

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 411 OF 1998

Cuttack, this the 15th day of November, 2001

Orissa Civil Audit Association
and another

Applicants

Vrs.

Comptroller & Auditor General of India
and others..... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? **Yes**
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? **No**

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
15.11.2001

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 411 OF 1998
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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

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1. Orissa Civil Audit Association, represented through its General Secretasry, Sri Santosh Kumar Mohanty, office of the Accountant General, Audit-I, Bhubaneswar, District-Khurda.
2. Sibaram Mohanty, son of late Nanda Mohanty, At-Type-2 Q.No.91 A.G.Colony, Bhubaneswar

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Applicants

Advocates for applicants - M/s B.M.Patnaik
R.Sharma
S.Singh Samant

Vrs.

1. Comptroller & Auditor General of India, 10, Bahadurshah Zafar Marg, Indraprastha, New Delhi.
2. Secretary, Ministry of Health & Family Welfare (Department of Health), Government of India, Nirman Bhawan, New Delhi.
3. Accountant General (Audit-I), Accountant General Office, Bhubaneswar, District-Khurda.
4. Accountant General (Audit-II), Accountant General Office, Bhubaneswar, District-Khurda.
5. Principal Accountant General (Accounts & Entitlement), Accountant General Office, Bhubaneswar, District-Khurda

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Respondents

Advocate for respondents - Mr.A.K.Bose
Sr.C.G.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

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In this O.A. applicant no.1 is Orissa Civil Audit Association, represented by its General Secretary, Sri Santosh Kumar Mohanty, and applicant no.2 is Sri Sibaram Mohanty, an employee of Accountant General Office. They have prayed for a declaration that the Dispensary opened by respondents 1,3,4 and 5 in the

office premises of Accountant General, Orissa, Bhubaneswar, is not under Central Government Health Scheme(hereinafter referred to as "CGHS"). The second prayer is for a direction to the respondents not to deduct any CGHS subscription from the staff of Accountant General (Audit-I) and Accountant General (Audit-II).

2. The case of the applicants is that the respondents have opened a Dispensary in the office of Accountant General, Orissa, Bhubaneswar, on 19.8.1988 and have styled it as CGHS Dispensary and have been deducting CGHS subscription from the salary of the employees. The applicants state that this Dispensary is not a CGHS Dispensary and therefore, the deduction made towards subscription to CGHS is unauthorised. It is also submitted that even though the Dispensary has been opened in 1988, the facilities, which are required to be provided under CGHS, have not been provided. On the above and other grounds mentioned in the pleadings and urged by the learned counsel for the petitioner the applicants have come up in this petition with the prayers referred to earlier.

3. Respondents in their counter have opposed the prayers of the applicants. They have stated that CGHS Dispensary having been opened in 1988, the present application is hopelessly barred by limitation. They have also stated that all the members of the Association are not covered under the Scheme and therefore the application is not maintainable. Thirdly, it is stated that the Dispensary has been opened under CGHS and is functioning under the CGHS Rules. On the

question of increase in subscription, it is stated that prior to increase of CGHS subscription in 1998, such subscription was enhanced twice earlier in 1989 and 1994 and no objection was taken to this. On the above grounds, the respondents have opposed the prayers of the applicants.

4. The applicants in their rejoinder have reiterated the averments made by them in their O.A. and it is not necessary to record the same in detail.

5. I have heard Shri B.M.Patnaik, the learned counsel for the petitioners and Shri A.K.Bose, the learned Senior Standing Counsel for the respondents and have perused the pleadings. The learned counsel for the petitioners has filed two booklets showing the CGHS Rules and orders, and Guide Book of CGHS and these have also been taken note of. The various grounds urged by the learned counsel for the petitioners in support of the prayers are discussed below.

6. The first ground urged by the learned counsel for the petitioners is that according to rules, CGHS can be extended to cities other than Delhi, Bombay, etc., by the Central Government by notification in the official gazette. In the case of Dispensary functioning in the office of Accountant General, there has been no such notification and therefore, this Dispensary cannot be treated as a CGHS Dispensary. In support of his contention the learned counsel for the petitioner has relied on paragraph 1 of the booklet filed which provides that besides the towns mentioned in the paragraph where CGHS is functioning, it can be extended

to other cities by the Central Government by notificatino in the Official Gazette. The respondents have stated in their counter that originally CGHS was introduced in 1954 in Delhi to provide comprehensive medical care facilities to Central Government employees and members of their fasmily and to do away with the cumbersome and expensive system of reimbursementof medical expenses. In view of the successful implementation of the scheme in Delhi, it was subsequently extended to Bombay, Allahabad, Meerut, Kanpur, Calcutta, Nagpur, Madras, Hyderabad and Bangalore and some other cities subject to availability of funds and various other pre-requisites. Accordingly, the Scheme has been extended gradually to other cities of the country where there is a large concentration of Central Government employees. In accordance with this policy, in the year 1985 Government of India, Ministry of Heaslth & Family Welfare with the concurrence and with consultation of Comptroller & Auditor General of India, decided to extend such benefits to the staff of accountant General, Orissa, Bhubaneswar and their family members in a first phase and issued orders dated 17.7.1985 (Annexure-R/1). On a refe^rence to this order dated 17.7.1985 (Annexure-R/1) it is seen that the order has been issued by the Ministry of Health and it has been specifically mentioned therein that it has been decided to extend the CGHS in operation in Delhi/New Delhi, Bombay, Madras, Calcutta, etc., to the Accountant General's staff at Ranchi and Bhubaneswar with immediate effect and to create certain posts for implementation of the Scheme. It was also provided in

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paragraph 3 of this order that the instructions issued by the Government of India regarding the CGHS functioning in other cities will apply mutatis mutandis to the scheme at Ranchi and Bhubaneswar. It was furtherstated that the details about the implementation of the scheme in these two stations will follow. The respondents have stated that the details of the Scheme were circulated in letters dated 24.2.1987 (Annexure-R/2), dated 8.8.1988 (Annexure-R/3) and dated 10.8.1988 (Annexure-R/4). It has been mentioned in letter dated 10.8.1988 that the General Guide Book for CGHS issued by Government of India has already been circulated among the staff members in letter dated 24.2.1987, and in this letter dated 10.8.1988 certain relevant instructions and circulars were circulated. From the above letters enclosed by the respondents it is clear that the Ministry of Health had extended the CGHS for the staff of Accountant General's office at Ranchi and Bhubaneswar, and therefore, merely because of absence of gazette notification it cannot be said that the Dispensary is not a CGHS Dispensary. This contention is, therefore, held to be without any merit and is rejected.

7. The second ground urged by the learned counsel for the petitioners is that payment for the staff of the Dispensary is being made by Accountant General and because of this, the Dispensary cannot be said to be under CGHS. It is submitted by the learned counsel for the petitioners that the respondents in page

9 of their counter have mentioned that Accountant General (A&E), Orissa, being the immediate local authority is controlling the administration of the Dispensary on behalf of the Ministry of Health temporarily and expenditure relating to the said establishment is incurred by the Government of India through the Accountant General (A&E), Orissa, under a separate head of account "Central Government Health Scheme" and separate allotment of fund under the said head. The respondents have stated that the funds meant for meeting the expenditure of the doctors and other staff and other expenditure of the staff are being borne by Government of India from the Consolidated Fund and it is immaterial whether the expenditure is incurred by Government of India through Director General, Health Services, or through the concerned Accountant General when the expenditure is ultimately met from the Consolidated Fund of Government of India.

8. The learned counsel for the petitioners has also submitted that as the administrative control of the Dispensary is with the Accountant General, the Dispensary cannot be said to be a CGHS Dispensary. It is further submitted that the respondents have admitted that the control of the Dispensary by the Accountant General administratively is a temporary arrangement, but the arrangement is continuing from 1988. A temporary arrangement cannot continue for long thirteen years and therefore, the Dispensary cannot be said to be a CGHS Dispensary. It is further submitted that Deputy Accountant General in his letter dated 17.7.1998 enclosed by the applicant at

Annexure-7 to the rejoinder, has pointed out that after increase of CGHS subscription with effect from 1.5.1998, the staff are objecting to payment of increased subscription and are claiming that the Dispensary should not be called as CGHS Dispensary. In this letter the Deputy Accountant General (A) has sought for instructions from the office Comptroller & Auditor General, but no instruction has so far been received. On the above grounds, the applicants have stated that the Dispensary cannot be called as a CGHS Dispensary. I have considered the above submissions carefully. As earlier noted the Dispensary has been started as a CGHS Dispensary by an order issued by the Health Ministry. The payment for the doctors and other staff and other expenditure of the Dispensary are being made from allotment under a sub-head "Central Government Health Scheme" which is administered by the Accountant General. As the payments are being made from a sub-head "Central Government Health Scheme", the fact that the Accountant General is administering this sub-head will not by itself make the Dispensary a Non-CGHS Dispensary. As regards the letter at Annexure-7, the Deputy Accountant General (A) has merely forwarded the objections raised by the staff on increase of the CGHS subscription. These are the very points which are being agitated in this O.A. and therefore, merely because such a letter has been written by Deputy Accountant General (A) will not make the Dispensary a non-CGHS Dispensary. As regards the temporary arrangement, the general provision is that when CGHS is extended to a particular town or a particular area, all Central Government employees

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remaining within the area of operation of the Dispensary are entitled to take advantage of CGHS facilities in the Dispensary. In the case of the present Dispensary, the order dated 17.7.1985 at Annexure-R/1 extends the CGHS to the staff of Accountant General's office at Ranchi and Bhubaneswar. There is nothing in the Central Government Health Scheme that it cannot be extended to the staff of a particular Department in a particular station. Coverage of all Central Government employees in a particular station, as is envisaged under CGHS, depends upon the facilities to be provided and the basic arrangement should be made in a particular Dispensary. The fact that only Accountant General's office staff and some of them are covered by the Dispensary opened in A.G.'s office would not make it a non-CGHS Dispensary. This contention is, therefore, held to be without any merit and is rejected.

9. The third contention of the learned counsel for the petitioner is that all the facilities which are required to be provided under the CGHS are not being provided in the Dispensary opened in the office of Accountant General, Orissa, Bhubaneswar and therefore, the Dispensary cannot be called a CGHS Dispensary. This contention is without any merit because even in places like Delhi all the CGHS facilities are not provided in the Dispensaries which are set up in different colonies. For better facilities like consultation with Specialist, indoor treatment, etc., even in Delhi, the Central Government employees have to go to hospitals referred to by the doctors in the relevant CGHS Dispensary. The fact that indoor facilities and some of the specialised

facilities are not available in the Dispensary opened in the office of Accountant General, Orissa, Bhubaneswar, will not therefore go to support the contention of the applicants. In case facility for a particular line of treatment, say in case of Cancer, is not available in the Dispensary opened in the office of Accountant General, the doctors there can always refer the patient to a hospital where such specialised facilities are available. This contention is, therefore, held to be without any merit and is rejected.

10. The next point urged by the learned counsel for the petitioners is that the CGHS Dispensaries are meant for all Central Government employees within the areas of operation of the Dispensaries. But the Dispensary of the A.G.'s office is meant only for the staff of the A.G.'s office who are residing in the quarters of the A.G. Office and therefore, it cannot be called a CGHS Dispensary. The respondents in their counter have denied this and have stated that the A.G. office staff are staying in different areas of Bhubaneswar town. Only such staff who are staying within the area of demarcation of the Dispensary in Government quarters or otherwise are covered under the CGHS. The fact that the Dispensary in the A.G. Office does not cater to the employees of other Central Government offices will not make it a non-CGHS Dispensary. Moreover, the staff who are staying outside the area of operation of the Dispensary naturally and logically are not covered under the Scheme because it may be difficult for them to come over long distance to consult the doctors at the Dispensary. This contention

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is also therefore held to be without any merit.

11. Lastly, it is submitted by the learned counsel for the petitioners that the P&T Department is running Dispensary, but that is not a Dispensary under the CGHS and in respect of Postal employees who are availing the facilities of the Dispensary no deduction is made from their salary towards CGHS subscription. The respondents have pointed out that the P&T Dispensary has not been opened under CGHS. It is functioning purely as a Departmental Dispensary to provide outdoor patient care facilities and instructions issued by Government of India regarding CGHS are not applicable and mandatory for P&T Dispensary. I have already noted that the Dispensary has been opened under orders of the Ministry of Health & Family Welfare as a CGHS Dispensary. No order has been filed by either side in the pleadings that there is any such decision of the Ministry of Health with regard to P&T Dispensary and the fact that the P&T Dispensary is running as a Departmental scheme and not as a part of CGHS does not in any way change the character of the Dispensary in A.G.'s office.

12. Moreover, the Dispensary admittedly has been opened in 1988 and the present application has been filed in 1998. Ever since the opening of the Dispensary, CGHS subscription is being deducted from the CGHS beneficiaries. The respondents have pointed out and this has not been denied by the applicants in their rejoinder that this subscription has been enhanced twice earlier in 1989 and 1994. The present enhancement with

with effect from 1.5.1998 is on the basis of the order dated 27.5.1998 of the Ministry of Health & Family Welfare at Annexure-5. This order has been issued keeping in view the recommendation of the Fifth Central Pay Commission. From the above it appears that the applicants have approached the Tribunal after a delay of more than ten years. It is submitted by the learned counsel for the petitioners that the applicants have been filing representations objecting to deduction of subscription, but no reply has been given to them. Law is well settled that repeated representations will not extend the period of limitation. In view of the above, I hold that the O.A. is without any merit and is also barred by limitation.

13. In the result, the Original Application is rejected. No costs.

Somnath Som
(SOMNATH SOM)
15.11.2001
VICE-CHAIRMAN

AN/P-s