

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.43/2003.

Monday this the 7th day of April 2003.

CORAM:

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

V.Y.Mariyamma,
D/o the late Yoyakey Mathew,
Working as Assistant Superintendent of Post Offices,
Aluva Postal Division, Aluva,
residing at Eacharamkudi House, Thuruthy P.O.,
Kuruppumpady, Aluva. Applicant

(By Advocate Shri O.V.Radhakrishnan)

vs.

1. Post Master General,
Central Region,
Kochi- 16.
2. Senior Superintendent of Post Offices,
Aluva Postal Division, Aluva.
3. Union of India represented by its Secretary,
Ministry of Communications,
New Delhi-110 001.

(By Advocate Shri C.Rajendran, SCGSC)

The application having been heard on 7th April 2003, the Tribunal on the same day delivered the following:

ORDER

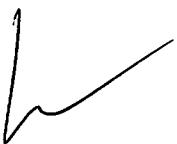
HON'BLE MR. K. V. SACHIDANANDAN, JUDICIAL MEMBER

The applicant is presently working as Assistant Superintendent of Post offices, Aluva Postal Division under the administrative control of respondents 1 and 2. Her son Manoj Kumar met with a road accident while he was 6 years old in the year 1978 and sustained serious head injuries. He underwent two major operations on his brain and his frontal skull having been broken, he had to undergo plastic surgery also. It has been reported on the basis of the MRI Scan that 1/3rd of his brain cells are totally dead and he had been suffering from post-traumatic epilepsy since 1997. His disability is assessed to be about 50%. The said Manoj Kumar, is now 30 years old and and is solely a dependant on the applicant. He needed constant

assistance of some person and as advised by the physician, on 11.4.1999 he got married to a girl who is also unemployed, for the purpose of nursing and attending on him. The applicant submitted that his son had undergone treatment in various hospitals. The applicant came to be transferred to Aluva Division on 20.7.2002. She submitted a representation on 3.9.2002 before the 2nd respondent along with an application for claiming refund of medical expenses incurred in connection with treatment of her son, for the period from 20.6.2002 onwards. The applicant emphasized that till that date she was getting the medical reimbursement for the treatment of her son on submission of medical bills etc.

2. It is submitted that the 2nd respondent orally informed the applicant that her claim for reimbursement of medical expenses cannot be allowed as the patient (her son) is married and hence he is not a dependant on the parents. Again she submitted a representation dated 23.9.2002 before the 1st respondent explaining the factual position and pointing out that there is no bar for reimbursement of medical expenses in respect of a dependant son who got married. However, the claim of the applicant for medical reimbursement remained unsettled. Aggrieved by the inaction on the part of the respondents, the applicant has filed this O.A. seeking the following reliefs.

- i. To declare that the medical reimbursement claim made as per Annexure A-3 incurred by the applicant for treatment of her invalid son, who is wholly dependant on her cannot be denied solely on the ground that he is married, by which he does not cease to be a dependant;
- ii. To issue appropriate direction or order directing the respondents 1 and 2 to accord sanction for medical reimbursement claim of the applicant made in respect of her invalid son, who is wholly dependant on her without regard to his ; marital status and to disburse and to continue to disburse the medical reimbursement claims in accordance with the Rules and Orders on the subject, forth with and at any rate within a time-frame that may be fixed by this Hon'ble Tribunal;



iii. To grant such other reliefs which this Hon'ble may deem fit, just and proper in the circumstances of the case such other;

and

iv. to award costs to the applicant;

3. The respondents have filed a detailed reply statement contending that they have received a representation of the applicant stating that her son, Manojkumar aged 30 years was under prolonged treatment for post-traumatic seizures (epilepsy) and still the treatment continues. The medical bill was for Rs.1215.80/- for two months treatment from 20.6.2002 onwards. Though the claim was in order, a doubt arose whether her son can be considered as dependant as he got married. Hence, a clarification was sought for from the Postmaster General, Kochi and it is intimated that "the claim cannot be admitted as the son is married and he cannot be considered as solely dependent on parents". As such, the applicant's claim was not entertained and informed accordingly. Thereupon the applicant represented to the Postmaster General, Kochi stating that there was no bar based on the rules in force and requested for reimbursement of the claim. It is also submitted that in the earlier medical bill for reimbursement the age of the applicant's son was shown below 25 years and while submitting the present claim,, he is 30 years old and married on 11.4.2002. It is also submitted that the matter is under consideration and the Postmaster General, Kochi had intimated that "the matter is taken up with the Director of Postal Accounts, Trivandrum for examining the case".

4. Shri O.V.Radhakrishnan, learned counsel appeared for the applicant and Shri C. Rajendran, SCGSC represented by Ms. Jisha appeared for the respondents. Learned counsel has taken us to the various pleadings in the O.A. and the reply statements and the materials placed on record. I have given due consideration to the arguments advanced by the counsel.



5. The reimbursement of medical expense of the Government servant and members of his family are governed by Central Services (Medical Attendance) Rules. The word 'family' has been defined to mean employee's:

(i) omitted

(ii) omitted

(iii) Children including legally adopted children, stepchildren and children taken as wards, subject to the following conditions:-

Son--Till he starts earning, irrespective of age-limit.

Son suffering from no age limit
permanent disability of
any kind (Physical or mental)

'Dependency':- Members of the family (other than one spouse) whose income is less than Rs.1500 per mensem are treated as dependents.

6. From the above rule position, it is clear that, a dependant son, irrespective of his age, is entitled to CGHS medical facilities. There is no mention of his marital status. The only disputed fact that has been raised by the respondents is, whether the dependent son who got married and above 25 years is eligible to get reimbursement or not. My attention is brought to the O.M.No.4-24/96-C&P/CGHS (P), dated 17.-9-1999 of Department of Health, which is reproduced below:

Dependent married son is entitled to medical facilities:

As per Circular No. 4-24/96-C&P/CGHS (P), dated 17-9-1999 of Department of Health, a dependant son irrespective of his age is entitled to CGHS medical facilities. There is no mention of his marital status. The Additional Director, CGHS, Jaipur is refusing to include the name of a married dependent son in the CGHS card of a pensioner on the plea that the son is married.



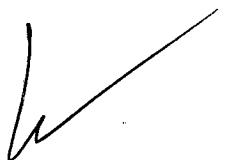
Kindly clarify.

H.P.Majumdar,
Central Government
Pensioners' Association Rajasthan,
17, Sartinagar N.S.Road,
Jaipur-302 019.

While defining dependency for son/daughter vide G.I., Ministry of Health and Family "Welfare O.M.", dated the 31.12.1992-- Order (a) below Note - 2 of the Definition of Family under Chapter 4 of "Swamy's Compilation of Medical Attendance Rules", the clause 'married' has been included to the conditions only in respect of daughter and NOT in respect of son. Hence, the stand taken by the Additional Director, CGHS, Jaipur is not correct. "

7.. In the O.M. dated 17.9.1999 a modification that the clause 'married' has been included as a condition in relation to the daughter and not to the son, as is evidenced from the rule position that has been cited above. No age limit is prescribed to the son of an employee for claiming CGHS benefits. Further, learned counsel for the applicant has brought my attention to the decision of the Hon'ble High Court of Kerala in O.P.No.23922 of 2000 dated 3rd April, 2002 wherein this question was elaborately discussed and a finding entered into.

"I heard both sides. The employment assistance can be given only to the genuine dependents of the deceased employee. This submission of the learned Government Pleader is well-founded. Even the widow/widower or son or daughter can be declined appointment provided they are not dependents on the soldier. But in the case at hand, I find that the claim of the petitioner has been rejected only on the basis that he is married. Ext.P5 also says, a married sister or married brother is ineligible. I think the said norm is plainly irrational. As long as Ext.P3 scheme remained unamended making sisters and brothers eligible, they cannot be denied appointment only for the reason that they are married. But, as stated earlier, appointment can be declined to them, whether they are married or not, if they are not dependents. Therefore, I feel that the 1st respondent has asked the wrong question and thereby made a serious irregularity in disposing of the petitioner's claim. The clarification issued in Ext.P5 should be understood to mean that married sisters and brothers who are not dependents are ineligible. Even in the absence of any clarification, the said position is clear because Ext.P3 scheme envisages grant of appointment only to dependents."



8. In Paragraph 4 of the said judgement, the Hon'ble Court observed in connection with the compassionate appointment to a dependent wherein it is found that even if the dependent is married they are entitled to get the benefit of the scheme. Though that decision was in different contexts and interpreted in different scheme, I am of the opinion that this case also is similar and the legal principles can be adopted and therefore, the son depending on the applicant is entitled to get the benefit of the medical facilities.

9. Under the circumstance, considering the above aspects I am of the view that the fact that the dependent son of applicant is aged 30 years and the fact that he is married do not stand as a hindrance in granting medical facilities to the applicant's son so long as he stands to be a dependent on the applicant. To that effect a declaration is granted to the applicant and direct the respondents to grant the benefit to the applicant on that basis.

10. In view of the above declaration, I am confident that the respondents will settle the medical reimbursement claim made by the applicant as expeditiously as possible and in any case, within three months from the date of receipt of a copy of this order.

11. With the above observations the O.A. is disposed of. Under the circumstances, the parties shall bear their respective costs.

Dated the 7th April, 2003.



K.V.SACHIDANANDAN
JUDICIAL MEMBER

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