

6

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

OA No.1963/2004

New Delhi this the 6<sup>th</sup> day of January, 2005.

**HON'BLE MR. SHANKER RAJU, MEMBER (J)**

N.R. Bhattacharya,  
(Retd. Chief Post Master General),  
C-2/2134, Vasant Kunj,  
New Delhi-110070.

-Applicant

(By Advocate Shri G.S. Lobana)

-Versus-

1. Union of India, through  
Secretary,  
Ministry of Health & Family Welfare,  
Department of Health,  
Nirman Bhawan,  
New Delhi-110001.
2. Secretary,  
Department of Posts,  
Dak Bhawan,  
New Delhi-110001.
3. Additional Secretary,  
Department of Pensions &  
Pensioners' Welfare,  
Lok Nayak Bhawan,  
New Delhi-110003.
4. The Director,  
Central Govt. Health Scheme,  
Nirman Bhawan,  
New Delhi-110001.

-Respondents

(By Advocate Ms Satya Siddiqui with Sh. Dalip Singh, Advocate)

**ORDER (ORAL)**

Applicant impugns respondents' order dated 4.8.2004, whereby respondents have refused to extend the CGHS facilities to applicant.

2. Applicant who belongs to Indian Postal Service, Group 'A' retired on superannuation on 31.12.2001 from Jaipur, where he was availing the

6A

medical facilities from P&T Dispensary from 1.5.2000 to 31.12.2001. Before posting to Jaipur he was posted at Delhi as Deputy Director General (MM) from 16.10.1997 to 10.9.1998 and had availed CGHS facilities. On his transfer to Ghaziabad from 11.9.1998 to 5.4.2000 applicant and his family had availed CGHS facilities at Delhi. Against the transfer to Jaipur applicant had made a representation on medical grounds and represented his case to be taken up with the Ministry of Health and Family Welfare for extension of CGHS facilities as after retirement applicant intended to settle at Delhi in his own house. For this, a request for issuing a temporary identity card<sup>in</sup> for availing CGHS facilities was asked for.

3. The Ministry of Health and Family Welfare vide order dated 1.8.1996 had decided that P&T pensioners were not residing in CGHS covered cities at the time of retirement and were not getting medical facilities under CGHS are not eligible for the CGHS facilities.

4. As per Government of India's memo dated 17.12.1990 the Central Government has fixed the eligibility criteria for all retired Central Government employees irrespective of the department to avail CGHS facilities and inter alia it is stated that all retired personnel who are eligible to enjoy CGHS facilities while in service would be extended the same. This has led the respondents to take up the case of applicant with the Ministry of Health and Family Welfare vide letter dated 15.12.2003 but was not acceded to.

5. A Division Bench of the Tribunal at Bangalore Bench in OA-704/2001 in **N. Nanjundaiah v. Union of India & Others**, decided on 20.11.2001, while dealing with a case of a postal employee to whom CGHS facilities were not extended to, referring to OM dated 17.12.1990 of the DoPT observed as under:

X

"The Central Government vide Annexure A-1 O.M. dated 17.12.1990 has framed certain rules for availing the CGHS facilities for civilian Central Government pensioners. As stated above under Clause 1 sub-clause 1.1, 1.2 and 1.4 of the eligibility criteria, it has been clearly mentioned that (a) the families of Central Government employees in receipts of family pension are also eligible to avail of CGHS facilities if the deceased Government servant was eligible for these facilities while in service. (b) It is not that on those Central Government employees who were actually availing of CGHS facility during service are eligible to enjoy them after retirement. All retired personnel of Ministries, Departments, Offices which are eligible to enjoy CGHS facility 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. (c) Furthermore in clause 1.4 of the eligibility criteria it has been categorically stated that even though CGHS facilities are at present available only at specified places and it may not be possible for Central Government pensioners living away from these places to avail of the CGHS facilities on day to day basis as in the case of persons living at these place, it may be in the interest of the pensioners to enroll themselves as beneficiaries of the CGHS scheme so that at least in the case of major ailments/major surgery they will be able to come to the CGHS station to avail of these facilities if and when such a need should arise."

6. Accordingly the following directions have been issued:

"After going through the eligibility criteria for availing CGHS facility after retirement as have been envisaged under Annexure A-1, we are of the considered opinion that Annexure A-9 is completely against the prescribed norms as have been fixed by the Central Government for all its retired employees for availing CGHS facility after their retirement. The Post and Telegraph Department is one amongst the other Central Government Departments. As such Annexure A-9, which was issued by the Health Department in respect of retired employees of Post and Telegraph Department alone is completely discriminatory, arbitrary, unjust and against the settled principles of law. Article 14 of the Constitution of India forbids class legislation, but permits reasonable classification. But after issuance of O.M. dated 17.12.1990 (annexure A-1), issuance of order/letter dated 1.8.1996 (Annexure A-9) in respect of Post and Telegraph Department alone does not come within the purview of reasonable classification, whereby equals have been treated differently without any basis. Hence it is violative of Article 14 and 16 of the Constitution of India and as such not sustainable in the eye of law."

In view of the observations made above the order/letter at Annexure A-9 dated 1.8.1996 and also the order under Annexure A-7 dated 5.1.2001, which was passed by the Department on the basis of Annexure A-9 are quashed. Further, we direct the respondents to take immediate steps for extending the CGHS facility in favour of the applicant as has been envisaged under Annexure A-1 which was issued by the Central Government for all its employees irrespective of any Department, including that of the Post & Telegraph Department."

7. In a similar decision in OA-955/CH/2003 a Bench of the Tribunal at Chandigarh while dealing with the issue of extension of benefit of CGHS to retired employees of P&T Department observed as under:

"6. Attention of this Tribunal has also been drawn to a judgment 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 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 judgment. Letter dated 1.8.1996 has already been declared violative of provision of Article 14 of the Constitution of India. Till the judgment 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 judgment in the case of N. Nanjundaiah."

8. In the above conspectus learned counsel for applicant contended that on all fours the case of applicant is covered by the aforesaid decision. As

such denial of CGHS facility to applicant when Ministry of Health and Family Welfare dated 1.8.1996 has been declared ultra vires is not sustainable.

9. Learned counsel for respondents vehemently opposed the contentions and stated that as per 1.8.96 letter those P&T pensioners who were members of CGHS before retirement are allowed to avail the benefits and as majority of P&T employees availed the medical facility through their own dispensaries as per CCS (Medical Attendance) Rules, 1944, CGHS rules prescribe a pensioner to be registered to nearest to the covered cities even if he is not living in a CGHS covered city and if such a decision is taken to extend CGHS facility to all the P&T Pensioners irrespective of their availing facility before retirement, it would be a huge burden and overload on CGHS and this being a policy decision cannot be interfered with.

10. I have carefully considered the rival contentions of the parties and perused the material on record. In **K.P. Singh v. Union of India**, 2002 SCC (L&S) 761 the Apex Court while according medical re-imbursement observed that the rates approved by CGHS regardless of the fact that the town or city has only private but no government hospital should be re-imbursed.

11. Right to live is a fundamental right and the corresponding duty is entrusted upon the State to provide medical facilities not only to working government servants but also to the retirees. A discrimination on the ground that those P&T employees who were availing CGHS facilities before retirement are entitled but those who had not availed are not is an invidious discrimination and I do not find any intelligible differentia and any reasonable nexus with the objects sought to be achieved, treating the class, i.e., retirees, unequally without any reasonable basis is an anti thesis to principles of equality, which cannot be countenanced in the wake of Article 14 of the Constitution of India.

10

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 for 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 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 foregoing 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.

S. Raju  
(Shanker Raju)  
Member (J)

'San.'