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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Cuttack, this O.A. NO. 260 of 2001
the 21st day of NOVEMBER 2003

The Association of Central
Government Pensioners, Orissa
Circle, and another.

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Applicants.

-Versus-

Union of India & Others.

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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? Yes.

Manoranjan Mohanty
21/11/03
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL).

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A.NO. 260 of 2001
Cuttack, this the 21st day of November, 2003

C O R A M:

THE HONOURABLE MR. MANORANJAN MOHANTY, MEMBER (JUDL.)

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1. The Association of Central Government Pensioners', Orissa Circle, Cuttack, represented by Bhramarbar Mohanty, Aged about 82 years, S/o. Banshidhar Mohanty, the President of the Association.

2. Shri Sunash Ch. Palit, President of the Association of Central Government Pensioners, Bhubaneswar.

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.... Applicants.

By legal practitioner: M/s. A.K. Mishra,
J. Sengupta,
P.R.J. Dash,
D.K. Panda,
G. Sinha,
Advocates.

-Versus-

1. Union of India represented through the Secretary to Govt. of India (Pension), Department of Pension, Pensioners' Welfare, the Ministry of Personnel, Public Grievances and Pension, New Delhi.
2. The Secretary to Govt. of India, Ministry of Communication-Cum-DG Posts, Dak Bhawan, New Delhi.
3. The Chief Postmaster General, Orissa Circle, Bhubaneswar.
4. The Secretary to Government of India, Ministry of Railway, New Delhi.
5. The Divisional Manager, South Eastern Railway, Jatni, Khurda.

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Respondents.

By legal practitioner: Mr. A.K. Bose, Sr. Standing
Counsel (Central)

Mr. C.R. Mishra, Addl. St. Counsel
Railways.

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O R D E R

MR.MANO RANJAN MOHANTY, MEMBER(JUDICIAL):

Non-payment of the "fixed Medical Allowance" of Rs.100/- per month to the Members of the Applicants Association(who are the retired employees of the Govt. of India in the postal Department) is the subject matter of challenge in this Original Application under section 19 of the Administrative Tribunals Act,1985.It is the case of the Members of the Association/Applicants that pursuant to the recommendation of the 5th pay Commission; Government of India(in the Ministry of Personnel, public Grievances and pensions) issued a circular, on 19-12-1997, stating therein about the presidential sanction to grant a fixed amount as medical allowance @ Rs.100/- per month) for such pensioners/family pensioners(who are not covered by the Central Govt.Health Scheme) for meeting the expenditure of day-to-day medical expenses that do not require hospitalisation(a copy of the same is at Annexure-2 to this O.A.).It is the further case of the Applicants that pursuant to the said circular (of the Government of India) dated 19-12-1997, the Department of posts of Government of India(vide its order dated 16-03-2000) issued a clarification regarding grant of medical allowance of Rs.100/- per month; wherein it has been mentioned that the said allowance is admissible

only to the pensioners/Family pensioners, those who are not residing within the area of C.G.H.S. or P&T dispensaries and, thereby, such of the members of the Applicants Association (who are residing within the area of the CGHS/P&T dispensaries) are being denied of the benefits in question. It is the specific case of the Applicants that even though they are residing within the area but at far away places and it is difficult for them to come to the dispensaries for treatment at this old age having walking disability. Hence they have prayed (in this Original Application) for quashing of the order under Annexure-6 dated 16.3.2000 and for direction to release the said fixed medical allowance @ of Rs.100/- per month in their favour.

2. Respondents, by filing their counter, have disclosed that, as per the decision of the Government of India, fixed medical allowance @ Rs.100/- p.m. became admissible to the pensioners/Family pensioners. But the said allowance is not admissible to the beneficiaries of CGHS and P&T dispensaries and, therefore, the Department of Posts of Government of India issued an order (under Annexure-6 dated 16.3.2000) stating therein that such of the pensioners/Family pensioners, who are residing within the area of CGHS/P&T dispensaries, are also not entitled to get the said fixed medical allowance of Rs.100/- and that, there is/was nothing wrong in issuing such an order, because the pensioners/Family pensioners can avail the medical facilities from the CGHS Hospitals/P&T dispensaries.

3. Heard Mr. Aswini Kumar Mishra, Learned Counsel appearing for the Applicants, Mr. Anup Kumar Bose, Learned Senior Standing Counsel for the Union of India and Mr. C. R. Mishra, learned Counsel appearing for the Railways and perused the materials placed on record.

4. As in the present case, the Indian Railways also imposed such a restriction (in their order under Annexure-9 dated 21.4.1999); which was formed subject matter of challenge in Original Application No. 430/2000 (in the case of P. Karunakaran and four others Vrs. Union of India and seven others) in the Ernakulam Bench of this Tribunal and the said Bench of this Tribunal in its judgment dated 29th November, 2001 examined the said impugned order dated 21-04-1999 (which is at Annx.9 dated 21.4.1999) with the following words and came to the conclusion noted below:-

"Instead of restricting the admissibility of medical allowance to those railway pensioners/ family pensioners residing outside the city/ Town/Municipality limits of places where a Railway Hospital/Health Unit/Lock-up dispensary is situated, it would be necessary to restrict the claim to those who reside outside the radius of stipulated distance from the specified hospital/ dispensary/health unit etc. We, therefore, consider it fair to set aside the impugned A-3 order which, according to us, has been issued without proper application of mind in so far as it adversely affects the applicants in this case and direct the respondents to issue fresh order taking into account factors like the net work of CGHS dispensaries/ hospitals/health unit, provided in the specified cities and the maximum distance which the fixed monthly medical allowance is admissible. Distance should be fixed having regard to the fact that the retired employees are elderly people with reduced

mobility. As has been observed already, jurisdiction of an authorised medical attendant, being a Railway Doctor, is taken to cover Railway employees residing within a radius of 2.5 KMS of the Railway. Since all the Applicants in this case are residing beyond that distance (i.e. 2.5 KMS) from the nearest Railway medical facility, we would consider it eminently reasonable to direct the respondents 1 to 3 to keep this aspect in mind while issuing fresh orders in pursuance of A-1 OM dated 19.12.1997*.

After discussing as above, this Tribunal (at its Ernakulam Bench) declared the following results:-

"In the result, the impugned A-3 order dated 21.4.99 is set aside. Respondents 1 to 3 are directed to issue fresh orders in accordance with A-1 and A-2 Office Memoranda within a period of three months from the date of receipt of copy of this order".

Since the issues raised in the present Original Application are akin to the issues raised before the Ernakulam Bench of this Tribunal, there are absolutely no hesitation to apply the said ratio decided by the Ernakulam Bench of this Tribunal. It is also profitable to note here that the aforesaid judgment of the Tribunal of the Ernakulam Bench was also carried (by the Union of India) to the Hon'ble High Court of Kerala (at Ernakulam) in a Writ petition and Their Lordships of the Hon'ble High Court of Kerala affirmed the judgment of the Ernakulam Bench of this Tribunal on 22.11.2002. The text of the said judgment of the Hon'ble High Court of Kerala (as placed in Annexure-4 to the O.A. 949/2003 of this Bench) is extracted below for a ready reference:-

"The Vth Central pay Commission suggested to grant medical allowance of Rs.100/- per month to Government pensioners/Family pensioners, who are residing in an area not covered by Central Government Health Scheme. That was accepted by

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the Government of India and Annexure-A/1(Ext.P.1) dated 19.12.1997 shows that the Government has accepted the above sanction provided the pensioners are residing in areas not covered by Central Govt. Health Scheme administered by the Ministry of Health and Family Welfare and corresponding Health Scheme administered by the other Ministries/Departments for their retired employees for meeting expenditure on day to day medical expenses and do not require hospitalisation. The main intension was that old employees need not go to a place where CGHS scheme is not covered to get medical treatment below Rs.100/- and which do not require hospitalization. Following Ext.P.1, Railway issued Ext.A.3 dated 21.4.1999. A.3 also shows that if pensioners are residing where railway hospitals, dispensaries are situated, they will not get these allowances and Ernakulam also shows one of the place where there is Railway dispensary. Government of India issued Office Order No. 38/99/99-P&PW dt. 17.4.2000 wherein the matter became more liberalized. Even if a person residing in a place where CGHS is in force, they could opt for a fixed amount of Rs.100/- as elderly people living far away from the hospital or dispensary need not travel much, if monthly medical expense is below Rs.100/- whether the place is covered under the CGHS but Railway did not adopt the petitioners request was rejected by A.3. A.3 was challenged before the Tribunal.


2. The Tribunal directed to issue fresh order taking into account all these aspects. As per Government order dated 17.4.2000, even if the retired employees are residing in a place where there is Government hospital, they can opt for fixed amount, as it is difficult for the employees to travel long distance. For elderly people who are residing 2.5 KMtrs. away from the dispensary, it is very difficult to come to the Railway dispensary for a small ailment.

Most of them has to hire taxi or auto-rickshaw. Applicants before the Tribunal also had walking disability. Fourth respondent herein is aged 84. Therefore, for a policy decision, the Tribunal directed to pass fresh orders in place of Ext.p. 7. Therefore, respondents can pass fresh orders in accordance with A1, A2 and A5 in the place of Ext.A1. Considering all these matters, we see no ground to interfere in the matter under Article 227 of the Constitution of India. Fresh orders will be passed taking note of all circumstances of the case within six months. The judgment may be implemented within six months from today*.

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5. In view of the settled position, as discussed above, there are no doubt that the order under Annexure-6 dated 16-03-2000 is to have the same fate as that happened with the impugned order before the Ernakulam Bench of this Tribunal as affirmed by the Hon'ble High Court of Kerala. In this view of the matter, applying the said reasonings, the order under Annexure-6 dated 16-3-2000 is hereby quashed with a direction to the Respondents to examine the cases of each of the members of the Applicants' Association for granting them the fixed medical allowance of Rs.100/- per month, by the end of December, 2003 (for which, the members of the Applicant Association should represent their cases by the end of November, 2003) and, in appropriate cases, clear-up their arrears, if any, by the end of March, 2004. In the result, this Original Application is allowed in the aforesaid terms. No costs.


2/11/2003
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

KNM/QM.