

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

OA No. 619 of 2018

Present: Hon'ble Mr. Swarup Kumar Mishra, Member (J)
Hon'ble Mr. T. Jacob, Member (A)

1. NALCO RETIRED OFFICERS' ASSOCIATION (NROA),
represented through its General Secretary Sri
Suryamani Samal, aged about 62 years, S/O Late
Ghanashyam Samal, At Plot No. 739, Bhimpur,
Aerodrome Area, Bhubaneswar – 751020, PS
Airfield, District Khurda.

2. GOPAL CHANDRA DAS, aged about 62 years, S/O
Late Purna Chandra Das, resident of 253 District
Center, Chandrashekarapur, Bhubaneswar – 751016,
PS Chandrashekaharpur, District – Khurda.

.....Applicant.

VERSUS

1. Union of India, represented through its Secretary,
Ministry of Mines, Govt of India, Shastri Bhawan,
New Delhi, 110001.

2. NATIONAL ALUMINIUM COMPANY LIMITED
(NALCO) represented through its CMD, having its
corporate office at Nalco Bhawan, P/1 Nayapalli,
Bhubaneswar – 751013..

3. NATIONAL ALUMINIUM COMPANY LIMITED
(NALCO) represented through its Director (HR)
having its corporate office at Nalco Bhawan, P/1
Nayapalli, Bhubaneswar – 751013.

4. NATIONAL ALUMINIUM COMPANY LIMITED
(NALCO) represented through its General Manager
(H&A), having its corporate office at Nalco Bhawan,
P/1 Nayapalli, Bhubaneswar – 751013.

.....Respondents.

For the applicant : Mr. S. Palit, Advocate.

For the respondents: Mr. M. K. Mishra, Advocate.

Mr. D. K. Pattnaik, Advocate.

Heard & reserved on :10.02.2021 Order on :21.06.2021

O R D E R

Per Mr. Swarup Kumar Mishra, Member (J)

1. The case of the applicants, as averred in brief in the OA, is that the applicants have challenged the circular dated 07.04.218 (Annexure A-11) issued by the respondents capping the medical benefits provided to the retired employees and submitted that it is being given effect retrospectively. The applicant has prayed for the following relief:

A. Under the premise stated above it is expedient in the interests of justice, equity and fair play to direct that the scheme as provided for in the impugned circular dated 07.04.2018 under Annexure 11, so far as it deviates from the 1991

scheme be struck down more particularly with respect to:

- i. Revising the benefits with retrospective effect from 2007 i.e. 10 years back.*
- ii. Capping the annual medical benefits to the OPD to the scales of 2007*
- iii. Capping of indoor benefits to only five critical diseases;*
- iv. Restoring the benefits given under the 1991 scheme;*

B. And any other relief or reliefs that the applicant may be entitled to in the facts and circumstances of the case.

2. The Respondent Nos. 2 - 4 in their counter have inter alia averred that the NALCO being a Central Public Sector Enterprise regulates various benefits for its executives in terms of guidelines issued by DPE, GoI and that the Pay Revision Committee recommendations are not directly applicable to the company. The respondents further submitted that as per para (v) of Annexure (iv) of DPE OM dated 26.11.2008 (Annexure R/1 series) read with para 2 (ii) of DPE OM dated 02.04.2009 (Annexure R/1 series) wherein it is stipulated that CPSEs would be allowed up to 30% of Basic Pay as superannuation benefits, which may include contributory provident fund (CPF), Gratuity, Pension and Post Superannuation Medical Benefits to be run as a defined contribution scheme. In the said OMs it has also been provided that CPSE should make their own superannuation benefit schemes to manage the funds or operate through insurance companies on fixed contribution basis as defined contribution scheme

and the amount of pension, gratuity and post retirement benefit will be decided based on returns from the schemes to be operated. The respondents further submitted that keeping in view requirement of funds for running the PRMF scheme benefits the company fixed the contribution rate for PRMF scheme at 6% of basic pay plus DA of officers w.e.f. 01.01.2007, within the approved 30% limit for superannuation benefits. The change in scheme provisions has been effected under the authority provided to the CMD of the Company as per the para No. 9.6.7.3 of the earlier PRMF scheme as given in Annexure 2 of the OA and necessitated by the demand of the associations of serving officers of the company to reduce the contribution rate from the earlier fixed 6% of Basic Pay plus DA to 4% of Basic Pay Plus DA retrospectively w.e.f. 01.01.2007. This reduction in contribution rate for PRMF scheme to 4% retrospectively w.e.f. resulted in reduction of fund available for running the PRMF scheme existing prior to 01.04.2017. This also led to payment of resultant surplus of 2% of basic pay plus DA as arrears of pension contribution to all officers w.e.f. 1.01.2007 including the retired eligible officers. The respondents submitted that the revised scheme benefits have been effected from 01.04.2017 in spite of reduction of contribution rate w.e.f. 01.1.2007 and in

order to make an equitable distribution of benefits under the PRMF scheme and to make benefits sustainable in the long run based on the fund contributed at the reduced rate of 4% of basic pay plus DA, the new cappings have been introduced from 01.04.2017 and not retrospectively from 2007 as claimed in petition.

3. The parties have more or less reiterated the same stand in rejoinder and reply to rejoinder.
4. Learned counsel for the applicants relied on some citations including the following:
 - a) Hon'ble Apex Court in the case LIC of India and ors vs Consumer Education & Research centre and ors reported in JT 1995 (4) SC 366
 - b) Hon'ble Apex Court in the case of Consumer Education and Research Centre & Ors vs Union of India & ors (1995) 3 SCC 42.
5. Heard learned counsels for both the sides and carefully gone through their pleadings, materials on records and citations relied upon by them.
6. Learned counsel for the applicants in para 4.12 submitted that Respondent Company in an arbitrary manner issued order dated 07.04.2018 wherein the benefits under the PRMBS were revised to include a capping for both indoor as well as outdoor benefits i.e. to say when the retired employee is treated as an indoor patient and as an OPD patient respectively. While capping the annual benefits of the OPD

retrospectively, the indoor benefits have been limited to only “five critical diseases”.

7. On the other hand respondents counsel in their counter submitted that the change in the scheme provisions has been effected under the authority provided to the CMD of the company as per the para No. 9.6.7.3 of the earlier PRMF scheme was necessitated by the demand of the Association of serving officer of the company to reduce the contribution rate from the earlier fixed 6% of Basic Pay plus DA to 4% of Basic Pay plus DA retrospectively w.e.f. 01.01.2007. This reduction in contribution rate for PRMF scheme to 4% retrospectively w.e.f. 01.01.2007 resulted in reduction of fund available for running the PRMF scheme existing prior to 01.04.2017. This also led to payment of resultant surplus of 2% of Basic Pay plus DA as arrears of pension contribution to all officers w.e.f. 01.01.2007 including the retired eligible separated officers, some of whom are claimed by the petitioner association as their members. The payment process to the concerned retired officers/employees is currently going on. Considering the fact that continuation of the same level of benefits under PRMF scheme is not sustainable after reduction of the contribution rate for the same to 4% within the limit of 30%, the revised scheme benefits have been

effected from 01.04.2017 in spite of reduction of contribution rate w.e.f. 01.01.2007. This action of the company is in line with the guidelines issued by the DPE that the amount of post retirement benefits will be decided based on the returns from the scheme and that it will be only a defined contribution scheme. As regards capping of the indoor as well as outdoor benefits under the PRMF scheme, it is submitted that different types of capping already existed under the PRMF scheme prior to revision w.e.f. 01.04.2017. The OPD (outdoor) benefits were capped at an amount equal to maximum stage of the pay scale from which the employee retired, subject to certain regulating conditions. In respect of employees who avail PRMF benefits from the company's own hospitals, both the indoor as well as outdoor benefits were capped to the extent of availability of the facilities in NALCO hospitals. In order to make an equitable distribution of benefits under the PRMF scheme and to make benefits sustainable in the long run based on the fund contributed at the reduced rate of 4% of Basic Pay plus DA, the new capping have been introduced from 01.04.2017 and not retrospectively from 2007 as claimed in the petition.

8. The relevant portion of impugned order dated 07.04.2018 is extracted below:

“Sub: Revision of rate of contribution and benefits under Post-retirement Medical benefit scheme.

01. In terms of approval by the Board of Directors in their 299th meeting held on 10.05.2017, the rate of contribution for availing post-retirement medical benefits has been amended in respect of the following categories of employees, as mentioned against each:

Sl. No	Category of beneficiary	Contribution rate payable		
		Existing rates (in Rs.)		Amended annual renewal in Rs.
		Nalco hospital loation	Other locations	All locations
i)	Executives and non executives separated prior to 01.01.2007	115/- per month	145/- per month	1000/- per year, if both self and spouse are registered
				500/- per year, in case of single beneficiary
ii)	Executives separated on or after 01/01/2007	115/- per month	145/- per month	1000/- per year, if both self and spouse are registered
				500/- per year, in case of single beneficiary

02. All executives separating henceforth shall have to deposit one time lump sum contribution of Rs. 5000/- towards registration charges under the scheme.

03. The limit of OPD benefits for the above categories of beneficiaries will be irrespective of location and will continue to be linked to the scales of pay revised w.e.f. 01.01.2007.

04. Indoor expenses reimbursement will be limited to a life time ceiling starting from Rs. 14 laksh at W1 level to Rs. 18 lakh at the level of T7/P7/M7/S4 (for non-executives not covered under 5th Long Term Wage Settlement and separated prior to 01.01.2007).

05. Similarly, the indoor ceiling for executives will range between Rs. 20 lakhs at E0 level and Rs. 32 lakhs at the level of CMD.

06. The above life time indoor expenses reimbursement ceiling will not include indoor expenses for five critical diseases i.e. cancer, heart diseases and chronic kidney diseases, joint replacement and neurological/neuro surgical diseases/conditions. These will be reimbursed outside the said ceiling based on rates specified in NALCO medical attendance rules.

07. Beneficiaries registered to avail medical facilities as available at Nalco Hospitals at Angul/Damanjodi may, henceforth, avail medical facilities as per their requirement at any Nalco empanelled hospital/nursing homes or Government/PSU hospital anywhere in India and claim reimbursement for the same within the defined ceiling limit. Similarly, if they wish to avail facilities as available at Nalco Hospital, the same may be availed on cash payment basis and reimbursement may be claimed within the applicable ceiling.

08. The revised ceiling limits will be effective from 01.04.2017. Detailed circular with regard to limits and procedures will be issued separately.

This issues with approval of the Competent Authority.”

9. It is ascertained from para v of Annexure IV of DPE OM dated 26.11.2008 that for superannuation benefits which includes medical benefits CPSEs were allowed 30% of basic pay and accordingly the respondent company vide circular dated 08.03.2011 implemented superannuation benefits limiting to 30% of Basic Pay plus DA and fixed the contribution rate for PRMF scheme at 6% of Basic Pay plus DA of officers w.e.f. 01.01.2007. It is further ascertained from Para 9.6.7.3 of Contributory Scheme for Post Retirement Medical Facilities (Annexure A/2) that the CMD reserves the right to amend, modify or discontinue the scheme, in part or full. It is also seen that the proposal for modification of PRMF was approved in meeting of Board of Directors in its 299th Meeting held on 10.05.2017 and approved by CMD.

10. Judicial review in administrative action is no more res integra. Trite is the position of law that “it is not the

domain of the court to embark upon uncharted ocean of public policy in an exercise to consider as to whether a particular public policy is wise or a better public policy can be evolved. Such exercise must be left to the discretion of the executive and legislative authorities as the case may be". (Ref: (1994) 2 SCC 691 para 54 in the matter of Premium Granites v State of TN)

11. Further we would like to rely on the decision of Hon'ble Supreme Court in the case of State of Punjab v Ram Lubhaya Bagga 17 (1998) 4 SCC 117, wherein it has been held as under:

"25. Now we revert to the last submission, whether the new State policy is justified in not reimbursing an employee, his full medical expenses incurred on such treatment, if incurred in any hospital in India not being a government hospital in Punjab. Question is whether the new policy which is restricted by the financial constraints of the State to the rates in AIIMS would be in violation of Article 21 of the Constitution of India. So far as questioning the validity of governmental policy is concerned in our view it is not normally within the domain of any court, to weigh the pros and cons of the policy or to scrutinize it and test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it, based on howsoever sound and good reasoning, except where it is arbitrary or violative of any constitutional, statutory or any other provision of law. When Government forms its policy, it is based on a number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion. It would be dangerous if court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The court would dissuade itself from entering into this realm which belongs to the executive. It is within this matrix that it is to be seen whether the new policy violates Article 21 when it restricts reimbursement on account of its financial constraints."

12. From the factual background state above, we find that the new PRMF scheme has been brought out by the respondent company as per guidelines issued by DPE and has been approved by its Board of Directors and CMD after considering the relevant factors, as a

matter of policy. The citations relied upon by learned counsel for the applicant are not applicable to the facts and circumstances of this case. Therefore in view of the judicial stands made above, we do not find any scope for judicial intervention in the policy decision made by the respondent company.

13. Accordingly the OA being devoid of merit is dismissed but in the circumstances without any order as to cost.

(T JACOB)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)

(csk)