



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

Judgment Reserved on: 01.02.2024

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Judgment Pronounced on: 09.02.2024

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W.P.(C) 686/2018

MANISH KUMAR

..... Petitioner

Through: Mr. Tushar Sannu, Mr. Priyankar
Tiwary, Mr. Navbeen Bhati and
Mr. Sahaj Karan Singh, Advocates

Versus

UNION OF INDIA AND ANR

..... Respondents

Through: Mr. Rajesh Kumar, Advocate

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

SAURABH BANERJEE, J.

1. As per facts involved, the petitioner after having joined Sashastra Seema Bal (hereinafter referred to as '**SSB**') as a Constable on 01.02.2006, remained posted to 11 Bn until 07.04.2012, whereafter he was posted to 42 Bn at Coy Hqr, Gandoh, J&K on 18.04.2012.

2. On 01.10.2013, the petitioner, vide an application to the Commandant 42 Bn, requested for self-treatment from any of the SSB empanelled Hospital for his kidney ailment. In response, the Director (Medical) FHQ SSB, New Delhi accorded the permission on 04.10.2013. Based thereon, the petitioner reported at 25 Bn, SSB Ghitorni, New Delhi on 06.10.2013, where he was accommodated at the unit Hospital for dialysis. The petitioner was further kept on dialysis at an SSB empanelled Hospital being the Asian Institute of Medical Science, Faridabad,



Haryana on credit basis through 25 Bn, SSB Ghitorni, New Delhi from 07.10.2013 to 17.03.2015.

3. In the meantime, the petitioner, vide an application dated 06.02.2014, made a request to the Commandant 42 Bn seeking permission to proceed for kidney transplant at Sir Ganga Ram Hospital, New Delhi (hereinafter referred to as '**SGRH**'). In response, 25 Bn, SSB Ghitorni, New Delhi on 27.02.2014 categorically informed the petitioner that SGRH was neither recognized under Central Government Health Scheme (hereinafter referred to as '**CGHS**') nor is it an empanelled Hospital with the SSB. Despite thereto, the petitioner, nevertheless, proceeded for his medical treatment from SGRH and in fact vide an application dated 16.06.2014, applied for a medical advance of Rs.11,00,000/-. Needless to say, the said application was returned to him vide memorandum dated 13.10.2004 alongwith the following remarks of the Ministry of Home Affairs (hereinafter referred to as '**MHA**'):

“a. As per Central Service Medical Attendance Rules, treatment in a private Hospital can only be obtained in an emergency cases involving accidents, serious nature of disease etc, in case no Government or recognized Hospital is available nearer than the private Hospital. Whereas, in the instant case it appears that the petitioner was taking treatment from a long time back. Moreover, no emergency certificate has been issued by Sir Ganga Ram Hospital.

b. The petitioner in his application has stated that ABO Incompatibility facilities are not Renal Transplantation available in Apollo Hospitals and AIIMS, New Delhi Whereas, neither these Hospitals furnished any certificate regarding non availability Transplantation of ABO Incompatibility Renal facilities nor patient to Sir Ganga Ram Hospital for management referred the further management.”

4. Thereafter, on the petitioner applying for a loan amount of Rs.6,00,000/- to the Central Welfare Fund (hereinafter referred to as



‘CWF’) of the SSB for his kidney transplant, the CWF sanctioned an interest free loan of Rs.6,00,000/- to the petitioner, vide order No.35/SSB/Wel/Medi Loan/13/517-19 dated 27.01.2015.

5. After that, the petitioner submitted a medical reimbursement bill of Rs.11,21,716/- which was forwarded by the department to the Joint Director (R&H), CGHS (HQ), New Delhi for consideration, who vide letter No.S-9827/2015/R&H/CGHS(HQ)/1918 dated 10.08.2015 advised reimbursement of the medical expenses as per CGHS rates approved vide Serial No. 809 of the CGHS Rate List OM dated 01.10.2014. Accordingly, the claim of the petitioner was processed and admitted for Rs.6,35,827/- and payment qua the same was made in October, 2015.

6. As per respondents, as it was categorically decided in the 24th Governing Body Meeting of the SSB CWF dated 21.12.2014 that upon the reimbursement of his medical bill, the petitioner had to repay the loan amount sanctioned by the CWF and as he was wilfully not paying, it was decided by the respondents that a monthly recovery of Rs.30,000/- should be made from his salary.

7. Aggrieved thereby, the petitioner filed the present petition under Article 226 of The Constitution of India, seeking the following reliefs :

“(i) To declare the action of the Respondents in forcing the Petitioner to accept the amount required to be utilized for medical treatment as loan amount as illegal and arbitrary and issue appropriate directions to the Respondents to release the entire amount of Rs. 11,21,716 lakhs spent by the Petitioner for treatment of 'End Stage Renal Disease' caused and attributable to the service conditions of SSB.

(ii) To declare the action of Respondents in treating the amount sanctioned for medical expense as loan amount, as illegal and arbitrary and reimburse the same to the Petitioner with 18 percent interest.

(iii) To direct the Respondent No. 1 & 2 to initiate appropriate



disciplinary actions against the concerned officers who are responsible for causing harassment and humiliation to the Petitioner and treating the reimbursement amount as a loan amount.”

8. Pertinently, this Court vide an interim order dated 14.05.2018 allowed the respondents to recover the balance loan amount to the tune of Rs.3,80,000/- by making a deduction from the salary of the petitioner in 24 equal monthly installments from June, 2018 onwards. In fact, as recorded subsequently in order dated 11.10.2022, learned counsel for the respondents had intimated this Court that the entire loan amount had already been recovered from the petitioner.

9. Coming to the facts involved herein, learned counsel for the petitioner submits that the health of the petitioner had deteriorated owing to him being repeatedly given hard postings for a continuous period of 6 years since his induction into SSB. He submits that the petitioner in his application to the SSB CWF dated 27.03.2014 had stated that the ABO Incompatible Kidney Transplant Facility was not available in Apollo Hospital/AIIMS (*the same being empanelled Hospitals*) and in any event, the same being a highly risky treatment with very less success rate, the petitioner was left with no other option but to seek treatment from SGRH for saving his life.

10. Learned counsel for the petitioner then submits that since the medical ailment of the petitioner i.e. the need for kidney transplant was an emergency scenario, the petitioner was fully covered under the provisions of the Central Service Medical Attendance Rules (hereinafter referred to as ‘*CSMAR*’) and therefore, his treatment in a private Hospital was justified. He further submits that while sanctioning the loan



amount of Rs.6,00,000/-, CWF had nowhere mentioned that the medical advance would be treated as a loan and even if it was a loan, it was nowhere mentioned that non-payment of requisite dues/instalments on time would result in deduction from the salary to an exorbitant tune of almost 80%.

11. To buttress his submissions, learned counsel for the petitioner places reliance upon the decision of the Hon'ble Supreme Court of India in *State of Punjab and Others vs Mohinder Singh Chawala* AIR (1997) SC 1225 involving the case of an employee in the State of Punjab suffering from cardiac issues requiring replacement of two valves in the heart, who had to be admitted in a Hospital outside the State of Punjab and had thus incurred expenditure towards room rent charges where the reimbursement towards room rent for stay was granted. He further places reliance upon the decision dated 13.04.2018 of the Hon'ble Supreme Court of India in W.P.(C) No.694/2015 titled *Shiva Kant Jha vs Union of India* wherein it was held that the treatment of the petitioner therein from a non-empanelled Hospital was genuine since he had no other option left with him at the relevant time.

12. On the other hand, learned counsel for the respondents submits that vide Fax Message dated 27.02.2014 through 25 Bn, SSB Ghitorni, New Delhi, the petitioner was duly informed that SGRH was neither recognized under the CGHS nor is it an empanelled Hospital with the SSB and hence, in terms of CS(MA) Rule, 1944, the petitioner was suggested to get his kidney transplant done from AIIMS/ Government Hospital or any other empanelled Hospital. He submits that despite the aforesaid position, the petitioner wilfully ignored the advice/suggestion



of the relevant authorities and proceeded to get his treatment done from SGRH.

13. Learned counsel for the respondents further submits that as regards the loan amount sanctioned by the CWF to the petitioner, it was categorically decided vide the 24th Governing Body Meeting of the SSB CWF held on 21.12.2014 that *“On receipt of Medical reimbursement by the petitioner, amount of advance from CWF should be recouped in total and not in instalments”*. He further submits that as the petitioner had refunded only Rs.40,000/- until July, 2017, leaving an outstanding of Rs.5,60,000/-, it was decided to recover the amount to the tune of Rs.30,000/- from his salary on a monthly basis. He further submits that as a humanitarian gesture, the petitioner has already been posted to FHQ, Delhi since 24.04.2012 and is not assigned hard duties owing to his precarious health condition.

14. This Court has heard the learned counsel for the parties and has also perused the documents on record.

15. At the very outset, it is pertinent to note that it is not the case of the petitioner that he was facing any emergency or that he was suffering from any ailment for which no treatment was available with the list of CGHS empanelled Hospitals or that he was denied any kind of, specific treatment(s) for any disease at any stage or that he had ever sought or tried seeking any permission from the respondents to that effect or that such permission had ever been denied to him. On the contrary, *admittedly*, the petitioner was duly cared for, looked after and attended properly by the Medical teams(s) comprising of doctors, attendants etc. provided by the respondents including extending of financial assistance



in the form of loan at all stages when he required care and treatment for a substantial time.

16. In fact, as a welfare measure, the respondent no.2-SSB, via its CWF also has a facility of extending the facility of interest free loan for treatment of anyone suffering like the petitioner herein. The petitioner was always free to avail of the same and in fact he did so. Resultantly, he received the reimbursement of his expenses as per the applicable and prescribed rules. Despite that, the petitioner has willfully defaulted time and again in repaying the same and it was only after an order dated 14.05.2018 passed by this Court in the present petition, the respondents commenced a monthly deduction from the salary of the petitioner in 24 equal installments from June, 2018 onwards to recover the balance loan amount to the tune of Rs.3,80,000/-.

17. Thus, there can be no occasion for the petitioner to attribute any kind of negligence to the respondents. More so, when all that the petitioner ever sought from the respondents was medical advance(s) from time to time which was duly released to him as per the relevant OM's/CSMAR in the best possible manner.

18. Moreover, under the existing circumstances and even otherwise, personal belonging to the Armed Forces, like the petitioners herein, are guided by and have to adhere to the prescribed procedure(s), rule(s), regulation(s) including the various OM's issued by the respondents from time to time. Going by that, the petitioner could not have afforded to get treatment on his own volition in any of the non-empaneled/ non-approved Hospitals, more so when the list of empaneled/ approved Hospitals was very much shared with him and which he was well aware of and more so,



when he was categorically denied by the respondents to seek treatment in a non-empanelled Hospital well in advance.

19. Lastly, reliance placed by the learned counsel for the petitioner upon *State of Punjab and Others* and *Shiva Kant Jha (supra)* is misplaced as they are not applicable to the facts involved herein because the situation was much graver in those cases than what is involved in the present proceedings, particularly, whence the gravity/seriousness of the illness(s) suffered by those involved therein were requiring urgent medical intervention. In *State of Punjab and Others (supra)*, the respondent was indeed suffering from a cardiac ailment that required the replacement of two valves in his heart and the same was a situation that required immediate and urgent medical attention that could not have been denied to him. However, in the present case, it is an admitted position that the petitioner was very much in the care and under the treatment of the respondent no.2-SSB for a period of almost two years.

20. For the afore-stated discussions and reasoning therewith and in view of the existing facts and circumstances involved, this Court finds no merit in the present writ petition.

21. Accordingly, the writ petition is dismissed, leaving the parties to bear their respective costs.

SAURABH BANERJEE, J

V. KAMESWAR RAO, J

FEBRUARY 09, 2024/rr