
(2005) 10 DEL CK 0026
In the Delhi High Court
Case No : Writ Petition (C) 7493 of 2002

V.K. Jagdhari

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-10-2005

Acts Referred:

Citation : (2005) 125 DLT 636 : (2005) 85 DRJ 160

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Arun Monga, for the Appellant; Rajiv Shakdhar, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—The petitioner is seeking issuance of a writ to the respondents to reimburse the medical expenditure incurred by him. The respondents have denied their liability.

2. The petitioner, a former member of the Indian Revenue Service (IRS) superannuated from the service of the first respondent on 31.10.1995. At the time of his retirement, the Government of India had introduced, w.e.f. 1.4.1984 the Central Government Health Scheme (CGHS) for medical treatment of its employees and former employees who opted under the scheme. In terms of Rule 9 of that scheme pensioners could opt for making for one time payment towards CGHS contribution equal to 10 times the annual contribution which entitled them to issuance of a permanent CGHS card.

3. The petitioner had settled down at Neemuch in Madhya Pradesh. It is averred that no CGHS facility was available at that time nor is available even today, in that place. It is averred that the petitioner had applied for a CGHS card mentioning his Neemuch address but was asked to give a Delhi address. He furnished his daughter's New Delhi address. The application for the card was made on 26.4.1999 and he paid Rs. 18,000/- for the purpose.

4. In the meanwhile, during November 1998, the petitioner suffered high fever and developed medical complications while at Neemuch. He was under the care and treatment of the medical practitioners in the local Government Hospital; he underwent treatment from 25.11.1998 to 2.12.1998. He was advised Echo-cardio Graphy (ECG) and immediate medical attention. The petitioner went to Mumbai, where his son was residing. After investigation, he was advised open heart by-pass surgery, which he underwent at the embay Hospital and Medical Research Centre. The petitioner was in that Hospital for more than two weeks between 17.12.1998 and 3.1.1999. The surgery resulted in grafting of three coronary arteries and replacement of one valve. The petitioner had to incur an expenditure of Rs. 313452/-.

5. The petitioner applied to the third respondent for reimbursement, of the expenses incurred, on 10-5-1999, attaching all the medical bills and vouchers. This application was routed through the Chairman, Central Board of Direct Taxes. The petitioner apparently followed up the matter and eventually the respondent rejected the request for reimbursement on the ground that the claim was not permissible since the life card was issued to the petitioner on 26.4.1999 and that the surgery was carried out before the card was issued. This rejection dated 12.5.2000 has been impugned in these proceedings as arbitrary. It is alleged that with the issuance of the card in April, 1999, the coverage of the petitioner related back to, and operated from the date of his retirement and that the entitlement flows not from the card itself but from his status as a pensioner and former Central Government Employee.

6. The respondents have resisted the claim in these proceedings. It is denied that the Central Civil Services (Medical Attendance Rules) are application to the pensioners. It is averred that as per existing instructions governing the scheme, the pensioners have to obtain CGHS card within a grace period of three months from the date of retirement failing which the card would be valid from the date of issue. In this case, the petitioner opted for CGHS card, in April 1999 after he had undergone the surgery and incurred the expenditure; thus he was clearly disentitled to the claim for reimbursement.

7. It is further averred that the rules applicable to Central Government Employees residing in non-CGHS areas or for serving employees for treatment in non-CGHS areas and are inapplicable to the petitioner.

8. Mr. Monga, learned counsel for the petitioner submitted that the dispute in this case is no-longer rest integra. It is covered by several judgments of this Court. He has placed reliance upon the judgment reported as P.N. Chopra v. Union of India, 111 (2004) DLT 190 and the judgment in W.P.(C) 4794/2003 (T.K. Sharmia v. Union of India) and the decision of the Division Bench in Union of India v. T.S. Oberoi (LPA 898/2002 decided on 7.11.2003. It was submitted that in T.S. Oberoi's case the Court had given a clear finding that once life membership was accepted for a CGHS card, it related back to the point in time when the beneficiary was hospitalized.

9. Learned counsel for the petitioner also submitted that the entitlement to medical treatment and full reimbursement flows not merely from the terms of the scheme or rules but on account of the status enjoyed by the petitioner as a Government pensioner and a superannuated employee. The petitioner admittedly lived in a non-CGHS area. Hence, there was no rationale for him to apply and obtain a life membership under the scheme, or in some other scheme. If the condition for treatment and reimbursement is that a person has to reside only in a CGHS area, and that if on account of deteriorating health a person living outside the CGHS area would be disentitled to treatment or benefit, that amounts to un-reasonable classification and arbitrariness.

10. Mr. Rajiv Shakdhar, learned counsel for respondents submitted that the judgment in T.S. Oberoi's case cannot be pressed into service because that pertains to entitlement of a retired High Court Judge who, both in terms of Constitution as also in terms of High Court Judges (Salaries and Conditions of Service) Act, 1954 is entitled to a definite status equivalent to that of a Union Deputy Minister which is not the case with other public servants. It is submitted that the observations with regard to coverage relating back from a prior point in time have to be read in the context of the essential or basic entitlement of the beneficiary there and his peculiar status as a former High Court Judge which could not have been disputed.

11. Learned counsel also relied upon the judgments of the Supreme Court reported as 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 . It was submitted that these judgments bear out the contention of the respondents that the scheme or its provisions cannot be made retrospective as claimed by the petitioner in these proceedings, and that the Government, not being possessed of unlimited resources, is within its rights to curtail entitlements of its former employees, through guidelines.

12. 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.

13. 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 v. UOI, (111) 2004 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,

14. 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 (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 had held that a Government was obliged to grant ex-post facto sanction in case an employee requires a specialty treatment and there is a nature of emergency involved.

15. The judgments relied upon by the respondents, 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.

16. In the present case, admittedly, the claim of the petitioner for having undergone the by-pass surgery procedure was verified by the Central Board of Direct Taxes, which forwarded his application for reimbursement. Hence, there is no controversy about the petitioner's medical emergency and the treatment undergone by him. The only resistance however is with regard to his having acquired the CGHS card subsequently. This aspect has been specifically dealt

with in the judgments reported in S.K. Sharma's case and also in 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), . I see reason to take different view. I am not relying upon the decision in T.S. Oberon's case in view of the distinction sought to be made by the respondents. Nevertheless, the judgments in the case of other Government employees are also premised upon their status as retire public servants/Central Government Pensioners entitled to participate in the scheme.

17. In the light of foregoing discussions, I am of the opinion that this petition has to be allowed. A direction is accordingly issued to the respondents to process the case of the petitioner and ensure that he is fully reimbursed for all the medical expenses incurred by him in connection with the by-pass surgery undergone in December 1998/January 1999. The process shall be completed within a period of three months from today.

18. The writ petition is allowed to the extent indicated above. No costs.