

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

**ORIGINAL APPLICATION NO. 291/1/2017
with
MISC. APPLICATION NO. 291/273/2020**

Order reserved on 05.08.2020

DATE OF ORDER: 10.08.2020

CORAM

**HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER
HON'BLE MRS. HINA P. SHAH, JUDICIAL MEMBER**

Gyan Singh Panwar Son of Late Shri Jaswant Singh Panwar, aged about 55 years, resident of House No. 46, Choudhary Colony, Near Saket Nagar, Beawer, Ajmer. Voluntary retired on 31/08/2012 from the post of TTI, under Chief Ticket Inspector, North Western Railway, Ajmer Division, Ajmer.

....Applicant

Shri C.B. Sharma, counsel for applicant - (through Video Conference).

VERSUS

1. Union of India through General Manager, North Western Zone, North Western Railway (Head Quarter), Near Jawahar Circle, Jagatpura, Jaipur-302017.
2. Divisional Railway Manager, North Western Railway, Ajmer Division, Ajmer.
3. Senior Divisional Finance Manager, North Western Railway, Ajmer Division, Ajmer.

....Respondents

Shri Anupam Agarwal, counsel for respondents - (through Video Conference).

ORDER

Per: Hina P. Shah, Judicial Member

The applicant has filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985 seeking for the following reliefs:

- “(i) That respondents be directed to allow the applicant fixed medical allowance of Rs. 300/500 per month after voluntary retirement by quashing letter dated 13/09/2016 (Annexure-A/1) with all consequential benefits.
- (ii) That respondents be further directed to refund Rs. 17,110/- along with interest from market from the date of deposit in the year 2012 till payment with all consequential benefits.
- (iii) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case.
- (iv) That the costs of this application may be awarded.”

2. Brief facts of the case, as stated by the applicant, are that he being a railway employee sought voluntary employment on 31.08.2012 from the post of TTI, Ajmer and after retirement he settled at Beawar, which is at a distance of 60 kms from Ajmer. He further stated that at Beawar, there is no medical facility available for outdoor/indoor for retired railway employees. In 1996, a Scheme in the name of Retired Employees Liberalised Health Scheme (RELHS) was promulgated and vide order

21.02.1997 certain instructions were provided for joining the scheme and there was provision for switching over from earlier scheme. As per 5th Central Pay Commission, Govt. of India granted medical allowance of Rs. 100/- per month for outdoor treatment and on the same lines, Respondent-Railways also issued RBE No. 65/1999 dated 21.04.1999 (Annexure A/4) for granting similar benefits to Railway Pensioners subject to fulfilment of certain conditions. Thereafter, Railways issued another order dated 01.03.2004 (RBE No. 45/2004) for grant of fixed medical allowance at the rate of Rs. 100/-per month to railway pensioners / family pensioners residing beyond 2.5 kms from a Railway Hospital / health unit subject to furnishing an undertaking. Thereafter, another order dated 20.07.2006 was issued whereby switching over from fixed medical advance to RELHS-97 Scheme was allowed and, thereafter, order dated 12.10.2006 was issued allowing outdoor facilities in the cases of chronic diseases. As per order dated 15.09.2009 (Annexure A/8), it was clarified that those not availing OPD facility, such ex-employees would be entitled for fixed medical allowance. Thereafter, allowance of Rs. 100/- was increased to Rs. 300/- per month w.e.f 01.09.2008. Several orders in this respect were issued thereafter. It

is further stated by the applicant that during completion of formalities of retirement, he has filled option form dated 03.09.2012 (Annexure A-12) for medical facilities and though respondents knew that no medical facilities are available at Beawar, still PPO dated 25.11.2012 (Annexure A-13) was issued wherein against column of fixed medical allowance, it was shown that 'not applicable'. Accordingly, on receipt of PPO, applicant submitted a revised undertaking dated 24.03.2014 (Annexure A/15) stating in his letter dated 10.07.2013 that in Beawar, where he is residing, no facility of Railway Hospital/dispensary is available and so he should be granted fixed medical allowance. As per letter dated 26.05.2014 (Annexure A/16), respondent No. 2 informed the applicant that as he is allowed OPD facility, so he cannot be given fixed medical allowance. Thereafter, there were several guidelines on the subject. Though, he had deposited Rs. 17,110/- i.e. one month's pay at the time of his retirement for allowing medical facility as per the Scheme, he was not granted the said benefit and for which he made request and the said request was rejected vide letter dated 13.09.2016 (Annexure A/1), which is the impugned order in the present Original Application.

Hence, the applicant has approached this Tribunal to get fixed medical allowance.

3. The respondents, after issue of notices, have filed their reply. Respondents raised preliminary objection that the applicant retired in 2012 and PPO was issued in 2012, which was accepted by him without any protest. Therefore, in view of principle of estoppel, he cannot challenge the same at belated stage for seeking fixed medical allowance. It was informed that the order dated 13.09.2016 was only a reply to his representation dated 02.06.2016. Earlier also, on several occasions since 2014, the applicant was informed that he is not entitled for fixed medical allowance, therefore, letter dated 13.09.2016 is not the actual cause of action available to the applicant to approach this Tribunal. Therefore, the present Original Application deserves to be dismissed as the same is barred by limitation. The respondents relied on the judgement passed by the Hon'ble Apex Court in the case of M.K. Sarkar, which clarifies that repeated representations even if decided will not give a fresh cause of action. Therefore, the present Original Application deserves to be dismissed on ground of limitation. It is further stated by the respondents that they have not

received representations dated 10.07.2013 as well as 24.03.2014.

4. On merits, the respondents state that admittedly, the applicant after his retirement has settled at Beawar and is residing there till date. As per the Medical Scheme, retired railway employees are entitled for indoor as well as outdoor medical facilities. Railways have implemented a circular being RBE No. 65/1999 and retired employees are being paid accordingly. Thereafter, several circulars are issued on the subject. It is further stated by the respondents that the applicant has himself placed on record a copy of option form disclosing his consent about indoor and outdoor facilities. There is no provision under the rules to change the option unless there is a change in his residence. In fact, the applicant himself, vide his letter dated 10.03.2014 (Annexure R/1), had requested for issuance of medical card. Accordingly, Medical Card No. 04446 was issued in his favour but he refused to receive the same. The respondents once again submitted that they have not received representations of the applicant dated 10.07.2013 and 24.03.2014. The representation dated 18.03.2015 was received from the applicant, which was replied vide letter dated 01.04.2015

(Annexure R/2). It is further stated that there is no relevance on the issue that applicant has not availed any OPD facility. It is further stated that applicant himself had opted for acquiring the benefits under RELHS and once opted for the same, it cannot be changed and, on the other hand, he did not opt for fixed medical allowance at the time of retirement. As per RBE No. 146/2014, the said circular only provides for increase in fixed medical allowance under the conditions mentioned therein. As per RBE No. 83/2011, those who opted for OPD facility were allowed to revise their undertaking and the same was only in respect of chronic diseases. The respondents have annexed complete set of said RBE circular with revised undertaking form (Annexure R/3). It is further clarified that Annexure A/21 only provides for change of option at the time of change of residence. The applicant can avail medical facilities at Ajmer, which is only 60 kms from his residence. Therefore, he cannot be allowed to change his option on the said basis. The applicant being educated cannot take the plea that he was unaware of the medical facilities at Beawar and yet he submitted his request and deposited the amount knowing fully well of consequences. The respondents, on number of occasions, have time and again informed the applicant vide letters

dated 29.07.2015, 29.09.2015, 24.11.2015, 07.01.2016 , 13.06.2016, 13.09.2016 and also through Pension Court dated 15.06.2015 that he is not entitled for fixed medical allowance. Therefore, the respondents state that there is no illegality in the orders of the respondents and the present Original Application deserves to be dismissed.

5. The applicant has filed a rejoinder denying submissions of the respondents and further stated that as per order dated 19.12.2014 issued by the Railway Board in pursuance to order dated 19.11.2014 issued by DOP & PW, fixed medical allowance is available to those pensioners, who are residing beyond 2.5 kms from the nearest health centre and also for fixed medical allowance and the case of the applicant is fully covered by the same. Therefore, as the case of the applicant is covered by these orders and as fixed medical allowance is being given to many pensioners, who opted for RELHS, he submitted a revised undertaking on 24.03.2014, but respondents instead of considering his case, rejected his claim. He has submitted the said option / undertaking for indoor & outdoor facilities in case of chronic disease only for future, which can be perused from Annexure A/12. As other pensioners were allowed to avail such benefit, even

his case should have been considered, but the respondents failed to consider his case on same lines. So he has rightly approached this Tribunal for redressal of his grievance.

6. The applicant, thereafter, has filed a Misc. Application being M.A. No. 291/273/2020 on 04.06.2020 for taking copies of letters dated 11.09.2017 as well as 23.03.2018 on record. As per letter dated 11.09.2017, the respondent No. 1 informed the respondent No. 2 that decision pertaining to payment of fixed medical allowance in respect of the applicant from current date has been taken. Thereafter, respondent No. 2 directed the applicant vide letter dated 23.03.2018 to submit an undertaking for payment of fixed medical allowance w.e.f. 11.09.2017. But applicant's request to respondents is that he should be granted fixed medical allowance from the date of his retirement i.e. 31.08.2012 as he is residing at Beawar, which is 60 kms. away from Ajmer and that there is no medical facility available at Beawar. It is his submission that his issue was pending since retirement and as the same was taken up in PNM meeting vide Item No. 106/2013 and respondents principally agreed for payment and as per further Item No. 26/2016

ordered for payment from current date instead of date of his retirement. As the applicant is facing financial hardship, respondents should grant fixed medical allowance to him from the date of his retirement.

On the other hand, respondents have filed their reply to the said Misc. Application and stated that as per the decision of the respondent No. 1 for grant of fix medical allowance to the applicant, letter dated 23.03.2018 was issued to the applicant asking him to submit duly filled undertaking form so that further action can be taken. But the applicant has failed to submit the same till date. In absence of the same, no action could be taken. As the applicant is aware of letter dated 23.03.2018, but he has in fact failed to submit the said undertaking till date as required. Pertaining to the submission about refund of Rs. 17110/-, respondents stated that the applicant cannot ask for said refund as joining RELHS was mandatory at the time of retirement and, therefore, deduction of one month pay from DCRG cannot be said to be illegal. As the applicant had himself submitted his option at the time of his retirement for OPD for RELHS, therefore, there was no illegality in the action of the respondents at that relevant time as respondents

had acted as per the said option. Now, as respondents are ready to pay fixed medical allowance from 11.09.2017, the applicant should submit required undertaking as per letter dated 23.03.2018 and his grievance could be sorted.

7. Heard learned counsels for both the parties through Video Conference and perused material available on record.

8. The controversy in the present matter has come down in a narrow compass. The respondents are ready to pay fixed medical allowance to the applicant vide letter dated 11.09.2017 (Annexure MA/1 - annexed by the applicant to his MA No. 291/273/2020), from the date of issue of the said letter. The respondents have, thereafter, issued another letter dated 23.03.2018 (Annexure MA/2) in pursuance to the letter dated 11.09.2017 and as per the said letter, the applicant is required to submit duly filled undertaking form so that further action can be taken and that the applicant can be paid fixed medical allowance from 11.09.2017. But it is seen that the applicant has, till date i.e. even at the time of hearing of

the matter finally on 05.08.2020, failed to submit the undertaking as required by letter dated 23.03.2018. The issue can, therefore, be sorted if the applicant is ready to submit an undertaking and he can be given fixed medical allowance from 11.09.2017. But it is seen that the applicant is not satisfied for the aforesaid and he wants it from the date of his retirement i.e. 31.08.2012.

9. Now the question is whether applicant is entitled for fixed medical allowance from 31.08.2012 i.e. the date of his retirement. It is seen that on the date of his retirement, the applicant himself had chosen an option disclosing his consent about indoor and outdoor facilities. He himself had deposited one month's pay i.e. Rs. 17110/- as per the Scheme. Thereafter, PPO was issued in 2012. He accepted the same without any protest. He is an educated person and very well knew that he is residing in Beawar and the medical facilities available there. No one had coerced him to fill the said option. He had done the same with his open eyes. Suddenly, after some time, he feels that in Beawar no medical facilities are there and Ajmer where medical facilities are available is 60 Kms. away from Beawar. For the first time, representation was made to the respondents vide letter

dated 18.03.2015 and the respondents have replied to the same vide their letter dated 01.04.2015 stating that as per Railway Board letter dated 23.10.1997, once a retired person has opted for RELHS Scheme, he cannot change his option and that he is not entitled for fixed medical allowance. It was reminded to him that he himself had chosen the option for OPD facility. Thereafter, on several occasions vide letters dated 29.07.2015, 29.09.2015, 24.11.2015, 07.01.2016, 13.06.2016 , 13.09.2016 and also through Pension Court dated 15.06.2015, the applicant was informed that he is not entitled for fixed medical allowance. Finally, the applicant has approached this Tribunal against the letter of respondents dated 13.09.2016 for quashing the same and for grant of fixed medical allowance after his voluntary retirement. As per Section 21 of the Administrative Tribunals Act, 1985, the actual cause of action arose in 2012 when he himself opted for the OPD facility and accepted the PPO without any protest. But the applicant has approached this Tribunal only in 2017 challenging a reply to his letter dated 02.06.2016 and, therefore, on limitation itself the present Original Application deserves to be dismissed. Even on merits, the applicant has no case as per the option chosen by

himself at the time of his retirement as discussed above. But the respondents in the present matter have taken a decision in PNM meeting vide Item No. 26/2016 and have agreed for grant of fixed medical allowance from the date of issue of the letter dated 11.09.2017 provided the applicant submits duly filled undertaking form as per letter of respondents dated 23.03.2018. But it is seen that the applicant till date has not submitted the said undertaking. If gone by rules / circulars in this regard, it is clear that the applicant is not entitled for the said relief as prayed for by him as per the option chosen by himself. But it is open for the applicant to accept the fixed medical allowance as stated by the respondents vide letter dated 11.09.2017 after submitting duly filled undertaking form as per their letter dated 23.03.2018 immediately within two weeks from the date of receipt of a certified copy of this order. The respondents shall do the needful accordingly and pass necessary orders to that effect within two weeks thereafter.

10. In view of the observations made above, the present Original Application is disposed of with a direction to the respondents to pass necessary orders if the applicant submits his duly filled undertaking form as per

their letter dated 23.03.2018 in terms of letter dated 11.09.2017 within two weeks from the date of receipt of a certified copy of this order and thereafter they should pass final orders within two weeks from the date of receipt of the said undertaking from the applicant. However, there shall be no order as to costs.

11. In view of the order passed in the Original Application, Misc. Application No. 291/273/2020 is also disposed of.

(HINA P. SHAH)
JUDICIAL MEMBER

(DINESH SHARMA)
ADMINISTRATIVE MEMBER

Kumawat