
(2007) 08 DEL CK 0144

In the Delhi High Court

Case No : Writ Petition (C) : 6535 of 2000

Sh. Y.R. Sachdeva

APPELLANT

Vs

DG, Health Services

RESPONDENT

Date of Decision : 30-08-2007

Acts Referred:

Citation : (2007) 5 ILR Delhi 33 Supp

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Y.R. Sachdeva, for the Appellant;

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—The petitioner claims a direction to the respondents to process and release his medical reimbursement claim for the treatment undergone by him between 10.02.2000 and 18.02.2000. The Petitioner was appointed on 1.10.1953 as a Clerk in the Department of Posts and Telegraph. He retired on 30th September 1992, from the post of Chief Post Master at the office of the Delhi GPO in the Department of posts & Telegraph under the Central Government. The last pay drawn by the petitioner was 3600/- (pre-revised) and the allowances.

2. The Petitioner had a Central Government Health Scheme (CGHS) Card from 10th May 1996 to 31.12.1996. He was admitted for treatment for Angiography and Angoplasty at Kalra Hospital and the treatment duration was between 10.2.2000 to 17.2.2000.

3. It is averred that the CGHS contribution amount was paid by the petitioner and accepted by the Respondent, along-with penalty amount for the period effective from 1.2.2000 to 21.12.2000 but the CGHS card was validated only w.e.f. 16.2.2000. The amount was accepted for the full month of February 2000 onwards up-to December 2000. The payment against medical expenses has been made by the Respondent only for the period 16.2.2000 to 17.2.2000, but the

medical expenses have not been paid for the period from 10.2.2000 to 15.2.2000.

4. It is claimed that the respondent is liable to be directed to pay full medical expenses for the period falling between 10.2.2000 to 15.2.2000 when they have already made the payment for two days i.e. 16.2.2000 and 17.2.2000.

5. It has been admitted in the counter affidavit in para 4 (2) that the CGHS contribution is accepted for the whole month, and therefore, the medical scheme being of beneficial nature, the respondent is liable to make the payment for medical expenses for the full period of treatment falling in the month of February, 2000.

6. Mr. R.K. Kapoor, learned counsel, re-iterated the allegations in the petition and contended that it has been held by the Supreme Court in the case of State of Punjab and others Vs. Mohinder Singh Chawala, etc., that if a Government servant suffers due to an ailment and undergoes treatment, then it is the duty of the State to bear the actual expenditure incurred by him, while in service or after retirement from service. Therefore, irrespective of the CGHS part, the Government was bound to pay the medical expenses when particularly they have paid the part of the expenses. Reliance was also placed on the judgment of this Court in Shri V.K. Gupta Vs. Union of India (UOI) and Another, which followed the judgment of the Supreme Court in Mohinder Singh Chawla case. It was held that that the respondents were required to be more responsive and could not deprive the relief in a mechanical manner. In that case, the petitioner was held entitled for full reimbursement of expenses incurred at the Escorts Heart Institute.

7. The respondent's stand is that the petitioner's no doubt was a CGHS Card holder. But his card lapsed and he omitted to pay his contributions. Although he subsequently got the card renewed w.e.f. 16.02.2000, the treatment obtained for the period when there was no coverage, could not be taken into consideration.

8. The respondents have relied upon a letter dated 18.12.1996, in support of their stand, the same reads as follows:

No. 4469/95 - R&H - CGHS (P)

Government of India

of Health and Family Welfare

Department of Health

Nirman Bhavan, New Delhi

Dated the 18th December, 1996

To.

The Director,

CGHS, Nirman Bhavan,
New Delhi.

Subject: Renewal of CGHS cards of CGHS Pensioners from the date of payment of subscription and not from retrospective effect to avoid Court cases - Regarding.

Sir,

I am directed to pay that with a view to avoiding future litigation regarding reimbursement matters etc., it has now been decided that the renewal of CGHS cards of pensioners should be done from the date of payment of subscription by them and not with retrospective effect if the card is not got revalidated within the grace period of one month.

2. The pensioners will not be eligible for reimbursement of medical expenditure for the period for which the CGHS card has not been renewed.

3. This issues with the approval of JS (FA) vide his Dy. No. 5387/(FA)96 dated 16.12.96.

Yours faithfully.

(Braham Dev)

Under Secretary to the Govt. of India.

9. It is further submitted that treatment was taken in a private unrecognized hospital and the patient was admitted on 10.2.2000 to 17.2.2000. The CGHS card was revalidated only on 16.2.2000, hence the period of treatment from 10.2.2000 to 15.2.2000 was taken while the petitioner did not have any valid CGHS card. It is alleged that medical facility under the Scheme (CGHS), can be provided to the beneficiary only on the authority of the identity card issued by the issuing authority. It is clear that the issuing authority had earlier issued the card which was valid only up to 31.12.1996, and when the beneficiary requested for revalidation on 16.2.2000 notwithstanding the fact that the CGHS contribution for the whole month of February was taken, as CGHS contribution is recovered only on monthly basis, and not on a daily basis. Therefore, it was the choice of the petitioner to get the CGHS care revalidated from any date he choose provided that the CGHS contribution for the whole month in which the request for revalidation of the CGHS card falls, was paid by the beneficiary.

10. The relative rights and obligations of the Central Government and its pensioners as well as employees in regard to medical treatment and reimbursement has been the subject matter of several decisions. In V.K. Jagdhari vs. Union of India (WP 7493/2002, decided on 7.10.2005) the position was summarized as follows:

The question of entitlement of Government Employee to medical reimbursement for medical treatment undergone has been the subject-matter of several rulings of this court. In one of the judgments reported as S.K. Sharma and Others Vs.

Union of India (UOI) and Others, , the Court after considering the rulings of the Supreme Court and other judgments of this Court held that a pensioner cannot be discriminated against merely because he has not opted for a CGHS Scheme and resides outside a non-CGHS area, The petitioner in that case, a non-card holder pensioner, residing in a non-CGHS area, after undergoing emergency medical treatment, had claimed in August 1998 and stated that ex-post facto approval ought to have been granted. The petitioner had also sought for issuance of the card subsequent to undergoing the treatment. The Court rejected a similar plea of the Central Government that the benefit was inadmissible (due to the patient living in a non-CGHS area, and not having the card) and directed the reimbursement to be given. In a judgment reported similarly in Mahendra Pal Vs. Union of India (UOI) and Others, this Court held that even if membership under the scheme has not been processed and granted but the patient had undergone medical treatment, he would nevertheless entitled to the benefits under the scheme.

The position emerging from various decisions of this Court may be summarised as follows:

- (1) Even if employee contributes after availing medical facilities, and becoming member after treatment, there is entitlement to reimbursement (DB) Government of National Capital Territory of Delhi and The Principal, Govt. Co-ed. Sr. Sec. School Vs. Shri Som Dutt Sharma, Retired P.G.T. (Sanskrit), .
- (2) Even if membership under scheme not processed the retiree entitled to benefits of Scheme Mahendra Pal Vs. Union of India (UOI) and Others, .
- (3) Full amounts incurred have to be paid by the employer; reimbursement of entire amount has to be made, It is for the Government and the hospital concerned to settle what is correct amount, Milap Singh Vs. Union of India (UOI) and Another, ; Sqn. Commandar Randeep Kumar Rana Vs. Union of India (UOI), .
- (4) The pensioner is entitled to full reimbursement so long the hospital remains in approved list P.N. Chopra vs. UOI, 2004 (111) DLT 190.
- (5) Status of retired employee not as card holder: S.K. Sharma and Others Vs. Union of India (UOI) and Others, .
- (6) If medical treatment is availed, whether the employee is a cardholders or not is irrelevant and full reimbursement to be given, B.R. Mehta Vs. Union of India and Others, .

The status of a retired Government Employee was held to be independent of the scheme and rules in so far as the entitlement to medical treatment and/or CGHS benefits were concerned (Shri V.K. Gupta Vs. Union of India (UOI) and Another,). Similarly in Narendra Pal Singh Vs. Union of India and Others, , this Court had held that a Government was obliged to grant ex-post factor sanction in case an employee requires a specialty treatment and there is a nature of emergency involved.

The judgments relied upon by the respondent, namely, Ram Lubhaya Bugga's case as well as Mohan Lal Jindal's case were considered by this court in P.N. Chopra's judgment (supra). Nevertheless, the primary liability of the respondents to ensure full medical reimbursement in accordance with the claim for medical treatment was upheld.

11. It can be seen from the above extract that so long as the pensioner was member of the Scheme, the failure by him to renew the card is by itself no excuse to deny benefits under it, for treatment or reimbursement. The right for these, arise on account of his status as a pensioner, participating in the scheme. The above decisions were rendered after considering provisions of the scheme. I find no reason to take a different view, merely because the Central Government issued a circular on 18.12.1996. There is no material on record to show when these circulars were published, or made known to the beneficiaries.

12. As regards the contention that the petitioner did not avail treatment in an approved institution is concerned, I am of the opinion that in view of the above findings regards eligibility to be considered, the respondents should process his case and pass appropriate orders on the issue, having regard to the nature and urgency of the treatment, and the conditions (sic) the scheme which may permit such part or proportion of the expense, as are permissible, under the scheme.

13. A direction is therefore issued to the respondents, to process the petitioner's case and issue necessary orders/admissible reimbursement in accordance with the scheme, within eight weeks of receipt of this order. The writ petition and pending applications are allowed in the above terms. No costs.