

(2002) 05 DEL CK 0139

In the Delhi High Court

Case No : Civil Writ Petition No. 4873 of 2000

S.K. Sharma

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 23-05-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 21

Citation : (2002) 05 DEL CK 0139

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : Naveen R. Nath, for the Appellant; Rakesh Kumar, for the Respondent

Judgement

Sanjay Kishan Kaul, J.—The rights of an ex-Government employees to claim reimbursement of medical expenses in the absence of being a member of the CGHS Scheme has given rise to the present writ petition.

2. The petitioner retired from service as Principal Chief Conservator of Forests of Mizoram on 30.9.1990 and thus served the Indian Forest Services in the Union Territory cadre till that date. The petitioner started residing in Bareilly, U.P. after his retirement. The petitioner and his wife both suffered from heart ailments and ultimately approached the Escorts Heart Institute, New Delhi which is an institute approved under the Central Government Health Scheme (CGHS) for treating cardiac related diseased. It is stated in the writ petition that in view of the urgency involved, the petitioner without seeking prior approval got his wife admitted for implementation of pace maker which was done on 7.7.97. Soon thereafter the petitioner also underwent a by-pass surgery on 15.7.97. The petitioner paid for both the services and stated that the amount for the same constituted more than 2/3rd of his retiral benefits.

3. The petitioner claimed the reimbursement of the amounts spent of Rs. 1,14,798/- for his wife and Rs. 1,80,490/- for himself in August, 1998 and the claim of the petitioner was rejected on 7.12.98. The petitioner made another

representation on 1.6.99 but to no avail. The petitioner thereafter filed the writ petition.

4. A reading of the rejection letter dated 7.12.98 shows that the only ground on which the petitioner's claim has been rejected is by reason of the fact that the petitioner is not covered under the CGHS rules being not part of the scheme. It is further stated in the letter that retired Central Government employees who reside in non-CGHS areas can make a CGHS card for himself and his dependent family members from the nearest centre where the CGHS is operational.

5. Learned counsel for the petitioner has contended that though earlier while in service petitioner was part of the CGHS scheme but since Bareilly falls in non-CGHS area he did not opt to continue as a member of CGHS. Learned counsel for the petitioner has referred to a subsequent letter dated 1.6.99 addressed by the petitioner to the Ministry of Health requesting for becoming a member of the CGHS to which also there has been no response.

6. Learned counsel for the petitioner has contended that the refusal of the respondent to reimburse the expenses on the ground that he is not a card holder of CGHS is violative of Article 14 and 21 of the Constitution of India. Learned counsel for the petitioner had contended that it is the status as a Central Government pensioner which is the material fact and not being a CGHS card holder specially since the petitioner was residing in Bareilly which is outside the CGHS area. Learned counsel also emphasised on the fact that the medical treatment was at Escorts which is a recognised institute by the Government of India for such treatment.

7. In the counter affidavit filed by the respondents it is admitted that Bareilly is not covered by the CGHS scheme and it is stated that since the petitioner had opted for not becoming the beneficiary of CGHS scheme after retirement, he was not entitled to the benefits. This was so stated on the basis that the petitioner had not made payments for becoming beneficiary of the CGHS scheme.

8. It is now settled law that a citizen of this country under the mandate of Article 21 of the Constitution of India does not only have a right for animal existence but a reasonable existence. Health service forms a very important part of existence of an individual. Government servants are provided the benefit of medical aid as within the limited financial emoluments available to them they would be unable to meet large medical expenses which may arise in certain exigencies. The chances of seeking such medical aid increases as the years go by and a person gets older. In fact the better medical facility back-up is required at that age. It is in these circumstances that a retired Government Officer is entitled to the benefit of the CGHS as he cannot be expected to have large financial capacity after retirement to meet exigencies of medical problems. There is thus force in the contention of learned counsel for the petitioner that the material factor is status of the person as the retired pensioner and not merely being the card holder of the CGHS scheme on payment of some nominal amount.

This has also to be appreciated taking into consideration the fact that certain areas are not CGHS areas. After retirement a Government Servant may reside in different parts of the country. It cannot be expected that the government should discriminate between the officers who happen to stay in one or other parts of the country. It is the duty of the Government to make available proper health facilities and the officer should not suffer by reason of the failure of the Government to extend CGHS scheme to all areas of the country.

9. It is in this context that the Supreme Court in *State of Punjab and others Vs. Mohinder Singh Chawala, etc.*, observed as under:

"It is now settled law that right to health is integral to the right to life. Government has a constitutional obligation to provide health facilities. If the government servant has suffered an ailment, which required treatment at, a specialized approved hospital and on reference whereat the government servant has undergone such treatment therein, it is but the duty of the State to bear the expenditure incurred by the government servant. Expenditure, thus, incurred requires to be reimbursed by the State to the employee."

10. The Supreme Court was thus of the view that the State having had the constitutional obligation to bear the medical expenses of Government servants while in service or after the retirement from service as per the policy of the Government. The Government is required to fulfill the constitutional obligation.

11. In *Surjit Singh Vs. State of Punjab and Others*, the Supreme Court held that a person is entitled to take steps for self-preservation and does not have to stand in a queue before a medical board before availing of medical facility. This was specially so when State itself had brought the Escorts Hospital on a recognised list.

12. The petitioner does not cease to be a Central Government pensioner merely because he is not covered by the CGHS scheme. A differentiation cannot be made between the pensioners staying in different parts of the country depending upon whether they are in CGHS area or non-CGHS area. In this behalf in case of *B.R. Mehta Vs. Union of India and Others*, on the basis of material placed before the court it was noted that the Government had not worked out any criteria for reimbursement in cases of persons who are settled in non-CGHS area but were still considering the question. In such a situation it would be a travesty of justice if a retired pensioner is deprived of reimbursement of medical expenses only on the basis that he is not a member of the CGHS scheme and in my considered view any differentiation between persons who are all government pensioners and some of whom are living in CGHS areas and some are in non-CGHS areas would be violative of Article 14 of the Constitution of India.

13. It may, however, be noted that an appeal was filed against the order of learned Single Judge in *B.R. Mehta's* case (*supra*) and in the LPA decided on 14.2.2000 while refusing to interfere with the impugned order, the Division Bench had observed that neither the order of the Appellate bench nor the order

impugned would operate as a precedent in any other case. This, however, to my mind, will not make any difference in as much as it is only for the finding of absence of any rules in respect of the applicability of the CGHS scheme to non CGHS areas that B.R. Mehta's case (supra) has been referred to.

14. It may be noted that in another case of Narender Pal Singh v. Union of India and Ors. 1999 (2) CLR 904 it was observed as under:-

3. The petitioner has admittedly suffered the ailment and required urgent and immediate treatment in an emergency. The plea of the Government that he has not taken prior sanction for treatment in non-CGHS Hospital is clearly erroneous and cannot be entertained. Moreover, the law does not require that prior permission has to be taken in such situation where the survival of the person is the prime consideration. It is always open for the Government to grant ex-post facto sanction subject to verification of the claim which has not been denied in the present case.

5. The law is Therefore, well-settled that right to health is an integral part of life and the Government has constitutional obligation to provide the health facilities to its employees or retired employees and in case an employee requires a specialised treatment in an approved hospital it is the duty of the Government to bear or reimburse the expenses. The petitioner in this case had to be operated in an emergency as he suffered a heart problem and in case he had waited for a prior sanction he might not have survived. Therefore, in this situation it is the duty of the Government to grant ex-post facto sanction and not deny the claim of the petitioner on technical and flimsy grounds."

15. I am thus of the considered view that the petitioner cannot be discriminated against merely because he is not a member of the CGHS scheme as he is staying in a non-CGHS area. The petitioner had made claim in August, 1998 and on the basis of the fact stated therein ex post facto approval could have been granted but instead the claim of the petitioner was rejected. The subsequent letter of the petitioner dated 1.6.99 to make him a card holder has also not evoked any response. The right to appropriate medical assistance cannot be denied on technicalities and flimsy grounds. The petitioner has spent almost 2/3rd of his retiral benefits on the treatment of his wife and himself and that too in a Government recognised hospital for heart diseases. It would be extremely unfair and unjust to deny the petitioner the reimbursement in respect of the same.

16. A writ of mandamus is thus issued directing respondents to examine the case of the petitioner for reimbursement of medical expenses and to reimburse the same to the petitioner on the basis that the petitioner is entitled to reimbursement of medical expenses as a retired Government servant. The needful be done within a period of two months from today.

17. The petitioner shall also be entitled to costs of these proceedings of Rs. 5,000/-.