

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Civil Writ Petition No.10110 of 2016
Decided on : 09.04.2019**

Braham Prakash

... Petitioner

Versus

Union of India and others

... Respondent

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. Anil Kumar Garg, Advocate
for the petitioner.

Mr. Deepak Malhotra, Advocate
for the respondents.

G.S. Sandhawalia, J. (Oral)

In the present writ petition filed under Article 226/227 of the Constitution of India, the petitioner seeks directions for quashing of the letter dated 23.09.2015 (Annexure P-3), whereby the claim for medical treatment of ₹1,31,938/- has been rejected on the ground that he is drawing Fixed Medical Allowance @ ₹500/- per month after retiring from the Government Service in April, 2003 and, therefore, the claim cannot be entertained. Challenge has also been raised to a similar decision taken on 07.12.2015 (Annexure P-5), whereby claim of ₹87,654/- was rejected on the same ground. Vide communication dated 29.03.2016 (Annexure P-9), the representation dated 02.12.2015 (Annexure P-4) for claiming amount was rejected while referring to the decision of the Delhi High Court, which had been appended and the petitioner was asked to seek orders in his favour from the appropriate Court of law.

It is not disputed that the petitioner has retired from the post of

Foreman Machine from Government of India Press at Nilokheri, Karnal on 30.04.2003 (Annexure P-1). The claim as such was on account of the fact that his wife was suffering from heart problem and had to undergo Bypass Surgery for which she was admitted in the hospital on 22.06.2015 and was discharged on 13.07.2015. She was, thereafter, again admitted in PGI, Chandigarh from 30.09.2015 to 09.10.2015 for which second claim of ₹87,654/- (Annexure P-4) was made. It is in view of the treatment taken for indoor patient, the claim was made for two amounts. The last claim was for admission from 01.11.2015 to 06.11.2015, which was at Hospital Amritdhara, Choura Bazar, Karnal of ₹48,416/-. Thereafter, there was another admission at PGI, Chandigarh from 06.11.2015 to 12.11.2015 for which an additional amount of ₹22,500/- was claimed, taking the total to ₹70,916/- for the 3rd claim.

The respondents have only fallen back on instructions dated 19.11.2014 (Annexure R-I) and the fact there are no rules available for retired persons, who are getting the fixed medical allowance of ₹500/- per month. It is also further submitted that in Annexure R-I and R-II issued by the Ministry of Personnel, Public Grievance & Pensions it had been clarified that the pensioners as well as the future retirees will have to exercise one time option to avail the medical facilities under the Central Government Health Scheme (CGHS). Therefore, since the petitioner had opted for getting the fixed medical allowance initially on 10.11.2003 (Annexure R-III), which admittedly has been raised to ₹500/- per month, the claim has been denied.

A perusal of Annexure R-I would go on to show that it is pertaining to day-to-day medical expenses, which do not require hospitalization.

Similar issue came up before the Division Bench of this Court in '**Darshan Singh Rai Vs. Union of India and others**' 2008 (2) SCT 242, which was also a case of medical expenses on account of surgery of heart from Escorts Heart & Research Institute, New Delhi. The defence was similar regarding the fixed allowance. The Division Bench came to the conclusion that the same was only for pensioners residing in areas not covered by CGHS being the expenses for treatment per month and did not pertain to the hospitalization charges for which the petitioner was entitled for the reimbursement. The relevant portion of the said judgment reads as under:-

“7. 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 heart 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 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.

8. 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 30-9-1977, 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 administered by the Ministry of Health & Family Welfare and corresponding Health Schemes administered by other Ministries / Departments for their retired employees for meeting expenditure on day-to-day medical expenses that do not require hospitalization.”

9. 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 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.

10. 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.

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Writ Petition allowed.”

In similar circumstances, another Division Bench of this Court in **LPA No.2372 of 2011 'Assistant Commissioner Income Tax Vs. J.R. Dhingra and others'** while placing reliance upon the judgment of the Delhi High Court passed in **W.P (C) 889 of 2007 'Kishan Chand Vs. Govt. of NCT and others'** dated 12.03.2010 dismissed the appeal against the order of the learned Single Judge, whereby the appellants were directed to reimburse the medical expenses incurred for the treatment at Fortis Hospital, Mohali.

Keeping in view of the above and in view of the settled principle that the pensioner cannot be denied the benefit as the State is under an obligation for reimbursing the medical expenses on the medical treatment, the present writ petition is allowed and the communication dated 23.09.2015 (Annexure P-3), 07.12.2015 (Annexure P-5) and 29.03.2016 (Annexure P-9) are quashed. The respondents shall take steps to process the case of the petitioner for reimbursement for the purpose mentioned above and make necessary payment within a period of 2 months from the date of the receipt of the certified copy of this order.

The writ petition is allowed, accordingly.

(G.S. SANDHAWALIA)
JUDGE

APRIL 09, 2019
Naveen

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No