



FORM No. - 4

See Rule (12)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH

ORDER SHEET

Original

Application No. 949 of 2003 *3 S 993 to 1067 of 2003*

Applicant(s) Nareesh Ch. Roui & Ors Respondent(s) Union of Indice & Ors

Advocate for Applicant(s) M/o S.B. Jena Advocate for Respondent(s) S.K. Das, S. Belena

NOTES OF THE REGISTRY

g.p.o. for Re. 501- to 20.
For consideration pl.

18-11-03

S.O. (T)

Mentioned Case.
To be taken up today
before S.B.
For Regn PI

18-11-03

Registrar

18-11-03

18/11/03

ORDERS OF THE TRIBUNAL

REGISTER

18/11/03

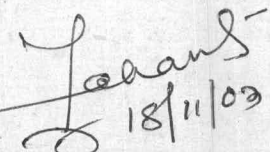
1. ORDER DATED 18.11.2003.

On being mentioned this matter is taken up today.

Applicants, 76 in number, have filed M.A.No.934/2003 seeking permission to prosecute this case jointly. Having heard Mr.S.B.Jena, learned Counsel appearing for the Applicants and Mr.C.R.Mishra, learned Counsel appearing for the Railways, this M.A.

No.934/2003 is allowed and all the 76 applicants

are permitted to prosecute this case jointly; subject to payment of Rs.1000/- in shape of IPO/Bank draft. Mr. Jena, learned Counsel appearing for the Applicants undertakes to deposit Rs.1000/- in shape of IPO/BD in course of the day. On receipt of said IPO/BD worth of Rs.1000/-, the Registry is directed to confined this Original Application No.949/2003 in respect of Applicant No.1 and separate numbers be assigned to Applicant Nos.2 to 76. MA is accordingly allowed and disposed of.


18/11/03
Member (Judicial)

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O.A.NO.949 OF 2003

2. ORDER DATED 18.11.2003.

All the Applicants, 76 in number, are senior citizens; almost all of them being 60 years of age. They are, either retired employees or widows of ex-Railway employees and they are getting pension/family pension under the rules of the Indian Railways. There was a provision to grant 'fixed Medical Allowance' of Rs.100/- per month to Railway pensioners/family pensioners. By order dated 21-04-1999, restrictions were imposed by the Indian Railways in the matter of payment of the said 'fixed Medical Allowance' of Rs.100/- per month and, it is alleged that, as a consequence thereof, no fixed medical allowance of Rs.100/- are/were being paid to the Applicants; for which the present Applicants have filed the present Original Application, under section 19 of the Administrative Tribunals Act, 1985, challenging the said order under Annexure-2 dated 21-04-1999. Before filing the present Original Application, on 18-11-2003, the Applicants through their representatives filed representations to their authorities on 18.4.2002, 24.4.2002, 15.9.2002, 17.2.2003 and 29.6.2003. A copy of this Original Application has also been served on Mr. C.R. Mishra, learned Counsel appearing for the Railways and he has been heard in the matter.

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O. A. NO. 949/2003

Contd....order No. 2, dated 18.11.2003.

Mr.S.B.Jena, Learned Counsel appearing for the Applicants has, at the out-set, disclosed that, in this Original Application, the order dt. 21-04-1999 of the Railways is the subject matter of challenge and, that, the same order was also the subject matter of challenge before this Tribunal at its Ernakulam Bench in Original Application No.430/2000 and the issues are no more res-integra; for the reason of the judgment dated 29th November, 2001 rendered by this Tribunal in its Ernakulam Bench in the said O.A.No.430/2000 between P.Karunakaran and four others vrs.Union of India and seven others.

In view of the aforesaid submissions of Mr.S.B.Jena, Learned Counsel appearing for the Applicants, the judgment, in question, of this Tribunal (rendered at its Ernakulam Bench on 29th of November, 2001 in O.A.No.430/2000) has been perused; the same being available at Annexure-3 to this O.A.

It appears from Annexure-3 to this O.A., the Ernakulam Bench of this Tribunal, in its judgment dated 29th November, 2001 rendered in O.A. No.430/2000, examined the present impugned order (which is at Annexure-2 dated 21-04-1999) with the following words and came to the conclusion noted below:-

AFR

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O.A.NO. 949/2003

Order No. 2 dated 19-11-2003.

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 orders taking into account factors like the network for 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 21.4.1999 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.

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Since the issues raised in the present Original Application by 76 Applicants are no more res integra and had been given a rest, as discussed above, there, virtually, remains nothing for this Bench of the Tribunal to examine further. It is profitable to note here that the aforesaid

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O. A. NO. 949/2003

Order No. 2 dated 18.11.2003.

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 this Bench under Annexure-4 dated 22.11.2002. The text of the Judgment as available at Annexure-4 of the Hon'ble High Court of Kerala is extracted below for ready reference:-

*The 7th 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 the Government of India and Annexure-A-1 (Ext. P1) dated 19.12.1997 shows that 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 other Ministries/ Departments for their retired employees for meeting expenditure on day to day medical expenses and do not require hospitalization. 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. P1, Railway issued Ext. A3 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&PWO 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 A3. A3 was challenged before the Tribunal.

2. The Tribunal direct to issue fresh order

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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*.

It is the case of the Applicants that the nearest railway dispensary is far away from their places of residence and it is very difficult for them to go upto the said dispensary at this old age.

In view of the settled position, as discussed above, this Original Application of 76 applicants are hereby allowed with direction to the Respondents to examine the cases of each of the Applicants for granting them the fixed medical allowance of Rs. 100/- per month by the end of December, 2003 and, in appropriate cases, clear-up their arrears, if any, by the end of March, 2004. Liberty is, however, granted to the Applicants to represent their cases individually, by the end of November, 2003. There shall be no order as to costs.

Manoranjan Mohanty
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL) 18/11/03

Copy of order
dt 18/11/03 issued
to the Council
for both side

[Signature]
24/11/03
S.O.

24/11/03

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O.A. 949 of 2003

3. Order dated 18.11.2003.

Send copies of the Order No.2 dated 18.11.2003 to the Respondents alongwith the copies of the Original Application and free copies of this order be given to learned counsel for both sides.

Member(Judicial)

Copy of order
dt- 18/11/03 a/w
on copy issued
to all the respondents
by posts.

[Signature]
28/11/03

[Signature]
28/11/03