPF itself Rs. 50000 could have been granted in the facts of the present case.

31. Apart from the aforesaid facts the entitlement of the son to receive an advance has been denied on a consideration which does not appear to have any rationale, inasmuch as, the amount of advance claimed was not such that could not have been reimbursed keeping in view the status of employment as also the salary that was being received by the son of the appellant.

32. In the year 2011, petitioner's wife succumbed to her illness without getting treatment. Petitioner, who had served the nation for 31 years, kept begging for medical assistance from the respondents for about 5 years and even after his best attempts he could not get money to save his wife's life. It has to be kept in mind that, had proper medical aid been given to the petitioner's wife on time, a precious life could have been saved.

33. In the back drop of facts of the case it is crystal clear that petitioner was entitled to medical assistance for the operation expenses of his ailing wife. But, because of callous attitude of the respondents medical assistance was not released in favour of the petitioner's wife and as a result of which wife of the petitioner died in the year 2011 without treatment.

34. The Wife of the petitioner is no more alive, thus, the question of medical assistance or of medical reimbursement as against actual treatment through surgery is no more to be addressed.

35. The only question to be dealt with now is of imposition of costs as well as exemplary compensation on the respondents for negligence resulting in the death of the petitioner's wife. The debt for the mental agony, harassment, pain, breach of trust and the loss of life has to be compensated. Respondents are liable to pay compensation to the petitioner for his sufferings, for the sufferings of his deceased wife and for the loss of a life without getting treatment.

36. On the facts as established it is evident that the claim of the petitioner was accompanied by documents relating to the medical treatment of his wife as per the application dated 19.3.2009, the receipt whereof is admitted in the supplementary counter-affidavit dated 14.2.2012 of the respondents. No specific deficiency in documents have been pointed out in the impugned order or the affidavits relating to this aspect so as to disentitle the petitioner of the medical assistance claimed.

37. The entitlement on completion of formalities appears to be acceptable by the

respondents. The cap of Rs. 20,000/- maximum medical assistance is increased to Rs. 50,000/- which also could not be disputed on record.

38. The denial of advance to the son on the ground that he may not be able to return back the money advanced is a presumption on the part of the respondents which had no factual basis having been assessed or even indicated in the order dated 11.2.2008. This presumption that the son of the petitioner was not in a position to return back the money if advanced as per estimate of the SGPGI, appears to be without foundation.

39. In sum and substance, the respondents were totally insensitive to the basic human rights and the protection granted under the constitutional guarantee of Article 21 of the Constitution of India. The Standing Order No. 07 of 2004 dated 7th January, 2005, coupled with the subsequent enhancement of the amount of Rs. 20,000/- to Rs. 50,000/- that had already been extended way back in August, 1999, leave no room for doubt that the petitioner was entitled to such medical assistance benefits. The respondents also consciously accepted the request of the petitioner vide the revised Pension Payment Order dated 15th October, 2008 for availing of the Central Government Health Scheme and medical assistance. The petitioner, in our view, had completed all paper formalities and the denial of such benefit to him was therefore an official negligence on the part of the respondents as concluded by us hereinabove. In view of the reasons so recorded, we find that these issues have nowhere been appropriately dealt with by the learned Single Judge in the impugned judgment dated 25th July, 2014 which deserves to be set aside.

40. On the facts aforesaid, the petitioner has a legitimate expectation founded on the basis of the medical assistance scheme and Standing Order, which we are otherwise obliged to enforce on the facts of the present case.

41. We accordingly, allow the appeal and set aside the impugned judgment dated 25.7.2014, but in so far as the relief claimed in the petition is concerned, we set aside the order dated 3.6.2009 impugned in the writ petition with a direction to the respondents to pay a sum of Rs. 50,000/- to which he was entitled as medical assistance and in addition thereto, we compensate the petitioner on account of this harassment being caused to him and the loss of his wife by directing that the respondents shall pay an exemplary compensation of Rs. 50,000/- to the petitioner, which amount of Rs. One Lac in total, shall be paid to the petitioner within three months, failing which the petitioner shall be further entitled to 12% interest on the said amount on account of any delay being caused by the respondents. The appeal stands allowed accordingly.