

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

**Civil Writ Petition No.27697 of 2017
Decided on : 27.08.2019**

Kuldeep Singh Kanwar

... Petitioner

Versus

Additional Director, Central Government Health Scheme (CGHS),
Chandigarh and others

... Respondents

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

Present: Mr. Dinesh Singh Rawat, Advocate
for the petitioner.

Ms. Sheenu Sura, 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 reimbursement of the medical bills of ₹2,41,776/- incurred by him on account of the Heart Surgery on 05.12.2010 at Fortis Hospital, Mohali.

2. The said claim has been rejected vide communication dated 19.03.2015 (Annexure P-9) on account of the fact that the same was not reimbursable as he was not processing a valid Central Government Health Scheme (CGHS) Token Card at the time of treatment.

3. It is not disputed that the petitioner has served with the Central Industrial Security Force and had taken voluntary retirement from the post of Inspector in CISF on 31.10.2003. Belonging to Himachal Pradesh, he is residing at village Pirthipur, Tehsil Amb, District Una. He was receiving his pension from the State Bank of India, Daulatpur Chowk, Una and was received a fixed medical allowance of ₹300/- per month.

4. It is his case that this was being done on account of the fact that the CGHS did not cover his place of stay. He had applied for stoppage of the same on 01.11.2010 (Annexure P-2) to the Branch Manager of State Bank of Patiala, so that he could apply for the CGHS Medical Card for his own and his family members treatment.

5. It is not disputed that the medical allowance of ₹300/- have been stopped w.e.f. 01.11.2010, as per the certificate issued by the Bank dated 13.05.2015 (Annexure P-3). Unfortunately before he could be covered under the CGHS, he suffered a heart attack and had to be taken to the Fortis Hospital, Mohali, Punjab where Angiography was done on 05.12.2010. It is his case that he was informed on 09.12.2010 to avail the CGHS facility and he had also been sanctioned a sum of ₹35,000/- out of the Central Welfare Fund. It is further his case that thereafter on account of receiving the CGHS Card on 18.01.2011 (Annexure P-6), he had submitted his reimbursement bills of ₹2,06,776/- after subtracting ₹35,000/-. On account of the fact that scheme was prospective in nature as such he has not been granted the said benefit.

6. Needless to say that the petitioner has been running from pillar to post and had also made representation to the Prime Minister of India on 14.07.2014 (Annexure P-7) and had also sought help from the local Member of Parliament, which has led to the rejection order passed on 19.03.2015 (Annexure P-9).

7. The defence of the respondents No.1 & 4 is that the petitioner took the treatment from a private hospital for the period from

05.12.2010 and, therefore, the cover could not be extended with retrospective effect. It is further the case of the respondents that the petitioner has received the CGHS card on 18.01.2011 for whole life at his own without intimation to pay account office and without submitting NOC to this effect.

8. Similar stance is of respondents No.2 and 5 that he has been given fixed medical allowance of ₹100/- per month. It is not disputed that ₹35,000/- was given by the Director, CISF from the Central Welfare Fund.

9. This Court in **CWP No.10110 of 2016 'Braham Prakash Vs. Union of India and others'** decided on 09.04.2019 has examined the issue regarding the payment of fixed medical allowance and the fact of medical reimbursement. It cannot be disputed that the fixed medical allowance is pertaining to day-to-day medical expenses, which do not require hospitalization. Even if the petitioner as such was drawing fixed medical allowance on the date when the procedure was done on 05.12.2010, the same would not be cover his medical expenses of hospitalization and, therefore, respondents cannot wish away reimbursement of the expenses as such which have been incurred by the petitioner.

10. 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.

Writ Petition allowed.”

11. 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

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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.

12. 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. The denial as such vide communication dated 19.03.2015 (Annexure P-9) is held to be without any justification. The respondents shall take steps to process the case of the petitioner for reimbursement for the purpose mentioned above and make necessary payment of ₹2,06,776/- within a period of 2 months from the date of the receipt of the certified copy of this order.

13. The writ petition stands allowed, accordingly.

AUGUST 27, 2019
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No