

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

OA 274 OF 1996

Present : Hon'ble Mr. Justice A. K. Chatterjee, Vice-chairman  
Hon'ble Mr. M. S. Mukherjee, Member (A)

DURGAGATI MOOKHERJEE

VS

1. Union of India through Secretary  
Govt. of India, Ministry of Health &  
Family Welfare, Nirman Bhawan,  
New Delhi-110 001.
2. Director, Central Govt. Health Services,  
Directorate General of Health  
Services (CGHS),  
8, Esplanade East, 4th Floor, Calcutta
3. Addl. Director, Central Govt. Health  
Services, Directorate of Health Services,  
8, Esplanade East, 4th Floor,  
Calcutta
4. Chief Medical Officer I/C, Salt Lake,  
AF Dispensary, CGHS, Calcutta-64  
... respondents

For the petitioner : Mr. P.K.Roy, Counsel

For the respondents : Mrs. K. Banerjee, Counsel

Heard on : 9.9.96 : Order on : 14.01.97

ORDER

M.S.Mukherjee, A.M.:

This is an application u/s 19 of the Administrative Tribunals Act, 1985, in which the petitioner is aggrieved by the order dt. 8.1.96 of the Addl. Director, Central Govt. Health Services (CGHS) (respondent No. 3) rejecting supply of certain medicine to the petitioner, a Central Govt. pensioner registered with the CGHS although such medicine had been prescribed by the specialist on a reference by the CGHS authorities.

2. The facts of the case are that the petitioner is an Ex- Group A officer of the Central Govt., who retired on superannuation in 1975. He is a beneficiary under the Central Govt. Health Scheme and holds a permanent medical card

registered with CGHS, AF Block, Bidhan Nagar, Salt Lake, Calcutta. On 18.12.95, the petitioner, it is contended, consulted respondent No. 4 viz. Chief Medical Officer, (CMO), in-Charge of the said dispensary for medical check up and the latter referred him to the CGHS approved specialist centre at CB-124, Bidhan Nagar (Salt Lake City), for appropriate advice from a Cardiologist. The said specialist doctor after necessary check up and examination of ECG of the patient, prescribed inter alia one syrup called "Livo-luk" to be taken as per the directions for six months until review. It is the contention of the petitioner that Livo-luk is a schedule drug carrying a warning that it would be sold by retail only on the prescription of a registered medical practitioner.

3. When the CGHS dispensary was requested to arrange supply of the prescribed medicines including Livo-luk against such prescription, respondent No. 4 i.e. CMO-in-Charge of the dispensary observed that Livo-luk was an inadmissible item and that it needed prior sanction of respondent No. 3 for such supply. Accordingly, the petitioner made a self-contained representation to the Addl. Director, CGHS (respondent No.3) on 6.1.96 and this application was submitted through respondent No. 4, who by his office endorsement dt. 8.1.96 forwarded the same to respondent No. 3 for necessary direction. It is the further contention of the petitioner that respondent No. 3 instantaneously rejected the representation outright at the dak stage without application of mind by passing a cryptic order that the medicine Livo-luk is "inadmissible as per CGHS Rule" on the body of the said reference. A copy of the said application along with the endorsement of respondent No. 4 and the order of respondent No. 3 thereupon has been annexed as Annexure-A2 to the

petition. Thereafter, the petitioner made further representation on 31.1.96 to all the respondents against this decision of respondent No. 3/4 (vide Annexure-A3), but without any result.

4. The petitioner has further grievance that in rejecting his case, the respondents have shown discrimination against him inasmuch as on an earlier occasion, i.e. in the case of one CGHS pensioner-beneficiary, viz. Mr. Justice M.N.Roy, the respondents had issued direction for supply for certain medicine prescribed by the specialist vide DGHS letter dt. 21.3.94 (vide Annexure-A to the petition) and that this fact had been brought to the notice of the authorities through his representations dt. 6.1.96 as well as through his further representation dt. 31.1.96, but again to no effect.

5. The petitioner has, therefore, prayed for a direction on the respondents for arranging the supply of the medicines as prescribed by the specialist by quashing the impugned order of respondent No. 3 dt. 8.1.96 vide Annexure-A2 to the petition.

6. An affidavit-in-opposition has been filed only by the respondents which is in fact a reply filed by respondent No. 3 on his own behalf as it appears from the text of the same.

7. Through this reply, the claim of the petitioner has been contested on several grounds, first objection being that this Tribunal does not have any jurisdiction to consider this petition. Secondly, the particular medicine prescribed by the specialist viz. Livo-luk is alleged to be a drug falling under the category of laxative as per guidelines contained in the CCS(Medical Attendance) Rules. The particular incident of medicine having been supplied to Mr. Justice M.N.Roy is stated to have been on the basis of specific instruction issued by the Union Health Ministry and therefore, the present

petitioner cannot claim any benefit of the same. The respondent has, therefore, urged for the rejection of the petition.

8. We have heard the learned counsel for the parties and have gone through the documents produced. In view of urgency of the matter, we propose to dispose of the same at the stage of admission itself.

9. We may first deal with the issue regarding jurisdiction of this Tribunal. The respondent's argument is that "Administrative Tribunal deals with the service matter of Central Government employees. This case is related to supply of inadmissible medicines to a CGMS beneficiary. This case does not come under the purview of the Central Administrative Tribunal inasmuch as it is not a service matter as claimed by the applicant."

10. We are afraid, we cannot agree with this contention. Admittedly, the petitioner is a retired Central Govt. employee of Group A category. The CGHS scheme has been created normally to provide health care to serving Central Govt. employees in the areas where the scheme is operational. Central Govt. pensioners as well as a few other categories of persons specifically notified have also been declared to be the CGHS beneficiaries under specific notification. Under Union Health Ministry's notification No. F.No.4-1/87-C&P Section/CGHS/3260-3410 dated 27.3.87, Govt. of India decided to extend CGHS facilities to Central Govt. pensioners in five more stations, viz. Delhi, Calcutta, Bombay, Pune and Madras irrespective of such employee's area of residence [vide page 77 (English Version) of CGHS Compendium, Vol. I, 1989 Edition.] The petitioner has accordingly been issued with a permanent CGHS card by the respondents in order to be entitled to such facilities. The existing Central Govt. employees who are currently serving

the Govt. and ex-employees or pensioners of Central Govt. who rendered past service under the Central Govt. are also beneficiaries under the said scheme. This is, therefore, related to service matters under the Union of India and hence it is not seen as to how this Tribunal is devoid of jurisdiction to deal with this case. This objection of the respondent is, therefore, overruled.

11. The second objection of the respondent is that the particular medicine Livo-luk cannot be allowed as it has been considered as inadmissible. There is no dispute about the fact that the said medicine has been prescribed by the Central Govt.'s authorised medical specialist to whom the petitioner had duly been forwarded by respondent No. 4. However, the respondent contends that such prescription notwithstanding, a medicine cannot be supplied if it is inadmissible under the CGHS Rules.

12. Regarding the inadmissibility, rule 2(h) of Central Services (Medical Attendance) Rules, 1944 as amended upto date is relevant. It deals with the definition of the word 'Treatment' and sub-rule (iii) thereof deals with the issue of supply of inadmissible medicines, which reads as follows :

(iii) the supply of such medicines, vaccines, sera or other therapeutic substances not ordinarily so available as the authorised medical attendant may certify in writing to be essential for the recovery or for the prevention of serious deterioration in the condition of the Govt. servant except the items mentioned below, namely, -

(1) preparations which are not medicines but are primarily foods, tonics, toilet preparations or disinfectants as specified in Schedule I; and

(2) expensive drugs, tonics, laxatives or other elegant and proprietary preparations as specified in Schedule II for which drugs of equal therapeutic value are available.

12. It, therefore, follows that the medicines included in Schedule I are totally inadmissible, but medicines belonging to Schedule II are of different categories as these are relatively expensive drugs or or elegant and proprietary

preparations and as for these cheaper substitutes of equal therapeutic value are available. However, medicines specifically shown in both Schedule I and Schedule II under rule 2(h) of CS (MA) Rules, 1944, by themselves are inadmissible for supply.

13. There are indeed reasons why in the scheme of CS(MA)Rules, the medicines/drugs so elaborately catalogued in the 2 Schedules (Schedule I & Schedule II), have been shown in 2 separate schedules and not in one integrated one. This is because, there is qualitative difference between the 2 classes of inadmissible drugs. The inadmissible medicines belonging to Schedule I are not to be supplied at State's cost/responsibility, no matter, however essential they are considered by the authorised medical expert, for treatment of the CGHS beneficiary patient (whether serving employee or a pensioner), or no matter, even if for such drugs/medicines cheaper substitutes of equal therapeutic value are available, or even if such drugs are not that expensive. These medicines if very necessary, have on ultimate analysis, to be supplied/arranged by the CGHS beneficiaries themselves.

14. Schedule I, as amended up-to-date, consists of following classes of specific items or preparations viz.

|  |          |
|--|----------|
| Invalid Foods                                | 30 items |
| Baby Foods                                   | 10 items |
| Weaning Foods                                | 4 items  |
| Glucose Preparations                         | 2 items  |
| Liquid Foods & Wines                         | 3 items  |
| Meat Extracts & Juice                        | 1 item   |
| Carbonated/Flavoured/<br>Sweetened Beverages | 7 items  |
| Protein Biscuits                             | 6 items  |
| Misc. Preparations like<br>Cocoa, Oats etc.  | 10 items |
| Toilet Preparations                          | 18 items |
| Disinfectans                                 | 55 items |

15. Schedule II preparations/formulations on the other hand stand on different footing. These consist of more than 2000 individual preparations/formulations, alphabetically

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arranged names, - some of these being brand names, without any sub-heading. The broad heading describes these as the "List of Expensive Drugs/Tonics/Laxatives or other Elegant and Proprietary preparations". These are primarily treated as fancy formulations, more expensive than equally effective substitutes. The nature of the Schedule II drugs has been described in the governing Rule 2(h)(iii)(2) of CS(MA) Rules, 1944 as "expensive drugs, tonics, laxatives or other elegant and proprietary preparations, for which drugs of equal therapeutic value are available."

16. So it will be seen, that for the drugs specified in Schedule II, the inadmissibility of a particular formulation is from the stand point of the cost effective public health care with the use of cheaper substitute medicines. The very objective of identifying elaborate list of over 2000 medicines is to indicate that their brand names, glamour or sales-promotion appeal notwithstanding, there exist for these equally effective but simultaneously less expensive substitutes.

17. From the above context, in our considered point of view, it logically, therefore, follows that, the nature of inadmissibility of a Schedule II drug is not as absolute, as that of a Schedule I drug. If for a Schedule II medicine, effective but less expensive substitutes are available, the latter has to be identified and supplied by the CGHS experts/Administration to the patient. It is, therefore, the duty of the CGHS doctor/Administration to provide an alternative which is admissible. It will indeed be the height of irresponsibility, if the patient is driven from wall to wall, from office to office, from the MO/CMO in charge of CGHS dispensary to authorised medical specialist and from there to Addl. Director of CGHS via CMO in order only to find out that a particular prescribed medicine is considered inadmissible

and thereafter only, he has himself to persuade the Medical Specialist to prescribe an alternative medicine and subsequent to all these only the patient can get the same medicine supplied through further office process involving effort, cost and time.

18. The problem is further compounded by the fact that in many cases it is even a matter of judgement on the part of the CMO in-charge of CGH S dispensary or the DG/ADG, CGHS, whether a medicine should be inadmissible as being of the class of either Schedule I or Schedule II, keeping in view the composition of the medicine to be researched by the CGHS Administration. So even if a medicine's particular name is not in either of the Schedules, there is no automatic guarantee that it is admissible. This is because the Union Health & Family Welfare Ministry OM dt. 24.10.1986 prescribes that -

" AMA (Authorised Medical Attendant) may take a decision whether a particular new medicine or preparation falls under any of the broad categories specified in Schedule I or Schedule II and shall so certify whereupon the cost of such medicines may be reimbursed."

( vide Appendix XVI, Swamy's Compilation of MA (Rules) - page 246, 1994 Edn.)

19. The CGHS circular dt. 7.12.88 also prescribes that-  
"Before placing any local purchase indent, the Medical Officer Incharge must satisfy himself that the indent is placed for essential items only. Items which are available in the dispensary or for which equivalent substitutes are available, should not normally be indented. " ( Vide CGHS Instructions dt. 7.12.88 at page 84 of Compendium of CGHS, Vol. I, 1989 Edn.)

20. Therefore, in our view, if a medicine prescribed by the AMA (or approved medical specialist) is subsequently



considered by the CMO Incharge of the dispensary or by DG/ADG, CGHS as inadmissible, and that the same, in his opinion, belongs to Schedule II category, in that case the CMO Incharge of CGHS dispensary or the DG/ADG, CGHS, as the case may be, should on his own judgement and responsibility prescribe and immediately supply an alternative less expensive medicine of the same therapeutic value. Otherwise, he should refer the matter back to the same doctor for reconsideration of the prescription, or to a new authorised doctor or specialist for a fresh prescription. But pending such fresh opinion of the doctor on reconsideration etc. and supply of the alternative medicine thereof, it should be the responsibility and obligation of the CMO Incharge of dispensary or DG/ADG to immediately supply the medicine as originally prescribed, so that the patients' medical welfare does not suffer.

21. The above obligation of CGHS Administration logically follows because the particular medicines had originally been prescribed for the CGHS beneficiary by a doctor authorised by the CGHS itself. In such a case, it is presumed that the CGHS authorities have provided to their own medical practitioner/specialist in advance the requisite guidelines as to which medicines are admissible or not admissible. Therefore, it becomes the responsibility of the CGHS Administration to ensure that its own authorised medical practitioner/specialist while prescribing suitable treatment for the patient does not deviate from such guidelines. But if despite all these, a medicine is prescribed which subsequently is considered as inadmissible by the CGHS Administration, then there should be automatic mechanism to simultaneously provide less expensive effective substitute, in case the medicine belongs to the class included in Schedule II, as otherwise timely medical care for which the laudible CGHS Scheme has been introduced will be denied to the patient beneficiary. No such obligation, however, exists if the medicine prescribed is

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inadmissible because it belongs to Schedule I for reasons already analysed above.

22. In the instant case, the particular medicine "Livo-luk" by referring to the composition of the same, has been observed by the CMO Incharge and the ADJ, CGHS to be a laxative and hence inadmissible. Schedule I does not mention any class of medicine of the group laxative, whereas under Rule 2(h)(iii)(2) of CS(MA) Rules, 1944, laxatives belong to Schedule II. Therefore, even if "Livo-luk" is inadmissible, the respondents should promptly supply the effective alternative to it. Also, under the circumstances, in the peculiar facts of the case, since it could not be done by the respondents so long, if the petitioner has already purchased the said medicine from out of his own resources and has used the same and produces the original cashmemo etc. for such purchase, the authorities should reimburse the same to the petitioner and for future the authorities should following either of the directives as at preceding paragraphs Nos. 20 and 21 above.

23. The petitioner has also argued in support of his case by citing the issue of discrimination. He has specifically mentioned that in an earlier occasion, Mr. Justice M.N.Roy, a CGHS beneficiary (retired) had similarly been refused supply of certain medicines and then respondent No. 2, Director of CGHS, through his DO letter dt. 21.3.94 (Annexure-A1) directed the respondent No. 3 to supply the said medicine as prescribed by the specialist to the retired Mr. Justice M.N.Roy urgently. Not only that, he even asked for explanation from respondent No. 3 why the said medicines had not been supplied to retired Mr. Justice M.N.Roy.

24. The medicines involved in that case seem to be capsules Maxepa and Tablets Spemen as is evident from certain letter issued by respondent No. 3 to respondent No. 2 on 24.5.94 (Annexure-R2 to the reply). The said letter also indicates

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that as per telephonic direction these two medicines were being supplied to reired Mr. Justice M.N.Roy from the concerned CGHS dispensary.

25. Out of these medicines, tablet Spemen is specically mentioned in Schedule II already referred to above whereas capsul Maxepa does not find place in either of the schedules. Any way, the fact remains that these two medicines had been supplied to another CGHS beneficiary by the authorities, although the medicines were initially disallowed by the local authorities as being inadmissible.

26. In response to the allegation of discrimination, the answering respondent has averred through the reply that no such discrimination has been made as the said medicines had been issued on specific instruction from the Union Health Ministry whereas in the instant case no such instruction was available. We do not consider this objection as tenable as anyway the respondent No.3 had not even referred the matter to the Union Ministry for their direction. Also the specific representation made by the petitioner alleging such discrimination to both respondent No. 1 as well as respondent No. 3 still remain unanswered.

27. However, whether discrimination exists or not, we have already held as above as to how the authorities have to supply medicines considered as inadmissible, if the same belongs to Schedule II list. We need not, therefore, go into this issue further.

28. Under the circumstances, we dispose of the petition with the following orders, viz.

i) If any medicine prescribed by the AMA or Govt. approved specialist belongs to Schedule I as referred to in rule 2(h)(iii) of Central Services (Medical Attendance) Rules, 1944 and as catelogued in Appendix XVI of Swamy's Compilation of CS (MA) Rules, 1944, as amended upto-date, the same need not be supplied by the authorities.



ii) However, if any medicine prescribed by the AMA or approved medical specialist belong to Schedule II with reference to above, the authorities can on their own judgement and responsibility, prescribe a less expensive ~~effective~~ substitute of equally effective therapeutic value. Otherwise, the authorities may require the AMA/specialist to reconsider the matter for prescribing such alternative. During the intervening period, the authorities shall <sup>however,</sup> supply the medicine as already prescribed by the AME/specialist.

iii) While disallowing the prescribed medicine as inadmissible, the CGHS Administration shall indicate specifically the reason why the said medicine is considered inadmissible i.e. whether it belongs to Schedule I or Schedule II.

iv) In the instant case, if the petitioner has actually used the particular medicine Liv-luk after prescription by the authorities medical specialist by purchasing the same from his own resources, the cost shall be reimbursed by respondent Nos. 3 and 4 to him within two months from the date of communication of this order, provided he petitioner supplies all documentary evidence about such purchase. For future periods, respondent Nos. 3/4 shall act in accordance with the directions given at sub-para (i) and (ii) above.

29. Let a copy of this judgement be forwarded <sup>by the Registry</sup> to respondent No. 1 and 2 for issue of appropriate general instructions in the light of our directions given in sub-para (i) and (ii) of para 20 above.

30. There will be no order as to costs.

*M.S. Mukherjee* 14/1/97  
(M.S. MUKHERJEE)

MEMBER(A)

*A.K. Chatterjee*  
(A.K. CHATTERJEE)

VICE CHAIRMAN