

X

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. NO.2501 of 2004

New Delhi, this the 21st day of April, 2005

HON'BLE SHRI M.K. MISRA, MEMBER (A)

Shri Ram Dhan Sharma son of Late Shri Ganpat Ram,
Retired Sub Postmaster Onkar Nagar, Delhi-110035
under Delhi Postal Circle and Delhi North Postal Division,
and R/o B.103, Shiv Vihar Delhi-110087.Applicant.

(By Advocate : Shri Sant Lal)

VERSUS

1. The Union of India, through the Secretary,
M.O. Health and Family Welfare,
Department of Health, Nirman Bhawan,
New Delhi-110011.
2. The Additional Director C.G.H.S.
Nirman Bhawan,
New Delhi-110011.Respondents.

(By Advocate : Shri N.S. Dalal)

O R D E R

The applicant an employee of the Postal Department, by virtue of this OA, seeks the following reliefs:-

- “1. To direct the respondents to issue CGHS Card and extend CGHS facilities in favour of the applicant in view of O.M. dated 17.12.1990 and the judgement of the Tribunal cited in paras 5.3 & 5.4 above as already applied at the earliest;
2. To direct the respondents to arrange payment of medical allowance of Rs.100/- p.m. from the date of his retirement pending extension of CGHS facilities;
3. To grant all consequential benefits;
4. To grant such other or further benefit as this Hon'ble Tribunal deem fit in the interest of justice; and
5. To award the costs of this application.”

(M)

A

2. Briefly the facts of the case are that the applicant joined the service as Postman on 16.2.1960. He was eligible for CGHS benefits and he was also contributing towards CGHS at the prescribed rates by way of deduction from his salaries from 1961. During the period between 1981-1991, when he was working as Sub-Postmaster, Jwalapuri Post Office Delhi where CGHS facilities were not available in that area no contribution to CGHS Scheme was made by him. The last contribution towards CGHS was made at the rate of Rs.20/- per month in October, 1996 when the applicant superannuated. The applicant was not provided with CGHS Card even though he was contributing monetarily to the CGHS Scheme wherever it was applicable in the State of Delhi. The certificate to the effect that the applicant made the contribution towards CGHS Scheme is at Annexure A/2 at page 7 of the OA. After the retirement from the Postal Department, the applicant applied under the prescribed proforma on 25.2.2004 along with the bank draft of Rs.8,400/- to the Ministry of Health and Family Welfare for issuance of CGHS Card meant for retirees of the Central Govt. The Ministry of Health and Family Welfare did not issue the CGHS Card to the applicant after his retirement on the ground that the applicant was not the member of the CGHS Scheme and he opted out and for consideration thereof the applicant was being paid medical allowance as per prescribed rules.

3. The grievance of the applicant is that though he is entitled to get CGHS Card from respondent no.2, but the same was refused by them without assigning any reasons. Hence, this OA.

(M)

4. In support of his claim, he referred to the judgment of Chandigarh Bench of this Tribunal in the case of Pyare Singh and others Vs. Union of India and others in OA No.955/CH/2003 wherein it was held as under:-

“5. Before addressing to the facts of the present case, it is thought profitable to refer to Annexure A-4 which is a brochure issued by Government of India. Ministry of Personnel Public Grievances & Pensions. Department of Pension & Pensioners' Welfare. It was issued in December, 1990 and is known as Central Government Health Scheme facilities for civilian Central Government Pensioners. Para 102 being relevant for the facts of the present cases being reproduced below:-

“1.2 it is not that only those Central Government employees who were actually availing of CGHS facilities during service are eligible to enjoy them after retirement. All retired personnel of ministries. Departments offices which are eligible to enjoy CGHS facilities while in service are eligible to enjoy them after retirement, even if immediately prior to their retirement, they were not actually availing or never availed these facilities on account of their posting to a station where CGHS facilities were not available.”

Besides this paragraph, para 1.1 makes it abundantly clear that all Central Government pensioners except Railway and Armed Force pensioners who were eligible for availing CGHS facilities while in service are eligible for availing such facilities after retirement. Thus, the very basic of Annexure A-2 which has been relied upon by the respondents, appears to be opposed to the policy enforce by the department relevant in this case while issuing Annexure A-4. Reading of paras 1.1 & 1.2 refers to their eligibility while they were in service registered with CGHS and whether they were actually beneficiaries of CGHS while in service is not the bases for extending such facilities to them as pensioners. Annexure A-2 in fact refers to a limited section of pensioners who were members of CGHS prior to retirement, permitting them to transfer their CGHS cards from one CGHS covered city to another CGHS covered city. Last three lines only make reference to P&T retirees. This part of the letter is hereby quashed and set aside being opposed to the scheme of working under CGHS.

(MIE)

60

6. Attention of this Tribunal has also been drawn to a judgement of Bangalore Bench which has been published in Swamys' News of April, 2002 and copy of which is Annexure A-3. In the case of N. Nanjundaiah vs. Union of India & Ors. as decided by Bangalore Bench of CAT on 20.11.2001, the Bench has specifically quashed and set aside the order dated 1.8.1996 (Annexure A-2 reference to which has already been made above). It has been held that this order dated 1.8.1996 making out the Pensioners from the P&T department alone does not fall within the purview of reasonable classification where equals have been treated as differently without any basis. This letter has been declared to be violative of Article 14 of the Constitution of India. Directions were given to the respondents to take immediate steps for extending the CGHS facilities in favour of the applicants as envisaged in the order dated 17.12.1990 (Annexure A-4) which was issued by the Central Government for all its employees/pensioners irrespective of any department including that of P & T department. In the opinion of this Bench, facts of the present cases are fully covered under the ratio of this judgement. Later dated 1.8.1996 has already been declared violative of provision of Article 14 of the Constitution of India. Till the judgement of C.A.T. Bangalore Bench is set aside, the respondents by issuance of letters of cancellation of registration of the applicants with the CGHS is thus found to be not only opposed to the provisions of Annexure A-4, but also the mandate of the judgement in the case of N. Nanjundaiah.”

5. The learned counsel also referred to the decision of this Tribunal (Principal Bench) in OA No.1963/2004 in the case of N.R. Bhattacharya vs. Union of India and others decided on 6.1.2005 wherein it has been held as under:-

“12. Moreover, a Division Bench of this Tribunal, to which I respectfully agree, having set aside Ministry of Health and Family Welfare's letter dated 1.8.1996 there is no impediment of grant and extension of benefit of CGHS facilities to applicant who has not availed immediately before his retirement CGHS facilities. Moreover, it is transpired that there are no P&T dispensaries in Delhi. A retiree cannot be left without any medical facility to which he has a right. Financial burden cannot come in the way of effecting welfare

C/MC

legislation, which as a fundamental right provides medical facilities to the retirees as an onerous duty of the Government.

13. In the result, for the forgoing reasons, impugned orders are set aside. Respondents are directed to forthwith extend the facilities of CGHS to applicant on usual payment by issuing CGHS card to avail of the CGHS facilities at Delhi at par with other Central Government employees. No costs.”

6. Learned counsel for the respondents submitted that the decision was taken by the Department of Health, particularly, fulfilling the request of P&T pensioners by ways of extension of CGHS facilities to them. But the same was extended to only those P&T pensioners who were members of CGHS prior to their retirement as per memorandum dated 1.9.1996. On the basis of this circular, the applicant was not issued CGHS Card by the Ministry of Health and Family Welfare as he is stated not to be a member of CGHS before his retirement. It was also argued that the case of the applicant is not covered by the decision of the Bangalore Bench of this Tribunal in the case of N. Nanjundaiah Vs. Union of India and others decided on 20.11.2001 inasmuch as medical allowances of Rs.100/- per month was paid to the applicant in lieu of opting out of the CGHS Scheme. Further P&T employees are also given the benefit of medical facilities by the P&T dispensaries. Therefore, the applicant is also not entitled to avail the facilities of the CGHS Scheme. However, the special concession was provided to the employees of the P&T pensioners by the Ministry of Health and Family Welfare only to the pensioners who were members of the CGHS Scheme before their retirement. The learned counsel for the respondents also referred to various decisions of the higher Courts, reiterating that if every retiree is allowed to take the benefit of

(Signature)

CGHS Scheme, there will be extra financial burden on the Govt. of India and since it was a policy decision not to provide medical facilities to those retirees, who were not earlier members of the CGHS Scheme, the Court should not normally interfere in the policy matter of the Govt. of India.

7. It was further averred by the learned counsel for the applicant that for the first time in August 2004, the applicant requested for CGHS facilities and as per their record, earlier he was not the member of the CGHS.

8. I have considered the averments made by learned counsel for both the parties at great length and perused the material available.

9. I observe that this Tribunal had already decided this controversy in the case of **Pyare Singh and others** (supra) and in the case of **N. Najundaiah** (supra). It has been decided therein that the CGHS Scheme is not for only those Central Govt. retired employees, who were actually availing CGHS facilities during service, but also it is applicable to all retired persons of ministries and departments' offices, who are eligible to enjoy them after retirement, even if immediately prior to their retirement they were not actually availing or never availed of these facilities on account of their posting to a station where CGHS facilities were not available. I, therefore, respectfully agree with the decision of the Division Bench of this Tribunal in the above cases and the Single Bench decision, as mentioned above. A retiree cannot be left without any medical facilities to which he has a right. Financial burden cannot come in the way of effecting welfare legislation, which is a fundamental right to provide medical facilities to the retirees as an onerous duty of the Government.

(Signature)



10. In the result, the respondent no.2 is directed to issue CGHS Card to the applicant on usual payment and subject to completion of prescribed formalities so that he is able to get the benefit of CHGS Scheme in the State of Delhi within a period of one month from the date of receipt of a copy of this order. OA stands allowed. No order as to costs.



(M.K. MISRA)
MEMBER (A)

/ravi/