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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 5981/2014**

Date of decision: 13th January, 2016

JOGESHWAR MAHANTA ..... Petitioner

Through Mr. N.S. Dalal and Ms. Ruchika Sharma, Advocates.

versus

UNION OF INDIA & ORS ..... Respondent

Through Mr. Vikram Jetley, Advocate for UOI.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J. (ORAL)

Jogeshwar Mahanta, by this writ petition, seeks to challenge the order dated 30th May, 2014, passed by the Central Administrative Tribunal, Principal Bench dismissing his Original Application No.563 of 2013. The petitioner had claimed reimbursement of medical expenditure of Rs.1,38,781/- with interest @ 18% per annum and damages etc. as he was covered under the Central Government Health Scheme (CGHS scheme, for short).

2. The impugned order records that the petitioner herein was not

covered under the said scheme on the date when he was hospitalised and had undergone heart bypass surgery in December, 2009-5th January, 2010, having become member of the said scheme on 30th October, 2011.

3. The case of the petitioner before the Tribunal and before us is that the petitioner was not at fault and could not become member of the CGHS scheme post retirement as his pension control order was finalised and issued on 21st June, 2011, though the petitioner had retired on 30th June, 2007.

4. We may have found merit in the said contention, if it was correct and true, but are unable to accept the said argument for we perceive and believe that the said contention is an afterthought and make believe. The accepted position is that the petitioner had retired on 30th June, 2007. Thereafter, he did not exercise the option and subscribe to the CGHS scheme. As per the case of the petitioner, he suffered heart attack in December, 2009 and was admitted to a private hospital and, thereafter had undergone bypass surgery in January, 2010 incurring an expenditure of Rs.2,00,000/-. Rs.75,000/- was reimbursed under a mediclaim policy, leaving a balance of

Rs.1,38,781/-.

5. The petitioner applied for membership under the CGHS scheme after about 20 months in August, 2011. We have repeatedly asked the learned counsel for the petitioner to show us any rule under which the petitioner was required to produce pension order to exercise the option to be covered under the CGHS scheme after retirement. Learned counsel is unable to show and point out any such stipulation and requirement in any rule, circular or notification. He, however, relies upon a file noting in the petitioner's case dated 25th April, 2012, which was obtained by the petitioner under the Right to Information Act, 2005. We are afraid file notings do not create a rule. The noting does not record that there was a statutory or other stipulation to the said effect. Learned counsel for the respondent, on the other hand, has drawn our attention to the Swamy's Handbook relating to CGHS scheme wherein it is mentioned that upon retirement, an employee has an option to get covered under the said scheme and has to make payment of registration fee and pay annual contribution or life time contribution.

6. Looking at the facts of the present case, we are satisfied that in

the present case the petitioner by way of choice did not opt for the CGHS scheme after his retirement on 30th June, 2007 and was not a member of the scheme when he was hospitalised and operated in December, 2009-January, 2010. He became a member only on 30th October, 2011. From 30th June, 2007 till August, 2011, he did not write even a single letter seeking enrolment or membership of the CGHS Scheme.

7. The legal conclusion recorded by us is in consonance and as per the mandate of a Division Bench of this Court in ***Dal Chand Vashisht Vs. Government of NCT of Delhi and Others***, 2008 VI AD (DELHI) 44, wherein after referring to several earlier judgments, the ratio elucidated and expounded was that a person should be a subscriber of the scheme when medical procedure was performed. Where a person has not exercised the option to become a member and there was no automatic coverage under a scheme, the said person would not be entitled to benefit and reimbursement. Legal ratio in ***MCD; Union of India and Ors. Vs. Chander Prakash Gupta; Nand Ram***, W.P.(C) 3368 & 4806/2010 decided on 30th July, 2010, is identical.

8. In view of the aforesaid, we do not see any reason to interfere with the impugned order. The writ petition is dismissed.

SANJIV KHANNA, J.

NAJMI WAZIRI, J.

JANUARY 13, 2016
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