

Laxmi Chand

vs

Comptroller And Auditor General...

Central Administrative Tribunal – Gwalior

4 November, 2004

Citations: 2005 (2) SLJ 145 CAT

Bench: M Singh, A Sanghvi

ORDER

A.S. Sanghvi, Member (J)

1. The applicant is a retired Accounts Officer. Prior to his retirement, he was serving in the office of the Accountant General, Gwalior. He had suffered heart attack on 1.2.2002 and was rushed to heart specialist in Gwalior. He referred him to into Apollo Hospital, New Delhi for urgent treatment. He was admitted in Apollo Hospital, New Delhi on 7.2.2002 and had undergone Angiography on 8.2.2002 and bypass surgery on 9.2.2002 in the Apollo Hospital, New Delhi and, ultimately he was discharged from the hospital on recovering his health. The Apollo Hospital, New Delhi certified the expenses incurred at Rs. 1,63,654 and the applicant preferred the bill for medical reimbursement with respondent No. 2. His claim for medical reimbursement was however, rejected on the ground that he being a retired Govt. employee, not covered under CS (MA) Rules, 1944, was not entitled to the medical reimbursement. He has therefore, approached this Tribunal for a direction against the respondent to consider and allow his reimbursement claim of Rs. 1,63,654.

2. The respondents in their written reply to the O.A. has conceded that the applicant was working as an Accounts Officer in the office of the respondent No. 2 and has retired on superannuation on 31.12.90. It is also admitted that he had submitted a bill for medical

reimbursement for Rs. 1,63,654 incurred by him for Angiography and Bypass surgery, treatment undertaken by him during the period from 7.2.2002 to 18.2.2002 in Indraprastha Apollo Hospital, New Delhi. It is also admitted by them that the claim of the applicant is rejected but according to them since CS (MA) Rules, 1944 do not cover the cases of the retired Govt. employees and as such, no reimbursement can be granted to the applicant. It is also contended that under the CGHS (P), Central Govt. pensioners living in non-CGHS areas can avail of CGHS facility by obtaining a CGHS pension card from the nearest covered CGHS city after making necessary contribution. The failure of the applicant to obtain the CGHS pensioner card cannot give him any right for medical reimbursement beyond the rules/instructions. They have prayed that the O.A. be dismissed with costs.

3. It is quite apparent from the reply of the respondents as well as the order of rejection of the reimbursement claim of the applicant that the reimbursement claim of the applicant is rejected by the respondents on the ground that the applicant being a retired Govt. officer was not entitled to reimbursement of charges on medical treatment. The question is no more res integra as in several decisions of various Benches of this Tribunal as well as of Hon'ble High Courts it is categorically upheld that a retired Govt. employees is entitled to claim medical reimbursement. Even the Central Govt. in O.M. dated 5.6.98 of Ministry of Health and Family Welfare pursuant to the O.M. dated 15.4.97 of the Deptt. of Pension and Pension Welfare has stated in unequivocal terms that it was decided by the Ministry that the pensioners should not be deprived of medical facilities from the Govt. in their old age when they require them most and that the Ministry has no objection to the extension of the CS (MA) Rules to the Central Govt. pensioners residing in non-CGHS areas. The benefits were not extended to the pensioners only because of some procedural tangle or lethargic attitude on the part of the relevant ministry or department. This was considered in the case of Prabhakar Sridhar Bapat v. Union of India and Ors. in O.A. 205/2003 by the Ahmedabad Bench of this Tribunal and while allowing the claim of the reimbursement vide order dated 10.11.2003, the Tribunal had directed the respondents to sanction the admissible amount of the medical claim and pay the same within specified period. This order of the Ahmedabad Bench of the Tribunal was challenged before the

Hon'ble High Court of Gujarat at Ahmedabad in Special C.A. No. 3843/2004. The Hon'ble High Court vide order dated 2.4.2004 while dismissing the special C.A. No. 3843/2004 and upholding the claim of the pensioner relied on the decision of the High Court in another S.C.A. No. 9704/02 decided on 30.9.2002. It is observed as under:

"By the said order dated 5th June, 1998, the Govt. of India took a decision that. "pensioners should not be deprived of medical facilities from the Govt. in their old age when they require them most." By the very wordings of this decision it is clear that it was intended to apply to all the pensioners and therefore, there was no need to exclude Postal Department from the ambit of the application of these orders. As a corollary to the said decision, it was specifically stated in the order that there was no objection to extension of the said Rules to the Central Govt. pensioners not residing in CGHS areas as recommended by the Pay Commission. The responsibility of administering the said Rules was however, left to the respective Ministries/ Departments. It was suggested that the pensioners could be given one time option at the time of their retirement for medical coverage under the scheme or under the Rules. It is evident from these orders that the benefit of the said Rules was extended to the pensioners who were not covered under CGHS area. The contention that since there were no rules for the pensioners and that the said rules applied only to the employees during the tenure of their service and, therefore, the respondent could not claim reimbursement of medical bills, is misconceived. Even though the said Rules applied to the employees and there were no statutory Rules applicable to the pensioners, and it is by virtue of the said administrative orders that the pensioners became entitled to the benefits similar to those which the employees were given under the statutory rules. The pensioners who were not covered by the statutory rules were now sought to be covered by the administrative instructions extending the benefit of the Rules applicable to the employees for medical reimbursement to the pensioners."

4. The same Tribunal i.e., Ahmedabad Bench of the CAT in the case of S.Y. Ganpule v. Union of India and Ors. in O.A. No. 351/2000 has held that the retired Govt. employees are entitled to the reimbursement of the medical expenses. This decision was also upheld by the Hon'ble High Court of Gujarat in Special C.A. No. 3843/2004. Again thereafter in

the case of Islamkhan H. Pathan v. Union of India and Ors. in O.A. 631/2001 decided on 11.9.2002, the Ahmedabad Bench of the Tribunal has upheld the claim of the applicant therein for medical reimbursement rejecting the contention of the respondents that the retired Govt. employees or the employees are not entitled to medical reimbursement.

5. Even when the employee has taken treatment in the private dispensary or private nursing home his claim of reimbursement of medical expenses is upheld by the High Courts and the Supreme Court. In the case of Surjit Singh v. State of Punjab and Ors., 1996(2) SCC 336, the Supreme Court while upholding the claim of the medical reimbursement of an employee who had taken treatment in London, observing that the principle of self-preservation of one's life is the necessary concomitant of the right of life enshrined in Article 21 of the Constitution of India has further observed as under:

"Self-preservation of one's life is the necessary concomitant of the right of life enshrined in Article 21 of the Constitution of India, fundamental in nature, sacred, precious and inviolable. The importance and validity of the duty and right to self-preservation has a species in the right of self- defence in criminal law. Centuries ago thinkers of India conceived of such right and recognised it."

6. Thereafter in the case of State of Punjab v. Ram Lubhaya Bagga, 1998(4) SCC 117-1998(2) SLJ 35 (SC), the Supreme Court said that a policy cannot be challenged because that is challenging wisdom of the authority. However, referring to the earlier law the Supreme Court pointed out as follows:

"A right, it correlates to a duty upon another individual that is employer, Government or authority. The right of one is an obligation of another. Hence, the right of a citizen to live under Article 21 casts obligation on the State. This obligation is further reinforced under Article 47, it is for the State to secure health to its citizen as its primary duty."

The Supreme Court elaborated the point as follows:

"No doubt the Government is rendering this obligation by opening Government hospitals and health centers, but in order to make it meaningful, it has to be within the reach of its

people, as far as possible, to reduce the queue of waiting lists and it has to provide all facilities for which an employee looks for at another hospital. Its upkeep, maintenance and cleanliness has to be beyond aspersion. To employ the best of talents and tone up its administration to give effective contribution. Also bring in awareness in welfare of hospital staff for their dedicated service oriented training, not only at the entry point but also during the whole tenure of their service. Since it is one of the most sacrosanct and valuable rights of a citizen and equally sacrosanct sacred obligation of the State, every citizen of this welfare State looks towards the State for it to perform its obligation with top priority including by way of allocation of sufficient funds. This in turn will not only secure the right of its citizen to be best of their satisfaction but in turn will benefit the State in achieving its social, political and economical goal. For every return there has to be investment. Investment needs resources and finances. So even to protect this sacrosanct right finances are in inherent requirement. Hamessing such resources needs top priority."

7. The above observation of the Supreme Court clearly suggests that the Govt. is under an obligation to provide its every citizen all necessary facilities to enjoy the best of health. When the Govt. is not in position to provide necessary hospital facilities, for securing the best medical treatment available it is under obligation to reimburse the treatment taken in other hospitals. For this purpose, no discrimination can be made between serving Govt. official and a retired Govt. official, both are citizen of India and both are entitled to same treatment. When the serving employees are entitled to reimbursement of their medical claim, the retired Govt. employee cannot be discriminated in that behalf. The extension of the medical reimbursement facility to pensioners of the Govt. was even recommended by the Fifth Pay Commission and as observed above accepted by the Govt. in principle by issuing the O.M. dated 5.6.98. Unfortunately the Govt. has thereafter not taken necessary steps to amend the CS (MA) Rules but then this cannot be treated as a cause to deprive the legitimate claim of medical reimbursement of the pensioners. We note that in the case of Ram Dev Singh and Ors. v. Union of India and Ors., 2003(2) ATJ CAT 19 the Full Bench of the Tribunal Chandigarh had while considering the ambit of the CS (MA) Rules vis-a-vis the applicability to a retired Govt. employee has directed the Central Govt. to

frame a scheme within a period of six months keeping in view its resources and availability of medical facilities for reimbursement of the claims particularly for indoor treatment of the retired Govt. Officials. It is also directed that while doing so care must be taken against the retired Govt. servants, who have already taken indoor treatment and have since not been reimbursed. We find that though these directions are issued by the Full Bench as far back as on 17.3.2003, nothing appears to have been done by the Central Govt. in this behalf. We also note that the Delhi High Court in the case of Narendra Pal Singh v. Union of India and Ors., 1999 DLT 358 had permitted the reimbursement of the medical expenses of a retired Govt. employee holding that the concerned person had the right to take steps in self-preservation.

8. We also note that in a recent decision in the case Shakuntla v. State of Haryana , 2004(1) ATJ 155, Punjab and Haryana High Court dealing with the medical reimbursement claim of a retired Govt. employee along with other employees directed the sanction of the medical reimbursement claims observing that the gravity of situation has been understood by the Govt. in a far positive manner than applying the normal mathematics.

9. Gauhati High Court in the case of Gauri Sengupta v. State of Assam, 2000(1) ATJ 582 has also recognized the right of reimbursement of medical expenses even when the treatment was taken in the private nursing home.

10. In the instant case, the applicant's case reveals that the applicant having suffered heart attack was immediately rushed to the Apollo Hospital, New Delhi and was subjected to Bypass heart surgery within two days of his admission in the hospital. It clearly suggests that his condition was serious and required immediate treatment. It is an undisputed position that the Apollo Hospital, New Delhi is a recognised hospital for heart surgery so far the heart treatment is concerned and as such, the applicant was very much entitled to claim the reimbursement of the expenses incurred by him for his treatment in Apollo Hospital. The contention that the applicant could have become the member of the CGHS and having not become the member of CGHS after retirement, cannot claim the medical reimbursement is quite illogical and unacceptable. Even if the CGHS facility was

available in certain areas, could not have extended the benefit of heart treatment. Merely because the applicant was not the member of the CGHS cannot deprive him of his entitlement for reimbursement of the medical expenses incurred by him. We therefore have no hesitation in concluding that the claim of the medical reimbursement of expenses incurred by the applicant is denied on untenable grounds and therefore, the O.A. deserves to be allowed and the respondents are required to be directed to entertain the claim of reimbursement of medical treatment expenses of the applicant and reimburse the same.

11. For the reasons discussed above, we direct the respondents to entertain the medical reimbursement claim of the applicant and reimburse the admissible amount spent by the applicant for the treatment taken by him in Apollo Hospital, New Delhi. We also direct that if the amount is not reimbursed to the applicant within three months, the same would be payable with interest at the rate of 9% per annum. The O.A. stands disposed of with the above direction. No order as to costs.