

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

O.A. NO. 1988/2004

New Delhi, this the 06th day of September, 2005

HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)

Shri Chander Shil Bhatia, aged 82 years,
119, Sector-23, H.B. Colony,
Faridabad-121 005
(Now through Shri P.K. Bhatia - L.R.)

Applicant

(By Advocate : Shri G.S. Lobana)

VERSUS

1. Union of India through
Secretary,
Department of Telecommunication,,
Sanchar Bhawan,
20, Ashoka Road,
New Delhi-110 001
2. Chief General Manager,
Haryana Telecom Circle,
107, the Mall Ambala Cantt.
PIN-133001
3. Secretary,
Ministry of Health & Family Welfare ,
Department of Health,
Government of India, Nirman Bhawan,
New Delhi-110 001
4. The Additional Secretary,
Dept. of Pensions & Pensioners Welfare,
Government of India,
Lok Nayak Bhawan,
New Delhi-110 003

Respondents

(By Advocate : Sh. Rajesh Katyal for Res. 1, 3 & 4 and
Sh. M.M. Sudan for Res. 2)

ORDER (Oral)

Shri Chander Shil Bhjatia, retired as Assistant Director from the Office of
Chief General Manager, Haryana Telecom Circle, Ambala on 31st August, 1980,

was availing medical facilities from P&T Dispensary located at Ambala Cantt. After his retirement, he settled down at Faridabad where no P&T Dispensary exists. His request for issuing CGHS Card was rejected by the Ministry of Health in terms of its letter dated 01.08.1996. The applicant had to undergo emergent Heart treatment to save his life, at Metro Heart Institute, Faridabad from 23.12.2003 to 26.12.2003 and accordingly paid a Bill for Rs.1,91,785.10. He claimed reimbursement of the said amount from Respondent No.2, which had not been agreed to, despite representations made on the said subject. The applicant had challenged this action of the respondents in returning the said claim for medical reimbursement vide communications dated 17.04.2004 and 06.07.2004. He seeks a direction to entertain and consider the medical re-imbursement claim along with interest at the rate of Rs.12%.

2. Since said Shri Chander Shil Bhatia died during the pendency of the present OA on 02.10.2004, vide MA No.87/2005, his L.R., namely, Shri P.K. Bhatia, being his son, was brought on record.

3. Shri G.S. Lobana, learned counsel appearing on behalf of the applicant forcefully submitted that the sole ground, which became the basis for rejecting the applicant's claim, namely, that the CS(MA) Rules have not been extended to the Central Government pensioners residing in non-CGHS area, has been considered by a Coordinate Bench of this Tribunal and a view has been taken that such contention cannot be accepted. It was further contended that such a plea and contention was illegal, arbitrary, discriminatory, unjust and violates Articles 14, 16 and 21 of the Constitution of India. Further more, the Ahmedabad Bench of this Tribunal vide Judgement dated 12.05.2004 in OA 99/2004 **Mr. Sadashiv B. Marathe Vs. Union of India & Ors.** after considering the identical contentions as raised in the present case, has held that right to health being an integral part of life and the Government is under Constitutional obligation to provide the health facilities to employees or retired employees and in any case he or she if required a

specialized treatment in an approved hospital, it was the duty of the Government to bear or reimburse the expenses. Accordingly, directions were issued to entertain and consider the medical reimbursement claim of the said official in the light of Government of India's OM dated 05.06.1998 along with interest. It was further contended that the Gujarat High Court in Special Civil Application No.13120 of 2004 with SCA No.13121 of 2004 and SCA No.23122 of 2004 decided on 08.10.2004 has upheld the view taken by the Ahmedabad Bench of this Tribunal. It was further contended that the Division Bench of this Tribunal, Circuit Bench at Gwalior in the case of **Laxmi Chand vs. Comptroller and Auditor General of India & Ors.**, 2005 (2) SLJ (CAT) 145, decided on 04.11.2004 had also considered an identical claim and allowed the same with directions to the respondents to entertain the medical re-imbursement claim and reimburse the same amount along with interest. It was further held therein that:

“10. In the instant case, the applicant's case reveals that the applicant having suffered heart attack was immediately rushed to the Apollo Hospital, New Delhi and was subjected to Bypass heart surgery within two days of his admission in the hospital. It clearly suggests that his condition was serious and required immediate treatment. It is an undisputed position that the Apollo Hospital, New Delhi is a recognized hospital for heart surgery so far the heart treatment is concerned and as such, the applicant was very much entitled to claim the reimbursement of the expenses incurred by him for his treatment in Apollo Hospital. The contention that the applicant could have become the member of the CGHS and having not become the member of CGHS after retirement cannot claim the medical reimbursement is quite illogical and unacceptable. Even if the CGHS facility was available in certain areas, could not have extended the benefit of heart treatment. Merely because the applicant was not the member of the CGHS cannot deprive him of his entitlement for reimbursement of the medical expenses incurred by him. We therefore have no hesitation in concluding that the claim of the medical reimbursement of expenses incurred by the applicant is denied on untenable grounds and therefore, the O.A. deserves to be allowed and the respondents are required to be directed to entertain the claim of reimbursement and medical treatment expenses of the applicant and reimburse the same”. (emphasis supplied)

4. Further, a Division Bench of this Tribunal at Madras in OA No.669/2004 **N. Sampandam Vs. UOI** decided on 5.11.2004 also considered a similar issue wherein the Department of Posts had rejected the claim for medical reimbursement on the ground that the retired Govt. servants were not covered by CS (Medical Attendance) Rules, 1944 and after considering OM dated 05.06.1998 issued by the Ministry of Health and Family Welfare, direction was issued to reimburse the medical claim to the extent admissible and make necessary payment within the time limit prescribed therein.

5. Shri M.M. Sudan, learned counsel appearing for Respondent No.2 contended that the applicant being a Central Government employee and having retired on 31.08.1980 was drawing his pension from Government of India. The liability in that respect has not been passed on to BSNL and, therefore, the Respondent No.2 being a functionary under BSNL, which came into existence w.e.f. 01.10.2000, has no concern with the claim made by the deceased Govt. employee and, therefore, their name may be deleted from the Memo of Parties.

6. Respondent No.3 by its reply contested the applicant's claim. Shri Rajesh Katyal, learned counsel appearing for respondents No. 1, 3 and 4 stated that the said reply be read on behalf of Respondents 1, 3 and 4. It is contended that the present OA is not maintainable as the deceased Govt. employee had opted for fixed medical allowance of Rs.100/- per month pursuant to OM dated 19.12.1997 issued by the Ministry of Personnel, Public Grievances and Pensions and further that a decision was taken by the Department of Health, partly fulfilling the request of the P&T for extension of the CGHS facilities to them as the same was extended to only those pensioners who were members of the CGHS prior to their retirement. However, those P&T pensioners who were not participating in CGHS while in service, the said facility was not extended. Accordingly, orders were issued on 01.08.1996 stating that those P&T pensioners who were members of CGHS prior to retirement may be allowed to transfer their CGHS cards from one

CGHS covered city to another CGHS covered city. Since applicant was not enjoying the CGHS facility prior to his retirement, his request could not be agreed to. It was further contended that the provisions of CS(MA) Rules, 1944 are only applicable to the serving employees of Central Government and not to the pensioners. The OM dated 05.06.1998 relating to extension of CS(MA) Rules, 1944 to the pensioners residing in areas not covered by the CGHS was only recommendatory in nature. The Department of Pension and Pensioners Welfare till date has not issued any order extending the said Rules to the pensioners. CGHS is unable to carry the huge burden and work-load by extending its facilities to P&T pensioners and employees both in terms of infrastructure and resources as well.

7. The Applicant filed rejoinder and contested the respondents' pleas and claim and placed reliance on an Order dated 06.01.2005 of this Bench in OA No.1963/2004 **N.R. Bhattacharya vs. UOI & Others.**

8. I have heard the learned counsel for the parties and perused the pleadings carefully.

9. The short issue which arises for consideration in the present case is whether the applicant is entitled to medical reimbursement or not, as well as whether the judgement and orders passed by the Coordinate Bench of this Tribunal could be extended to the Applicant/deceased Govt. employee. A perusal of Judgement dated 12.05.2004 passed by the Ahmedabad Bench of this Tribunal in OA No.99/2004 in **Mr. Sadashiv B. Marathe vs. Union of India & Others**, in specific shows that it dealt with the case of an employee from the Department of Posts whose claim for medical reimbursement had been rejected on the ground that he being a pensioner, was not eligible for such claim. Para-4 in specific noticed the reasons given for such a rejection that the said official was not covered under CGHS or CS(MA) Rule as he was a pensioner not residing within the area covered by the CGHS. The said Bench also noticed that similar claim had already

been allowed in **Ratan Chand Tisa v. UOI** in OA No.216/2001 decided on 21.10.2002, directing the respondents to pay the claim as early as possible in terms of Govt. of India OM dated 05.06.1998 while rejecting the respondents' contention that the claim was not covered under CS(MA) Rules, 1944. The said decision had been upheld by the Gujarat High Court in a Special Civil Appeal No.5591/2003 along with Special Civil Appeal No.9302/2003. Similarly, an identical issue had been decided by the said Bench in OA 351/2000 vide order dated 16.10.2002, which was also upheld by the said High Court vide Special C.A. No.9704 of 2002. Even the plea of limitation raised was negatived and rejected. Ultimately the OA was allowed with a direction to entertain and consider the medical reimbursement claim.

10. As far as the contention raised by the learned counsel for Respondent No.3 that the applicant has been paid a sum of Rs.100/- per month in terms of Ministry of Personnel, Public Grievances and Pensions OM dated 19.12.1997 is concerned, I find that such aspects had been considered by the Division Bench of the Madras Bench of the Tribunal in OA No.669/2004 (supra), and it was rejected. The further plea raised by the respondents that the OM dated 05.06.1998 was not a final order and necessary clarifications had been issued on 20.08.2004, the said Division Bench observed that a clarification cannot over-ride the decision of the Ministry which had been conveyed after due consideration and OM issued earlier cannot be nullified by a clarification issued subsequently. Shri G.S Lohana, learned counsel for applicant strenuously urged that the clarificatory instructions cannot supersede or take away the right itself under the regulations/instructions sought to be clarified and for this purpose reliance was placed on 1997 (1) SCC 641, **Director General of Posts & Others vs. B. Ravindran and Another**. In this case, the Hon.ble Supreme Court under para-16 observed as under:

"Under these circumstances, the Government could not have, under the guise of a clarificatory order, taken away the right

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which had accrued to such re-employed pensioners with retrospective effect by declaring that while considering hardship the last pay drawn at the time of retirement was to be compared with the initial pay plus pension whether ignorable or not."

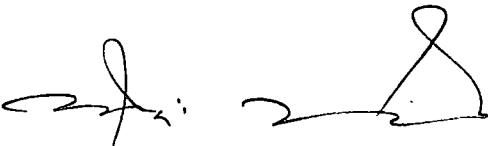
11. I may note on the face of it that the OM dated 20.08.2004 which has been termed as a certificatory OM to earlier OM dated 05.06.1998 states that the said OM had been mis-interpreted by some pensioners as the final order of the Government of India as to CS(MA) rules to pensioners. I may note that the judgements pronounced on the subject have been rendered by various Bench of this Tribunal, which is the competent Court of Law, and upheld by the High Court in the Petitions noticed hereinabove and, therefore, I find no justification in the respondents' stand that the said OM dated 05.06.1998 had been mis-interpreted. It is well settled that administrative ipse dixit cannot infiltrate on to an arena which stands by judicial orders (2001 (5) SCC 327, **Anil Rattan Sarkar vs. State of West Bengal**).

12. I may also note the fact that the Division Bench of this Tribunal at Bangalore in OA No.704/2001 **N. Nanjundaiah vs. UOI & Others** decided on 20.11.2001 dealing with the case of Postal employees to whom CGHS facilities were not extended has held that the OM dated 01.08.1996 in respect of Posts & Telegraph Department alone did not come within the purview of reasonable classification and accordingly the same was declared to be violative of Articles 14 and 16 and set aside. Ultimately, the respondents therein were directed to take immediate step for extending the CGHS facility which was given by the Central Government for all its employees irrespective of any Department including that of the Posts and Telegraph Department. The said judgement has been followed and reiterated by the Chandigarh Bench in OA No.955/CH/2003 as well as other Benches of the Tribunal. As the Ministry of Health and Family Welfare OM dated 01.08.1996 was quashed and set aside being volatile of Articles 14 and 16 of

the Constitution by the Bangalore Bench of the Tribunal, I find no justification in the Respondents' action in denying the applicant CGHS facility on the same very ground, which stood concluded. Shri Rajesh Katyal, learned counsel for Respondents 1, 3 and 4 contended that the deceased Government employee had applied for CGHS facility on 23.3.2004, i.e., after he had undergone the emergency Heart Treatment on 23.12.2003. I have considered this aspect too but find no merit in the said contention. Merely because the deceased Govt. employee approached the Respondents for extending CGHS facilities after taking the medical treatment, that itself could not be a ground to reject such a request particularly when the OM under which such facilities were denied stood quashed and set aside by this Tribunal as early as on 20.11.2001. In other words, under the law the said OM dated 01.08.1996, in fact, never existed.

13. Following the ratio laid down under the aforesaid Judgements of the Ahmedabad Bench, Gwalior Bench and Madras Bench of the Tribunal, and which had been upheld by the Hon'ble High Court of Gujarat, I find no justification in the Respondents' action in rejecting the claim vide communications dated 17.06.2000 and 06.07.2000. Accordingly, the same are quashed and set aside. The respondents are directed to entertain and consider the medical reimbursement claim of the deceased Govt. employee in the light of Govt. of India's OM dated 05.06.1998 and reimburse the same within a period of three months from the date of receipt of a copy of this Order. However, in the facts and circumstances of the case, I find no justification to order interest, as prayed for.

14. Accordingly, the OA stands disposed of with no order as to costs.



(Mukesh Kumar Gupta)
Member (J)