

Two
Central Administrative Tribunal
Principal Bench
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O.A. No. 835/1995

(5)

New Delhi, this the 8th day of November, 1995

Hon'ble Shri B.K.Singh, Member (Administrative)

Sukhdev Singh Mayer,
s/o Shri Desh Raj Mayer,
r/o Block No. 9, Lodi Colony,
New Delhi.

...Applicant

(By Shri Sunil Malhotra, Advocate)

Versus

Union of India through

1. Ministry of Home Affairs,
North Block, New Delhi.
2. Ministry of Health and Family Welfare,
(Secretary Health), Nirman Bhawan,
New Delhi.
3. Chief Medical Officer,
C.G.H.S. Headquarters,
Nirman Bhawan,
New Delhi.
4. National Capital Territory,
(Through Chief Secretary),
Old Secretariat, Delhi.

..Respondents

(By Shri M.K.Gupta, Advocate)

ORDER

By Hon'ble Shri B.K.Singh, Member(A):

This O.A. No. 835/95 has been filed against the
impugned order No. 7-82/81-C&P Section/Pt./3993 dated
7.4.1995.

The admitted facts are these. The applicant joined
Delhi Police as Public Prosecutor on 14.11.1967 and was
provided C.G.H.S. facilities till 1974. In 1974, the Prosecution
Branch, which was functioning under Delhi Police was placed
under a separate Directorate of Prosecution, Delhi Administra-
tion w.e.f. 1.4.1974 and the C.G.H.S. cards issued to the

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employees concerned were allowed to be continued. In 1981, the C.G.H.S. Headquarters refused to renew the existing cards of the Public Prosecutors. Delhi Prosecution Welfare Association approached the Delhi Administration with a request to continue the C.G.H.S. facilities and this request was duly forwarded by the Delhi Administration which was acceded to by the Ministry of Health and Family Welfare vide their letter No. S.11019/13/30-CGHS Desk-I dated 1.8.1981 a copy of which is enclosed with the O.A. at page 12 of the paper book. The applicant's CGHS card bearing No. 187654 dated 18.8.1981 was issued on payment of the requisite charges and he enjoyed these facilities till his retirement on 31.1.1995. His request for continuation of the facilities even after the retirement, as is applicable to Central Govt. employees, was not acceded to and aggrieved by that order this O.A. has since been filed seeking the relief that the letter of rejection of the application for continuance of C.G.H.S. facilities after retirement be quashed and the applicant may be allowed to avail of the facilities even after his retirement.

On notice, the respondents filed the reply contesting the application for grant of reliefs prayed for.

Heard the learned counsel for the parties and perused the record of the case.

During the pendency of this O.A., the respondents, vide their letter No. 7-81/81-C&P/CGHS(P) dated 14th Aug., 1995 have withdrawn these facilities on the ground that Govt. of Delhi have its own health service scheme and they should provide these medical facilities to their employees. Para No. 2 of the letter says that this letter issues with the approval of Additional Secretary vide diary No. 1346-AS(H)/95 dated 20.3.95 and copies have been marked to all concerned.

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The learned counsel for the applicant vehemently argued that a facility which had been continuing right from the date the applicant joined till the date of his retirement, cannot be unilaterally withdrawn. It is a vested right accrued to the applicant at par with the similarly placed employees in whose favour this facility has been extended. He has made averments to the effect that eight persons who were similarly placed employees have been granted these facilities and their names are (i) Shri L.N.Shukla, Chief Prosecutor; (ii) Sh. K.B.Saxena, Chief Prosecutor; (iii) Shri C.P.Nanda, Chief Prosecutor; (iv) Shri S.C. Saxena, Chief Prosecutor; (v) Shri V.P.Sahni, Chief Prosecutor; (vi) Shri A.N.Sehgal, Chief Prosecutor and (vii) Shri S.N.Vinayak, Chief Prosecutor. In addition to this, it is further stated that the C.G.H.S. facilities were also extended to Shri R.K.Khanna who also retired as Chief Prosecutor. The rebuttal in the counter reply is only in case of Shri R.K.Khanna ignoring other seven persons whose names have been indicated by the learned counsel for the applicant. In the case of Shri R.K.Khanna, it has been stated that it was inadvertently extended to Shri Khanna. The rebuttal in case of others is either not there or is very weak. The position of law in such matters is very clear. It is well settled that Rule making authority has the power to amend a rule but it is equally well settled that if any right is accrued it cannot be curtailed or abridged without giving a show cause notice to the affected employees. In such cases the rule always has a prospective effect. If retroactivity is trampling upon the vested rights of the individual, this law. Rules have to be cannot be sustained in the eyes of / framed under the provisions of statute. In other words rules have statutory force but before a rule could have the effect of the statutory provision the Hon'ble Supreme Court have held that two conditions must

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be fulfilled namely (i) it must conform to the provisions of the statute under which it is framed; and (ii) it must also come within the scope and purview of the rule making power of the authority framing the rule. If either of these conditions is not fulfilled, the rule so framed would be void. This has been held in the case of ONGC and Another V/s. Subhash Chander Yadav reported in 1988(7) A.T.C. P.296(SC). A policy decision also must stand the test of being in tune with the fundamental rights and if it encroaches upon any of the fundamental rights, it is void as ordined by Article 13 of the Constitution. The Hon'ble Supreme Court have further highlighted that deviation from the standard by which the respondents profess must be consistently followed in case of the similarly placed employees. This has been held in the case of Sukhdeer Singh reported in A.R 1975(SC) P.1329 "The existence of rules and regulations under statute is to ensure regular conduct with a distinctive attitude to that conduct as a standard. This court has repeatedly observed that whenever a man's right is affected by decision maker under statutory powers, the court could presume the existence of duty to observe the rules of natural justice in compliance with rules and regulations imposed by the statute. In such cases where the rule is modified and is likely to affect the vested right of an individual, its promulgation should be given effect in future if retrospectivity is likely to curtail or abridge, the rights which have already accrued. The rules cannot operate to deprive any person of his vested right and particularly when other similarly situated people have been extended those benefits accruing from the prevalent rules. Firstly this rule which is being described as a policy decision is curtailing the right and secondly

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the respondents have not consistently followed these rules. It is also not clear whether the Additional Secretary is the competent authority to modify or amend the rules. The relevant amended rule states that this issues with the approval of the Additional Secretary. It is not clear whether this falls within the scope and purview of the Additional Secretary to modify the rules or to amend the rules which are in existence, and the facility which has been extended to eight other similarly situated people.

It was clearly conceded by the counsel for the applicant that the amendment in the said rule was issued in August, 1995 and this O.A. was filed in April, 1995 and as such the amended rules could not be assailed at that time since it was not in existence. An interim order was issued in this case on 19.4.1995 which has continued since then.

It is not denied that the relevant rules have been issued during the pendency of this O.A. Promulgating this rule with retrospective date is not fair and just, since it will deprive only the applicant when all other similarly situated persons have escaped from the operation of this rule and will continue to enjoy the facility. To that extent, there is an element of discrimination under Article 14 & 16(1) of the Constitution.

In the light of what has been stated above, the applicant is directed to file a fresh representation to the respondents to consider his case at par with other similarly situated persons highlighting all the facts and circumstances of this case and hardship, if any, involved in the retrospective application of this rule which has come into force in Aug., 1995 and the applicant retired on 31.1.1995 and this was O.A. was filed in April, 1995 for redressal of the grievance within a period of two weeks from the date of receipt of the copy of

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this order and the respondents are directed to dispose of the representation to be filed by the applicant, within a period of four weeks from the date of receipt of a copy of the representation.

With these above observations, the O.A. is disposed of but without any order as to costs.

(B.N.Singh)
Member (A)

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