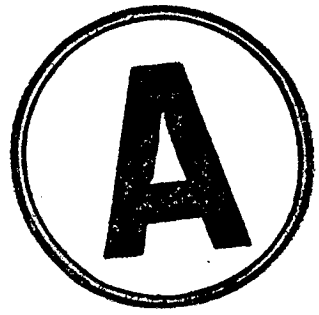


CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH



O.A .No.563/2004 AND 590/2004

Tuesday. This the 12th July 2005

CORAM:

HON'BLE Mrs. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER
OA 563/04

1. Central Govt Pensioners' Association (Kerala), Pension Kendra, Capital Towers, Patturical Junction, Trissur, represented by its General Secretary T.I.Sudhakaran, S/o A.Parameswaran Kartha, R/o Suthrya, Vattakkallu, Pattikkad
2. P.Ravindran, S/o Pachan, R/o TC 62/1678, MRWA, 91, Malliyedathu Lane Kalippankulam Road, Manacaud P.O, Trivandrum
3. A Ganesan Nair, S/o R.Anandaraman, R/o at Ganesh Saras, Kesava Deve Road Poojappura P.O, Trivandrum
4. K.P.Bhaskaran, S/o Kunjukunju, R/o Kavunkal, TC 55/2070 Pappanamcode, Trivandrum.

(By Mr.M.R.Hariraj, Advocate)

Applicants

Vs.

1. Union of India, represented by Secretary to Govt.of India, Department of Health and Family Welfare, New Delhi.
2. Director, Central Govt Health Scheme, Department of Health, Ministry of Health and Family Welfare, Nirman Bhavan, New Delhi.
3. Joint Director, Central Govt Health Scheme, 3/45. Kesavadasa Puram, Trivandrum.
4. Chief Medical Officer, CGHS Dispensary, Vanchiyoore, Trivandrum.
5. The Secretary, M/o Communication, Deptt of Posts, New Delhi.

(By Mr.Thomas Mathew Nellimoottil, Advocate)

Respondents.

O.A No.590/2004

1. M.Vasudevan Nair, Senior Superintendent of Post Offices (Rtd) Kollam Division, S/o Narayanan Nair, R/o Vasutha, Pappanamcode, Trivandrum.
2. N.Sivadasan, Mailman (Rtd), RMS, TV Division, Thiruvananthapuram S/o Narayanan, R/o Thandakaran Vilakathu Veedu, Kulathoor, Thiruvananthapuram.

(By Mr.Sasidharan Chempazhanthiyil, Advocate)

Applicants

Vs.

1. Union of India represented by its Secretary, Ministry of Health & Family Welfare, Nirman Bhavan, New Delhi.
2. The Director, Central Govt Health Scheme, Nirman Bhavan, New Delhi.
3. The Joint Director, CGHS, Kesavadasapuram, Thiruvananthapuram.
4. The Chief Medical Officer, CGHS Dispensary, Sasthamangalam, Thiruvananthapuram.
5. The Chief Medical Officer, CGHS Dispensary, Kesavadasapuram, Thiruvananthapuram
6. Chief Post Master General, Department of Posts, Kerala Circle, Thiruvananthapuram.

Respondents

(By Mr. TPM Ibrahim Khan, SCGSC, Advocate)

The applications having been heard on 22.6.05 and the Tribunal on 12.7.2005 delivered the following:

ORDER

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

The issues involved in both the O.As are one and the same, seeking CGHS benefits to the pensioners of P&T Department. By consent of the parties, both the O.As are disposed of by a common order.

2. The case of the applicants are that they have obtained CGHS cards after their retirement and that they were enjoying the facilities till the middle of July 2004 and all of a sudden the facilities were stopped without cancelling their cards and giving them notice. The applicants are entitled to the facilities under the scheme promulgated by the Department of Personnel in the year 1990. There is no basis for denying them the medical facilities. Aggrieved by the said inaction, they have filed these O.As seeking the following main reliefs:

In O.A No.563/2004

"Quash Annexures A1, A2 and A3.

Direct the respondents to continue to grant the benefits under CGHS Scheme to applicants 2 and 3 and also the other members of the 1st applicant association,

irrespective of which department they retired from and whether they were getting benefits of CGHS while in service in accordance with Annx.A4.

Direct the respondents to reimburse to the applicants 2 and 3 and the similar members of the 1st applicant association the medical expenses which would have been available free to them as per the CGHS Scheme or would have been reimbursed them, had Annexure A1 and A2 were not implemented.

Direct the respondents to enroll applicant No.4 and other members of the 1st applicant association if they are otherwise eligible for enrollment in the CGHS without insisting that they must have had the CGHS card while in service."

In O.A No.590/2004

Declare that the applicants are entitled to medical facility on the strength of Annexure A1 & A1(a) and direct the respondents to regulate their claims for medical facility accordingly.

Direct the 3rd, 4th and 5th respondents to extend the medical facility under the CGHS Scheme to the applicants.

Direct the 2nd respondent to consider and pass orders on Annexures A6 & A7 and direct the respondents to extend the medical facility to the applicants till this is done.

Call for the records and quash Annexure A8 and A2 to the extend it denies CGHS facility to the applicants.

3. The respondents have filed a detailed reply statement contending that the CGHS cards were issued to the applicants by the respondents unaware of the existence of the order dated 1.9.96. When this was brought to the notice of the respondents, new cards were not issued and alerted the dispensaries not to grant relief and the Ministry has referred for withdrawal and cancellation of the cards vide Annexer R1 order dated 15.7.04. As per the Ministry's order dated 1.9.96, this scheme does not cover P&T employees who did not possess a card while in service. The scheme does not provide for pensioners in P&T and are admissible only to Central Govt servants who are paid their salary/pension from the civil estimates of the Central Govt. It excluded those in Railway services, etc. since they have their own dispensaries/hospitals. P&T Department is similar to the Railways which have their own Dispensaries, they have not been allowed CGHS facilities except in Delhi where the P&T Dispensaries are much less and in a city

out side Delhi which has a facility of P&T Dispensaries in that city he/she would necessarily have to P&T Dispensary facilities.

4. The P&T Dispensaries are not extending its facilities on a quid pro quo basis to those Central Govt, non-P&T employees in cities not covered under CGHS. Due to repeated requests a decision was taken by the Department of Health partly fulfilling the request of P&T, for extension of CGHS facilities to them as the same was extended only to those P&T pensioners who were members of CGHS prior to their retirement. However, those P&T pensioners who were not participating in CGHS while in service were not extended these facilities. Accordingly orders were issued on 1.8.90 to P&T pensioners who were members to CGHS prior to retirement allowing to transfer their facility covered in the city to another covered city. Since the Govt could not create new posts in CGHS, the implementation of extending the facilities becomes impossible. The Department of Health took a stance that augmentation/extension of CGHS facilities to the existing/new categories be difficult until the Department of Expenditure agrees for the creation of new post for CGHS. Since the applicants are retired P&T employees, the order dated 1.9.96 is binding on them. The medical facilities were withdrawn from the applicants for the above reasons and the original application has no merit.

5. The applicants have filed a rejoinder in OA 563/04 reiterating their contentions and further adding that none of the applicants were posted to a CGHS covered city during their service. Annx.R1 was never brought to the notice of the applicants and only Ext.A8 was exhibited and did not mention about refund of the amount. The contention of the respondents that extention of CGHS facility to all P&T pensioners will place huge burden and work load on CGHS in both in terms of infrastructure and resources were rejected by the Tribunal orders. The respondents also filed reply to the rejoinder, reiterating that since the P&T has a large workforce the CGHS with its existing manpower and resource constrains will not be able to absorb the additional beneficiaries.

The Postal Department has also filed a separate statement contending that the P&T serving employees are covered under the CS(MA) Rules which do not cover pensioners. The P&T Pensioners are also not covered under the said rules. Retired P&T employees who reside in the area not covered by P&T Dispensary and are not entitled to the facilities under CGHS are entitled to a fixed medical allowance of Rs.100/- per month.

6. We have heard Sri M.R.Hariraj and Sri Sasidharan Chempazhanthiyil, the learned counsel for applicants and Sri Thomas Mathew Nellimoottil and Sri TPM Ibrahim Khan, the learned counsel for respondents. We have perused the materials and evidences placed on record and given due consideration to the arguments advanced by the counsel. The learned counsel for the applicants argued that some of the applicants are registered under the CGHS after their retirement and some took life time registration by paying more than Rs.8000/- and refusal to include P&T pensioners alone in the CGHS Scheme is most discriminatory. No similar limitation is placed on pensioners of other Departments and the classification is illegal for want of an intelligible differentia and a rational nexus for a classification with any reasonable object sought to be achieved. The counsel for the respondents persuasively argued that the facility has no infrastructural availability nor any work force to extend the benefit to P&T pensioners who are large in number and moreover they themselves are having their own facilities like that of Railways. And therefore it becomes impossible for extending these facilities to the applicants.

7. The short question for consideration in this case is whether the CGHS facilities should be extended to the pensioners in P&T Department. Admittedly, most of the applicants are already extended with this facility and some of them are life members. According to the applicants, ~~without notice~~ these facilities have been abruptly stopped without notice, which is impugned in the O.A. The excerpts of the communication of the Ministry of Personnel & Public Grievances and Pension, which is the nodal Ministry on CGHS facilities for civilian Central Govt Pensioners are reproduced below:

"1. All Central Government pensioners (except Railway pensioners and armed Forces pensioners) who were eligible for availing CGHS facilities while in

service are eligible for availing CGHS facilities after retirement. The scheme is also applicable to Central Government employees who retired with Contributory Provident Fund benefits. Similarly families of Central Government employees in receipt of family pension are also eligible to avail of these facilities. If the deceased Government servant was eligible for these facilities while in service.

1.2 It is not that only those Central Government employees who were actually availing of CGHS facility during service are eligible to enjoy them after retirement. All retired personnel of Ministries/Departments, offices which are eligible to enjoy CGHS facility while in service are eligible to enjoy them after retirement, even if immediately prior to their retirement, they were not actually availing of never availed the facilities on account of their posting to a station where CGHS facilities were not available.

1.3 Pensioners/family pensioners/CPF retirees whose children are serving Central Government employees and are eligible for CGHS facilities can avail of the CGHS facilities as a member of the family of the said serving employee provided a member of the family of the said serving employee provided their pension/family pension does not exceed Rs.500 on pension/family pension sanctioned after average CPI 608 is not taken into account. As far as Contributory Provident Fund retirees are concerned their monthly income is worked out with reference to the pension equivalent of employees contribution to the Contributory Provident Fund along with interest thereon received by them at the time of retirement.

1.4 Even though CGHS facilities are at present available only at specified places and it may not be possible for Central Government Pensioners living away from these places to avail of the CGHS facilities on day to day basis as in the case of persons living at these places. It may be in the interest of the pensioners to enroll themselves as beneficiaries of the CGHS scheme, so that at least in the case of major ailments/major surgery they will be able to come to the CGHS station to avail of these facilities if and when such a need should arise."

8. The said communication makes it clear that the Central Govt. pensioners except the Armed Forces and Railways pensioners are eligible for CGHS facilities after retirement. If that is so, the applicants No.2 to 4 in O.A No.563/2004 and the applicants in O.A 590/04 who are admittedly retired employees of P&T and Telecom Departments are eligible for CGHS facilities keeping in view of the said communication.

9. This apart, Chandigarh Bench of the Tribunal in order dated 13.11.2003 in O.A 955/CH/2003 and O.A 974/CH/2005 quashed A-4 order and directed continuance of membership under CGHS to the applicants who are retired employees of the Department of Telecom and Department of Posts. The Bangalore Bench of the Tribunal in order dated 20.11.2001 in O.A 704/2001 quashed the impugned letter dated 1.8.96 with

consequential benefits. In its order dated 5.2.2004, the Bangalore Bench of the Tribunal in O.A 392/2003 and connected cases, directed extension of CGHS benefits to retired employees of Department of Posts and Telecom. We are in agreement with the aforesaid orders of Chandigarh and Bangalore Benches of this Tribunal. This Bench of the Tribunal in O.A 589/04 dated 10.12.2004 followed the same ratio and granted relief.

10. In view of this facts, we are of the opinion that all Central Government Pensioners except pensioners of Armed Forces and Railways are entitled to CGHS facility subject to the payment of subscription for this purpose. Accordingly the pensioners of P&T and Telecom Departments are entitled to CGHS benefit.

11. On consideration of the facts and circumstances of the case, the impugned orders at A1, A2 and A8 in O.A No.563/2004 and A8 and A2 in O.A No.590/2004 are quashed. The respondents are directed to continue CGHS Benefit to applicants 2 to 4 in OA 563/2004 and 1 and 2 in O.A No.590/2004 subject to the payment of requisite subscription for this benefit as per rules. We further declare that all Central Government pensioners (except Railway and Armed Forces Pensioners) including pensioners who retired from P&T and Telecom Departments are entitled to CGHS facility subject to the payment of subscription for availing themselves of this facility as per rules. The respondents are directed to extend CGHS facility to such individual on their request subject to payment of requisite subscriptions. The O.As are accordingly allowed as above. In the circumstances no order as to costs.

(K.V.Sachidanandan)
Judicial Member

kkj

(Sathi Nair)
Vice Chairman.