

(2019) 10 SHI CK 0035

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 2053 Of 2016

Subhash Chand

APPELLANT

Vs

UOI And Others

RESPONDENT

Date of Decision : 18-10-2019

Acts Referred:

Central Services (Medical Attendance) Rules, 1944 — Rule 1
Constitution Of India, 1950 — Article 14, 16, 21, 39(3), 41, 43, 48A

Citation : (2019) 10 SHI CK 0035

Hon'ble Judges : Jyotsna Rewal Dua, J

Bench : Single Bench

Advocate : Prem. P. Chauhan, Lokender Paul Thakur

Final Decision : Allowed

Judgement

Jyotsna Rewal Dua, J

1. Placing reliance upon the judgment passed by the Division Bench of this Court in Union of India and another vs. Shankar Lal Sharma, reported in 2015 (8) SLR 732, petitioner is praying for reimbursement of indoor medical treatment expenses to the extent of Rs. 1,82,693/- along with interest.

2. Facts may be noticed hereinafter:-

2(i) Petitioner served in the Indian Army from April, 1963 to September 1970. In June, 1971, he joined respondents (Para military Forces) as Constable and superannuated on 31.10.1993.

2(ii) The petitioner admittedly belonged to an area not covered in Central Government Health Scheme (hereinafter referred to as CGHS in short). At the time of his superannuation, he availed the only given option of fixed medical allowances (FMA) of Rs. 500/- per month.

2(iii) In 2013, petitioner underwent treatment as an indoor patient in Fortis Hospital at Kangra and thereafter at Alchemist Hospital, Panchkula. On account

of treatment in these hospitals, he incurred expenses of Rs. 1,82,693/-. Petitioner prayed for reimbursement of these expenses from the respondents vide his application dated 08.11.2013 (Annexure P-1), enclosing therewith his entire medical record inclusive of bills. The request for reimbursement was turned down by the respondents vide memo dated 11.10.2013 (Annexure P-2) only for the reason that petitioner had suffered illness post his superannuation.

2(iv) The issue of medical reimbursement, in case of retired employees not covered under the CGHS Scheme at the time of their superannuation because of non-availability of any such option to them at the relevant time, came before this Court in CWP No. 4621 of 2011, filed by Union of India assailing the judgment passed by learned Central Administrative Tribunal. Operative directions from the judgment having great bearing on the facts and prayers made in the instant case, are extracted hereinafter:-

"52. It is the prime responsibility of the State Government to protect health and vigour of retired Government officials, this being their fundamental right under Article 21, read with Articles 39(3), 41, 43, 48A of the Constitution of India. The steps should be taken by the State to protect health, strength and vigour of the workmen. Non providing of postretirement medical care to retired Government official in a city not covered by CGHS at par with in service employee would result in violation of Article 21 of the Constitution of India. Moreover, employees need medical care most after their retirement. The State cannot call its own actions as wrong. We have clarified and explained O.M. dated 20.08.2004 and it is made clear that all the Central Government pensioners residing in non-CGHS areas would be covered either under the CS(MS) Rules, 1944 or CGHS as per their option to be sought for by the Central Government. In order to avoid litigation, this judgment shall apply to all the retired Government officials residing in non-CGHS areas. There should be equality of health benefits to retirees as well in their evenings of life. There cannot be any discrimination while extending the social benefits to in service and retirees. It is the prime responsibility of the State to protect the health of its workers. In view of the phraseology employed in O.M. dated 05.06.1998, Note 2 appended to Rule 1 is read down to extend the benefit of CS(MA) Rules, 1944 to retired Government officials residing in non-CGHS areas to save it from unconstitutionality and to make it workable. The higher Courts have to evolve new interpretive tools in changing times. The neo capitalism may concentrate wealth in the hands of few persons which would be contrary to the philosophy of the Constitution of India. Right to health is a human right. The action of the petitioner -Union of India not to reimburse the medical bills to the respondent and also not giving option to him and similarly situate persons residing in a city not covered under CGHS as per O.M. dated 5.6.1998 to either opt for CGHS Scheme or CS(MA) Rules, 1944, is illegal, arbitrary, capricious, discriminatory, thus, violative of Articles 14, 16 and 21 of the Constitution of India. The decision in matters pertaining to the health of the employee should be taken with utmost humane approach.

53. Ordinarily we would have ordered the retired Government officials to refund the amount already received by them, but taking into consideration that this would be oppressive and cause undue hardship to them, we order the Union of India not to make recoveries from the respondent and similarly situate persons residing in non-CGHS areas in the event of their opting for CS(MA) Rules or CGHS.

54. Accordingly, the writ petition is dismissed. However, the Union of India is directed to seek the option from the respondent and similarly situated retired employees residing in non-CGHS areas for medical coverage either under CGHS Scheme or under CS(MA) Rules, 1994 as per Office Memorandum, dated 05.06.1998 within a period of six months. Henceforth, the pensioners should be given one time option at the time of their retirement for medical coverage under the CGHS Scheme or CS(MA) Rules, 1994. The Union of India is also directed to release a sum of 1,79,559/- incurred by the respondent on his treatment and a sum of 20,000/- incurred by the respondent towards post operation follow up, medicines and transportation charges within a period of three months from today, failing which, the respondent shall be entitled to interest @12% per annum. The miscellaneous application(s), if any, also stand(s) disposed of. No costs."

2(v) The above extracted judgment unequivocally held that it was to be applied to all the retired employees, i.e. even to those residing in Non-CGHS areas; there cannot be any discrimination while extending social benefits to in-service and retirees; Note 2 appended to Rule 1 of O.M. dated 05.06.1998 was read down to extend the benefit of CS(MA) Rules, 1944 to retired Government officials residing in Non-CGHS areas to save it from unconstitutionality and to make it workable. Accordingly, the respondents herein were directed to seek options not only from the retired employee therein but also from all such similar situated retired employees residing in Non-CGHS areas for medical coverage either under CGHS Scheme or under CS(MA) Rules, 1994, as per office memorandum dated 05.06.1998, within a period of six months. Union of India was further directed to reimburse the expenses incurred by the retired employee (therein) on his medical treatment.

2(vi) After becoming aware of the aforesaid judgment, petitioner again requested the respondents through his representation dated 25.02.2016 (Annexure P-3) for reimbursement of his medical expenses. Failing to get any fruitful response, instant writ petition was preferred.

3. I have heard Mr. Prem P. Chauhan, learned counsel for the petitioner and Mr. Lokender Paul Thakur, learned Senior Panel Counsel for the respondents and with their assistance gone through the appended record.

Contentions for opposing the relief:-

4. The respondents have opposed the prayer on following grounds:-

(a) Petitioner had not joined CGHS facility at the time of his superannuation and had only opted for fixed medical allowance of Rs. 500/- at the time of his retirement. Therefore, no comparison can be drawn between the CGHS beneficiaries and fixed medical allowances beneficiaries.

(b) The benefit of judgment in Shankar Lal Sharma's, case supra, was to be made applicable only to the petitioner therein;

(c) Present petitioner was not similarly situated to Shankar Lal Sharma in CWP No. 4621/2011.

Reasoning:-

5. All the above contentions deserve to be rejected in view of the following reasons:-

5(a) A careful perusal of the judgment dated 28.12.2015, in particular, paragraphs 52 to 54 thereof, clearly reveals that the judgment had been held applicable to all the retired Government officials. It was thus applicable to even retired employees residing in Non- CGHS areas. The applicability of the judgment was, thus, not restricted only to the petitioner. The action of Union of India in not reimbursing the medical bills to the Government employee therein as well as not in giving them and other similarly situated persons residing in areas not covered under CGHS Scheme as per OM dated 05.06.1998, the option to opt either for CGHS Scheme or CS(MA) Rules, 1994 was declared illegal, arbitrary, capricious, discriminatory and violative of Articles 14, 16 and 21 of the Constitution of India. It was held as under:-

"16. We do not accept the plea taken in the petition that O.M. dated 5.6.1998 was intra departmental communication. The decision dated 5.6.1998 was a conscious decision. It was a final order. The respondent and similarly situated persons have changed their position by getting themselves treated from various institutes legitimately expecting that they are covered under CS(MA) Rules. According to Office Memorandum, dated 20.08.2004, the view of all the Ministries/Departments of the Government of India were sought before a final decision could be taken. This Office Memorandum is dated 20.08.2004, but till date no material has been placed on record that O.M., dated 05.06.1998 was withdrawn, rescinded, superseded or any corrigendum was issued. The operation of O.M., dated 05.06.1998 has not been suspended. The only requirement as per O.M., dated 05.06.1998 was to work out the modalities in consultation with the Ministries/Department, that too, to avoid any hardship to the pensioners. It was to be followed by the Ministerial Act. The pensioners were to be given one time option at the time of their retirement either to opt for CGHS or under the CS(MA) Rules, 1944 for medical coverage. There was sufficient time for consultation with various Departments from 05.06.1998 to 20.08.2004. Though it is stated that the Department of Expenditure has categorically said that in view of huge financial implications, it is not feasible to extend CS(MA) Rules, 1944 to pensioners, but that decision has not been placed on record. The issue was with

regard to the applicability of CGHS Scheme floated in 1954 and the applicability of CS(MA) Rules, 1944 to the retirees, who were not residing in the areas covered by CGHS Scheme. The O.M. dated 05.06.1998 cannot be stated to be a decision in isolation since it is based on the recommendations made by the 5th Pay Commission of the Central Government. The main objective underlined in the issuance of O.M. dated 05.06.1998 was to mitigate the hardships faced by the retired Government officials.

17. The Central Government must act like a model employer. Ours is a socialist welfare State. The difficulties faced by the retired Government officials have rightly been redressed by O.M. dated 05.06.1998. Thus, O.M., dated 05.06.1998 supplements the CS(MA) Rules by extending the scope of health coverage to retired Government Officials as well.

18. The matter is required to be considered from another angle. There is a Scheme floated by the Central Government in 1954, whereby, the persons who have been enrolled under the Scheme can get themselves treated in 25 cities across the country. All the Government Officials who retired from the Central Government constitute a homogeneous class whether they are living in station 'A' or 'B' after their retirement. There is no reason assigned why the respondent and similarly situated person have been left out from the applicability of CGHS or CS(MA) Rules, 1944. It is a case of invidious discrimination. The CGHS facilities could not be restricted to specified places. The respondent and similarly situated person are to be treated at par with those persons who are residing at Delhi and other areas covered under CGHS. There is no intelligible differentia so as to differentiate the retired Government officials vis-a-vis some other retired persons only on the ground of residing in a particular place. The objective of the Scheme is to provide better health facilities to the retired Government officials. It is with the objective that O.M. dated 5.6.1998 was issued."

5(b) It was not open for the petitioner at the time of his superannuation to opt for CGHS Scheme. He resided in an area, which was not covered in CGHS Scheme. No such option was granted to him by the respondents at that time. It was under such circumstances that the petitioner had opted for fixed medical allowance of Rs. 500/-. Though, as per rejoinder filed by the petitioner, which has not rebutted by the respondents, even this fixed medical allowance was not paid to him from the year 2005 to 2011.

5(c)(i) For determining the finality attached to the above extracted judgment, following order was passed in the matter on 12th July, 2019:-

"Heard for some time. It appears from the record that the petitioner superannuated on 31.10.1993 and the CGHS Scheme under CS(MA) Rules 1994, came into force subsequent to the superannuation of the petitioner. Perhaps, in view of this position, the option was not taken from the petitioner for applicability of CGHS Scheme. It is not in dispute that the petitioner, as per situation in existence at the time of his superannuation, had given the option for

fixing monthly medical allowances of Rs. 500/-. In terms of judgment passed by a Division Bench of this Court on 28.12.2015, titled Union of India and Another vs. Shankar Lal Sharma, the following directions were issued in respect of the scheme:-

"54. Accordingly, the writ petition is dismissed.

However, the Union of India is directed to seek the option from the respondent and similarly situated retired employees residing in non- CGHS areas for medical coverage either under CGHS Scheme or under CS(MA) Rules, 1994, as per Office Memorandum, dated 05.06.1998 within a period of six months. Henceforth, the pensioners should be given one time option at the time of their retirement for medical coverage under the CGHS Scheme or CS(MA) Rules, 1994....."

Learned Central Government Counsel, to seek instructions in respect of:

(i) finality;

(ii) implementation and

(iii) applicability of the above judgment to the case of the petitioner"

5(c)(ii) In pursuance to the above directions, learned Sr. Panel Counsel has produced the instructions dated 10.10.2019 imparted to him by the respondents. These instructions reveal that subsequent to the judgment, the respondents have issued office memorandum dated 29.10.2016, where under, Central Government Pensioners have now been granted following options in respect of availing medical facilities:-

"2. It is further informed that the following options to avail medical facilities are available to Central Government pensioners:

a) Pensioners residing in CGHS covered areas:

1) They can get themselves registered in CGHS dispensary after making requisite contribution and can avail both OPD and IPD facilities.

2) Pensioners residing in CGHS areas cannot opt out of CGHS and avail any other medical facility (i.e. Fixed medical Allowance). Such pensioners, if they do not choose to avail CGHS facility by depositing the required contributions, cannot be granted Fixed medical Allowance in lieu of CGHS.

b) Pensioners residing in non-CGHS areas:

1) they can avail Fixed Medical Allowance (FMA) @ Rs. 500/- per month.

2) They can also avail benefits of CGHS (OPD and IPD) by registering themselves in the nearest CGHS city after making the required subscription.

3) They also have the option to avail FMA, for OPD treatment and CGHS for IPD treatments after making the required subscriptions as per CGHS guidelines."

It is, thus, clear that now i.e. subsequent to the judgment in Shankar Lal Sharma's case supra, option has been given by the respondents to its employees residing in non-CGHS areas for availing either the fixed medical allowance or the benefit of CGHS Scheme.

5(d) In case of petitioner, the stand taken by the respondents is contrary to the judgment passed in Shankar Lal Sharma's case. Petitioner did not have the liberty to exercise the option to become member of CGHS Scheme for IPD treatment at the time of his superannuation. Medical reimbursement cannot be refused to the petitioner on the ground that at the time of his superannuation, petitioner had opted for fixed monthly allowance. This option was made available to him only under office memorandum dated 29.9.2016, therefore, in my considered view, the present petition deserves to be allowed on the analogy of the judgment passed in Shankar Lal Sharma's case, which apparently has attained finality. The petitioner is similarly situated as was Shankar Lal Sharma in CWP No.4621/2011 and had promptly requested the respondents for medical reimbursement by timely submitting his indoor treatment medical bills etc. Accordingly, this petition is allowed. Respondents are directed to reimburse a sum of Rs. 1,82,693/- incurred by the petitioner towards his medical treatment within two months from today, failing which, the amount shall carry interest @ 9% per annum from the date of filing of the petition till its realization.

Petition is disposed of along with pending application(s), if any.