

(2006) 05 DEL CK 0167

In the Delhi High Court

Case No : Writ Petition (C) 2966 of 2005

Shamsher Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 17-05-2006

Acts Referred:

Citation : (2006) 05 DEL CK 0167

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Sanjay Jain and Mukesh Kumar, for the Appellant; Manisha Dhir and Surekha Srivastava for Respondents 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—The petitioner in these writ proceedings claims a direction to the respondents for reimbursement of a sum of Rs. 2,81,689/- which were the expenses incurred by him for his medical treatment.

2. The undisputed facts are that the petitioner was working with the Department of Tele-communication. During his employment, he was subscriber of the Central Government Health Scheme (CGHS) and entitled to the medical facilities as per the scheme. He retired from the services on 31.7.1997. After superannuation, he shifted to his native place in District Dehradun, Uttranchal. It is claimed that the village where he was resided was not covered by the CGHS; as a consequence his erstwhile employer, DOT in addition to pension and other allowances also paid him Rs.100/- per month to meet the day-to-day medical expenses which did not cover hospitalization. Admittedly, the petitioner had not surrendered his CGHS card, though, as per the circulars and guidelines in that regard he was required to do so.

3. It is averred that sometime in December 2003, the petitioner permanently shifted to Delhi and intimated the fact to the Department of Tele-communication. He also intimated that the medical allowances hitherto being received by him

may be stopped and that he would be entitled to CGHS coverage. The DOT by its letter dated 31.12.2003 advised the disbursing authority, the Punjab National Bank, to stop paying the sum of Rs.100/- per month. It is also claimed that the petitioner had applied on 13.1.2004 for re-admission to the CGHS and deposited amount of Rs.4800/- being the life time contribution for the purpose.

4. This amount deposited was however, returned on the ground that the application pertained to BSNL. This was apparently on the understanding of the respondents that since some of the activities of the DOT has been handed over to the BSNL w.e.f. 1.10.2000, the CGHS facilities could not be extended to the petitioner.

5. The petitioner had to undergo medical treatment by way of Angioplasty for Coronary Artery Disease and was hospitalized in the Batra Hospital between 9th February, 2004 to 12th February, 2004. It is claimed that he expended Rs. 2,81,689/- towards treatment. After discharge from the Hospital, the petitioner unavailingly represented to the respondents and also sent several reminders. By the letter/intimation dated 30.9.2004, the CGHS declined the claim with the following remarks:

Dy.No.2071/on cep/8700/05/x/04

Referred in original with the following remarks.

(1) No authentic documentary proof showing that the applicant has been retired from Deptt. Of Telecommunication.

(2) Copy of surrender certificate of CGHS Card during service period.

(3) Copy of PPO to confirm whether the person is drawing from Central Civil (illegible) or not. Sd/- 30.9.04

6. The petitioner in response to the above intimation wrote on 25.11.2004 pointing out that he had already annexed documents pertaining to his retirement and at that time he was not asked to surrender the CGHS card. It was also pointed out that when he applied for the CGHS card again in end of 2003, he was asked to surrender it which he did to the DOT but the CGHS card however did not entertain the application for issuance of the fresh card on the ground that the case pertain to BSNL.

7. The petitioner has impugned the denial of the claim on the ground that it is contrary to the decisions of the Court as well as arbitrary. Learned counsel submitted that once the petitioner was entitled to the benefits of the CGHS, being a Central Government employee and continued to be the beneficiary of the scheme as a Government pensioner he could not be deprived the status merely because he had shifted out of Delhi and availed a meagre monthly allowance. It was submitted that even that allowance was surrendered once shifted back to Delhi. The denial of the petitioner's application for coverage by CGHS in January 2004, was termed as un-lawful and arbitrary.

8. The CGHS as well as the BSNL entered appearance and filed their returns. The stand of the CGHS is that the petitioner was initially working with the Post and Telegraphs Department and that he was entitled to avail P and T dispensary benefits. It is claimed and also submitted on behalf of the DOT by Ms. Manisha Dhir, Advocate that P and T dispensaries were not extending facilities, on a quid pro quo basis, to those Central Government non P and T employees in cities not covered by CGHS but where P and T dispensaries exist. Due to repeated requests, from P and T pensioners, for extension of CGHS facilities, the same were extended to only those P and T pensioners who were members of CGHS prior to their retirement. It is claimed that such decision, based upon the view of the Department of Health, was extended to only those P and T pensioners who were members of CGHS prior to their retirement; it was contained in an order issued on 1.8.1996.

9. Some figures as to the total workforce of the Central Government, Indian Railways and the Department of P and T have been disclosed and the CGHS has also raised the plea of the resource crunch. Learned counsel submitted that at the time when the petitioner underwent the surgery, he was not covered by the CGHS and that the activities of the DOT had been taken over by the BSNL.

10. Learned counsel for the BSNL relied upon the averments in its counter affidavit. The petitioner was a Central Government pensioner having retired from the DOT in the year 1997 and, Therefore, no liability to be attached to the BSNL. It was also averred that the BSNL was created w.e.f. 1.10.2000 and, Therefore, in the absence of any enactment or binding regulation, liabilities of the kind which are subject matter in these proceedings cannot be attached to it.

11. The above factual matrix discloses that there is no dispute about the petitioner being a CGHS beneficiary, and a card holder in terms of the circular dated 1.8.1996, relied upon by the CGHS, on the date of his retirement, namely, 31.7.1997. The circumstance that he drew a monthly allowance of Rs.100/- for the purpose of his day-to-day medical expenses could not have wiped out his entitlement as a beneficiary of a CGHS because admittedly the place where he resided is within the Dehradun district and does not possess CGHS facilities. In any event, the petitioner did not claim any facilities which are disputed for the duration of his stay in the non-CGHS area. The dispute which has arisen pertains to the period after he shifted to Delhi in December 2003 when admittedly he had surrendered his right to receive Rs.100/- as monthly allowance. There is also no dispute that he applied afresh for issuance of the CGHS card in January; however for technical reasons, it could not be processed and one of the principal reasons that he has not disclosed proof that the previous card had been surrendered in the manner mandated by the prescribed procedure. The common stand of the respondents is that the older card is untraceable. Counsel for the petitioner has relied upon a diary number and produced it along with the rejoinder.

12. The question as to entitlement of Central Government pension to medical reimbursement both in terms of CCS Medical Attendance Rules, 1944 as well as

the Central Government Health Scheme has often arisen for consideration before this Court as well as the Supreme Court. The position may be summarized as follows:

1) Even if an employee contributes after availing medical facilities, and becomes member of the scheme after treatment, he is entitled to reimbursement 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 is 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 the 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 v. UOI 111 2004 DLT 190

5) The status is of retired employee and this leads to entitlement; the status is 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 card holder or not is irrelevant and full reimbursement has to be given, B.R. Mehta Vs. Union of India and Others, .

13. It has been held that the status of a Government employee is independent of the scheme and the rules in so far as the entitlement to medical treatment or CGHS benefits are concerned (ref. Shri V.K. Gupta Vs. Union of India (UOI) and Another, . Similarly in Narendra Pal Singh Vs. Union of India and Others, , this Court held that the Government was obliged to grant ex-post facto sanction in case an employee requires a speciality treatment and there is an element of emergency involved.

14. The question of limited resources available with the State in the context of such claims is often pressed into service by state agencies. It was considered by the Supreme Court in State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc., and State of Punjab and Ors. vs. Mohan Lal Jindal, 2001 (9) SCC 217 . All these judgments were considered in P.N. Chopra v. UOI 111 2004 DLT 190.

15. In the present case, there is no dispute that the petitioner was a pre 1.8.1996 Central Government Employee. The only area of dispute pertains to whether he had surrendered the card at the time he shifted to Dehradun. The petitioner had produced copies of some documents in support of his claim in the rejoinder. This aspect can be easily verified by the respondents.

16. Independent of the disputes sought to be raised the fact that the petitioner

had surrendered his claim for monthly allowance which was being enjoyed period to December 2003 has not been disputed. Equally, the circumstance that he applied for the CGHS facilities in January 2004 has not been denied. On these facts itself, the petitioner, in my opinion, is entitled to the relief claimed in view of the clear law declared by this Court in the judgments referred to above. The writ petition is accordingly allowed. The respondents are directed to process the petitioner's claim for the sum of Rs.2,81,689/- and after verifying it, (at the same time considering the issue of surrender of the card as claimed by the petitioner), pass an appropriate order as to the amount which the petitioner would be entitled to in accordance with the circulars applicable in that regard within a period of 8 weeks from today. The petitioner shall be entitled to interest at the rate of 8% per annum on the said amount from 1st April, 2004 till the date of the payment. The respondents 1 and 2 are also directed to process the case for release of CGHS card and to the petitioner within the said period of eight weeks. Rule made absolute in the above terms; no costs.