

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 80 of 2004

Friday..., this the 10th day of November, 2006

GORAM:

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MR. N. RAMAKRISHNAN, ADMINISTRATIVE MEMBER**

Jeevan Chacko,
S/o. M.A. Chacko,
Stores and Purchase Officer,
Rajeev Gandhi Centre for Biotechnology,
Thycaud P.O., Poojappura,
Thiruvananthapuram – 14,
Residing at C-50, Mythri Nagar,
Valiyavila, Thirumala P.O.,
Thiruvananthapuram – 6

(By Advocate Mr. Sasidharan Chempazhanthivil)

versus

1. V.S.S.C., represented by its Director, I.S.R.O. P.O., Thiruvananthapuram.
2. Additional Secretary, Government of India, Department of Atomic Energy, Anushakti Bhavan, C.S.M. Marg, Mumbai – 400 039.
3. Union of India, represented by its Secretary, Department of Atomic Energy, Anushakti Bhavan, C.S.M. Marg, Mumbai – 400 001.
4. The Secretary, Department of Space, Antharaksh Bhavan, New BEL Road, Bangalore : 500 094

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

This application having been heard on 13.10.06, this Tribunal on 10.11.06 delivered the following:

ORDER
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The issue: Whether the applicant is entitled to the benefits under the provisions of Annexure A-5 office Memorandum No. 7/19/95/CHSS/IR&W/69 dated 22/27-03-1996?

2. The relevant portion of the scheme is as under:-

"2.1 The scheme is compulsory for the serving employees of the Department of Atomic Energy who are stationed at Thiruvananthapuram. Retired employees who have completed a minimum of five years in this Department prior to their retirement and who are members of the CHSS at the time of retirement and who have settled down in and around at Thiruvananthapuram may have the option to join the scheme.

2.7 The subscription towards CHSS will be made by the retired employees to the VSSC directly based on amount of subscription indicated by the Department of Atomic Energy units. In the case of serving employees the subscription will be recovered from their monthly salary to be credited to the VSSC.

3.1 The retired employees who are engaged in any trade, business or profession or are employed in any capacity either under Government or otherwise are also eligible to the benefits of the Scheme subject to the payment of additional contributions indicated below:

Such retired employees can also opt out of the scheme while in employment or engaged in any trade and join it after final retirement from such employment occupation or trade."

3. From para 2.1, the conditions to be fulfilled by a retired employee for deriving the benefits of CHSS are as under:-

- (a) The person should have completed a minimum of five years in the Department of Atomic Energy prior to retirement;
- (b) He should have been a member of the CHSS at the time of retirement
- (c) Should have settled down in and around at Thiruvananthapuram.

4. To ascertain whether the above conditions are fulfilled in this case, a look at the admitted position which is as under:-

(a) The applicant had worked in the Department of Atomic Energy for a period of 11 years and 5 months (This confirms fulfilment of (a) above). He was the member of the CHSS (This fulfils the condition at (b) above.) While working in the Centre for Advance Technology, Indoor, under the 2nd respondent, he applied for the post of Purchase Officer in the Rajiv Gandhi Centre for Biotechnology, Thiruvananthapuram on deputation. His application for deputation was forwarded through proper channel and he had submitted a technical resignation for taking up the post and subsequently, on permanent absorption in the said organization, he was paid the monthly pension for the period he served under the 2nd Respondent (This fulfills the 3rd condition).

[Signature]

(b) When the applicant applied for the benefits of the scheme as for a retired employee of the Department of Atomic Energy, he was denied the benefits primarily on the ground that the applicant had tendered technical resignation and since a pensioner is he who has either superannuated or who has been compulsorily retired, the applicant is not entitled to the benefits of the Scheme. While the applicant has relied upon the division Bench judgment of CAT, Bangalore Bench in OA 747/02 (T.R. Raghavan vs Department of Space) which was decided on 20-02-2003, the respondents have relied upon the decision a single Bench of the CAT, Bombay in OA No. 115/2000 decided on 24-04-2000.

5. The Doctrine of precedent is well explained by the Apex Court in the case of **Government of Andhra Pradesh v. A.P. Jaiswal, (2001) 1 SCC 748** wherein, the Apex Court has held as under:-

24. Consistency is the cornerstone of the administration of justice. It is consistency which creates confidence in the system and this consistency can never be achieved without respect to the rule of finality. It is with a view to achieve consistency in judicial pronouncements, the courts have evolved the rule of precedents, principle of stare decisis etc. These rules and principles are based on public policy and if these are not followed by courts then there will be chaos in the administration of justice, which we see in plenty in this case. This Court in the case of Sub-Inspector Roopal v. Lt. Governor (2000) 1 SCC 644 held thus: (SCC p. 654, para 12)

..... Precedents which enunciate rules of law from the foundation of administration of justice under our system. This is a fundamental principle which every presiding officer of a judicial forum ought to know, for consistency in interpretation of law alone can lead to public confidence in our judicial system. This Court



has laid down time and again precedent law must be followed by all concerned; deviation from the same should be only on a procedure known to law. A subordinate court is bound by the enunciation of law made by the superior courts. A Coordinate Bench of a court cannot pronounce judgment contrary to declaration of law made by another Bench. It can only refer it to a larger Bench if it disagrees with the earlier pronouncement.

6. Keeping in view the aforesaid decision the precedential value of the two judgments relied upon by the respective parties has to be analyzed. The Division Bench had discussed threadbare the provisions of para 2.2.5. of the CHS scheme as available for the the department of Space -ISRO, which reads as under:-

"Retired employees of the department who opt for the benefits under the Scheme and the members of their families subject to the following conditions:

- (i) Retired employees should have put in a minimum of five years service in the Department before his/her retirement.
- (ii) The retired employee should pay the contribution as notified by Department from time to time.
- (iii) Retired employees who are engaged in any trade, business or profession or are employed in any capacity either under Government or otherwise shall also be eligible to the benefits of the Scheme subject to payment of additional contribution prescribed from time to time. Such retired employees can also opt out of the Scheme while in employment or engaged in any trade, etc., and may join it after final retirement from such employment, occupation or trade. The coverage will be limited to the employees and spouse only. Additional dependants falling under the definition of 'family' will be included only on payment of contributions equal to the unsubsidised cost of the Scheme per dependent."



7. The aforesaid three conditions are comparable to the conditions as per para 2.1, 2.7 and 3.1 (already extracted above) of the scheme applicable to the respondents' organization. After full discussion and taking into account the decision of the Apex Court in the celebrated case of D.S. Nakara (1983) 1 SCC 305, the Division Bench held that the applicant therein is entitled to the CHSS facilities as a retired employee of the ISRO organization. The facts in that case are that the applicant had joined the services as Engineer with the respondent, Department of Space Bangalore in 1968. Later, he proceeded on deputation on Foreign Service to the National Building Construction Corporation Ltd (NBCC) which is a public sector undertaking and was absorbed permanently w.e.f. 01-07-1985. His absorption in the said organization was with the consent of the respondents. He had commuted 100% of his pension while leaving the Department of Space and after 15 years of his retirement from Department of Space, his pension was restored to one third as per the Rules and the applicant was treated as a pensioner, retired from the Department of Space. However, despite his fulfilling all the conditions for the benefit of CHS facilities, he was not allowed the benefits of CHS Scheme and on his moving the matter before the Division Bench of the Tribunal (Bangalore), by a detailed order the OA was allowed. In contra distinction to the same, the order of the Bombay Bench relied upon by the respondents did not take into account the decisions of the Apex Court and is by a single Bench. It is trite that when two judgments on the same subject



are available for following as precedent, under the doctrine of precedence, the judgment of a larger Bench (which is also of a later period) should be followed. Hence, the decision of the Division Bench (Bombay) relied upon by the applicant is followed.

8. In addition, the philosophy underlying grant of medical facilities has been explained in the case of ***State of Punjab v. Ram Lubhaya Bagga, (1998) 4 SCC 117***, where the Apex Court has referred to certain earlier judgment of that Court and held as under:-

8. In Vincent Panikurlangara v. Union of India (1987) 2 SCC 165: (SCC p. 174, para 16)

In a series of pronouncements during the recent years this Court has culled out from the provisions of Part IV of the Constitution these several obligations of the State and called upon it to effectuate them in order that the resultant pictured by the Constitution Fathers may become a reality. As pointed out by us, maintenance and improvement of public health have to rank high as these are indispensable to the very physical existence of the community and on the betterment of these depends the building of the society of which the Constitution-makers envisaged. Attending to public health, in our opinion, therefore, is of high priority perhaps the one at the top.

9. In Kirloskar Bros. Ltd. v. ESI Corp. (1996) 2 SCC 682 (SCC p. 688, para 9)

The expression life assured in Article 21 does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to livelihood, better standard of living, hygienic conditions in the workplace and leisure facilities and opportunities to eliminate sickness and physical disability of the workmen. Health of the workman enables him to enjoy the fruits of his labour, to keep him physically fit and mentally alert. Medical facilities, therefore, is a fundamental and human right to protect his health. In that case health insurance, while in service or after retirement was held

to be a fundamental right and even private industries are enjoined to provide health insurance to the workmen.

10. In Paschim Banga Khet Mazdoor Samity v. State of W.B. (1996) 4 SCC 37 (SCC pp. 43-44 & 48, paras 9 &16)

The Constitution envisages the establishment of a welfare State at the federal level as well as at the State level. In a welfare State the primary duty of the Government is to secure the welfare of the people. Providing adequate medical facilities for the people is an essential part of the obligations undertaken by the Government in a welfare State. The Government discharges this obligation by running hospitals and health centres which provide medical care to the person seeking to avail of those facilities. Article 21 imposes an obligation on the State to safeguard the right to life of every person. Preservation of human life is thus of paramount importance. The government hospitals run by the State and the medical officers employed therein are duty-bound to extend medical assistance for preserving human life. Failure on the part of a government hospital to provide timely medical treatment to a person in need of such treatment results in violation of his right to life guaranteed under Article 21.

It is no doubt true that financial resources are needed for providing these facilities. But at the same time it cannot be ignored that it is the constitutional obligation of the State to provide adequate medical services to the people. Whatever is necessary for this purpose has to be done. In the context of the constitutional obligation to provide free legal aid to a poor accused this Court has held that the State cannot avoid its constitutional obligation in that regard on account of financial constraints. The said observations would apply with equal, if not greater, force in the matter of discharge of constitutional obligation of the State to provide medical aid to preserve human life. In the matter of allocation of funds for medical services the said constitutional obligation of the State has to be kept in view.

9. In the instant case, the applicant is admittedly a retired employee of the respondents organization and he has served more than 5 years in the

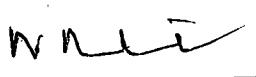


respondents' organization. During the said period he was a subscriber to the CHSS scheme. Now he is the resident of Trivandrum and he opts for CHSS facilities and is prepared to make due subscription for the same in accordance with the schemes. Taking into account the precedents and the doctrine of precedent emphasized by the Apex Court, it is declared that the applicant is entitled to the benefits as he claims through this O.A.

10. The OA is therefore, allowed. Respondents are directed to entertain the application of the applicant for extending the CHSS facilities to the applicant and his family, subject to his making the payment for the same to the authority as specified in the scheme itself. This order shall be complied with, within a period of two months from the date of communication.

11. Under the above circumstances there shall be no orders as to costs.

(Dated, the 10th November, 2006)


N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER


K B S RAJAN
JUDICIAL MEMBER

CVR.