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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. 1166/2004

New Delhi this the 13th day of January, 2005

Hon'ble Mrs. Meera Chhibber, Member (J)

Shri A.N. Banerjee,
S/o late Shri K.P. Banerjee,
R/o B-7/3-B Sector-2,
D.I.Z. Area, Mandir Marg,
New Delhi.

.... Applicant.

(By Advocate Shri K. Venkatraman)

Versus

1. Govt. of NCT of Delhi
through the Chief Secretary,
Delhi Secretariat,
B-Wing, I.P. Estate,
New Delhi.
2. The Director General of Works,
Central Public Works Department,
Nirman Bhawan,
New Delhi.
3. Govt. of Delhi through
Deputy Secretary (PWD-1),
PWD Secretariat
5th Level, B Wing,
Delhi Secretariat,
New Delhi.

.... Respondents.

(By Advocate Ms. Kanika Vadera proxy for Mrs. Avnish Ahlawat)

O R D E R (ORAL)

By this O.A., the applicant has sought the following reliefs:

“(i) declaration declaring that Office Order No. F.10 (108)/2002/PWD/4120 dated 13.3.2003 issued by Respondent/PWD Secretariat circulated vide O.M. No. 22 (52)/01-E/PWDZ-1/860 dated 14.5.2003 is not applicable to the case of the applicant who had undergone treatment much prior to the circular/O.M. i.e. on 22.4.2003;

(ii) declaration that the applicant is entitled to medical reimbursement of Rs.33486/- and it is prayed that necessary direction be issued to the respondents to reimburse the medical bill of



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Rs.33486/- to the applicant along with the interest @ 18% p.a. from the date of submission of the application (i.e. 13.5.2003);

and/or

(iii) declaration that the office order dated 13.3.2003 issued by PWD Secretariat (Circulated vide O.M. dated 14.5.2003) is per se illegal, arbitrary and discriminatory in law and the same has been issued without any prior notification by the Government of Delhi and without providing opportunity to the applicant for the change over and the said order be set aside as illegal and bad in law;

(iv) grant any other relief as may be deemed fit and proper under the facts and circumstances of the case".

2. It is submitted by the applicant that he was selected on the basis of open advertisement by CPWD as Junior Engineer and had worked in public places. In the month of October, 1995, he was posted in PWD Circle-II, Kasturba Gandhi Marg, New Delhi. He was last posted as A.E (P) in PWD Division-31, FFC Rani Jhansi Road, Jhandewalan, New Delhi. He was contributing towards Central Government Health Scheme (CGHS) right from the beginning and even when he was transferred to PWD, his CGHS contribution was being deducted from his salary throughout. He has submitted that the staff strength of the PWD of Delhi Govt. is encadred with the CPWD and they can be transferred from PWD to CPWD and CPWD to PWD. However, the administrative control of the PWD employees rests with the Govt. of NCT, Delhi while that of CPWD remains with the Centre.

3. In the month of April, 2003, applicant suddenly fell sick and had an emergency operation of his gall bladder on 22.4.2003 and he was admitted to Jeevan Nursing Home, as referred to by the CMO of CGHS (Gole Market). Applicant incurred a bill of Rs.33486/- for the said treatment. He accordingly submitted his medical bill along with requisite documents for reimbursement to EE/PWD-31, on 13.5.2003, with a request to sanction the said medical bill. His bill was duly recommended and forwarded by the Executive Engineer, PW-3, FFC Jhandewalan, vide his letter dated 26.05.2003 (pages 27 and 34, respectively). However, no reply was given to him nor his bills have been cleared. On the contrary, PWD is relying on O.M. dated 14.5.2003 and the Office



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Order dated 13.3.2003 to state that Govt. of NCT of Delhi is not liable to reimburse the medical bill. As per the O.M. dated 14.5.2003 on page 26, Office of the Chief Engineer, Zone-1, PWD had circulated copy of Office Order dated 13.3.2003 for information and compliance by all the Superintending Engineers and as per the Office Order dated 13.3.2003 (page 26C), it was clarified by the PWD Secretariat, Govt. of Delhi that the employees of the CPWD, who are members of CGHS working in Delhi PWD and are regularly making monthly contributions to the scheme having valid CGHS Cards, shall not be given reimbursement of medical claims in respect of themselves as well as their dependent family members, till they surrender their CGHS Card and become member of Delhi Government Health Scheme (DGHS). However, as and when they return back to the Central Government, they can get CGHS Card afresh and even the employee of Central Government on retirement from service while serving in the Govt. of Delhi, he can get back his CGHS Card for availing medial facilities from the CGHS. In nutshell, it was made clear that when an employee is working in PWD, he has to be a member of DGHS instead of CGHS to avail the facility of reimbursement of medical claim from Delhi Government. However, counsel for the applicant submitted that since this Office Order dated 13.3.2003 was circulated in the office of PWD itself vide O.M. dated 14.5.2003 for the first time whereas the applicant had already been operated in emergency on 22.4.2003 itself, that is before the date of 14.5.2003, therefore, he cannot be denied medical reimbursement by the Government of Delhi, on the basis of Office Order dated 13.3.2003. He has further relied on the Office Order dated 17.7.2003 issued by the Superintendent Engineer, PWD Div-8, wherein it was informed that in respect of the medical treatment received after 14.5.2003 and the medical bills submitted in lieu of the treatment received after 14.5.2003, no further action be taken for reimbursement till further orders. Counsel for the applicant relied on this Office Order to advance his case to say that applicant had received the medical treatment before 14.5.2003, therefore, his case had to be decided by the Govt. of NCT itself and he would not be governed by the Office Order dated 13.3.2003. He has also relied on the letter dated 23.07.2003 written by the Director General of Works,



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CPWD to the Chief Secretary to the Govt. of NCT, Delhi, wherein even CPWD had taken up this matter with the Government of NCT by stating as follows:

“2. The CGHS was introduced with the intention of providing comprehensive medical care facilities to the Central Govt. employees and members of their family. The CPWD employees qualify as Central Govt. employees for all purposes, as they have an all India transfer liability and are administered/governed by the CPWD which is an attached office of the M/o UD&PA. Therefore all CPWD employees are eligible for CGHS benefits. These employees are enjoying the status of Central Govt. employees and cannot be deprived of their right of holding CGHS Card and claim for medical reimbursement for specialized treatment as done in the case of other Central Govt. employees.

3. The Delhi Govt. Health Scheme has Dispensaries/Medical Care Units which are concentrated near the limited Delhi Govt. Colonies like Nanakpura, Moti Bagh, Sadiq Nagar, Timarpur etc. while CPWD employees are residing in places scattered all over the New Delhi, Delhi Region and NCT Regions like Ghaziabad, Gurgaon, Noida, Faridabad, etc. It is practically impossible to avail medical attendance facility in these limited DGHS Dispensaries/Medical Care Units, specially in the event of medical emergency.

4. The staff strength of the PWD of Delhi Govt. is encadred with the CPWD while the administrative control of the PWD employees rest with the Govt. of NCT of Delhi. Thus the staff are transferred from PWD to CPWD and vice-versa from time to time depending upon the exigencies of public work and administrative convenience. Consequently, it is nearly impossible to shift from CGHS to DGHS and vice-versa every time an official is transferred, as envisaged by the Office Order.

5. The terms and conditions of the CPWD employees cannot be taken to be similar to that of the members of the Central Health Service posted in the Govt. of NCT of Delhi, as the CPWD employees are working in far flung field areas and remote corners of Delhi where even DGHS has no dispensaries, while Central Health Scheme employees are working in Dispensaries located in the central area of Delhi only.

6. The Delhi Govt. authorities are continuously deducting monetary contribution and keeping in custody the CGHS contribution in respect of CPWD employees without giving them any medical facility in lieu thereof, negating the very basis of these deductions.

9. In view of the above, you are requested to look into the matter and arrange for remedial measures by restoring the old practice of CGHS facility for the CPWD staff working with PWD, Govt. of Delhi”

which clearly shows that even the Director General of Works had taken up the matter of employees, who belong to CPWD and have been posted in PWD. He





thus submitted that in these circumstances, Govt. of NCT or CPWD should be directed to reimburse the bill, as submitted by the applicant.

4. Applicant has made CPWD as well PWD through Govt. of Delhi both as parties. Even though CPWD was served, they have chosen not to file any reply. Govt. of Delhi has, however, filed reply. They have briefly stated that since applicant had not become a member of the DGHS, therefore, they are not liable to reimburse the medical claims of the applicant. They, however, admitted that the CGHS contribution is being deducted from the salary of applicant every month but the amount so deducted goes to the head of account of the CGHS only and the Govt. of Delhi does not get any benefit of this fund. They have further explained that the DGHS was introduced in Govt. of NCT of Delhi w.e.f. 1.4.1997 and it was decided that the reimbursement facility of the medical treatment will be available to only those employees who have been the members either on deputation or borne on the strength of Delhi Govt. They further submitted that the members of CGHS cannot have the membership and avail the benefit of two schemes simultaneously. Therefore, if the officers posted in PWD want to continue their membership with the CGHS, they can get the benefit of Central Government Dispensaries without any claim of reimbursement from the Govt. of Delhi or can claim the benefit of reimbursement from the Government of Delhi only after surrendering their CGHS card and becoming the member of DGHS. As far as the case of Smt. Seema Saxena is concerned, they have explained that the dues towards the medical reimbursement in her case were got settled by treating the same as a special case. Thereafter, it was decided to set up medical claims with the specific direction that no further claims of such type will be accepted where the employees are not the members of DGHS. As regards the claim prior to the date of the issue of the Office Order, the matter is under process to consider the claims on case to case basis, subject to the condition that CGHS certifies the treatment so taken was absolutely essential and that the treatment is taken in the approved hospitals and dispensaries of the Govt. of Delhi. They have thus prayed that the O.A. may be dismissed.

5. I have heard both the counsel and perused the pleadings as well.

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6. It is seen that the Office Order gave an option to the officers to opt for DGHS in case they wanted to avail the facility from Govt. of Delhi but the said Office Order was circulated in the office of PWD itself on 14.05.2003 for the first time. This fact is not disputed by the respondents at all. Therefore, before 14.05.2003, the employees who were posted in PWD would not even be aware of any such Office Order whereby option was given to them to become the member of DGHS. It is relevant to see that applicant was operated on 22.4.2003 itself, that too after he was admitted to Jeevan Nursing Home, as referred to by the CMO of CGHS, Gole Market which averment has not been denied by the respondents in their counter affidavit. Now, as per the Office Order dated 17.07.2003 also, it has been clarified that in respect of the medical treatment received after 14.05.2003, no further action shall be taken for reimbursement till further orders, meaning thereby that where the medical treatment had already been taken before the cut off date of 14.05.2003, on which date the Office Order dated 13.03.2003 was circulated for the first time, was still to be considered by the Govt. of NCT itself. In this view of the matter, I see no justification why Govt. of NCT should sit tight over the file without even passing any order on the medical claim made by the applicant. After all, admittedly applicant was operated on 22.4.2003 and he had submitted his claim for medical reimbursement on 13.05.2003 through his controlling officer which is evident from page 27 itself. The acknowledgement by the Executive Engineer on 13.05.2003 has not been disputed by the respondents. They have stated that the stamp of the Executive Engineer shows that this application was given only on 17.05.2003 i.e. after 14.05.2003 but if the Office Order dated 17.07.2003 is seen, it is absolutely clear that the relevant thing is the date of medical treatment and not submission of application. In the said Office Order, it was informed that in respect of the medical treatment received after 14.05.2003 and the medical bills submitted in lieu of the treatment received after 14.05.2003, no further action shall be taken. Since applicant's treatment had already been given on 22.4.2003 itself, naturally he would be governed under the Office Order dated 17.07.2003 to the extent that his case could still be considered by the Govt. of Delhi itself.





7. In any case, once the claim for medical reimbursement was given to the Govt. of Delhi by virtue of his posting in PWD which is a part of the Govt. of NCT, Delhi, it was incumbent on the part of the Govt. of NCT, Delhi to either sanction the bill itself in accordance with the rules or in case they felt that the applicant was to be reimbursed by the Central Government, they should have referred his case to the CPWD or at least inform the applicant that he should claim his reimbursement from the CPWD. They could not have sat tight over the file without giving any reply to the applicant because that does not serve the purpose at all. It is not disputed that applicant belongs to CPWD and has been giving his CGHS contributions regularly. Therefore, either it is the Govt. of Delhi who should consider his claim for reimbursement or the CPWD should do the same. The claim of applicant has not been disputed at all, as till date nobody has applied mind to the correctness of the claim made by the applicant. Therefore, this O.A. is being disposed of by giving direction to the Govt. of Delhi (Respondent No.3) to apply their mind to the claim made by the applicant in view of the observations as made above and then pass appropriate order in accordance with law, within a period of three months from the date of receipt of copy of this order, under intimation to the applicant. In case, they still feel that applicant can be reimbursed only by the CPWD, they shall inform the applicant about it and refer the matter to the CPWD on their own as all the documents have already been submitted by the applicant to PWD, Govt. of Delhi.

8. With the above direction, this O.A. is disposed of with no order as to costs.

(MRS. MEERA CHHIBBER)
MEMBER (J)

'SRD'