

Before Permod Kohli, J.

P. S. NOOR,—Petitioner

versus

UNION OF INDIA AND OTHERS,—Respondents

C.W.P. 9037 of 2000

5th May, 2008

Constitution of India, 1950—Art.226—Instructions dated 13th February, 1995 issued by the Government of India—Pensioners claiming medical reimbursement for treatment—Rejection on ground that there is no provision in rules for allowing medical reimbursement claim of retired personnel—Instructions dated 13th February, 1995 provide that pensioners of Central Government are entitled to medical treatment—Petitioners residing in CGHS area—Petitioners held entitled to medical reimbursement.

Held, that instructions dated 13th February, 1995 applied to medical claims of Central Government Pensioners and all the Directors/ Additional Directors/Deputy Directors, CGHS have been impressed upon to settle the claims for treatment taken in recognized hospital/ Government referral hospital with prior permission of CGHS. It also indicate that even the claims relating to treatment taken in recognized hospitals, Government referral hospitals without prior permission under emergency circumstances or otherwise may be referred to Director, CGHS for Ex-Post Fact permission/relaxation of rules before reimbursement. Not only this, even claim relating to treatment taken in emergency in unrecognized private hospitals/nursing homes/clinics etc. without permission are also required to be sent to the Director CGHS/ Ministry for consideration.

(Para 8)

Further held, that claims of the petitioners have been rejected on the ground that there is no provision in rules for allowing medical reimbursement claim of retired personnel. This ground seems to be contrary to the Government instructions dated 13th February, 1995

wherein all concerned have been impressed upon by the Government of India, Ministry of Health and Family Welfare to consider their claims even if treatment is taken in unrecognized private hospitals/nursing homes/clinics under emergent circumstances.

(Para 9)

Ashok Sharma Nabhawala, Advocate *for the petitioners*.

Pardeep Bhandari, Advocate *for the respondents*.

PERMOD KOHLI, J

(1) Both these writ petitions relate to common question of facts and law and the same are being disposed of by this judgment.

(2) Petitioner in CWP No. 9037 of 2000 retired as a Deputy Comandant on 30th June, 1995 from the Central Reserve Police Force after putting in 33 years of service. The petitioner developed some symptoms of Angina in the year 1988 and underwent Angiography in P.G.I., Chandigarh, on 11th May, 1998. Thereafter, he was operated upon the Heart By-pass surgery in emergent circumstances at the Tagore Heart Care and Research Centre, Jalandhar. He raised the bill for Rs. 1,10,000 as medical reimbursement on 13th December, 1998 claiming such amount as a pensioner of Government of India. His claim was finally rejected,—*vide* order dated 13th April, 2000 by the D.I.G (Administration).

(3) Petitioner in CWP No. 9039 of 2000 also retired from Central Reserve Police Force on 1st April, 1991 from the Rank of Deputy Commandant. It is alleged that the petitioner developed chest pain on 16th July, 1998 and was diagnosed as a case of Angina. He underwent Angiography at Tagore Heart Care and Research Centre Private Ltd., Jalandhar, on 27th July, 1998. On 17th September, 1998 Angioplasty of the petitioner was performed in the same institute. He claims to have incurred a sum of Rs. 1,35,600 on his treatment for Angiography and Angioplasty and submitted the bill dated 6th November, 1998 for medical reimbursement as a pensioner. His claim has also been rejected,—*vide* communication dated 27th January, 2000 by the Commandant 9th Bn. CRPF, Mahavir Nagar, New Delhi.

(4) Earlier both these writ petitions were dismissed by a Division Bench of this Court on 18th July, 2000 in view of the instructions dated 8th July, 1999 which were held to be prospectively applicable and the personnel having retired earlier than that, their claim was held not to be covered therein. The review petitions filed by the petitioners also resulted in dismissal. The petitioners approached the Hon'ble Supreme Court of India in Civil Appeal Nos. 2837—2839 and the order passed by this Court was set aside and the case remanded for rehearing,—*vide* order dated 16th April, 2001 in the light of the Government instructions dated 13th February, 1995.

(5) I have heard the learned counsel for the parties at length and perused the record of the case.

(6) Learned counsel appearing for the respondents have relied upon the Government instructions dated 4th August, 1998 and argued that the pensioners of Central Reserve Police Force were granted benefit for the first time under these instructions.

(7) To the contrary, learned counsel for the petitioners has relied upon the Government instructions dated 13th February, 1995. As a matter of fact, the Hon'ble Supreme Court of India remanded the case back to this Court on the basis of the aforesaid instructions. It is necessary to take note of these instructions which are reproduced as under :—

“No. S-11011/1/95-CGHS (P)
GOVERNMENT OF INDIA
MINISTRY OF HEALTH AND FAMILY WELFARE
(DEPARTMENT OF HEALTH)
Nirman Bhavan, New Delhi.
Dated 13th February, 1995

The Director,
CGHS,
Nirman Bhavan,
New Delhi.

Sub : Settlement of medical claims of Central Government pensioners covered under CGHS regarding.

Sir,

I am directed to say that it has come to the notice of the Government that the medical claims of Central Government pensioners including those of Ex-Members of Parliament, retired Judges of Supreme Court and High Courts and freedom fighters covered under CGHS are being referred to Director, CGHS/Ministry before reimbursement, thereby causing hardships to the beneficiaries. All the Additional Directors/Deputy Directors, CGHS, of the cities concerned may therefore, kindly be requested once again to settle the medical claims under the powers already delegated to them, according to which they can settle the claims for treatment taken in recognised hospitals/Government referral hospitals with prior permission of CGHS, i.e. CMO-Incharge of the dispensary concerned, without referring them to Director, CGHS/Ministry of Health and Family Welfare.

The claims relating to treatment taken in recognized hospitals, Government referral hospitals without prior permission under emergency circumstances or otherwise may be referred to Director, CGHS, for *Ex-post facto* permission/relaxation of rules before reimbursement. The claims relating to treatment taken in emergency in unrecognised private hospitals/nursing homes/clinics without permission have also to be sent to the Director, CGHS/Ministry for consideration.

This issues with the approval of Secretary (Health)

Yours faithfully,

(Sd. . . .)
(BRAHAM DEV),

Under Secretary to the Government of India.”

(8) Admittedly, these instructions applied to medical claims of Central Government Pensioners and all the Directors/Additional Directors/Deputy Directors, CGHS have been impressed upon to settle the claims for treatment taken in recognised hospital/government referral hospitals with prior permission of CGHS. It also indicate that even the claims relating to treatment taken in recognised hospitals, government referral hospitals without prior permission under emergency

circumstances or otherwise may be referred to Director, CGHS for Ex-Post Facto permission/relaxation of rules before reimbursement. Not only this, even claims relating to treatment taken in emergency in unrecognised private hospitals/nursing homes/clinics etc. without permission are also required to be sent to the Director CGHS/Ministry for consideration.

(9) Claims of the petitioners have been rejected on the ground that there is no provision in rules for allowing medical reimbursement claim of retired personnels. This ground seems to be contrary to the government instructions, dated 13th February, 1995 wherein all concerned have been impressed upon by the Government of India Ministry of Health and Family Welfare to consider their claims even if treatment is taken in unrecognised private hospitals/nursing homes/clinics under emergent circumstances.

(10) The petitioners in the writ petitions have specifically mentioned that they are residing in CGHS area which fact has not been disputed by the respondents. The respondents have also not denied the factum of medical treatment received by the petitioners. Thus, the only question which falls for consideration is whether the petitioners who are, admittedly, pensioners having retired from service of Government of India, are entitled to such reimbursement? Instructions, dated 13th February, 1995 uniformly referred to retired Central Government Employees and a reading of the above instructions clearly indicate that pensioners of Central Government are entitled to medical reimbursement.

(11) Learned counsel appearing for the respondents has produced copy of the Central Government Health Scheme. Clause 1 of the Scheme contains objectives of the Scheme which, *inter alia*, provided that Scheme has been formulated to provide comprehensive medical care facilities to the employees/pensioners which is reproduced as under :—

“OBJECTIVES :

- (i) To provide comprehensive medical care facilities to the Central Government employees/pensioners and members of their families.

- (ii) To avoid cumbersome system of reimbursement of medical expenses to the employees/pensioners.”

(12) Pensioners are also covered under the Scheme. A Division Bench of this Court in CWP No. 11494 of 2007 (*Darshan Singh Rai versus Union of India and others*), decided on 13th March, 2008, has considered a similar issue of medical reimbursement of a personnel who retired from the Border Security Force. In the aforesaid case the petitioner was paid Rs. 100 p.m. as fixed medical allowance under the recommendation of the 5th Central Pay Commission while considering the stand of the State that such an employee is not entitled to medical reimbursement, the Division Bench has made the following observations :—

“A perusal of the above text makes it clear that fixed medical allowance at the rate of Rs. 100 p.m. is given to the Central Government pensioners residing in areas not covered by CGHS for meeting day-to-day medical expenses which do not require hospitalization. Therefore, as the petitioner was getting fixed medical allowance of Rs. 100 per month for meeting day-to-day medical expenses that do not require hospitalization, he is entitled to reimbursement of medical expenses for his heart ailment for which he remained hospitalized in Escorts Hospital, New Delhi, and had to undergo by-pass surgery.”

(13) The ratio of the aforesaid Division Bench judgment is fully applicable to the facts and circumstances of the present case.

(14) In view of the above, the present petitions are allowed. The respondents are directed to reimburse the medical claims to the petitioners within a period of two months from the date, a copy of this order is made available to them, failing which the respondents shall be liable to pay interest at the rate of 6 per cent per annum for the delayed payment. No costs.

R.N.R.