

CWP-13014-2011 and
two connected cases.

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP-13014-2011
Date of Decision : November , 2018

No. 67243026 Ex. Inspector Sital Singh
.... Petitioner.

Versus

Union of India and others.
.... Respondents.

2. CWP-6655-2012

No. 780012981 Ex. Head Constable Jai Singh
.... Petitioner.

Versus

Union of India and others.
.... Respondents.

3. CWP-15205-2012

No. 68209007 Ex. Constable Surender Singh
.... Petitioner.

Versus

Union of India and others.
.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

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Present Mr. Ravi Badyal, Advocate
for the petitioners (in
CWP-13041-2011 and CWP-15205-2012).

Mr. J.C. Malik, Advocate
for the petitioner (in CWP-6655-2012)

Mr. Namit Kumar, Advocate,
for respondents No.1 to 5 (in CWP-6655-2012).

Ms. Sheenu Sura, Advocate,
for respondents in CWP-15205-2012

SHEKHER DHAWAN, J.

As common questions of facts and law are involved in all the above titled three writ petitions filed under Articles 226/227 of the Constitution of India, with the consent of the parties, the same are being disposed of by this common order.

2. For facility of reference, facts are being taken from **CWP-13014-2011, No. 67243026 Ex. Inspector Sital Singh Vs. Union of India and others.** Present writ petition under Articles 226/227 of of the Constitution of India for quashing the impugned order dated 2.11.2010 (Annexure P/10), whereby prayer for reimbursement for medical claims of the petitioner has been rejected.

3. The petitioner was enrolled in the Army on 25.07.1964 and superannuated on 30.10.1999. During the service tenure of the petitioner, he was provided medical facilities under the Central Government Employees (Medical Attendance) Rules, 1944 (For short, “the Medical Rules”) and some amount was deducted from the salary of the petitioner towards the BSF Welfare Funds for which “Border Security Force Welfare

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Fund Rules, 1988 (for short, "1988 Rules") were framed by the Ministry of Home Affairs. As per the petitioner, on 27.08.2010, he suffered from heart pain and was shifted to a private hospital called Tagore Hospital Heart Care Centre, respondent No.4 where he remained admitted upto 31.08.2010 as indoor patient. The disease of the petitioner was diagnosed as CAD, Acute Coronary Syndrome, Trop T positive. The petitioner submitted a claim of Rs.2,54,724/- on account of his indoor treatment, but the same was declined by the respondents vide order dated 2.11.2010 (Annexure P/10).

4. In the written statement, the respondents took the plea that the petitioner was enrolled on 25.07.1964 in 36 PAP which was converted into 24 Bn. BSF and thereafter, he proceeded on voluntary retirement on 31.10.1999. The respondents admitted the fact that the medical bill of Rs.2,54,724/- was received but after examining it, the same was returned with the remarks that as per notification No. F.16-2/38-H dated 1.1.1994, reimbursement under CCS (MA) Rules is applicable to serving government servants only and as such the medical bill amounting to Rs.2,54,724/- cannot be considered and reimbursed.

5. Learned counsel for the respondents contended that the matter in controversy had been set at rest by larger Bench of Hon'ble Apex Court in case **Confederation of Ex-servicemen Associations and others vs. Union of India and others**, 2006 AIR (SC) 2945, wherein Hon'ble Apex Court had taken a view that the pensioners as well as employees in service cannot be considered to be equal and one Class, and

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the Courts cannot issue directions or guidelines to fill in the gaps. On the same point, reliance was placed upon the judgment of Hon'ble Supreme Court in case **State of Punjab vs. Ram Lubhaya Bagga, 1998 AIR (SC) 1703.**

6. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that certain facts are not disputed about the ailment and submission of medical reimbursement bill to the tune of Rs.2,54,724/- by the petitioner. The said prayer of the petitioner was declined vide impugned order, Annexure P/10 on the ground that reimbursement under CCS (MA) Rules is applicable to serving government servants only and as such the medical bill amounting to Rs.2,54,724/- cannot be considered and reimbursed.

7. The matter in controversy was subject matter of **CWP-11494 of 2007-Darshan Singh Rai vs. Union of India and others,** decided on 13.03.2008, wherein Hon'ble Division Bench observed as under:-

“The State cannot refuse reimbursement of the expenditure incurred by a Government servant for it is the bona fide duty of the Government to pay for the beneficial act of an employee as it is Welfare State. All the rules and regulations are to be considered in favour of the Government employee liberally and to his benefit. The State cannot be permitted to have an iron heard in such matters. It is not the plea of the respondents that the petitioner has not incurred the expenditure on his treatment. It is being noticed by this Court that quite often writ petitions are filed to obtain redress in the matter of reimbursement of medical expenses particularly by those who

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have retired from service, which is a sad commentary on the working style of the concerned departments and particularly of the head of those departments who must own responsibility for the indifference and delays in this regard.

In the present context, we may refer to the Nabhi's Compendium of Orders under Central Government Health Scheme where texts of various orders passed by the Central Government have been incorporated. At page 206 of this book, text of DOP & PW. O.M. No.45/57/97-P & OW dated December 19, 1997 has been given which is as under:-

“The undersigned is directed to state that in pursuance of Government's decision on the recommendations of the 5th Central Pay Commission announced in this Department's resolution No.45/86/97-P & P.W. (A) dated 30.09.1997, sanction of the President is hereby accorded to the **grant of fixed medical allowance @ Rs.100 p.m. to Central Government pensioners/ family pensioners/ residing in areas not covered by Central Government Health Scheme** administrated by the Ministry of Health & Family Welfare and corresponding Health Schemes administered by other Ministers/ Departments for their retired employees for **meeting expenditure on day-to-day medical expenses that do not require hospitalization.**”

A perusal of the above text makes it clear that fixed medical allowance @ 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 required hospitalization,

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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.

For the aforesaid reasons, this writ petition is allowed and the respondents are directed to reimburse the medical expenses incurred by the petitioner during his treatment in Escorts Hospital, New Delhi, equal to the rates of A.I.I.M.S., New Delhi.”

8. Similar observations were made by Hon'ble Division Bench of this Court in **CWP-26270 of 2015-Union of India and others vs. Mohan Lal Gupta and another**, decided on 17.01.2018 wherein it was held as under:-

“We are thus of the opinion that given the judicial finality accorded in an identical petition which is not even remotely deviant from the present one, there is no reason for us not to take a similar view. The judgment relied upon by the learned counsel for the petitioners does not in any way enhance their case. It is pertinent to mention here that we are dealing with the cases of persons who have retired and are in dire need of medical attention in their old age. It is also an accepted fact by the petitioners themselves that CGHS facilities are not available in most of the areas where the respondents reside including an important town like Ambala.

If that be so, then the observations extracted above would be attracted to the present cases in all ferocity. Consequently, we decline interference. Hence, instant petitions are hereby dismissed.”

9. Identical matter was before this Court in **CWP-5571-2008, Bhupinder Singh vs. Union of India and others**, decided on 07.08.2009

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(Annexure P/4) and **LPA-1075 of 2010-Union of India and others vs. Amarjit Singh**, decided on 01.09.2010 (Annexure P/6).

10. In view of the above, the present writ petitions are also accepted and the respondents are directed to re-imburse the medical expenses incurred by the petitioners during his treatment in private Hospitals equal to the rates of of PGI/AIIMS within a period of three months from the date of receipt of copy of this order.

(SHEKHER DHAWAN)
JUDGE

November 20, 2018.
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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes