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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 21.08.2020

Pronounced on: 17.11.2020

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W.P.(C) 1342/2012 and CM 12334/2017

SHAILENDER CHOPRA

..... Petitioner

**Through: Mr. Naveen R. Nath, Mr. Rahul
Jain and Mr. Abhimanyu Verma,
Advocates**

versus

**NATIONAL AVIATION COMPANY OF
INDIA LTD. AND ANR.**

..... Respondents

**Through: Dr. Lalit Bhasin, Ms. Nina Gupta,
Ms. Ratna D. Dhingra, Ms.
Ananya Marwah, Mr. Chirag
Nassa and Mr. Ajay Pratap Singh,
Advocates**

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

CM 17037/2020

1. Present application has been filed by the Petitioner seeking directions to the Respondents to release the medical benefits to the Petitioner with immediate effect.

2. The writ petition assails the order dated 23.11.2010 passed by the Disciplinary Authority as well as the Appellate Order dated 14.11.2011. The Disciplinary Authority after a departmental inquiry imposed a

penalty of “dismissal from service of the company with immediate effect with release of full terminal benefits”, on the Petitioner. The said order was upheld by the Appellate Authority. The writ petition is still pending and during the pendency the Petitioner has attained the age of superannuation on 30.06.2015, upon attaining the age of 58 years.

3. Learned counsel for the Petitioner/Applicant contends that in terms of the Service Regulations/Standing Orders of the Respondents, “Dismissal” is one of the prescribed penalties and can be with or without retirement benefits, in part or in full. The retiral benefits have to be reckoned based on length of service. One of the prescribed benefits is a medical scheme and is applicable to employees even on dismissal with full retiral benefits. Petitioner has made representations for extending him the medical benefits, but to no avail.

4. It is further contended that challenge to the dismissal order is pending in the present petition and the final hearing is likely to take some time. Petitioner is a senior citizen and in urgent need of medical care. He is suffering from hypertension, diabetes as well as other complications such as diabetic retinopathy and diabetic neuropathy. He requires constant medical aid due to painful inflammation and hemorrhaging. Getting medical care is even otherwise a fundamental right under Article 21 of the Constitution of India as held in various judgments by the Supreme Court and this Court.

5. It is also contended by counsel for the Petitioner that in reply to the application dated 27.03.2017 filed by the Petitioner, Respondents have admitted that there is an optional Contributory Pension Scheme and that the amount shall be directly paid by LIC, on the Petitioner furnishing the

requisite forms. Once the Petitioner is entitled to benefit of a pension scheme there is no reason why he should be deprived of the medical benefits, which are the urgent need of the hour.

6. Learned counsel has also drawn the attention of the Court to a judgment by a Division Bench of this Court in *Air India Ltd. vs. Rakesh Bedi & Anr ILR (2009) IV DELHI 534* wherein the Division Bench has observed that while passing the order of dismissal, Disciplinary Authority can deny full retiral benefits or grant the benefits in part. Thus, when an employee is dismissed from service with full retiral benefits, it means that he or she will be entitled to all retirement benefits as are available or payable to a retired employee. Based on this interpretation as well as after examining the relevant medical schemes, the Division Bench directed Air India Ltd. to provide medical benefits to the employee therein.

7. Per contra Dr. Lalit Bhasin learned counsel for the Respondents vehemently opposes the grant of medical benefits to the Petitioner. It is argued that a charge sheet was issued against the Petitioner and on an inquiry the charges were duly proved. After affording full opportunity to the Petitioner, the Disciplinary Authority imposed the penalty on him. It is argued that the penalty imposed is dismissal from service with release of full terminal benefits and not retiral benefits. In so far as the terminal benefits are concerned, gratuity amounting to Rs.5,07,115/- has been released to the Petitioner vide cheque dated 14.09.2011 and the Provident Fund amounting to Rs.19,07,000/- has been paid vide cheque dated 10.12.2013. The medical benefits under the Service Regulations of the Respondents are retiral benefits and cannot be released to an employee

who is dismissed from service as he cannot be equated to an employee who stands “retired”.

8. Dr. Bhasin draws the attention of the Court to “Air India Employees’ Service Regulations 2013”. Regulation 14 deals with retirement and prescribes that an employee shall superannuate on attaining the age of 58 years with retirement benefits as per applicable Rules. It is pointed out that Chapter XII of the said Regulations deals with medical facilities and Regulation 63 provides for medical facilities to retired employees and their spouse including the spouse of an employee who died either in service or after retirement in accordance with Retired Employees’ Medical Scheme/Retired Employees’ Contributory Family Medical Scheme. The relevant Regulation as relied upon is as follows:

62. Medical facilities will be provided to the employees of the Company as may be laid down from time to time by the Company. The members of the employee’s family will be eligible for medical facilities in accordance with the provisions of the Contributory Family Medical Scheme, as framed and amended by the Company from time to time.

63. Retired employees and their spouse, as well as the spouse of an employee who died either while in service or after retirement, will be eligible for medical facilities in accordance with Retired Employees Medical Scheme/Retired Employees Contributory Family Medical Scheme as framed and amended by the Company from

time to time, and subject to the provisions of such Scheme.

9. In so far as the judgment of the Division Bench in *Air India Ltd. (supra)* is concerned, learned counsel for the Respondents argues that in the said case the Court was dealing with a penalty of dismissal with retirement benefits whereas in the present case the penalty is dismissal with terminal benefits. Additionally, it is argued that against the said judgment an appeal was filed by the Respondents in the writ petition and although the Supreme Court did not interfere in the judgment passed by the High Court but it was categorically observed that the judgment shall not be treated as a precedent in other similar cases.

10. I have heard the learned counsels for the parties and examined their rival submissions.

11. It is undisputed between the parties that the penalty imposed on the Petitioner is dismissal with terminal benefits and not retiral benefits. The retiral benefits according to the Service Regulations of the Respondents are to be disbursed to an employee who has retired from the service of the Respondents by the modes mentioned in the Regulations i.e. on superannuation and voluntary retirement. There is substance in the contention of counsel for the Respondents that the penalty imposed envisages grant of terminal benefits and not retiral benefits and that medical benefits are a part of retiral benefits under the Service Regulations. Petitioner has not disputed the receipt of terminal benefits.

12. The question that arises before this Court is whether pending a challenge to the dismissal order the Petitioner can be held entitled to the medical benefits under the Medical Benefit Scheme framed by the

Respondents. Counsel for the Petitioner has categorically stated in the application that the Petitioner is suffering from serious medical ailments with all their attendant complications. He is undisputedly a senior citizen and in need of medical aid and reimbursements for treatment. These facts have not been controverted by the Respondents. The writ petition is yet to be decided and there may be chances that the Petitioner succeeds in his challenge to the dismissal order in which case indisputably he would be entitled to the medical benefits under the Scheme.

13. The issue therefore is if the said benefits can be granted as an interim measure. In my view the Petitioner is in need of medical aid and help at this stage and phase of his life and postponing the entitlement up to the date of decision of the writ petition may be unjust to the Petitioner, considering his age and medical condition. Various Courts have repeatedly affirmed that right to medical treatment is a fundamental right under Article 21 of the Constitution of India. In any case it is an admitted case of the Respondents that the Petitioner is entitled to Contributory Pension Scheme Benefits thereby recognizing the status of the Petitioner as a pensioner. The issue can be perceived from yet another angle. Assuming that the Petitioner was to succeed in the writ petition and becomes entitled to the medical benefits years later, but is deprived of the same at present, which leads to worsening of his medical condition, the setting aside of the dismissal order will hardly inure to his advantage, at that stage.

14. In the peculiar facts and circumstances of this case I am inclined to allow the application and direct the Respondents to permit the Petitioner to subscribe to the Medical Benefit Scheme. The Petitioner shall take

requisite steps to fulfill the various formalities required to be a member of the Scheme, including payment of contribution, if any.

15. Needless to state that the grant of the medical benefits, if any, in the meantime by the Respondents shall be subject to the outcome of the writ petition and the Petitioner shall not claim any equity on account of the present interim order. The order will not be treated as a precedent in any other case.

16. Application is disposed of in the above terms.

NOVEMBER 17th, 2020

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JYOTI SINGH, J



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