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Central Administrative Tribunal  
Jodhpur Bench, Jodhpur

Original Application No. 124/2004  
This the 08<sup>th</sup> day of March, 2005.

CORAM :

Hon'ble Mr. G.R. Patwardhan, Administrative Member

.....

1. Smt. Roop Kanwar Mehta W/o Late C.R. Mehta aged about 75 years, C-71, Shastri Nagar, Jodhpur.
2. Shri Suresh Mehta S/o Late Shri C.R. Mehta, aged about 57 years resident of C-71 Shastri Nagar, Jodhpur.
3. Smt. Shashi Sancheti W/o Shri C.P. Sancheti, D/o Late Shri C.R. Mehta Shastri Nagar, Jodhpur.
4. Saroj Mehta W/o Late Shri R.L. Mehta 1/30 Gordhan Vilas HIG, Opp. Shikarbadi, Udaipur.

..... Applicants.

(By Mr. Manoj Bhandari, Advocate, for applicants)

Versus

1. The Union of India through the Secretary, Ministry of Finance, North Block, New Delhi.
2. The Income Tax Department through the Chief Commissioner of Income Tax No. 1 Aaykar Bhawan, Paota, C Road, Jodhpur.
3. The Commissioner, Income Tax Department no. 1, Aaykar Bhawan, Paota C Road, Jodhpur.

..... Respondents.

(By Mr. M. Godara, Adv., Brief holder for Mr. Vineet Mathur, for respondents)

Order  
(By the Court)

This O.A. was filed originally by Mr. C.R. Mehta, retired Additional Commissioner, Income Tax on 18.5.2004 against the Union of India and two others. However, in the very next week – on 23.5.2004, he died. His legal representatives, the widow Smt. Roop Kanwar Mehta and three others, filed a Misc. Application No. 102 of 2004 on 20.8.2004 praying that they may be taken on record. Learned counsels for them and the respondents Union of India, were heard on 15.9.2004 and Smt. Roop Kanwar Mehta was allowed to be taken as legal representative and applicant in the case.

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2. Reply has been filed on 5.11.2004 by Mr. T.C. Gupta, Assistant Commissioner of Income Tax, Jodhpur on behalf of all the respondents. A rejoinder has been filed on behalf of Smt. Roop Kanwar Mehta, the legal representative on 16.12.2004.

3. Learned counsels for both the parties have been heard. Briefly stated the facts are as follows. The applicant, an officer of the Income Tax Department, retired in 1981 and on 4th January, 1998 was advised hospitalization and coronary angiography. As no such facility was available at Jodhpur, he proceeded to Delhi and got himself admitted and treated at Escorts Hospital where they charged Rs. 1,77,300/- for the treatment including necessary tests. The discharge summary issued by the Hospital at Annex. A/3 discloses that he was admitted on 6.1.1998 and discharged on 19.1.1998. He claimed to have spent another Rs. 12,700/- on medicines and travelling thus having incurred a total expenditure of Rs. 1,90,000/-. After the operation, the applicant made a representation to respondent No. 3, the Commissioner, Income Tax Department, No. 1, Jodhpur on 20.1.1999 (Annex. A/5). It bases mainly his claim as follows :-

(a) There is no C.G.H.S. Dispensary at Jodhpur.

(b) He is receiving Rs. 100/- p.m. as medical allowance.

(c) It has been ruled by Hon'ble Supreme Court that the government is under constitutional obligation to provide free health care to its employees including retired personnel and pay entire expenditure on heart surgery and hospital or hostel expenses incurred by ailing staff.

(d) He is not aware if any previous sanction or approval or any other formality was required to be done before going ahead for surgery – but it was a case of emergency and he immediately got admitted to Escorts Hospital.

However by a letter dated 21.11.2003 (Annex. A/1) the applicant was informed by the Assistant Commissioner Mr. T.C. Gupta, that his case was referred to Central Board of Direct Taxes who after consulting the Ministry of Health have informed that C.S. (M.A.) Rules, 1944, are not applicable to pensioners and as such his claim cannot be reimbursed. Hence this O.A.

4. The prayer of the applicant, as contained in para 8 is as follows :-



(a) To hold communication contained in Annex. A/1 illegal and quash the same and order payment of Rs. 1,90,000/-.

(b) To order payment of interest @ 18% p.a. on the amount from the date it became due till date of payment.

5. Following main grounds have been taken for supporting the claim :-

(a) Through a Circular issued on 5.6.1998, the Ministry of Health and Family Welfare decided that the pensioners should not be deprived of medical facilities from the government in their old age and so they have no objection to the extension of C.S. (M.A.) Rules to the central government pensioners residing in non-C.G.H.S. Areas..... However, the responsibility of administering the C.S. (M.A.) Rules for pensioners cannot be handled by C.G.H.S. and it should be handled by the respective Ministries/Departments as in the case of serving employees covered under C.S. (M.A.) Rules, 1944.....



(b) The Chennai Bench of the C.A.T. in O.A. No. 194/2001 – Rangarajan Vs. Union of India has held that pensioners residing in non C.G.H.S. areas are entitled for reimbursement in similar cases.

6. The detailed reply discloses the following main objections :-

(a) The answering respondents had consulted the Ministry of Finance who opined that the O.M. of Ministry of Health and Family Welfare of 5<sup>th</sup> June, 1978, had not been extended by them to pensioners.

(b) They are not aware of the order of Chennai Bench of C.A.T. referred to by the applicant.

7. During the course of arguments, the learned counsel for the respondents Mr. Vineet Mathur, placed copy of another O.M. Dated 20.8.2004 on the issue, running as follows. maintaining that even if the June 1998 O.M. gave the

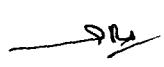
impression that such expenditure was reimbursable, the clarificatory O.M. makes it clear that it was never intended to be so.

"The CS (MA) Rules, 1944 is not applicable to the Central Government pensioners. The 5<sup>th</sup> Central Pay Commission had recommended extension of CS (MA) Rules, 1944 to the Central Government pensioners residing in the areas not covered by CGHS. On a reference received from the Department of Pension and Pensioners' Welfare on this subject, the response of the Department of Health had been conveyed through the O.M. No. S. 14025/4/96-MS, dated 5.6.1998 (Sl. No. 122 of Swamy's Manual, 1998). The response of this Department was that, it did not have any objections to the proposal of extension of CS (MA) Rules, 1944 to Central Government pensioners residing in non-CGHS areas as recommended by the 5<sup>th</sup> Pay Commission, subject to the condition that the responsibility of administering the CS (MA) Rules, 1944 for pensioners would be of the Departments / Ministries concerned.



The said O.M., dated 5.6.1998 was in reply to a reference in O.M. No. 45/74/97 PP&PW (c), dated 15.4.1997 from the Department of Pensions and Pensioners' Welfare. After that also, communication between these two departments had continued on this subject. In fact in a subsequent O.M. of the same number, dated 12.1.1999, the views of all the Ministries / Departments of the Government of India had been sought before a final decision could be taken. But unfortunately, the O.M. Dated 5.6.1998 has been misinterpreted by some pensioners as the final order of the Government of India to extend CS (MA) Rules, 1944 to pensioners. A lot of avoidable litigation has already taken place, because some pensioners have obtained favourable orders from various Courts/ Tribunals on the basis of the said O.M., dated 5.6.1998.

It is, therefore, considered necessary to clarify unequivocally that the O.M., dated 5.6.1998 was not intended to be a final order extending the applicability of CS (MA) Rules, 1944 to pensioners. In fact, it is not possible for any individual department to take such policy decisions without obtaining views of various departments, and particularly, the Department of Expenditure. Such being the case, in the process of examining the recommendations of the 5<sup>th</sup> Pay Commission on this issue, the Department of Expenditure has categorically said that in view of huge financial implications, it is not feasible to extend CS (MA) Rules, 1944 to pensioners."

 He, therefore prayed that the O.A. be dismissed.

8. It is found that the ailment and its treatment have taken place, much before the 2004 O.M. was issued. The O.A. was also preferred before that. The latter O.M. also mentions that some pensioners had obtained favourable orders from Courts on the basis of 1998 O.M. There is nothing to indicate that the earlier O.M. has been withdrawn. At the most the clarificatory O.M. can only have prospective effect leaving this claim to be governed by the earlier arrangement.

9. In this background, the impugned communication dated 21.11.2003 is set aside. The respondents are directed to scrutinise the claim of Rs. 1,90,000/- under C.S. (M.A.) Rules, 1944 for reimbursement as any other serving employee. For items for which there are no prescribed rates under C.S. (M.A.) Rules, the respondent shall consult the Joint Director, C.G.H.S., Jaipur and act accordingly.



10. A copy of the order shall be sent by the Registry to Joint Director, C.G.H.S., Jaipur under registered cover.

11. Compliance to be made within 90 days of receipt of a copy of this order. No costs.

SPB  
B.3.05  
(G.R.Patwardhan)  
Administrative Member

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