

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 583/2000

THURSDAY, THIS THE 1st DAY OF AUGUST, 2002

C O R A M

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

A.K. Subramanian
Retired Stores Inspector
Southern Railway
Divisional Office, Palakkad
residing at XXX/152
Vananam Lane, Ponkunnam
Thrissur-2.

Applicant

By Advocate Mr. K. Padmanabhan

Vs

1. Union of India represented by
the Secretary
Railway Board,
Ministry of Railways
Rail Bhavan, New Delhi.
2. General Manager,
Southern Railway
Chennai
3. Divisional Railway Manager
Southern Railway,
Palghat.

Respondents

By Advocate Smt. Sumathi Dandapani

The Application having been heard on 2.7.2002 the Tribunal delivered the following on 1.8.2002.

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant a voluntarily retired Stores Inspector in the Divisional Office, Palakkad aggrieved by A2 letter dated 11.2.2000 issued by the Divisional Personnel Officer, Palghat, A3 letter dated 23.10.97 and A4 letter dated 7.5.99 both and Circular No. PC-V/987/7/1/1 dated 21.4.99 both issued by the Railway Board, filed this Original Application seeking the following reliefs:

- (i) Quash Annexure A2 and Annexure A4 para 2(1)(a) fixing revised pension as on 1.1.1996 including commuted value (gross pension) multiplied by the figure of two for pre-96 retirees.



(ii) Quash Annexure A1 option form of Circular dated 21.4.1999 marked as Annexure A5 and declare that pensioners residing in places where Railway hospitals/health units exist are entitled for OPD facility in lieu of Rs. 100/- per month without becoming member of RELHS or allow payment of Rs. 100/- per month in lieu of OPD facility without becoming member under RELHS as conceptually both are different:

(iii) permit the applicant to join the RELHS-97 by paying one months contribution of Rs. 2675/- which was the last pay drawn by him at the time of retirement.

(iv) Direct the 3rd respondent to provide the applicant and his wife all facilities admissible under RELHS after accepting one months contribution as per prayer (iii) supra.

(v) Direct the 3rd respondent to pay Rs. 100/- per month for the period from 1.12.1997 onwards as per Annexure A5 since he was given permission to join the Scheme only on 11.2.2000 as per Annexure A2

and

(vi) Grant such other reliefs as this Hon'ble Tribunal deems fit and proper.

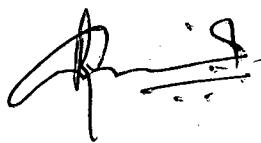
2. According to the averments of the applicant in the O.A. the Railway had introduced a medical Scheme for the retired Railway employees w.e.f. September, 1988 called Retired Railway Employees Contributory Health Scheme and subsequently another Scheme called Railway Employees Liberalised Health Scheme (RELHS for short) and that for the latter Scheme one time contribution equal to last month's basic pay drawn at the time of retirement was to be made by those opting for joining the Scheme. Applicant did not opt to join the RELHS Scheme at the time of his retirement by paying the one time contribution as his place of residence was at Trichur and at that time there was no railway hospital available at Trichur and that they were incapable of travelling long distance for medical assistance apart from incurring unnecessary expenditure for to and fro journey. Further, subsequent to his retirement he joined Konkan Railway Corporation from May, 1992 with Headquarters at Belapur and he finally settled at Trichur from August, 1997



leaving Konkan Railway. After permanent settlement at Trichur he submitted an application dated 6.8.97 to the third respondent requesting the Department to admit him for medical facilities under RELHS. Having not received any reply to his request he claimed that he continued to submit representations both in person and in writing A1 representation dated 19.11.98 was one such representation. He finally contacted the Sr. DPO, Palghat Division and he was served with A2 reply dated 11.2.2000 as per which he was directed to remit Rs. 8078/- to the Booking office Palakkad and submit the receipt to the office for further process in issuing RELHS medical card. According to the applicant he retired on 30.4.92 when he was drawing a basic pay of Rs. 2675/- in the scale of Rs. 2000-3200. He claimed that according to the orders in force at the time of his application dated 6.8.97 he had to pay one time contribution equal to the last month's basic pay drawn at the time of his retirement i.e. Rs. 2675/-. Applicant relied on para 140.19 of the Vth Central Pay Commission Report and A3 Railway Board's letter dated 23.10.97. Applicant submitted that according to A3 persons who were already members of the RELHS as on 1.1.96 were not required to pay any additional contribution and would automatically be included in the RELHS 97 and employees who retired prior to 1.1.96 and desirous of joining RELHS 1997 were to make one time contribution equal to the one month's basic pay in the revised pay scale w.e.f. 1.1.96. The applicant submitted that A3 circular was modified by A4 circular dated 7.5.99 by the Railway Board by which for employees who retired before 1.1.96 were required to pay revised basic pension as on 1.1.96 including commuted value (gross pension) multiplied by the figure of two. Applicant submitted that according to A4 he had to remit an amount of Rs. 80,78/- double his pension of Rs. 4039/- per



month. But as per A3 he has to remit Rs. 8100/-. This involved fixation of his pay but he was not entitled for the benefit of fixation of pay as he retired on 30.4.92 much earlier to the implementation of the Vth CPC. As pensioner who retired prior to 1.1.96 the consolidated pension of the applicant was only Rs. 4039/- inclusive of the commuted amount. Thus double the pension of Rs. 8078/- was almost equal to the revised pay of Vth CPC. He submitted that in the case of other Central Government employees in order to avail of the medical facilities under Central Government Health Scheme (CGHS), the rate of contribution of the pensioners was the same as in the case of serving employees. However pensioners had an option to pay contribution based on the last pay drawn at the time of retirement or the amount of their pension. In case they opted for the latter certain facilities like direct consultation by specialists, Nursing home, etc. were regulated in accordance with the pension and not on their pre-retirement pay. Such an option was not available for Railway pensioners. Railway Board orders at the time of implementation were one month's contribution equal to the last basic pay drawn at the time of retirement. The pensioners after remitting the one month's contribution were entitled for full fledged facilities including direct consultation by specialists, nursing home, etc. The Central Govt. had not amended the above provision imposing the contribution as double the pension as in the case of Railway pensioners. In these circumstances according to the applicant he was entitled for full fledged medical facilities under RELHS by merely paying one months contribution equal to the last basic pay drawn i.e. Rs. 2675/-



3. Applicant submitted that the Vth Pay Commission considered medical aid facilities to the retired railway employees based on the CGHS. In the recommendations as enshrined in para 140.18 pensioners in an area not covered by CGHS should be given a fixed medical allowance of Rs.100/- per month for meeting the expenditure on day to day medical expenses that did not require hospitalisation. Annexure-I to A-5 circular dated 21.4.99 issued by the Railway Board stipulated two types of option. Relying on the said Annexure-I the applicant submitted that pensioners should be given OPD medical facilities and in lieu, a medical allowances of Rs. 100/- to meet the day to day medical expenses that did not require hospitalisation and hence according to him he should be provided with OPD facilities without insisting on enrolment under RELHS. He submitted that payment of Rs. 100/- per month and medical aid contemplated under RELH Scheme were two separate provisions. According to him enrolment under RELHS was for full fledged medical facilities, as specified in A-4 circular dated 7.5.99 and in as much as a pensioner who was not desirous of full fledged medical facilities he should be given the OPD facility in lieu of Rs. 100/- He submitted that as per Annexure I of Annexure A5 pensioners residing in a city/town/municipality limits of the places where Railway Hospitals/Health units existed had to give an option that he was not entitled for the grant of medical allowance and he would be availing the existing OPD medical facilities. By giving this option the pensioners of these areas were not entitled for the grant of medical allowance of Rs. 100/-. Thus to get the OPD facility he had to become a member of RELHS. The pensioners like the applicant had not been given any other option. In the case of Pensioners who were already members of RELHS outside the jurisdiction of Railway



hospitals could freely opt for to claim fixed medical allowance of Rs. 100/- per month which meant that they could have both the facilities one as per the RELHS and the other as per the option for Rs. 100/- per month. Similarly in the case of persons residing in city / town covered by railway hospital, payment of Rs. 100/- fixed medical allowance should be treated for meeting the day to day medical expenditure and should not be clubbed with RELHS. Payment of Rs. 100/- was in lieu of OPD facilities and no condition was to be stipulated. According to the applicant he requested to join RELHS on 6.8.97 which was considered only on 11.2.2000 as per Annexure A2 order. The respondents ought to have allowed the applicant to join the RELHS then and there. Instead as no action was taken by the 3rd respondent pursuant to his request, he was virtually precluded from availing the medical facilities offered to pensioners. Denial of the same tantamounted to violation of his fundamental rights enunciated in Article 14 and 16 of the Constitution and against the principles of natural justice. Hence he filed this OA seeking the above reliefs.

4. Respondents filed reply statement resisting the claim of the applicant. They submitted the details of the three Schemes which were available to the retired railway employees from time to time, the last one being the RELHS-97. They also brought out the changes made by the Government of India regarding the pension admissible to the pre 1.1.1996 railway pensioners and submitted that the pension of every retired railway employee was fixed taking into account their pay as arrived notionally on 1.1.1996 and therefore fixing the rate of contribution to join RELHS-97 after 1.1.1996 as twice the pension after 1.1.1996 was justified. They further submitted that the primary condition for the grant of medical allowance



was that the pensioner should be eligible for medical facility in any of the existing health Scheme and the secondary condition was that the pensioner should reside beyond the jurisdiction of City/Town/Municipality limits of the places where the Railway Hospitals/Health Units are available. They submitted that the applicant was at liberty to join the Scheme which was in vogue at the time of his retirement and that the reason stated by the applicant for not joining the Scheme was without bonafides and was therefore not tenable. They submitted that applicant's contention that he had submitted repeated representations had no relevance at all. Relying on Hon'ble Apex Court's judgments it was submitted that repeated representations would not amount to surmount the law of limitation. The applicant having kept quiet all these years had approached the Tribunal against the fixing of the rate of payment for which he had got no locus standi or right. His claim was hit by delay and laches and lack of bonafides. He had not produced the copies of the repeated representations. They submitted that the applicant could not blame the respondents for the events leading to the issue of A2 since the applicant could have joined the medical Scheme at the time of his retirement. It was submitted that the failure on the part of the applicant to join the Scheme which resulted in payment of higher amount could not be attributed to the respondents. The Railways extended various facilities/Schemes for retired employees and it was upto them to avail of the same at the material time. He could not compare serving employees with retired employees. The statutory rules instructions could not be assailed on the flimsy grounds to cover the lapses of a pensioner for not opting for the Scheme at the material time. The provisions of granting medical allowance could not be seen separately as the same was granted to those who

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reside outside the jurisdiction of a place where a Railway Hospital was situated. The applicant was claiming double benefits. The medical allowance of Rs. 100/- per month was granted to members of RELHS and residing in interior areas so as to enable them to meet their day to day medical expenses. Such pensioners were forbidden from availing OPD treatment in the Hospital. The applicant was not entitled for medical allowance. They submitted that in terms of Railway Board's letter dated 10.5.96 retired employees were given option to join the RELH Scheme only upto 30.9.96. Further extension of option upto 31.3.99 was communicated as per Board's letter dated 16.12.98 only. Hence there was no facility of option in effect on 6.8.97. Hence there was no merit in the applicant's contentions. All the retiring employees were given chance to join various Schemes at the material time. The applicant did not join the Scheme for reasons best known to him. In case of members of health care Scheme who opt for payment of medical allowances, they were not entitled to receive treatment as outdoor patient. Membership of a health care Scheme was a prerequisite for OPD treatment whereas it was not a prerequisite for availing medical allowance. The applicant's averment that to avail OPD treatment, no membership of any Scheme was necessary was incorrect. The applicant was seeking multiple reliefs of rate of contribution to join RELHS and payment of medical allowance which was not permissible. The O.A. was liable to be dismissed.

5. Applicant filed rejoinder.

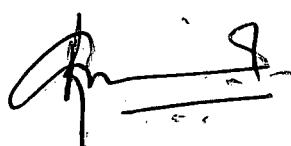
6. Heard learned counsel for the parties.

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7. We have given careful consideration to the submissions made by the learned counsel for the parties and the rival pleadings and have perused the documents brought on record.

8. The main ground on which the applicant had assailed A2 was that he had made an application on 6.8.97 to join RELHS and had the respondents taken action on this application prior to issue of Annexure A3 he could have joined the Scheme by paying Rs. 2675/- the last pay drawn by him at the time of his retirement on 30.4.92 because when the RELHS 97 was introduced by the Railway Board by A-3 letter dated 23.10.97 he would have automatically become a member of the Scheme and he would not have to make any additional amount to become a member. From the reply statement we find that in terms for Railway Boards's instruction contained in their letter dated 10.5.96, retired railway employees were given option to join RELHS, ^{upto 30.9.96} Applicant had not denied this in the rejoinder filed by him. Thus the position that emerges is that at the time when the applicant made his application on 6.8.97 there was no option to join RELHS. We further find from the reply statement that extension of option upto 31.3.99 was communicated by Railway Board's letter dated 16.12.98. Under these circumstances we cannot fault the respondents for not considering his application dated 6.8.97. We also find that the same had not prejudiced the applicant in any way.

9. From a reading of A3 we find that RELHS-97 was a Scheme introduced pursuant to the assurance given by the Minister for Railways in his budget speech for the year 1997-98. It was issued in supersession of all earlier instructions on the subject. According to the Scheme,

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retired railway employees were made eligible for full medical facilities as admissible to serving railway employees. Thus we find that it was a new Scheme and it was called RELHS-97. According to A-3, for joining RELHS-97, one time Contribution equal to last month's basic pay would have to be made at the time of retirement by those who opt to join the Scheme. It was also stipulated that those who were members of RELHS would become members of RELHS-97 automatically, but those who had joined the RELHS Scheme after 1.1.96 would have to pay the difference of one time contribution on account of introduction of Fifth Pay Commission's revised pay scales with effect from 1.1.96. According to the applicant this would mean that he had to pay an amount of Rs. 8100/- even though in his case there would be ^{no} refixation of his pay as he had retired on 30.4.92 at which time his basic pay was only Rs. 2675/-. He also assailed the modification done by the Railway Board through A-4 letter dated 7.5.1999. In para 2.1(a) of A4, railway employees who retired prior to 1.1.1996 were to pay double the gross pension to join RELHS-97. The ground on which the applicant assailed the said paragraph was that the pensioners had been classified as (i) pensioners who joined the Scheme prior to 1.1.96 and (ii) pensioners who retired prior to 1.1.96 and willing to join the Scheme after 1.1.96 and (iii) pensioners retiring after 1.1.96 after implementation of the Vth Central Pay Commission. According to him the said classification of pensioners who were a homogeneous class was discriminatory.

10. Para 2 of A-3 dealing with the Rate of Contribution for joining RELHS reads as under:

For joining RELHS-97 one time contribution equal to the last month's basic pay will have to be made at the time of retirement by those opting to join the

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Scheme. The persons who are already members of the existing RELHS, are not required to make any fresh payment. However, those who have joined the existing RELHS after 1.1.96 will have to pay the difference of one time contribution on account of introduction of Fifth Pay Commission's revised pay scales w.e.f. 1.1.96. It will be responsibility of the Railway Administration to realise the amount due from the concerned RELHS members. Those who join the RELHS-97 shall hold identify cards with photographs of all the beneficiaries.

11. The above provisions were amended by para 2.1(a) of A4 letter as under:

2. Retired Employees Liberalised Health Scheme -97

2.1 Rate of Contribution.

It has been decided that only in respect of pre-96 retirees the basis for the one time contribution will be the revised pension drawn by the Retired Railway Employee for joining the RELHS-97. The rate of contribution shall be calculated as under:

(a) For employee who retired before 1.1.96. Revised Basic Pension as on 1.1.96 including commuted value (gross Pension) multiplied by the figure of two.

12. We find from the reply statement that pensionary benefits of all railway servants irrespective of whether they retired/died prior to 1.1.1996 or who were in service on 1.1.1996 or retired/died after 1.1.1996 would be regulated as under:

(a) Pension of railway servant who retired/died on or after 1.1.96 with the maximum qualifying service of 33 years, when calculated at 50% of the average emoluments, fall short of 50% of the minimum pay in the revised scale of pay introduced with effect from 1.1.96, for the post last held by the railway servant as on the date of retirement, the pension should be raised to 50% of the minimum pay in the revised scale of pay.

(b) Pension to railway servant who retired/died during the period from 1.1.86 to 31.12.95, with the maximum qualifying service of 33 years, when consolidated as on 1.1.96 works out to be less than 50% of the minimum pay of the revised scale of pay introduced with effect from 1.1.96 for the post last held by the



railway servant as on the date of retirement, his/her basic pension should be raised to 50% of the minimum pay of the revised scale of pay.

(c) Pension of railway servant who retired/died prior to 1.1.86, with a maximum of 33 years qualifying service, if the pension revised as on 1.1.86 and then consolidated as on 1.1.96 works out to be less than 50% of the minimum pay of the revised scale of pay introduced with effect from 1.1.96 applicable to the railway servant as on the date of retirement, the amount of such pension should be raised to 50% of the minimum pay of the revised scale of pay.

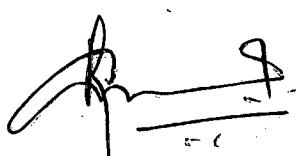
From the above we find that all pensioners irrespective of when they retired would be entitled to, if they had put in maximum of 33 years of qualifying service, 50% of their average emoluments which they were receiving at the time of their retirement if they retired after 1.1.96 subject to a minimum of 50% of the minimum pay in the revised pay introduced w.e.f. 1.1.96. Thus all pensioners have been treated as a homogenous class as far as payment of pension is concerned. From the provisions of RELHS 97 Scheme as modified by A4 we find that all pre-1996 retirees if they want to join the RELHS-97 have to pay twice the pension revised as on 1.1.96. Thus all the pensioners who join the Scheme after 1.1.96 had been treated alike. We do not find that the orders contained in A-4 are making any discrimination about pensioners who retired prior to 1.1.96 or after 1.1.96 in that those who retire prior to 1.1.96 have been asked to pay twice their monthly pension fixed as on 1.1.96 and those who retire after 1.1.96 one month's pay which they were drawing as on 1.1.96. Thus, we do not find any force in applicant's submission that the Scheme introduced by A4 letter is discriminatory in any way. As we have not found any infirmity in A3 and A4 we do not find any infirmity in A2 issued by the Senior DPO, Palghat Division pursuant to these letters.



13. Further the applicant being a railway pensioner cannot compare himself with Central Government Pensioners who are governed by CGHS Scheme. The railway Servants' conditions of service and Railway Pensioners Pension Scheme as well as Health Scheme are all governed by separate set of rules and there cannot be any comparison of one's service conditions with those of others. Moreover the details of the CGHS have also not been brought on record before this Tribunal to make a comparison and arrive at any conclusions.

14. Apart from the above, we are of the view that whenever a new Scheme is introduced by the Government in this case RELHS-97, it is well within the competency of the Government of India to lay down the rules which will enable those desirous to become members of the Scheme. May be a better Scheme and conditions for joining the Scheme is possible. But it is not for this Tribunal to act as an Appellate Authority and making fresh Scheme or modify the Scheme. In this view of the matter also we do not find any reason to interfere in the Govt. laying down the rates of contribution for joining the Scheme. We also find substance in the plea of the respondents that the applicant on his own volition decided not to join RELHS when he retired in 1992. When he decided to join the Scheme in 1997 ie. after after 5 years, he was bound by the conditions of the Scheme which was relevant at the point of time.

15. Another relief sought by the applicant is for a direction to the third respondent to pay RS. 100/- per month for the period from 1.12.97 onwards as per A5 since he was permitted to join the Scheme only on 11.2.2000 as per A2.

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16. Admittedly the applicant is residing at Trichur which is included in Annexure-III to A5 letter. As per A5, those who are within the jurisdiction of Trichur are not entitled for grant of medical allowance. The Recommendations contained in Para 140.18 of the Vth Pay Commission was that pensioners in an area not covered by CGHS should be given a fixed medical allowance of Rs. 100/- for meeting the day to day medical expenses that did not require hospitalisation. He is assailed the option contained in Annexure-I to A5 letter on the ground that he should be provided OPD facility without insisting on enrolment in RELHS. According to him the payment of Rs. 100/- per month was for meeting the day to day expenditure and should not be clubbed with RELHS. He submitted that in as much as a pensioner not availing medical facilities should be given OPD facilities in lieu of Rs. 100/-. According to the respondents medical allowance of Rs. 100/- was granted to members of RELHS and residing in interior areas so as to meet their day to day medical expenses and such members were forbidden to use the facility of OPD treatment from the hospital. According to them, the intention was that those who reside within the jurisdiction of the Railway Hospitals could avail RELHS and others could claim grant of medical allowances.

17. On a careful consideration of the rival contentions we find that medical allowance had been introduced for the first time pursuant to the recommendations of the Fifth Pay Commission. According to the applicant the recommendations were contained in para 140.18 according to which pensioners in an area not covered by CGHS should be given a fixed medical allowance. In the face of the recommendations as quoted by the applicant himself we do not find any merit in his contention that he should be given medical allowance of

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Rs. 100/- without becoming a member of RELHS, especially when he resides at Trichur where a Railway Health Unit is located, in lieu of OPD facilities. As far as the Railway Pensioners are concerned, as per the Fifth Pay Commission Recommendations they would be eligible for medical allowance only if they reside in an area not covered by RELHS. If the applicant was interested in availing the Railway Medical facilities he can avail of the same by going to the Railway Health Unit for which he has to join the RELHS. There may be places where such Health Units are not available. For availing the facility in the Railway Health Units a pensioner has to become a member of the RELHS 1997. But those who reside outside the jurisdiction of Railway Health Units even if they are members of the RELHS-97 they cannot avail of the OPD facilities because there are no Health Units in their area of residence. Viewed thus we do not find any infirmity in the option given as Annexure -I to A-5. The applicant would be entitled for Rs. 100/- P.M. as medical allowance only if he joined the RELHS-97 and opted not to avail OPD facilities from the Railway Health Unit.

18. In the result we hold that the applicant is not entitled for any of the reliefs sought for and accordingly we dismiss this Original Application. In the circumstances we leave the parties to bear the costs.

Dated the 1st August, 2002.



K.V. SACHIDANANDAN
JUDICIAL MEMBER

kmn.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

APPENDIX

APPLICANT'S ANNEXURE

- A1 True copy of representation dated 19.11.98
- A2 True copy of letter No. J/P 626/Sett dated 11.2.2000 issued by the 3rd respondent.
- A3 True copy of the Board's circular No. 97/H/28/I dated 23.10.97
- A4 True copy of the Board's circular No. 97/H/28/I dated 7.5.99
- A5 True copy of the Board's circular NO. PC-V/987/7/1/1 dated 21.4.99.

Respondents' Annexure

-Nil-