

10

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 1646/2004

New Delhi this the 18th day of January, 2005

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

1. All India CPWD Office Staff Association through its Genl. Secretary (presently Ms. Aruna Sharma Office Supdt. in PWD), 'C' Wing (GF), near generator Room, I.P. Bhawan, New Delhi-110002
2. C.K. Kamra, UDC, PWD 1, Y-Shaped Bldg., I.P. Estate, New Delhi.
3. Saroj (Mrs.) UDC 0/0 SE (P&A), PWD 2nd Floor, MSO Bldg., New Delhi-110002

..Applicants

(By Advocate Shri G.K. Aggarwal)

VERSUS

1. Union of India through, Director General (Works), Head of CPWD & Ex. Officio Secy., Nirman Bhawan, New Delhi.
2. The Secretary, Ministry of Health, Govt. of India, Nirman Bhawan, New Delhi-110011
3. Govt. of NCTD through Principal Secretary (PWD), Players Bldg., I.P. Estate, New Delhi-2
4. Principal Secretary (Finance), Govt. of NCTD, Players Bldg., New Delhi.
5. Engineer-in-Chief, PWD, NCTD, Curzon Road Barracks, K.G. Marg, New Delhi-1

..Respondents

(By Advocate Shri Rajiv Kumar proxy for Sh. J.B. Mudgil for respondents 1-2)
(Ms. Simran proxy for Mrs. Avinash Ahlawat counsel for respondents 3 to 5)

O R D E R (O R A L)

This OA has been filed by the All India CPWD Staff Association claiming the

2

following reliefs:

“(8.01) Quash and set aside A 1 dated 13.3.2003, and

(8.2) Order the respondents and, through them, their subordinates whoever concerned, to settle within four weeks all the medical (CGHS) reimbursement bills of all ministerial office staff working in PWD (NCTD) who are employees of CPWD, for the period prior to 13.3.2003, pay the amount due with interest at 18% per annum, grant any other relief, with costs”.

2. It is submitted that All India CPWD Staff Association is a recognized Association and represents all ministerial staff of Central Public Works Department (other than those belonging to Central Secretariat Services) all over India including those working in Public Works Department (Govt.of National Capital Territory of Delhi). They have categorically stated that some of the employees working in PWD are not on deputation and continue to be employees of CPWD Their wages and medical reimbursement bills are charged under CPWD Major Head 2059-Estt. They pay Central Govt. Health Scheme contribution into Central Govt.Revenue Head 0210. They hold CGHS cards and are entitled to all facilities thereunder, including reimbursement of medical expenses as entitled to Central Govt. employees.

3. Their grievance is that vide Office Order dated 13.3.2003 Govt. of Delhi has asked the applicants to become Members of Delhi Health Scheme (DHS) and give up their CGHS cards if they desire to avail of medical reimbursement from Govt. of Delhi which, in turn, would deprive them of availing the facilities of reimbursement through CGHS dispensaries and Central Govt. Hospitals and Nursing Homes. They would have to depend upon MCD dispensaries and Delhi Govt. Hospitals and Nursing Homes whereas most of the employees are residing in New Delhi areas where MCD dispensaries and Delhi Government Hospitals and Nursing Homes are not situated. Since they are living in Central Govt. general pool residential accommodation in New Delhi and still continue to be CPWD employees while working in PWD, they are entitled to the facilities of CGHS by paying monthly contribution to CGHS through PWD in Central Govt. Revenue Head



0210. They have submitted that Govt. cannot force them to switch over to Delhi Health Service from CGHS but should be made optional for the convenience of those residing in areas where MCD dispensaries, Delhi Govt. Hospitals and Nursing Homes are available.

4. They have further submitted that even the Medical bills for the period prior to 13.3.2003 including those of applicants 2 and 3 have not yet been settled. Some persons have already retired while their bills, including for heart operations have still not been settled. Thus the association has been pressing hard to settle at least those outstanding bills prior to 13.3.2003 but till date they have not been settled. They have thus prayed that the reliefs as claimed by them may be granted.

5. Reply has been filed by the Govt. of NCT of Delhi as well as Central Government. Govt. of NCT of Delhi have stated that the employees working with the Central Govt. in CPWD are covered under the Central Govt. Health Scheme and can avail medical facility under the said scheme only by paying regularly a monthly contribution to the scheme and holding a valid CGHS cards. Similarly, the employees working with Govt. of NCT of Delhi in PWD are covered under its respective health scheme of Delhi Govt i.e. DGHS and can avail medical facility under the said scheme only by becoming the member of it. However, to facilitate the employees in availing the medical facility working on deputation with Govt. of NCT Delhi, there had been a meeting in the chamber of Principal Secretary (Finance) regarding re-imbursement of medical claims of the employees working in PWD from CPWD and on the basis of the meeting held, an Office Order was issued on 13.3.2003 wherein it has been decided that those employees of CPWD working in Delhi PWD were not to be given reimbursement of medical claims in respect of themselves and their families till they surrender their CGHS card and become member of Delhi Govt. Health Scheme. Their claim for reimbursement will be entertained from the date of their joining DGHS. They have further explained that the DGHS was introduced in Govt. of NCT of Delhi w.e.f.



1.4.1997. The reimbursement facility of the medical treatment will be available to only those employees who have been the members either on deputation or born on the strength of Delhi Government. It is further submitted that the purpose of issuing the office order dated 13.3.2003 was to facilitate the officers/officials who are members of CGHS in availing the medical facility and working on deputation with Govt. of NCT of Delhi as an employee cannot have the membership of DGHS and avail the benefits of the two schemes simultaneously. This is entirely optional and, therefore, the CPWD officials posted with the Government of Delhi can continue their CGHS membership and get the benefit of Central Govt. dispensaries without any claim of reimbursement from the Govt. of Delhi or alternatively can become the member of the DGHS by surrendering his CGHS membership and claim their reimbursement from Govt. Of Delhi. On their repatriation they can adopt CGHS again. It is further submitted that the employees of GNCT of Delhi having a strength of about 1.05 lakhs are getting the benefits of medical reimbursement/treatment in the Govt. Hospitals and Dispensaries as well as in approved private hospitals that are available all over the NCT of Delhi. Hence, there should not be any problem for CPWD officials to take the treatment and get reimbursement once they become the members of DGHS.

6. However, as far as reimbursement of medical claims of the employees working in PWD before issuance of instruction in Office order dated 13.3.2003 are concerned, they were already in the process as all the Engineer-in-Chief along with all Chief Engineers have already been requested vide order dated 24.3.2004 to send details of the said employees

7. They have further submitted that as an employee cannot have the membership and avail the benefits of the two schemes simultaneously. This is entirely optional and, therefore, the CPWD officials posted with the Govt. of Delhi can continue their CGHS cards and get the benefit of Central Govt. dispensaries without any claim of



reimbursement from the Govt. of Delhi or alternatively can become the member of the DGHS by surrendering his CGHS cards and then claiming their reimbursement from Govt. of Delhi. They have thus prayed that the OA may be dismissed because medical claim, if any, have to be claimed separately and the Association cannot be allowed to file the present OA in a representative capacity.

8. Central Govt., on the other hand have submitted that the Central Govt. employees who are posted in the PWD of NCT of Delhi should not have been extended CGHS facilities in the first place. Since the NCTD has already framed its own medical scheme called the DGHS, such employees should obtain medical facilities under DGHS for the period they are posted to the PWD, GNCTD.

9. They have submitted that the applicants who are posted in the Govt. of NCT of Delhi are not eligible for CGHS facilities and their medical facilities would necessarily be governed under the medical rules/scheme by the GNCTD where they are presently serving. There is no system to switch over to the State Government Health Services or vice versa as the health services are provided by the respective State Governments to its employees either on deputation or on regular transfers to the State Governments. They have thus submitted that the Central Govt. employees who are posted to the GNCTD are not eligible for CGHS facilities and their medical facilities would necessarily be governed under the medical rules/scheme framed by the Govt. of NCT of Delhi where they are presently serving. They have thus prayed that the OA may be dismissed.

10. The applicants have reiterated their stand in the rejoinder as taken in the OA.

11. I have heard all the learned counsel and perused the pleadings as well. Applicants have raised a common issue which would have a bearing on all those employees who though belong to CPWD but have been posted to PWD and are being asked to switch over to the scheme of Govt. of NCT of Delhi, namely, DGHS. Therefore, this is a common grievance for all those persons who have been working in CPWD but posted in



PWD. I do not think that the objection raised by the respondents can be sustained because if the matter relates to all and can be decided in a single O.A., there is no need to ask each one of the employees to file a separate OA. Therefore, the preliminary objection taken by the Govt. of NCT is rejected

12. Applicants have stated categorically in their OA that they are employees of CPWD but have been posted in PWD; they are not on deputation. They are contributing towards CGHS till date and contributions are being deducted by the Govt. of NCT from their salary. None of these facts have been disputed by any of the respondents nor they have placed on record any order to show that these applicants are on deputation in PWD. Therefore, the contention of applicants that they were not on deputation, is taken to have been accepted. The question is if applicants are employed in CPWD and they are giving regular contributions towards CGHS and are holding valid CGHS cards whether they can be forced to opt for DGHS while they are working with PWD.

13. A perusal of office order dated 13.3.2003 shows that it has been issued only for reimbursement of medical claims with regard to Central Govt. employees working with PWD only. Govt. of NCT of Delhi has decided 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 members of Delhi Govt. Health Scheme or till they surrender their CGHS cards. It means that there is no bar on their continuing to be members of CGHS. It has only been clarified that so long they contribute towards DGHS, CPWD employees working in PWD would be entitled to reimbursement from Delhi Government and they can revert back to CGHS after they are posted to CPWD or in case retire from Govt. of Delhi PWD. It is also seen from the reply filed by the Govt. of NCT of Delhi that they have themselves stated that a person cannot become member



of 2 schemes simultaneously. This is entirely optional and therefore, the CPWD officials posted with Govt. of Delhi can continue their CGHS membership and get the benefits of Central Govt. dispensaries without any claim of reimbursement from the Govt. of Delhi meaning thereby that the persons who are though employees of CPWD but posted to PWD would have option to either opt for CGHS or DGHS. The only difference is that they would be entitled to claim medical reimbursement from the Govt. of NCT of Delhi only after they become members of DGHS. To my mind there can be no illegality if such an approach is taken by the Govt. of NCT of Delhi because after all when they are running their own scheme they would like the persons to contribute towards that scheme specially when the employees working with them want to avail the benefit of medical reimbursement facilities from the Govt. of NCT of Delhi. Therefore, as far as the Office order is concerned and the stand taken by the Govt. of NCT of Delhi is seen, there is no need to quash the office order dated 13.3.2003. The employees of CPWD who are working with PWD would have to make their option as to whether they want to take facilities of CGHS or they want to continue with DGHS. It is not disputed by the respondents that applicants are still employees of CPWD and they are contributing towards CGHS regularly every month. It is also not disputed that these applicants are not on deputation with Govt. of NCT of Delhi. If these are the facts, we see no justification why such of the persons who opt for contribution towards CGHS should be deprived of their rights to continue with that facilities. In that event they would have to claim reimbursement from CPWD. In fact this matter has been taken up by the Association and also the Director General (Works), CPWD with the Govt. of NCT of Delhi. So far PWD has neither referred any case for medical reimbursement after 13.3.2003 to CPWD nor they have rejected any of the claim of their employees. Therefore, we do not know what would be the stand of CPWD in a case when the matter is referred to them because each case would have to be decided in the given circumstances.

B

14. We, however, find that the stand taken by the Govt. of NCT of Delhi and Central Govt. are contradictory to each. While Govt. of NCT of Delhi has stated that this is entirely optional and the CPWD officials posted with the Govt. of India can continue their CGHS membership and get the benefit of Central Govt. dispensaries without any claim of reimbursement from the Govt. of Delhi. Reply filed by the official respondents indicates that the Central Govt. employees who are posted to the PWD of Delhi should not have been extended the CGHS facilities in the first place. Since the Govt. of NCT of Delhi has already framed its own medical scheme called the DGHS, such employees should obtain medical facilities under DGHS so long they are posted in PWD, Govt. of NCT of Delhi. They have further submitted that their CGHS card should have been withdrawn by CPWD once they were transferred to PWD, Govt. of Delhi and their monthly contribution to CGHS should have been stopped by CPWD. However, admittedly no such action has been taken by the CPWD or Govt. of Delhi. In fact not only the applicants are having CGHS card but they are contributing towards CGHS till date which is being deducted by Govt. of India. I see no reason why they should be deprived of the benefits of CGHS simply because they have been posted in PWD. No body has tried to explain in what capacity the employees of CPWD are transferred to PWD in Govt. of Delhi. Even though applicants have stated categorically in para 4.1 that their wages and medical reimbursement bills are charged under CPWD Major Head 2059 Estt. They pay Central Govt. Health Scheme contribution into Central Govt. Revenue Head 0210 but these facts have not been denied by the respondents. Either the Central Govt. should have made it clear to the employees concerned before transferring them to PWD that they would not be entitled to claim the benefit of CGHS and on their transfer they would have to contribute towards DGHS, but no such condition was conveyed to the employees at any point earlier than the issuance of order dated 13.3.2003 nor their CGHS cards were not taken back. On the contrary they are contributing towards CGHS



even now which are being deducted regularly by Govt. of India. Therefore, now to say that they would not be entitled to any benefit of CGHS in these circumstances does not seem to be correct. In any case the Govt. of NCT of Delhi is still deducting towards CGHS and have themselves stated in their reply that it is optional for the employees to either continue with DGHS or CGHS. Therefore, this matter needs to be settled finally for which the decision will have to be taken by the DG (Works) CPWD finally after taking into consideration the grievances advanced by the Association for which purpose they shall be at liberty to file a detailed additional representation also within a period of four weeks from the date of receipt of a copy of this order with copy to the Govt. of NCT of Delhi. In case such a representation is given to DG (Works), C.P.W.D. he shall pass an appropriate speaking order thereon after due consultation with Govt. of Delhi within a period of three months thereafter, under intimation to the applicants. Therefore, as far as relief No.1 is concerned that stands disposed of with the above directions.

15. So far as the 2nd relief is concerned Govt. of NCT of Delhi has itself stated in their reply that all the medical claims of the employees working with them prior to issuance of Office order dated 13.3.2003 are in process. They have relied on the letter dated 24.3.2004 in this case written to all the Engineer-in-Chief and Chief Engineers to send details of employees who have retired before issuance of Office order dated 13.3.2003; who have since been retired or not in service in Delhi Govt./repatriate from Delhi Govt. or the total number of employees who have adopted the DGHS. This letter was issued as far back as 24.3.2004, we are already in January, 2005 meaning thereby 10 months have gone by. All these claims prior to 10.3.2003 have to be decided by the Govt. of Delhi as per their own reply. Therefore, direction is given to Govt. of Delhi to decide all such claims within 8 weeks from the date of receipt of a copy of this order and make payment to the persons concerned within two weeks thereafter. Since Govt. was taking a policy decision and the medical claims could not be decided in view of the matter being



-10-

19

under consideration, I do not think that any interest can be granted to the applicants for the amount which would be due to such of the persons who had given their medical reimbursement bill prior to 13.3.2003.

16. With the above directions, this OA is disposed of with no order as to costs.



(Mrs. Meera Chhibber)
Member (J)

sk