

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 90 of 2009

Thursday, this the 15th day of July, 2010

CORAM:

**HON'BLE Mr. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

1. K. Sarala Devi,
Assistant Accounts Officer (Retd.),
House No. 27, Vrindavan,
Indira Nagar, Peroorkada P.O.,
Thiruvananthapuram.
2. Employees Provident Fund Pensioners'
Association, Represented by its Secretary,
C.V. Gopinathan Nair, 'Saroja Bhavan',
Devaswom Lane, Kesavadasapuram,
Pattom Palace P.O., Thiruvananthapuram
Pin : 695 004

... Applicants.

(By Advocate Mr. C.S.G. Nair)

v e r s u s

1. Union of India represented by its Secretary,
Ministry of Labour, New Delhi – 1
2. The Central Board of Trustees,
Employees Provident Fund Organization,
Represented by its Chairman, New Delhi.
3. The Central Provident Fund Commissioner,
New Delhi – 66
4. The Regional Provident Fund Commissioner,
Pattom, Thiruvananthapuram : 695 004.
5. The Secretary,
Ministry of Health and Family Welfare,
New Delhi.

... Respondents.

(By Advocates Mr. N.N. Sugunapalan (Sr.) with Mr. S. Sujin, for R2-4)
Mr. M.V.S. Nampoothiry for R1 and R5)

The Original Application having been heard on 28.06.10, this Tribunal on
15.07.10 delivered the following :

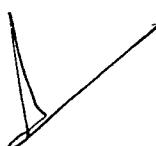
O R D E R

HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

The 1st applicant in this O.A. is a retired Assistant Accounts Officer of the Employees Provident Fund Organization (EPFO). The 2nd applicant is an Association of EPFO Pensioners. For the retired employees of EPFO, a fixed medical allowance of Rs. 600/- per month is granted for outdoor treatment. For indoor treatment they are given medical reimbursement under the Central Services (Medical Attendance) Rules, 1944 since 24.10.2006. The 1st applicant is aggrieved by the denial of the claim of medical expenses of Rs. 19898/- for the treatment of her husband at Aravind Eye Hospital, Madurai from 27.08.2008 to 01.09.2008 on the ground that as a Kerala State pensioner, he is in receipt of Rs. 100/- Fixed Medical Allowance (FMA). The 1st applicant mainly seeks a direction to the respondents to reimburse the medical claim of Rs. 19898/-.

2. The 1st applicant submits that she is entitled for reimbursement of medical expenses for in-patient treatment of her husband who is getting Rs. 100/- FMA. She relies on the order of C.A.T., Chandigarh Bench, in O.A. No. 763/CH of 1998. In respect of EPFO pensioners, the husband and wife who are drawing FMA are allowed reimbursement under CS (MA) Rules. There was no discrimination with regard to receipt of FMA when mediclaim policy was in force prior to 24.10.2006. There is no such restriction as in Annexure A-6 in respect of spouses of other Central Government pensioners who are getting CGHS benefits.

3. The respondents contested the O.A. They submitted that the rules and guidelines contained in CS(MA) Rules, 1944, have to be followed while

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processing the claim for medical reimbursement. The O.M. No. S.28013/8/98-MS dated 26.05.2000 issued by the Government of India, Department of health, stipulates that the Central Government employees will not lay claim for medical claims/facilities admissible to their spouses if such spouses are in receipt of some/fixed medical allowance. In the case of an employee whose spouse also an employee of the Government, he/she will be required to give an undertaking that his/her spouse is not availing medical facilities/FMA, if any, granted by the Government. The 1st applicant cannot draw the benefit of her spouse receiving FMA as well as reimbursement under CS(MA) Rules, 1944. There are category-wise ceiling for reimbursement of medical expenses under the mediclaim policy, when it was in force. The medical claims for reimbursement in respect of pensioners for the non-coverable period also were allowed under the provision of CS(MA) Rules, 1944 and met by the EPFO. The Annexure A/6 order was issued in compliance of the direction in O.A. No. 763/CH of 1998 of C.A.T., Chandigarh Bench which stipulates that the Central Government employees will not lay claim for medical claims/facilities admissible to their spouses if such spouses are in receipt of some/fixed medical allowance. There is no bar in allowing reimbursement of the expenses incurred for treatment of the Government employee, even if the spouse in receipt of FMA. The stand of the 1st applicant for getting reimbursement from EPFO and simultaneously enjoying the nominal FMA alongwith the pension of her spouse cannot be justified. As per the existing rules, she can enjoy either of the benefits. The medical allowance drawn by the applicant is not in lieu of out patient treatment. In cases where both the husband and wife are pensioners of EPFO, they will prefer claim for reimbursement as independent pensioners. The benefits available under CS(MA) Rules are absolutely free, whereas the benefits under the CGHS are contributory. Hence the benefits under CS(MA) Rules and CGHS

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cannot be equated. In view of the above, the application being devoid of merit should be dismissed.

3. We have heard the learned counsel for the parties and perused the documents.

4. It is relevant to quote Rules 3 and 6 of CS(MA) Rules, 1944, as under :

"Rule – 3

(1) A Government servant shall be entitled free of charge, to medical attendance by the authorized medical attendant.

(2) Where a Government servant is entitled under sub Rule(1), free of charge, to receive medical attendance, any amount paid by him on account of such medical attendance shall on production of a certificate in writing by the authorized medical attendant in this behalf, be reimbursed to him by the Central Government.

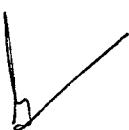
Rule 6 (1) – A Government servant shall be entitled free of charge, to treatment-

(a) in such Government hospital at or near the place where he falls ill as can in the opinion of the authorized medical attendant provide the necessary and suitable treatment, or

(b) if there is no such hospital as is referred to in sub clause (a) in such hospital other than a Government hospital at or near the place as can in the opinion of the authorized medical attendant provide the necessary and suitable treatment.

(2) - Where a Government servant is entitled under sub rule (1), free of charge, to treatment in hospital, any amount paid by him on account of such treatment, shall on production of a certificate in writing by the authorized medical attendant in this behalf, be reimbursed to him by the Central Government."

5. As the pensioners of EPFO and their families are covered under CS(MA) Rules, 1944, they are statutorily entitled to get free medical facilities or reimbursement, as the case may be.

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6. Annexure A/6 O.M. No. Z.28013/8/98-MS dated 26.05.2000 issued by the Government of India, Department of Health, is reproduced below :

"Government employees can claim medical reimbursement for family members except spouse who is in receipt of fixed medical allowance -

The undersigned is directed to say that the Hon'ble Central Administrative Tribunal, Chandigarh Bench, has delivered a judgement on 28.06.1999 in the case of Shri Dharam Pal, Assistant, Director of Census Operations, Union Territory, Chandigarh (O.A. No. 763/CH of 1998) sating that "if any orders have been issued by the Government of India to the effect that Central Government can be denied claim for reimbursement of medical attendance/treatment if his her spouse is in receipt of fixed medical allowance, we hereby strike down such order/decision on which a circular issued by the office of the Respondent Nos. 2 and 3 may be based."

Keeping in view the above mentioned judgement of Hon'ble CAT, Chandigarh, the employees of the Central Government who are similarly placed and have been extended the benefits of CS (MA) Rules, 1944, are made eligible for reimbursement of medical expenditure with a condition that the Central Government employees will not lay claim for medical claims/facilities admissible to their spouses if such spouses are in receipt of some/fixed medical allowance. In other words, the children of the Central Government employees will also be eligible for reimbursement of medical expenditure except the spouse who is receipt of medical allowance.

This issues with the concurrence of Finance Division vide Dy. No. 2445/Director(IF)/2000, dated 9.5.2000."

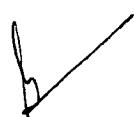
7. The aforesaid O.M. makes it clear that the spouse of the Government employee who is in receipt of FMA is not eligible for medical expenses. The receipt of even a nominal FMA of Rs. 100/- by the spouse prohibits a Government employee from receiving the medical facilities / reimbursement under CS(MA) Rules, 1944, in respect of the spouse. However, the Circular No. 68/2002/Fin. dated 24.10.2002 issued by the Finance (Pension-B) Department, Government of Kerala, permits a State Government pensioner to opt out from receiving the fixed medical allowance of Rs. 100/- so that they can



avail of better medical facilities elsewhere. The applicant has an option of her spouse opting out of the FMA to avail reimbursement under CS(MA) Rules, 1944. By not exercising the option to give up the FMA, the spouse of the applicant denied himself the cover of CS(MA) Rules.

8. The judgement in OA No. 763/CH of 1998 of Chandigarh Bench of the Tribunal, struck down the orders, if any, to the effect that Central Government employees can be denied claim for reimbursement of medical attendance/treatment if his/her spouse is in receipt of fixed medical allowance. The Chandigarh Bench also observed that the condition that the Central Government employees will not lay claim for medical claims/facilities admissible to their spouses if such spouses are in receipt of some/fixed medical allowance, is reasonable. Annexure A/6 O.M. dated 26.05.2000 is issued in full compliance with the order of the Tribunal. It denies of medical reimbursement only to the spouse who is in receipt of FMA while allowing medical reimbursement in respect of the Central Government employee and his/her children. The applicants have misunderstood the judgement of the C.A.T., Chandigarh Bench.

9. The respondents have further stated that in respect of EPFO pensioners both the husband and wife who are drawing FMA, prefer claims for reimbursement as independent pensioner. Therefore, no pensioner is claiming medical reimbursement to his spouse who is in receipt of medical allowance and as such does not contravene the conditions prescribed in Annexure A-6 O.M. dated 26.05.2000. The CS(MA) Rules, 1944, stand on a different footing than the mediclaim policy or CGHS Scheme. The mediclaim policy was replaced with CS (MA) Rules. Each scheme has its own restrictions. It is not possible to

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pick and choose whatever is favourable from different schemes, one has to choose one or other scheme.

10. It is seen that none of the grounds for reliefs can be sustained. The application being devoid of merit deserves to be dismissed. Accordingly, the O.A. is dismissed with no order as to costs.

(Dated, the 15th July, 2010)



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(GEORGE PARECKEN)
JUDICIAL MEMBER

cvr.