

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNKULAM BENCH**

O.A. NOs. 438/2005 & 877/2005

WEDNESDAY.....THE 30th DAY OF AUGUST, 2006

C O R A M

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

O.A. 438/2005

S. Paramasivan Pillai
Scientist -G (retired) NPOL
H.No. X/440-E, Sree Durga
Sastha Lane, Eroor
Cochin-682 306

Applicant

By Advocate Mr. CSG Nair

Vs.

- 1 Union of India represented by the Secretary
Ministry of Defence, South Block
New Delhi-110 001
- 2 The Secretary
Ministry of Health & Family Welfare
Nirman Bhavan
New Delhi.
- 3 The Controller of Defence Accounts (R&D)
C.V.Raman Nagar
Bangalore.
- 4 The Director
Naval Physical & Oceanographic Laboratory
Thrikakkara
Cochin-682 021

Respondents

By Advocate Mr. P.M. Saji, ACGSC.

O.A. 877/2005

V.Sankunny
Superintendent of Central Excise (Retd)
7-B-2 National Residency
Edapally, Cochin-682 024

Applicant

By Advocate Mr. CSG Nair,

Vs.

- 1 Union of India represented by the Secretary
Ministry of Defence, South Block
New Delhi-110 001
- 2 The Secretary
Ministry of Health & Family Welfare
Nirman Bhavan
New Delhi.
- 3 The Commissioner of Central Excise & Customs
Central Excise Buildings
L.S. Press Road,
Cochin-682 018
- 4 The Assistant Commissioner of Central Excise
Central Excise Division-II, Ernakulam
Central Excise Bhavan
Kathrikadavu
Cochin-682 017

Respondents

By Advocate Mrs. Aysha Youseff, ACGSC

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicants in these two Applications are Central Government pensioners who are aggrieved by rejection of their request for reimbursement of expenditure incurred towards medical treatment under Central Services (Medical Rules). They have challenged the instructions issued by the Ministry of Health and Family Welfare through O.M. NO. 14025/4/96-MS dated 20.8.2004. Since identical issues are raised in this two applications they were heard together and are disposed of by this common order.

O.A. 438/2005

- 2 The applicant in this O.A. is a retired Scientist-G from the Naval Physical and Oceanographic Laboratory (NPOL). He retired

from service on 31.12.2001. He is a resident of Cochin and there is no CGHS facility available at Cochin. He is in receipt of the medical allowance of Rs. 100/- per month granted to Central Government pensioners. On 25.1.2004 he was admitted to Medical Trust Hospital, Cochin due to chest pain and underwent Angiogram Test, was advised to undergo Bypass Surgery and was discharged on 2.2.2004. Again he was admitted in the AIMS, Cochin on 2.3.2004, Surgery was done on 4.3.2004 and was discharged on 11.3.2004. He submitted a claim for reimbursement of the expenditure incurred by him towards his treatment. By Annexure A-5 order, the claim for medical reimbursement was rejected by the respondents on the ground that no medical reimbursement is permissible to Central Government pensioners as per CS(MA) Rules.

877/2005

3 The applicant in O.A. 877/2005 is a retired Superintendent Central Excise. He retired on 31.10.1978. He is also a resident of Cochin where no CGHS facility is available. He is in receipt of Rs. 100/- as medical allowance granted to pensioners. On 12.7.2005 the wife of the applicant felt severe chest pain and was rushed to the nearest Lisi Hospital, Ernakulam. She underwent Coronary Angiogram and emergency Coronary Angioplasty and was discharged on 16.7.2005 and the total expenditure incurred was Rs. 1,10,480/- The applicant preferred a claim for reimbursement of the expenditure. By Annexure A-5 order it was rejected by the respondents on the ground that CS(MA) Rules would not apply to

retired Government servants.

4 The main contention of the applicants in both the OAs is that in O.M No. S-14025/4/96-MS dated 5.6.1998 (Annexure A-3) it was stated that medical reimbursement claims of pensioners residing in an area not covered by CGHS would be processed and the claim would be settled by the parent office from where the pensioner retired and that the beneficiaries of CS(MA)Rules 1944 would be entitled to avail hospitalisation facilities as provided under the rules. The second respondent later issued another OM of even number dated 20.8.2004 stating that pensioners do not come within the purview of the CS(MA) Rules and the reason given for this turn around is that the expenditure on the same will impose heavy burden on the central exchequer. The contention of the applicants are as follows:- The instructions issued in the earlier OM conveying non-objection to the proposal for extension of CS(MA) Rules to central government pensioners residing in non-CGHS areas hold the field and the clarification issued later can have no consequence. The matter has been agitated before the various benches of the Tribunal and in O.A. 250/2003 and OA 242/04 this Tribunal had directed the respondents to reimburse the medical claim of the applicants therein. The order in O.A. 242/2004 was challenged by the respondents before the Hon'ble High Court of Kerala in WP(C) No. 1977/2005 and the Hon'ble High Court dismissed the Writ Petition. The Hon'ble Supreme Court in State of Punjab Vs. Mohinder Singh Chawla (AIR 1997 1225) has categorically settled the law

holding that it is settled law that right to health is an integral right to life and in the light of the above judgment as well as the orders of the various Benches of this Tribunal non-payment of medical claim was illegal and arbitrary.

5 The respondents have filed reply statement and additional reply statement submitting that retired government servants do not come under the CS(MA) Rules. As per Note 2 of Rule 1(2)of CS(MA) Rules 1944 they are expressly excluded from the purview of the rules. Extension of CS(MA) Rules to Central Government pensioners residing in non-CGHS areas as recommended by the Vth CPC had been under consideration of the Health Ministry and a decision on the issue had been conveyed by the Ministry by OM dated 20.5.2004 which concluded " In view of financial implications, it is not feasible to extend Central Service (Medical Attendance) Rules, 1944 to pensioners." It is also submitted that various High Courts and Benches of the CAT in the recent past have passed orders to the effect that Central Government pensioners be reimbursed medical expenses under CS(MA) Rules, 1944. The Ministry of Health & Family Welfare in consultation with Ministry of Law & Justice had filed a SLP (Civil) CC 9939 of 2004 against those orders before the Hon'ble Supreme Court and by an order dated 2.5.2005 the Hon'ble Supreme Court directed issuance of notice to all concerned parties and the question of reimbursement of medical claims under CS(MA) Rules, 1944 to Central Government pensioners is under examination of the Hon'ble Supreme Court of India and therefore none of the

relief sought by the applicants is liable to be granted. The Hon'ble Supreme Court has also stayed any contempt proceedings initiated in these case.

6 I have heard learned counsel on both sides. The learned counsel for the applicant submitted that the issue raised in these two OAs are covered by the judgment of this Tribunal in O.A. 242/04 and 250/2003 etc. All the subsequent decisions of the Tribunal are based on the orders of this Tribunal in O.A. 242/04, now confirmed by the Hon'ble High Court of Kerala in WP(C) 1977 of 2005 and therefore these applications can also be disposed of on similar lines subject to the final outcome of the SLP referred to by the respondents.

7 It is true that the issue has been agitated in a number of Applications before the various Benches of the Tribunal/High Courts. They have taken the consistent view that the OM dated 5.6.1998 which conveyed the decision of the Ministry of Health and Family Welfare on the subject had the effect of extending the applicability of CS(MA) Rules, 1944 to the pensioners and by a clarification given in the OM dated 20.8.2004 and that the pensioners would not be eligible for the medical facilities of the Government under the guise of lack of finance, this benefit could not be taken away. The Apex Court in State of Punjab Vs. Mohinder Singh Chawla (AIR 1997 1225) has clearly laid down the dictum that: -

"... the Government has constitutional obligation to

provide the health facilities. It is the duty of the State to bear the expenditure incurred by the government servant. Expenditure thus incurred required to be reimbursed by the State to the employee. Having had the constitutional obligation to bear the expenses for the Government, the Government is required to fulfill the constitutional obligation. Necessarily the state has to bear the expenses incurred in that behalf."

8 The common order in O.A. 242/2005 and connected cases was also allowed on the same basis and ratio. I am in agreement with the orders in the above OAs and I find no reason to reject the same relief prayed for, as far as these OAs are concerned.

9 Accordingly, the OAs are allowed. I direct the respondents to reimburse the medical claims submitted by the applicants in accordance with the provisions of the CS(MA) Rules. However, as submitted by the respondents since the Hon'ble Supreme Court is seized of the matter by admission of the SLP © No.9939 /2004 filed by the Department of Posts assailing the orders of the Ahmedabad Bench of the Tribunal, it is further made clear that the above orders will be subject to the final outcome of the SLP mentioned above. No costs.

Dated 30.8.2006

Sathi Nair

SATHI NAIR
VICE CHAIRMAN