

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. CWP no. 26270 of 2015 (O&M)

Union of India and others
....Petitioner(s)
Versus
Mohan Lal Gupta and another
...Respondent(s)

2. CWP no. 10621 of 2016 (O&M)

Union of India and others
....Petitioner(s)
Versus
Gian Chand and another
...Respondent(s)

3. CWP no. 11329 of 2016 (O&M)

Union of India and others
....Petitioner(s)
Versus
A.L.Anand and another
...Respondent(s)

4. CWP no. 11488 of 2016 (O&M)

Union of India and others
....Petitioner(s)
Versus
Manohar Lal Takkar and another
...Respondent(s)

5. CWP no. 11553 of 2016 (O&M)

Union of India and others
....Petitioner(s)
Versus

Lachhman Dass and another
...Respondent(s)

6. CWP no. 11794 of 2016 (O&M)

Union of India and others
....Petitioner(s)
Versus
Harbhajan Singh and another
...Respondent(s)

7. CWP no. 11809 of 2016 (O&M)

Union of India etc.
....Petitioner(s)
Versus
Central Administrative Tribunal and another
...Respondent(s)

8. CWP no. 11852 of 2016 (O&M)

Union of India and others
....Petitioner(s)
Versus
Chhota Ram and another
...Respondent(s)

9. CWP no. 15706 of 2016 (O&M)

Union of India and others
....Petitioner(s)
Versus
Baldev Singh and another
...Respondent(s)

10. CWP no. 871 of 2018 (O&M)

Accountant General (A&E), Punjab
....Petitioner(s)
Versus

Date of Decision : 17.01.2018

**CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR JUSTICE RAJBIR SEHRAWAT**

Present : Mr. Namit Kumar, Advocate for petitioners
in CWP nos. 26270 of 2015, 11329, 11488, 11553, 11794,
15706 of 2016

Mr.Pritam Saini, Advocate for petitioners
in CWP no. 10621 of 2016

Mr. Vikrant Pamboo, Advocate for petitioners
in CWP no. 11809 of 2016

Mr. Puneet Gupta, Advocate for petitioners
in CWP no. 11852 of 2016

Ms. Moushmi Mittal, Advocate for
Mr. Barjesh Mittal, Advocate for petitioners
in CWP no. 871 of 2018

Mr. J.N.Gupta, Advocate for respondent no.1
in CWP nos. 11553 and 11794 of 2016

Mr.M.K.Bhatnagar, Advocate for respondent no.1
in CWP no. 10621 of 2016

MAHESH GROVER, J.(ORAL)

This order will dispose of ten writ petitions bearing CWP nos.
26270 of 2015, 10621, 11329, 11488, 11553, 11794, 11809, 11852, 15706
of 2016 and 871 of 2018.

We have perused the order of the Central Administrative
Tribunal disposing of the application filed by the present respondents
seeking medical reimbursement at PGIMS/AIMS rates. The said application
was disposed of on the basis of the earlier precedents.

Learned counsel for the petitioners contend that directions given
by the Tribunal are un-sustainable in view of the fact that there is a clear

distinction between retired and the serving employees whose perks cannot be equated on the ground of any legitimate principle or any touch stone of law. He has placed reliance on judgments of the Hon'ble Supreme Court rendered in cases titled as '**Confederation of Ex-servicemen Associations and others vs. Union of India and others**' reported as 2006(4) SCT 128, '**State of Punjab vs. Ram Lubhaya Bagga**' reported as 1998(1) SCT 716 and '**Union of India and others vs. S.K.Saigal and others**' reported as 2007(1) SCT 286.

Respondents on the other hand contend that precedent relied upon by the Tribunal was never challenged by the writ petitioners before the Hon'ble Supreme Court thereby leading to several other decisions by the Tribunal. Likewise some of these were challenged before the Hon'ble Supreme Court by way of SLP and met with dismissals. It is thus contended that the matter having attained judicial certainty would offer no ground to the writ petitioners to raise any challenge to their claims. It is further contended that the respondents were never given the option of joining the scheme as is now being sought to be asserted before the Court by the writ petitioners and in any eventuality most of the employees are residing in areas where CGHS benefits are not available which force them to opt for fixed medical allowance. Reliance has been placed on Division Bench judgement of this Court rendered in case titled as '**Mohinder Singh vs. Union of India and others**' reported as 2008(2) SCT 239 wherein this Court while referring to the letter by the Union of India itself had the occasion to comment on an identical controversy. For the purposes of reference same is extracted herebelow:-

10. While concluding the matter, we may also refer, to the Text of M.H.&F.W.O.M No. S-14025/4/96 M.S dated June 05, 1998, regarding extension of the Rules to pensioners residing in areas not covered by CGHS, which is at page 215 of the Nabhi's Compendium of Orders. For facility of reference, it is reproduced as under:-

“The undersigned is directed to refer to the Department of Pension and Pensioners' Welfare O.M No. 45/74/97-PP&PW (C) dated 15.4.1997 on the above subject and to say that it has been decided by the Ministry that the pensioners should not be deprived of medical facilities from the Government in their old age when they require them. This Ministry has, therefore, no objection to the extension of the CS(MA) Rules to the Central Government pensioners residing in non CGHS areas as recommended by the Pay Commission. However, the responsibility of administering the CS (MA) Rules for pensioners cannot be handled by CGHS. It should be administered by the respective Ministries/Departments as in the case of serving employees covered under CS(MA) Rules, 1944. The Department of Pension and Pensioners

Welfare would need to have the modalities worked out for the implementation of the rules in consultation with the Ministries/Department prior to the measure being introduced to avoid any hardship to the pensioners. The pensioners could be given a one time option at the time of their retirement for medical coverage under CGHS or under the CS (MA) Rules, 1944. In case of a pensioner opting for CGHS facilities he/she would have to get himself/herself registered in the nearest CGHS city for availing of hospitalization facilities. In such cases, the reimbursement claims would be processed by the Additional Directors, CGHS of the concerned city. For those opting for medical facilities under the CS (MA) Rules, the scrutiny of the claims would have to be done by the parent office as in the case of serving employees and the payment would also have to be made by them. The list of AMAs to be appointed under CS(MA) Rules would be decided Ministry/Department wise as provided under the rules. The beneficiaries of the CS(MA) Rules, 1944 would be entitled to avail of hospitalization facilities as provided under these rules.

The Departments of Pension and

Pensioners' Welfare are requested to take further necessary action in the matter accordingly.”

11. In the written statement, it has been specifically mentioned by the respondents that as per the provisions contained in the Rules, the pensioners who are not residing in the areas covered by the CGHS are entitled to medical allowance at the rate of Rs.100/- per month; meaning thereby that the petitioner had to perforce opt fixed medical allowance as the area where he was residing was not covered by the CGHS. As per text of M.H & F.W.O.M No. S-14025/4/96 M.S dated June 05, 1998 reproduced above, in order to avoid any hardship regarding availing of medical facilities by the pensioners in their old age, the Central Government decided to extend the implementation of the Rules to its pensioners residing in non CGHS areas as recommended by the Pay Commission. However, the responsibility of administering the Rules has been left to the respective Ministries/Departments as in the case of serving employees covered under the Rules. For those opting for medical facilities i.e fixed medical allowance of Rs.100/- under the reimbursement is to be done by the parent office as in the case of serving employees and the payment would also have to be made by them. It has also been clearly mentioned in the above-quoted text that the

beneficiaries of the Rules would be entitled to avail of hospitalization facilities as provided under these rules.

12. For the aforesaid reasons, this writ petition is allowed and the order declining reimbursement to the petitioner is quashed. The respondents are directed to reimburse the medical expenses incurred by the petitioner during his treatment in D.M.C Ludhiana, at the rates fixed by the Central Government under the Rules or the actual expenditure incurred, whichever is less. The request of the petitioner for sanction of Rs.20,000/- for follow up treatment be also considered by the respondents under the Rules.

Writ petition allowed.”

This judgment was also challenged by the petitioners in the Hon'ble Supreme Court where it met with a dismissal. Another Division Bench of the Himachal Pradesh High Court in case titled as '**Union of India and another versus Shankar Lal Sharma**' reported as 2016(1)SCT 413 has while relying on the Division Bench judgment of this Court in Mohinder Singh's case (supra) observed as follows:-

“47. In the instant case, O.M.dated 05.06.1998 was neither suspended nor cancelled. According to O.M. Dated 20.08.2004, the matter was required to be discussed, but the Court can take judicial notice of the fact that since till date, no decision has been taken, the Union of India has accepted the applicability of

O.M. Dated 05.06.1998, otherwise some decision was bound to have been taken either to suspend or cancel O.M. dated 05.06.1998 for 17 years. In view of the language employed in O.M. dated 20.08.2004, the principle of contemporanea expositio would not be attracted. It is wrong on the part of the petitioners to contend that O.M. dated 05.06.1998 was superseded. Word 'supersession' has not been mentioned at all in O.M. dated 20.08.2004. O.M. dated 05.06.1998 also supplemented the CS(MA) Rules, 1944.

48. O.M. dated 05.06.1998 was discussed by the learned Central Administrative Tribunal in its various judgments including O.A. No.205 of 2003 titled as Mr. Prabhakar Sridhar Bapat v. Union of India and another, decided on 10.11.2003. It was also discussed by the Division Bench of Gujarat High Court in SCA No.3843/2004, whereby the petition filed by the Union of India was dismissed on 02.04.2004 and also by the Punjab and Haryana High Court in CWP No.6559 of 2006, decided on 13.03.2008. In this petition also, a specific ground has been taken that identical issues raised in O.A. No.205/2003, titled as Mr. Prabhakar Sridhar Bapat v. Union of India and Another was pending before the Hon'ble Supreme Court including the applicability of O.Ms. Dated 05.06.1998 and 20.08.2004. The Hon'ble

Supreme Court has dismissed the SLPs on 03.04.2012. The Review Petition was also dismissed by the Hon'ble Supreme Court on 30.10.2013. Thus, the judgment rendered by the learned Central Administrative Tribunal Ahmedabad Bench in O.A. No.205 of 2003 on 10.11.2003, which has merged in the judgment rendered by the Division Bench of Gujarat High Court in Special Civil Application No.3843/2004 decided on 02.04.2004, were upheld by the Hon'ble Supreme Court on 03.04.2012.

49. The Union of India should have taken a common sense view to address the serious issue of welfare of its retired employees. We can take judicial notice of the fact that a retired person needs more medical care vis-a-vis a young employee. A serving employee, who enjoys benefits under the CS(MA) Rules, 1944, cannot be left high and dry immediately after retirement for want of medical care. His medical issues are required to be looked into with more sensitivity, compassion and sympathy. His genuine requirements for medical treatment cannot be permitted to be buried in the labyrinth of redtapism. The recommendations of the Pay Commission, though, recommendatory, have to be given highest regard, since the Central Government has planned to improve the conditions of service of Central

Government employees by examining, reviewing, evolving and recommending changes including pension and other retiral benefits.

50. The Seventh Central Pay Commission constituted vide notification, dated 28.02.2014, has also strongly recommended the introduction of Health Insurance Scheme for Central Government employees and pensioners. In the interregnum, for the benefit of pensioners residing outside the CGHS areas, the Commission recommended that CGHS should empanel those hospitals, which are already empanelled under CS(MA) ECHS for catering to the medical requirements of these pensioners on a cashless basis. The Commission has also recommended that the remaining 33 postal dispensaries should be merged with CGHS and all postal pensioners, irrespective of their participation in CGHS while in service, should be covered under CGHS after making requisite subscription.

51. The legal maxim “salus populi suprema lex esto” can usefully be called in aid in the present case also. It means “Let the good(or safety) of the people be the Supreme (or highest) law”. Salus is a latin word, which means health/prosperity, safety as per Black's Law Dictionary. Thus, health of the people should be the supreme law.

52. It is the prime responsibility of the State Government to protect health and vigour of retired Government officials, this being their fundamental right under Article 21, read with Articles 39(3), 41, 43, 48A of the Constitution of India. The steps should be taken by the State to protect health, strength and vigour of the workmen. Non-providing of post-retirement medical care to retired Government official in a city not covered by CGHS at par with in service employee would result in violation of Article 21 of the Constitution of India. Moreover, employees need medical care most after their retirement. The State cannot call its own actions as wrong. We have clarified and explained O.M. dated 20.08.2004 and it is made clear that all the Central Government pensioners residing in non-CGHS areas would be covered either under the CS(MS) Rules, 1944 or CGHS as per their option to be sought for by the Central Government. In order to avoid litigation, this judgment shall apply to all the retired Government officials residing in non-CGHS areas. There should be equality of health benefits to retirees as well in their evenings of life. There cannot be any discrimination while extending the social benefits to in service and retirees. It is the prime responsibility of the State to protect the health of its workers. In view of the

phraseology employed in O.M. dated 05.06.1998, Note 2 appended to Rule 1 is read down to extend the benefit of CS (MA) Rules, 1944 to retired Government officials residing in non-CGHS areas to save it from unconstitutionality and to make it workable. The higher Courts have to evolve new interpretive tools in changing times. The neo capitalism may concentrate wealth in the hands of few persons which would be contrary to the philosophy of the Constitution of India. Right to health is a human right. The action of the petitioner-Union of India not to reimburse the medical bills to the respondent and also not giving option to him and similarly situate persons residing in a city not covered under CGHS as per O.M. dated 05.06.1998 to either opt for CGHS Scheme or CS (MA) Rules, 1944, is illegal, arbitrary, capricious, discriminatory, thus, violative of Articles 14, 16 and 21 of the Constitution of India. The decision in matters pertaining to the health of the employee should be taken with utmost humane approach.”

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.

(Mahesh Grover)
Judge

17.01.2018
rekha

(Rajbir Sehrawat)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No