
(2013) 07 NCDRC CK 0030

In the National Consumer Disputes Redressal Commission

Ved Prakash Juneja

APPELLANT

Vs

Director, Cghs

RESPONDENT

Date of Decision : 16-07-2013

Acts Referred:

Citation : 2013 0 NCDRC 528 : 2013 3 CPJ 662

Hon'ble Judges : SURESH CHANDRA J.

Final Decision : petition stands allowed

Judgement

1. THERE is a delay of 180 days in filing this revision petition for which the petitioner has filed an application for condonation. We have considered the submissions made by the petitioner and for the reasons given in the application, we condone the delay in filing this revision petition.

2. THIS revision petition has been filed by Sh. Ved Prakash Juneja who is the original complainant in this case against the respondents - Director, CGHS and Additional Director CGHS who were the opposite parties No.1 & 2 respectively before the District Forum. The factual matrix of this case are that the petitioner who retired on superannuation from Government "s service under the Delhi Police on 30.6.1988 was drawing Rs.2000/- p.m. as basic pay and Rs.40/- per month as special pay. Based on his pay, he was entitled for nursing home facilities in accordance with the circular of Ministry of Health No.S-50/1974-CGHS(P) dated 30.10.1974. On his superannuation, his pension was fixed at Rs.988/- per month w.e.f. 1.7.1988 but he was denied CGHS I-Card with nursing home facility. Besides this, he had also submitted a claim for reimbursement of medical expenses amounting to Rs.12,832/- incurred by him for treatment. This claim, however, was rejected by the OPs on the ground that the claim was regarding purchase of medicines as an OPD patient and hence it was not admissible because the medicines are to be procured by the concerned patient from the CGHS dispensary where the beneficiary is registered. Aggrieved by the decision of the respondents/opposite parties, he filed a consumer complaint bearing No.339/2008 before the District Forum (Central), Kashmere Gate, Delhi

with two-fold grievance, namely, denial of CGHS I-Card with nursing home facilities and non-reimbursement of his medical claim bills amounting to Rs.12,832/-. It was pleaded by him before the District Forum that since he retired w.e.f. 1.7.1988 and was drawing pension of more than Rs.750/- per month (his actual pension being fixed at Rs.988/- per month), he was entitled to nursing home facilities under Ministry of Health order dated 30.10.1974 (supra). Regarding the reimbursement of his claim on account of purchase of medicines etc, it was his submission that CGHS dispensary normally kept medicines for general use and procurement of a number of medicines prescribed by the specialist would take 4-8 days which would also require several visits to the dispensary. Since his treatment was in respect of injuries sustained by him in an accident, he had purchased the medicines from the market and hence there was no reason that his claim should have been disallowed. The OP department resisted the complaint. In respect of his claim for nursing home facilities, it was submitted that the order dated 30.10.1974 (supra) was superseded by a later government order No.S-11011/9/86-CGHS (P) dtd. 1.2.1989 and as per the new government order after the implementation of 4th Pay Commission recommendations, the pensioners who were drawing less than basic pay of Rs.2501/- could not get nursing home facility. This had been duly communicated to the complainant / petitioner vide letter dated 12.3.2011 issued by the OPs. The claim in respect of the reimbursement of medical bill, as stated above, was rejected because the OPD patients could not be reimbursed for purchase of the medicines.

3. ON appraisal of the evidence adduced by the parties before it, the District Forum vide its order dated 14.7.2009 partially allowed the complaint in terms of the following directions:- "A) To pay the sum of Rs.12,832/- with interest @ 9% per annum. The interest shall be payable from the date of filing of the complaint i.e. 23.5.2008 till the realization of the amount. It is so because in the complaint, the date of purchase of the medicines or submitting the bills for reimbursement has not been mentioned. B) Compensation for harassment and agony, amounting to Rs.3,000/- and litigation charges amounting to Rs.2,000/- shall also be paid to the complainant. "

4. NOT satisfied with the aforesaid order of the District Forum, the petitioner filed an appeal bearing No.10/156 before the Delhi State Consumer Disputes Redressal Commission against this order praying for direction to the OPs to provide the petitioner with a CGHS I-Card allowing nursing home facility since this request was turned down by the District Forum. The OPs did not challenge the order of the District Forum. The State Commission vide its order dated 19.5.2010 held that the petitioner as a pensioner could not be regarded as a consumer within the meaning of section 2(1)(d) of the Consumer Protection Act, 1986 and as such dismissed his appeal in limine by observing that the facility provided to a Government servant cannot be provided to a pensioner even on contribution since he cannot be held to be a consumer within the meaning of section 2(1)(d) of the C.P. Act. However, keeping in view the fact that the OPs

did not challenge the order of the District Forum, the State Commission did not disturb the partial relief already granted by the District Forum. It is against this order of the State Commission that the present revision petition has been filed by the petitioner. We have heard the petitioner who has pleaded his case himself and learned counsel Mr. Rajat Guar, Advocate for the respondents. Learned counsel pointed out that since the respondents have already paid the medical bill in accordance with the order of the District Forum, the grievance of the petitioner in regard to payment of his bills has been satisfied. The petitioner submitted that in view of the impugned order, the revision petition now is for direction to treat the petitioner as a consumer within the meaning of the provisions of the C.P. Act and for issuance of a CGHS I-Card with nursing home facilities. In respect of the first prayer, petitioner submitted the State Commission gravely erred in ignoring the settled law which recognises a pensioner and beneficiary of the CGHS as a consumer under the provisions of the C.P. Act, 1986. In this context, he drew our attention to the order dated 20.10.2005 in the case of JagdishKumar Bajpai Vs. Union of India which has been delivered by 6-Member Bench of this Commission holding that a pensioner and beneficiary of the CGHS would be a consumer under the provisions of the C.P. Act, 1986 for the alleged deficiency in service by the CGHS officials. A copy of this order has been placed by the petitioner on the paper-book. This 6-Member Bench order is in line with the law settled by the Apex Court.

5. REFERRING to the view taken by the Apex Court in V.P. Shantha 's case [(1995) 6 SCC 651], this Commission has observed as under:- "This aspect is considered in para 49 of the V.P.Shantha 's case (Supra). The Court dealing with a similar situation illustrates that where a person has taken an insurance policy for medicare whereunder all charges, consultation, diagnosis and medical treatment are borne by the Insurance Company. In such a case the person receiving treatment is a beneficiary of services and the payment for such services would be made by the Insurance Company to the medical practitioner. The rendering of such service by the medical practitioner cannot be said to be free charge. Similarly, where as part of conditions of service the employer bears the expense of medical treatment of the employee and his family members dependant upon him, the service rendered to him by the medical practitioner would not be free of charge and would, therefore, constitute service under Section 2(1)(o). The same analogy would apply in case of retired employee. As stated above, past service would be consideration for providing such medical facility or other facilities. "

6. IN view of above position, we are convinced that the State Commission gravely erred in holding that the petitioner is not a consumer. Its impugned order in this regard, therefore, cannot be sustained in the eye of law and must be set aside. So far as the second issue in this revision petition regarding issuance of a CGHS I-Card with nursing home facility to the petitioner is concerned, the petitioner has submitted that he retired w.e.f. 1.7.1988 and as on that the Government order dated 30.10.1974 (supra) was applicable which entitled him

to nursing home facilities in terms of para 1(c) since his pay as well as pension both were more than Rs.750/- per month. His contention was that the Government order dated 1.2.1989 (supra) which has been heavily relied by the respondents to reject his representations and denying him the issuance of CGHS I-Card with nursing home facility has become effective from the date of its issue, i.e., 1.2.1989. He submitted that keeping in view his date of retirement which was prior to this Government order and his eligibility to the nursing home facilities as on that date under the then existing instructions vide OM dated 30.10.1974, denial of the nursing home facility was absolutely wrong on the part of the respondent authorities. To support his understanding in this regard, the petitioner referred to the clarificatory OM No.S-11011/9/86-CGHS(P) dated 11.10.1989 issued by the Ministry of Health which lays down that "contribution can be made by the pensioner and pensioner family on the basis of the last pay drawn and they are entitled to avail the treatment at the same level as on the date of retirement / date of death of the employee. " The petitioner submitted that this clarificatory OM which was issued after issuance of the OM dated 1.2.1989 clearly supports his plea that the government cannot deny him the facility which was already available to him on the date of his retirement and much before the issuance of the OM dated 1.2.1989 which obviously came into effect only from 1.2.1989 and not before. The petitioner has also referred to the two instant cases of S/Shri P.R. Sethi, retired Inspector of Delhi Police to whom CGHS I-Card No.407942 was issued on 11.8.1988 and B.D. Relan who retired as Sub-Postmaster on 1.10.1988 and whose pension was fixed at Rs.985/- per month and yet he was issued CGHS Card No.416692 on 12.10.1988 with nursing home facility. He submitted that besides the specific instructions of the government in the government orders referred to by him, he had been pleading time and again with the respondent authorities to give him the same treatment as was given to the other retired offers in similar circumstances but the respondents persistently rejected his representations and when he asked for information under the RTI Act which would disclose the basis and authority of the government for such rejection, the information was not furnished to him on the ground that the same being part of their old record, it was not available. He, therefore, submitted that the District Forum order which is based on the wrong interpretation of the applicability of OM dated 1.2.1989 and which ignores the later clarifications issued on 11.10.1989, is liable to be set aside. He clarified that so far as the contribution for availing the CGHS facility for his entitlement is concerned, he has never refused to contribute as per the instructions in force and in fact, he placed on record (page 45 of the paper-book) copy of a document which indicates that a higher contribution of Rs.15 was taken from him by the department.

7. PER contra, learned counsel for the respondents submitted that even though the petitioner was eligible for nursing home facility I-Card as on the date of his retirement, admittedly he did not get the pensioner 's card issued soon after his retirement and applied for the card only on 13.9.1989 by which time the revised

instructions as per OM dated 1.2.1989 had been issued. He further submitted that even though the petitioner has sent representations to the respondent authorities from time to time, he had been given suitable reply indicating that after the implementation of the 4th Pay Commission 's recommendations, the pensioners who were drawing a basic pay of Rs.2501/- and above are alone entitled for nursing home facilities. He, therefore, submitted that the order of the District Forum which turned down the plea of the petitioner regarding his eligibility to the nursing home facility is in accordance with the revised instructions of the Ministry of Health and the same deserves to be upheld and confirmed. He further submitted that the respondents have already sent a cheque dated 26.11.2009 for Rs.19,372/- in compliance of the District Forum order in respect of the other prayer of the petitioner/complainant. Hence the revision petition should be dismissed.

8. WE have given our anxious thoughts to the rival contentions and have also perused the record. There is no dispute that the petitioner was eligible for nursing home facility in terms of the instructions of the government contained in OM dated 30.10.1974, a copy of which is placed at pages 23-24 of the paper-book. It is also not in dispute that the instructions of this OM which came into effect on 1.11.1974 were in force till 31.1.1989 when they came to be superseded/revised by another OM issued on 1.2.1989 which admittedly became effective only from the date of its issue, i.e., 1.2.1989. It appears that the whole confusion arose because of the fact that the petitioner did not get the CGHS I-Card issued as a pensioner immediately after the retirement and by the time he applied for it on 13.9.1989, the situation, as interpreted by the respondents, had changed because of the OM of 1.2.1989. A plea was also taken by the learned counsel for the respondents that the petitioner himself had chosen to contribute differently to the CGHS kitty which rendered him ineligible to avail all the benefits of the earlier OM at a belated stage after issuance of OM of 1.2.1989. We are not impressed by the plea taken by the counsel for the respondents. If we go by his submission in this regard, it would be contradictory to the instructions issued by the government vide OM dated 11.10.1989 (supra) which clarifies that contribution can be made by a pensioner and pensioner family on the basis of last pay drawn and they are entitled to avail the treatment at the same level as on the date of retirement/date of death of the employee. Learned counsel has not been able to convince us as to how this clarification which clearly entitles the pensioner to avail the treatment at the same level as on the date of retirement can be ignored because this has been issued consciously by the government keeping in view the contents of both the earlier orders dated 30.10.1974 and 1.2.1989. We are, therefore, of considered view that learned District Forum erred in wrongly interpreting the instructions contained in OM dated 11.10.1989 by holding that the petitioner lost his eligibility to the nursing home facilities by opting for medical facilities on the basis of last pay drawn pension and not on the basis of last pay drawn. In spite of opportunities given, nothing has been produced before us by the respondents which would establish

that the petitioner had either given such an option consciously at the time of the retirement or even if assuming that he had given such option, the petitioner would stand to lose the eligibility to nursing home facilities in terms of the later clarification issued on 11.10.1989 which restores the same facility to every pensioner / family pensioner if he/she was prepared to contribute according to his/her last pay/pension. In this context, we reproduce below the extracts from the later OM dated 11.10.1989 which contains the aforesaid clarification:- "All Central Government pensioners including CPF retirees (except those of Railway and Armed Forces) are eligible for availing CGHS facilities if they were eligible to avail the same while in service irrespective of whether they actually availed of such facilities or not prior to their retirement ".

Learned counsel for the respondents has not filed any instructions of the government contrary to the clarification contained in the OM of 11.10.1989 which clearly makes the petitioner eligible for the nursing home facility on payment of the required contribution as per rules. In this context, we may also note that on superannuation, every pensioner can either contribute on a monthly basis to the CGHS or make a payment of 10 times of the annual contribution as may be applicable in his case. If we go by the contribution of Rs.4 per month as on the date of retirement, the petitioner would be entitled for availing the treatment of his level as on the date of his retirement by making a lump sum payment of Rs.480/- which is equivalent of 10 years contribution in lump-sum. Unfortunately, what learned counsel for the respondents has filed before us on 18.7.2012 is copy of OM in respect of reimbursement of medical expenses when pensioners take the treatment immediately after retirement but before getting CGHS card and condonation of delay for reimbursement of such expenses. The claim regarding reimbursement of medical bill preferred by the petitioner having already been settled by the respondents in accordance with the District Forum order, the OM dated 5.11.1993 filed by the counsel for the respondents has no relevance to the issue which remains to be decided by us. We may also note that in spite of repeated representations the respondents have miserably failed to give any explanation regarding issuing different CGHS I-Cards in two other cases of retired employees referred to by the petitioner.

9. IN view of the above discussion, we hold that the petitioner is eligible to issuance of CGHS pensioner 's I-Card with nursing home facility in terms of instructions contained in para 1 (c) of the Department of Health OM dated 30.10.1974 (supra) read with clarificatory instructions contained in the later Om dated 11.10.1989 (supra). We, therefore, direct respondent No.1 Director, CGHS, Ministry of Health and Family Welfare, Govt. of India to issue Pensioner 's I-Card with nursing home facilities to the petitioner within a period of 6 weeks from the date of receipt of this order subject to the petitioner making payment of lump sum amount of contribution to the CGHS for issuance of such a card in accordance with the instructions of the government based on the contribution applicable to the petitioner under the OMs dated 30.10.1974 read with clarificatory OM dated 11.10.1989.

10. IMPUGNED order of 19.5.2010 passed by the State Commission is accordingly set aside and the revision petition stands allowed in terms of the aforesaid directions with the parties bearing their own costs.