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

% *Date of Judgment : 18th September, 2019*

+ **W.P.(C) 8051/2018**

UNION OF INDIA AND ORS. Petitioner
Through: **Mr.R.V.Sinha, Mr.A.S.Singh and
Mr.Amit Sinha, Advts.**

versus

SHRI SHIV RAM SINGH NAULAKHA Respondent
Through: **Mr.Praveen Kumar, Advocate.**

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

G.S. SISTANI, J. (ORAL)

1. The present petition is directed against the order passed on 04.05.2018 by the Central Administrative Tribunal (Tribunal), by which the O.A. filed by the respondent herein stands allowed.
2. Some facts which are required to be noticed for disposal of this writ petition are that the respondent was appointed as Postal Assistant on 01.04.1963. The respondent superannuated on 30.11.2003 from the post of Sub-Postmaster. Post his retirement, the respondent settled at Mathura which admittedly is not a Central Government Health Scheme (CGHS) covered city. Based on the representations made by retired employees residing in non-CGHS covered areas, the Ministry of Health and Family Welfare vide O.M. dated 05.06.1998 gave a one-time option to the employees post retirement for opting for medical coverage under

CGHS or to remain covered under the Central Services (Medical) Allowance Rules, 1944. The retired government servants who opted for CGHS were required to be registered with the nearest CGHS city for available hospitalization facilities. The Additional Director of the concerned CGHS city was designated as the competent authority for reimbursement of the medical claims.

3. It is not in dispute that vide a letter dated 19.10.2015, the respondent wrote to the Senior Superintendent of Post Offices, Mathura Division, that he and his wife were suffering from various diseases and required CGHS facilities. He also sought information regarding medical payment for issuance of the card. Fate and destiny however had a different plan for the respondent as he suffered a heart attack on 06.11.2015 and was taken to Pushpanjali Institute of Cardiac Sciences, Agra where he was hospitalized from 06.11.2015 to 11.11.2015. The certificate from the hospital reads as under:

“This is to certify that Mr. Shiv Ram Singh Naulakha, 72 old male, normotensive, non-diabetic, with no family history of ischemic heart disease, presented on 06.11.2015 as a case of CAD, ACS, Acute AAMI. Subsequently Patient underwent CAG and Primary PTCA+stent to LAD on 07/11/2015 in same sitting. Later patient was discharged on 11/11/2015. He has been under my treatment on OPD basis since then.”

4. A bill in the sum of Rs.2,34,344/- towards medical expenses was received from the hospital. The respondent sought medical reimbursement vide a letter dated 05.12.2015. Petitioner No.3 herein replied to the said letter vide communication dated 09.12.2015 informing that pensioners are not given CGHS benefits nor is there any provision for reimbursement of their medical expenses, which led to

filing of the O.A.

5. Mr.R.V.Sinha, counsel for the petitioner, submits that the respondent is not entitled to reimbursement as he was not covered under CGHS as he did not possess a CGHS card, while placing reliance on ***LIC of India vs. R.Dhandapani*** reported at (2006) 13 SCC 613. Mr.Sinha submits that the Supreme Court of India has found the idea of granting reliefs in cases based purely on sympathy, which relief cannot otherwise be granted, although well-meaning but wholly unsustainable. Para 8 of the judgment is produced as under:

“8. In recent times, there is an increasing evidence of this, perhaps well-meant but wholly unsustainable, tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the Courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of the Courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability. (See: Kerala Solvent Extractions Ltd. v. A. Unnikrishnan and Anr.)”

6. In support of his submissions counsel for the petitioner has also placed reliance on the decision rendered by the Supreme Court in ***Sudhir Kumar Consul vs. Allahabad Bank*** reported at (2011) 3 SCC 486, more particularly paras 31 and 32 which are reproduced as under:

“31. We have sympathies for the appellant but, in a society governed by the rule of law, sympathies cannot override the

Rules and Regulations. We may recall the observations made by this Court while considering the issue of compassionate appointment in public service.

32. In *LIC v. Asha Ramchandra Ambekar* [(1994) 2 SCC 718 : 1994 SCC (L&S) 737 : (1994) 27 ATC 174] wherein the Court observed: (SCC p. 721, para 10)

“10. ... The High Courts and the Administrative Tribunals cannot confer benediction impelled by sympathetic consideration. ... Yielding to instinct will tend to ignore the cold logic of law. It should be remembered that ‘law is the embodiment of all wisdom’. Justice according to law is a principle as old as the hills. The courts are to administer law as they find it, however, inconvenient it may be.”

7. Learned counsel for the respondents submits that the case of the respondent is fully covered by the abovesaid O.M. and extension of CS (MA) Rules, 1944 to Pensioners residing in areas not covered by CGHS. He relies upon paras I, II and III of these rules, which are reproduced as under:

“I. Pensioners/Family Pensioners residing in an area not covered by CGHS (or corresponding health schemes of the Ministries/Department) and who have specifically' opted for not availing of outdoor facilities from the nearest CGHS dispensary, are entitled for a fixed medical allowance of Rs. 500 p.m. for meeting day-to-day medical expenses that do not require hospitalisation.

II Pensioners who have opted for a availing the fixed medical allowance, but also desire to avail CGHS facilities for indoor hospitalisation treatment from the nearest CGHS covered city, can be issued CGHS cards bearing stamp ' NOT VALID FOR OPD TREATMENT.'

III Pensioners whose places of residence are not served by CGHS (or any corresponding health scheme), even though the place of residence falls within a CGHS covered city, shall also be eligible for the fixed medical allowance on furnishing

- (a) an undertaking that he has not obtained a CGHS card and
- (b) a certificate from CGHS authorities or concerned ministry / Department, to the effect that the place of pensioner's residence is not served by a CGHS dispensary.”

8. Learned counsel for the respondent has also relied upon a decision rendered by the Supreme Court of India in *Shiva Kant Jha vs. Union of India*, (2018) 16 SCC 187, more particularly, para 17, which is reproduced as under:

“17. It is a settled legal position that the government employee during his lifetime or after his retirement is entitled to get the benefit of the medical facilities and no fetters can be placed on his rights. It is acceptable to common sense, that ultimate decision as to how a patient should be treated vests only with the doctor, who is well versed and expert both on academic qualification and experience gained. Very little scope is left to the patient or his relative to decide as to the manner in which the ailment should be treated. Speciality hospitals are established for treatment of specified ailments and services of doctors specialised in a discipline are availed by patients only to ensure proper, required and safe treatment. Can it be said that taking treatment in speciality hospital by itself would deprive a person to claim reimbursement solely on the ground that the said hospital is not included in the government order. The right to medical claim cannot be denied merely because the name of the hospital is not included in the government order. The real test must be the factum of treatment. Before any medical claim is honoured, the authorities are bound to ensure as to whether the claimant had actually taken treatment and the factum of treatment is supported by records duly certified by doctors/hospitals concerned. Once, it is established, the claim cannot be denied on technical grounds. Clearly, in the present case, by taking a very inhuman approach, the officials of CGHS have denied the grant of medical reimbursement in full to the petitioner forcing him to approach this Court.”

9. We have heard learned counsels for the parties.

10. The short question which arises for our consideration is whether the respondent would be entitled to reimbursement in the sum of Rs.2,34,344/- against a bill which was raised by the Pushpanjali Institute of Cardiac Sciences for his treatment from 06.11.2015 to 11.11. 2015 when he suffered heart attack on 06.11.2015. The factum of hospitalization is established on the basis of certificate dated 19.12.2015, which we have extracted in the foregoing paragraph.
11. It is not in dispute that a government servant is not excluded from the CGHS by virtue of residing in an area which is not covered by the CGHS. The rationale behind this rule is that in certain areas there may not be CGHS facilities but the aim, objective and purpose is not to deprive the government servant from health benefits to which he is entitled after his retirement. In this case, the respondent and his wife were suffering from various ailments. Prior to his suffering the heart attack he had taken steps to ensure that he was provided the CGHS card and he was also ready to pay the fee for the same. Before his request could be acted upon, he suffered a heart attack. The judgments relied upon by the Mr.Sinha in our view do not apply to the facts of the present case. The respondent is not seeking any reimbursement which he would not otherwise be entitled to. Territorial boundaries cannot deprive a retiree of the benefits granted under the Central Government Health Scheme. The reimbursement which he is entitled to is in accordance with law and government policy; and are the respondent's entitlement on account of having spent a large number of years working for the Central Government. Therefore, the rule sought to be relied upon by the counsel for the respondent would be applicable.

12. In the above view of the matter, we find no infirmity in the order passed on 04.05.2018 by the Central Administrative Tribunal. The writ petition is accordingly dismissed.
13. We are informed that that medical bill would have been returned. Copy of the bill forms part of the writ petition and has been filed at page 87 of the paper book. The original bill be filed before the department within four weeks. Reimbursement be granted to the respondent within four weeks from the date of submission of the original bill, failing which the reimbursement would be paid along with 6% interest per annum.

G.S. SISTANI, J

ANUP JAIRAM BHAMBHANI, J

SEPTEMBER 18, 2019/rb