

**Central Administrative Tribunal  
Ernakulam Bench**

**OA No./180/00153/2019**

Tuesday, this the 3<sup>rd</sup> day of March, 2020

**CORAM**

**Hon'ble Mr.Ashish Kalia, Judicial Member**

C.K.Anirudhan, aged 61 years,  
S/o C.K.Kunjunny,  
HS II (Retd), Naval Aircraft Yard,  
Chakkalakal House, Chellanam P.O.,  
Cochin.

Applicant

(Advocate: Mr.C.S.G.Nair)

**versus**

1. Union of India represented by  
its Secretary,  
Ministry of Health and Family Welfare,  
New Delhi-110 001.
2. Flag Officer Commanding-in-Chief,  
Southern Naval Command,  
Cochin-682 004.
3. Commodore Superintendent,  
Naval Aircraft Yard,  
Cochin-682 004.
4. Joint Controller (Navy),  
Defence Accounts Department,  
Thevara, Cochin-682 015.
5. Principal Controller of Defence Accounts (Pension),  
Draupati Ghat, Allahabad-211 014. Respondents

(Advocate: Mr.E.N.Hari Menon, ACGSC)

The OA having been heard on 3<sup>rd</sup> March, 2020, this Tribunal delivered the following order on the same day:

### **O R D E R (oral)**

Brief facts of the case are that the applicant is a retired employee of Naval Command Aircraft Yard in Southern Naval Command. He retired on 30.4.2017. He is getting monthly pension of Rs.12491. On 19.3.2018 at about 9 P.M., the applicant fell down in his bathroom and became unconscious. He was taken to the Medical Trust Hospital, Ernakulam which is the nearest hospital with all facilities. He was confined to the hospital till 2.5.2018 during which period he underwent various treatments including surgery. An amount of Rs.4,32,631/- was charged by the hospital. The applicant was again admitted to the Medical Trust Hospital and he remained there from 2.7.2018 to 5.7.2018 and another amount of Rs.1,19,434/- was paid as per hospital bills. Thus, a total amount of Rs.5,52,065/- was charged by the hospital for the in-patient treatment. It is stated that the bill was settled by friends and former colleagues of the applicant. The applicant submitted a medical claim for reimbursement to the 3<sup>rd</sup> respondent. The claim was rejected as per Annexure A2. Feeling aggrieved, the applicant has approached this Tribunal for redressal of his grievance.

2. Notices were issued. Sri E.N.Hari Menon, learned ACGSC put in appearance and filed a detailed reply statement. He has drawn my attention to para 3 of the reply statement, the relevant portion of which reads as under:-

*“The Central Services (Medical Attendance Rules), 1944 governs the medical benefits entitled to Government servants. The defence civilian employees paid from Defence service estimates are also covered by the same rule. However, the benefits of these rules are not applicable to certain categories of personnel which are enumerated in CS (MA) Rules, 1944 as under:*

*“(i), (ii), (iii) and  
 (iv) Retired Government Officials (v) Non officials sent on deputation abroad  
 (vi) Government servants who are governed by the Central Government Health Scheme (CGHS) while in stations where this scheme is functioning; (vii) Officers of the All India Services (Medical Attendance) Rules, 1954 ; (viii) India based officers and staff serving in Mission abroad who are governed by the Assisted Medical Attendance Scheme.*

*In this regard, the relevant excerpt of the Central Services (Medical Attendance) rules, 1944 is produced herewith and marked as Annexure R-1. It is evident from R1 that retired civilian personnel are not entitled for medical reimbursement as the provision contained in Central Services (Medical Attendance) Rules, 1944 is not applicable for them. The rules have categorically specified the class of personnel covered under the said rules. Retired service personnel in Defence service are covered by Ex-Servicemen Contributory Health Scheme (ECHS) which enables them to avail medical facilities in ECHS approved hospitals across the country. Whereas, Govt of India have catered two options to meet medical treatment requirements of civilian personnel. They are : (a) Central Govt. Health Scheme (CGHS) and (b) Medical Reimbursement Scheme.”*

3. Thus the counsel has submitted that under the Rules, only serving employees are entitled for CGHS after putting the requisite contribution towards the Scheme. In the present case, the applicant is entitled for fixed medical allowance of Rs.1000/- per month which he is already getting. Thus no further obligation is cast on the respondents to pay the expenditure incurred by him towards the surgery in the Medical Trust Hospital.

4. Heard learned counsel for the parties at length and perused the relevant material placed on record.

5. Learned counsel for the applicant has tried to impress upon this Tribunal that this issue is no longer res-integra as it is already decided by this Tribunal in various judgments which is upheld by the Hon'ble High Court of Kerala by dismissing the OPs (CAT). One such judgment is in OA No.412/2016 decided by this Tribunal in an identical circumstance where similar stand was taken by the respondents, which reads as under:

*“2. The OA was resisted by the respondents contending that the Civil Services (Medical Attendance) Rules, 1944 [hereinafter referred to as CS(MA) Rules] govern the medical benefits of serving Government employees. As per note-2 to Rule 1 of the said rules the same is not applicable to the retired Government officials. Retired personnel in defence service are governed by the Ex-servicemen Contribution Health Scheme (ECHS) which enables the retired service personnel to avail medical facilities in ECHS approved hospitals across the Country. But, for the civilian persons Government of India has provided for medical treatment under Central Government Health Scheme (CGHS) and medical reimbursement scheme. Those who opt for CGHS scheme can avail of*

*medical facilities through the CGHS approved hospitals. In Kerala CGHS is available only in Trivandrum. The retired civilian employees who have opted for CGHS scheme at the time of his retirement also are entitled to medical reimbursement facility but those who have not opted for CGHS are provided with Family Medical Allowance (FMA) of Rs. 500/- per month. The applicant has been drawing FMA since his retirement. In the above circumstances the respondents contend that applicant is not entitled to medical reimbursement as claimed by him. It is also contended that the competent authority for extending the CS(MA) Rules to pensioners is the DoP&T and hence the OA is barred for non-joinder of necessary parties".*

**6.** After considering the rival contentions, this Tribunal had directed the respondents as follows:

*"7. It is worth noting that in Annexure A8 order of the Ahmadabad Bench of this Tribunal it was held that the respondent Department shall reimburse the admissible amount of medical expenses claimed by the pensioner. In that case the applicant was a Deputy Postmaster who after his retirement suffered a severe heart attack and had to undergo coronary artery by - pass surgery and had incurred expenses of Rs. 1,60,736/-. In the order dated 3.4.2013 the Ahmadabad Bench relied on a decision of the High Court of Gujarat in Union of India v. Prabhakar Sridhar Bapat SCA No. 3843 of 2004 wherein the claim for reimbursement of medical expenses of a retired employee of the Postal Department was allowed, confirming the decision of the Ahmadabad Bench of this Tribunal in OA No. 205 of 2003. When the matter was taken to the apex court in SLP, the Supreme court declined to interfere with the said judgment of the Gujarat High Court.*

*8. In the light of the Annexure A8 judgment and the precedents cited therein, it appears to this Tribunal that the same decision can be made applicable to the instant case also. The judgment dated 28.12.2015 of the High Court of Himachal Pradesh in CWP No. 4621 of 2011 also is binding on this Tribunal as the aforesaid CWP arose from a decision of the Chandigarh Bench of this Tribunal.*

*9. In the result the OA is allowed. Annexures A6 & A7 are quashed and set aside. Respondents are directed to reimburse Rs. 37,638/- to the applicant being the medical expenses incurred for treating his heart ailments as evidenced by Annexures A1 and A2, with interest at 6% per annum from the date of presentation of the bills to the respondents till actual disbursement. Parties are directed to suffer their own costs".*

**7.** Learned counsel for the applicant further relied upon the judgments in *Kirloskar Bros. Ltd v. ESI Corp. (1996) 2 SCC 682* and in *Paschim Banga Khet Mazdoor Samity vs. State of W.B. (1996) 4 SCC 37*:

Kirloskar Bros Ltd.

*“The expression 'life' assured in Article 21 does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to livelihood, better standard of living, hygienic conditions in the workplace and leisure facilities and opportunities to eliminate sickness and physical disability of the workmen. Health of the workmen enables him to enjoy the fruits of his labour, to keep him physically fit and mentally alert. Medical facilities, therefore, is a fundamental and human right to protect his health. In that case health insurance, while in service or after retirement was held to be a fundamental right and even private industries are enjoined to provide health insurance to the workmen”.*

Paschim Banga Khet

*“The Constitution envisages the establishment of a welfare state at the federal level as well as at the state level. In a welfare state the primary duty of the Government is to secure the welfare of the people. Providing adequate medical facilities for the people is an essential part of the obligations undertaken by the Government in a welfare state. The Government discharges this obligation by running hospitals and health centres which provide medical care to the person seeking to avail of those facilities. Article 21 imposes an obligation on the State to safeguard the right to life of every person. Preservation of human life is thus of paramount importance. The Government hospitals run by the State and the medical officers employed therein are duty bound to extend medical assistance for preserving human life. Failure on the part of a Government hospital to provide timely medical treatment to a person in need of such treatment results in violation of his right to life guaranteed under Article 21”.*

8. After considering the entire gamut of the case, this Tribunal finds that the applicant herein is similarly situated as the applicant in OA No.412/2016 wherein this Tribunal had decided the issue involved. Accordingly, the OA is allowed and the respondents are directed to reimburse the medical dues to the applicant within a period of ninety days from the date of receipt of this order. No order as to costs.

**(Ashish Kalia)  
Judicial Member**

aa.

**Annexures filed by the applicant:**

Annexure A1: Copy of the Medical Claim to the 3<sup>rd</sup> respondent for reimbursement.  
Annexure A2: Copy of the Memo No.227/6/6 dated 29.1.2019 issued by the 3<sup>rd</sup> respondent.

**Annexures filed by the respondents:**

Annexure R1: Copy of relevant excerpt of the Central Services (Medical Attendance) Rules, 1944.  
Annexure R2: Copy of applicant's undertaking dated 31<sup>st</sup> October 2016.  
Annexure R3: Copy of Ministry of health and Family Welfare OM No.5.14025/23/2013-MS.EHSS dated 29<sup>th</sup> September 2016.  
Annexure R4: Copy of Ministry of health and Family Welfare OM F No.S.14025/4/96-MS dated 24<sup>th</sup> September, 2001.  
Annexure R5: Copy of Ministry of Health and Family Welfare (Department of Health) OM No.S.14025/4/96-MS dated 24.9.2001.