

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD**

(This the **30th** Day of **September**, 2021)

Hon'ble Mrs. Justice Vijay Lakshmi, Member (Judicial)

Original Application No.330/01158/2017

S.K. Vishwakarma aged about 61 years S/o Late Manbodh Vishwakarma R/o 36
A/27 C Sulemsarai Allahabad.

..... **Applicant**

By Advocate: Applicant in person

Versus

1. Union of India through Secretary Ministry of Health and Family Welfare
E.H.S. Section, Nirman Bhawan New Delhi – 110011.
2. Director Central Govt. Health Scheme, Department of Health and Family
Welfare, Nirman Bhawan, New Delhi – 110011.
3. Additional Director C.G.H.S. Sangam Place, Civil lines, Allahabad.

1.
..... **Respondents**

By Advocate: Shri L.M. Singh

O R D E R

Delivered by Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)

By means of the instant Original Application, the applicant has
prayed for the following relief(s):-

- "(A) To, issue a Writ, order or direction in the nature of certiorari to quash the impugned order dated 17.04.2017 (Annexure A-1 to Compilation-1) passed by Respondent No.2.*
- (B) To, issue a writ, order or direction in the nature of Mandamus directing the respondents to issue whole life CGHS pensioners card on payment of Rs.39,000/- instead of charging Rs.78,000/-.*
- (C) To issue another writ, order or direction in favour of the applicant as deem fit and proper in the circumstances of the case.*
- (D) Award the cost of application in favour of the applicant."*

2. I have heard Shri S.K. Vishwakarma, the applicant in person and Shri L.M. Singh, learned counsel for the respondents. Perused the record.

3. The facts, in brief, are that the applicant was serving as Superintendent in the office of Custom and Central Excise, Allahabad. He got superannuated on 28.02.2017, on reaching the age of 60 years. Last pay certificate was issued to him showing his subscription towards Central Government Health Scheme (in short 'CGHS') as Rs.325/- per month. After retirement, the applicant surrendered his previous CGHS card and moved an application on 11.03.2017 before the Additional Director CGHS, Allahabad for preparation of post retirement CGHS Card on the basis of subscription made by him in his last pay certificate. According to the applicant, as in his last pay certificate, the amount of subscription to CGHS was shown as Rs.325/- per month, therefore, the total amount required to be paid by him for preparation of post retirement CGHS Card for whole life, comes to Rs.39,000/-. However, the respondent No.3 demanded Rs.78,000/- for preparation of CGHS Card on the ground that as per the 7th Pay Commission Report, the enhanced rate of subscription is Rs.650/- and after implementation of 7th Pay Commission, the amount comes to Rs.78,000/- for whole life CGHS pensioner's card.

4. The applicant made a representation on 22.03.2017 before the respondent No.1. However, his representation was rejected by the impugned order dated 17.04.2017 (Annexure A-1).

5. The applicant in support of his contention has mainly placed reliance on Para 5.1 of Government OM dated 09.01.2017 which provides that contribution to be made by the pensioner/family pensioner would be the amount that they were subscribing at the time of the retirement or at the time of death of government servant.

6. According to the applicant, he had subscribed Rs.325/- in the month of Feb, 2017 at the time of his retirement, therefore, the amount of contribution for issuance of CGHS Card to the applicant should have been Rs.39,000/- for the whole life and not Rs.78,000/- as per respondent's demand.

7. The respondents have filed counter affidavit and have contested the O.A. on the ground that the demand of applicant is not tenable, the applicant is liable to pay the revised rate as per the OM dated 09.01.2017 and 21.02.2017. The representation of the applicant has been duly considered by the respondents and has been decided in accordance with law as provided under OM dated 09.01.2017 which was made effective from 01.02.2017. In support of their contention, a copy of the aforesaid OM has been annexed as Annexure CA-1 with the counter affidavit.

8. The applicant has filed Rejoinder Affidavit reiterating the same contentions as made in the Original Application.

9. The short controversy involved in this OA is whether the applicant is entitled to have his CGHS Card on the subscription rate

applicable at the time of his retirement i.e. at the rate of Rs.325/- or at the revised rate of Rs. 650/- ?

10. In order to arrive at a correct conclusion, it appears expedient to peruse the relevant part of the OM dated 09.01.2017, relied upon by the applicant, which is reproduced below:-

“ 5.
(i) *Contribution to be made by pensioners/family pensioners would be the amount that they were subscribing at the time of their retirement or at the time of death of the Government servant; .*”

11. The respondents have relied upon another OM dated 13.1.17 No.11011/11/2016-CGHS(P)/EHS, whereby the subscription under Central Government Health Scheme were revised due to revision of pay and allowances of Central Government employees on account of implementation of 7th Pay Commission. The aforesaid OM dated 13.01.2017 is reproduced as under:-

“
In partial modification to this Ministry's OM of even number, dated the 9th January, 2017 (Sl. No.25 in this issue) on the subject mentioned above, the undersigned is directed to say that the revised rates will be effective from 1st February 2017 instead of 1st January, 2017.

2. *Other contents of the above said OM will remain unchanged.”*

12. The aforesaid OM clearly shows that the OM dated 9.1.17, which has been relied upon by the applicant, has been modified and revision of rates of subscription have been made effective from 01.02.2017. Later on, one clarification for the pensioners, superannuated on 31.01.2017, was also issued, copy of which has been annexed with the counter affidavit, which provides as under:-

“It is clarified that those employees superannuating on or before 31.01.2017 may be allowed the subscription at the

prevalent rates applicable as on 31.1.2017 vide OM No. S.No.S.11011/2/2008- CGHS(P) dated 20.05.2009.”

13. One more OM No. S.11011/11/2016-CGHS(P)/EHS dated 09.02.2017, was issued by the respondents department to clarify the situation after receiving the several representations with regard to applicability of CGHS rate to the pensioner. For a ready reference, the aforesaid OM dated 09.02.2017, copy of which is also enclosed with Counter affidavit, is reproduced below:-

“No. S.11011/11/2016- CGHS (P)/EHS
Government of India
Ministry of Health and Family Welfare
EHS Section
Nirman Bhawan, New Delhi
Dated the 9 February, 2017

OFFICE MEMORANDUM

Sub: Revision of rates of subscription under Central Government Health Scheme due to revision of pay and allowances of Central Government employees and revision of pension/ family pension on account of implementation of recommendations of the Seventh Central Pay Commission- clarification reg.

2. This Ministry has been receiving several representations w.r.t. applicability of CGHS rates to pensioners superannuating on 31/1/2017. The matter has been examined in this Ministry and it is clarified that ‘those employees superannuating on or before 31/1/2017 and had submitted their application on or before 31/1/2017 may be allowed the subscription at the prevalent rates applicable as on 31/1/2017 vide OM No. S.11011/2/2008-CGHS (P) dated 20/5/2009. Pensioners applying for CGHS pensioner card on annual/lifetime basis after 31/1/2017 will have to pay as per the revised rates effective from 1/2/2017 vide OM of even no. dated 13/1/2017’.

3. This issues with the approval of the Competent Authority.”

14. A perusal of all the above quoted Office Memorandums, makes the legal position very clear and remove all the doubts with regard to the

controversy involved in this case, that those employees who have superannuated on or before 31.01.2017 and had submitted their application on or before 31.01.2017, would be allowed the subscription at the rate applicable on 31.01.2017 but those who have retired and have applied CGHS Pensioner Card after 31.01.2017, they have to pay the subscription as per the revised rate effective from 01.02.2017 vide OM of even number dated 13.01.2017.

15. So far as the applicant's claim is concerned, he has retired on 28.02.2017 and naturally he would have made application for pensioner's CGHS card after his retirement, therefore, in view of the clear provision as provided in the office memorandums quoted above, the applicant is liable to pay the subscription amount for issuance of CGHS Pensioner Card at the revised rate. The impugned order also shows that the representation of the applicant has not been acceded to on the same ground stating that the "as per OM dated 13.01.2017 revised rate of subscription are effective from 01.02.2017 hence your monthly contribution will be Rs.650/- per month."

16. It appears very strange that in Para-13 of the Rejoinder Affidavit, which is the reply to Para-9 of the Counter Affidavit, the applicant has only stated that "no further reply is needed in view of the following order passed by this Tribunal on 31.01.2017". The applicant has also quoted Para-5 of the order dated 31.10.2017, passed by this Tribunal, which is as under:-

" 13. That in reply to the contents of para 9 of CA, it is stated that Hon'ble Tribunal has passed the following order on 31st October, 2017 and as such no further reply is needed:-

“5. Issue notice to the respondents for filing reply within four weeks and the applicant may file rejoinder within two weeks thereafter.

No prima facie case is made out in favour of applicant. He may pay the amount claimed by the respondents which shall be subject to the decision of this O.A.”

17. Thus, the applicant himself has admitted that this Tribunal did not find any prima facie case in favour of the applicant, while deciding the prayer for grant of interim relief on 31.10.2017. It is also noteworthy that the applicant has not challenged the legality of any Office Memorandum.

18. In view of the above discussion, there does not appear any illegality or irregularity in the impugned order. The Original Application is devoid of merit. It is liable to be dismissed and is accordingly dismissed.

19. There shall be no order as to costs.

(Justice Vijay Lakshmi)
Member (J)

Sushil