

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.236/2003

Friday, this the 29th day of October, 2004.

C O R A M

HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER

1. Employees' Provident Fund Pensioners' Association, Kerala,
Represented by its President G. Raghunathan,
Regional Provident Fund Commissioner (Retd.),
"Krishnendu", T.C.No.4/695,
Kowdiar, Trivandrum.
2. C.V. Gopinathan Nair,
Enforcement Officer (Retd.),
Saroja Bhawan, Devaswom Lane,
Kesavadasapuram,
Trivandrum - 1

..Applicants

[By Advocate Mr. C.S.G. Nair]

Versus

1. Union of India
Represented by the Secretary,
Ministry of Labour,
New Delhi - 1
2. The Secretary,
Ministry of Health and Family Welfare,
New Delhi - 1
3. Central Board of Trustees,
Employees' Provident Fund,
New Delhi -1
Represented by its Chairman
4. Central Provident Fund Commissioner,
New Delhi - 66
5. The Regional Provident Fund Commissioner I,
Trivandrum - 4
6. M/s. Oriental Insurance Co. Ltd.,
Represented by Senior Divisional Manager,
Divisional Office No.1,
Jeevan Vihar, 3rd Floor,
Parliament Street,
New Delhi -1

..Respondents

[By Advocate Mr.George Joseph for R-1 to R-5]

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O R D E R

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

There are two applicants in this O.A. The first applicant is the Employees' Provident Fund Pensioners' Association, Kerala, and the second applicant is a retired officer of the Employees' Provident Fund Organisation. The main grievance of the applicants is as follows:

- "(i) To declare that the applicants are entitled to CGHS benefits as they are on par with central Government Pensioners;
- (ii) In the alternative, direct the respondents to frame a scheme on par with CGHS or on the basis of Annexure A8 within stipulated period in consultation with the EPF Pensioners Association; and
- (iii) To declare that the category-wise ceiling limits imposed in Annexure A6 is illegal and discriminatory and direct the respondents to grant the benefits under Annexure A6 to all the pensioners equally till a new scheme is introduced."

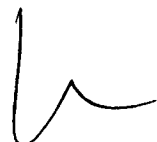
2. The claim of the applicants is that the Central Board of Trustees, Employees' Provident Fund Organisation (EPFO, for short), is a Body Corporate under Section 5C of Employees' Provident Funds and (Miscellaneous Provisions) Act, 1952 (PF Act, for short), which is created for the purpose of administering the funds and the 4th respondent is appointed as its Chief Executive Officer. EPFO is a self financing body and the expenses are met from the administration accounts collected under Para 38 of the EPF Scheme from the participating Institutions and of from the National Exchequer or the Consolidated Funds of India. The method of appointment, salary, discipline and other conditions of service of the officers and employees of the EPFO are governed by Section 5D(7) of the PF Act. The Central Board has framed



Employees Provident Fund (staff and conditions of service) regulation, 1962, providing service conditions, retirement and pension benefits to its employees, The Board has adopted the Central Government Rules governing pension and retirement benefits in terms of the said provisions in the regulations and the retired employees are being paid pension and retiral benefits as applicable to Central Government Employees in terms of Central Civil Services Pension Rules. Therefore, in effect the EPFO is similar to other departments of the Government of India except it is established under the Act of Parliament and financed by its own resources. The Central Government employees are governed by a Scheme, Central Government Health Scheme (CGHS, for short), under which the pensioners and the families are eligible for inpatient as well as out patient treatment in recognised hospital, both the Government, Private and CGHS Dispansaries. These benefits are denied to the pensioners of the EPFO even though they are on par with the Central Government employees and thus, they stand discriminated in the matter of medical benefits. The pensioners of the EPFO made series of representations claiming these benefits and as a result, the Board came out with a Scheme of "Group Mediclaim Policy" on 6.12.1994 by arrangements with the 6th respondent and according to the said Scheme, the Board had to pay the premium fixed by the 6th respondent which in turn, will reimburse the expenses for inpatient treatment of pensioners and their spouses in respect of post retiral scheduled ailments/diseases. There was no provision for treatment of pre-retiral ailments and outpatient's treatment. As the benefits were only nominal, the Board did not consider it beneficial to extend the Scheme beyond 6.12.1996 because the benefits reimbursed by the 6th respondent was very meagre in terms of

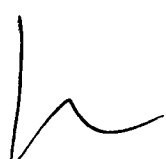


money. The anomalies in the Scheme were brought to the notice of the Board vide A/2 memorandum, but nothing was done by the Board to rectify the same. Thereafter, by the interference of this Tribunal in OA No. 663/97 dated 4.6.1997, the "Group Mediclaim Policy" was extended for another one year with effect from 24.6.98 with certain modifications pending finalisation of an alternate scheme approved by the third respondent in consultation with the Finance Ministry and a fixed medical allowance @ Rs. 100/- per month was granted as recommended by the Vth Central Pay Commission. The scheme was not equivalent to CGHS, therefore, the applicants filed OA No. 562/99 before this Tribunal and in the reply statement, it was alleged that an alternate mediclaim scheme proposed by the EPFO has been sent to the respondents 1 and 2 for approval. This Court directed the respondents 1 & 2 to consider the scheme submitted by the respondents 3 and 4 and issue appropriate orders within a reasonable time. It was further directed that till an alternate arrangement is made, the existing "Mediclaim Policy" will continue. The applicant thereafter moved a Review Application No. 20/2002, which was rejected vide order dated 4.12.2002 (A/6). The 5th respondent vide his letter dated 12.4.02 informed the first applicant that "the respondent No.1 has rejected the proposed alternative Medical Scheme. The reason for rejection was not known to the applicants. In Annexure A7 it was stated that the alternate scheme was rejected as the Government did not consider it necessary to formulate a medi-claim scheme exclusively for the EPF employees. This would evidently and necessarily mean that the Government policy is not to have separate schemes for each category of pensioners. In such a situation, the Govt. can extend CGHS benefits to the EPF pensioners and the cost is to be



reimbursed by the EPFO from its own funds. Meanwhile, the second respondent issued A/8 O.M. dated 5.6.1998 informing all the departments of the Government of India about the extension of the benefit under CCS (MA) Rules to all Central Government pensioners and directed to make necessary arrangements in the matter, including formulation of procedural formalities. As per the service regulations, the employees and pensioners of EPFO are on par with Central Government employees/pensioners for all purposes and as such CGHS benefit should be extended to EPFO pensioners also. By the action of the respondents in rejecting the proposal for a new medical reimbursement scheme, the applicants are aggrieved and stand discriminated from their counter part in the Central Government and hence this O.A.

3. The respondents have filed three reply statements dated 9.4.03, 19.9.03 and 16.7.04 respectively. The reply dated 9.4.03 is filed on the question of interim relief. The respondents contended that the provisions of 5D(7) of the Act make provision only with regard to method of appointment, salary, discipline and other conditions of service of officers and employees of EPFO. The provisions with regard to the pensioners and other pensionary benefits are not expressively provided in Section 5D(7). The EPF Organisation may be treated as similar to other departments of the Government so far as the framing of rules of the Central Board is concerned. EPFO cannot be treated as Central Government Department. The facility of Central Government Hospital services is available only to the Central Government Department and it is incorrect to say that it will be available to EPFO at par with central Government employees. However, in EPFO, as a beneficiary measure for the retiring employees and officers, the matter



regarding extension of CGHS facilities was taken up with CGHS authorities for consideration. The said facility was declined vide R1 letter dated 22.4.2002 due to resource constraints. As an alternate, EPFO had approached the Oriental Insurance Co. Ltd. to extend the medical benefits to the pensioners and retiring employees of Employees' Provident Fund Organisation termed as "Group Mediclaim Policy." The policy is effective from 6.12.94 and continued from time to time as per the terms of agreement, except for some broken spells, which have also been regularised by reimbursing the claims received from the retired officers and employees during the broken period. During certain period, the medical policy was not available for the retired employees of EPFO due to anomalies in the previous mediclaim scheme of the Insurance Company. However, for the said period, medical benefits were extended to the retired employees of EPFO in the shape of medical reimbursement by the department. After rectifying this anomaly, the mediclaim scheme was again reintroduced with effect from 24.6.98 and renewed on year to year basis from time to time. For certain period, there was some break in the policy and the claims received during that period were reimbursed by the EPFO. It is further stated that the EPFO is paying Rs. 100/- per mensem as fixed medical allowances to the retired employees of EPFO in addition to the benefits being provided through Oriental Insurance Co. Ltd. without contributing any subscription which they are liable to contribute under CGHS. The formulation of new scheme involves larger policy issues having financial implications. A Committee has been constituted by the department to examine the issue who will take decision under consultation with Government of India. The applicants claim for extending the CGHS benefit cannot be



considered since the expenditure on Central Government employees/pensioners is met with from the Consolidated Fund of India whereas the EPFO has its own funds. The applicants are not being denied of the medical benefits. They are being benefitted by the Group Mediclaim Policy as stated above.


4. In the reply statement filed on 16.7.04, the respondents have contended that all Central Government rules/regulations, except those for which the Organisation has framed its own rules/regulations, are applicable to the employees of the EPFO. Thus, the Central Civil Service (Medical Attendance) Rules, 1944 and CCS (Pension) Rules, 1972 are applicable to the employees of the Organisation. The CGHS facilities are available for serving employees of the EPFO located only in a few cities, like Delhi, Jaipur and Chandigarh etc. All the employees of the Organisation located in other stations are enjoying fixed medical allowances in lieu of the facilities for outdoor treatment available under CCS (MA) Rules. The retired employees are governed by the (CCS) Pension Rules. They are enjoying the benefit of medical allowance of Rs. 100/- per month with effect from 1.12.1997 in terms of the recommendation of the Vth Central Pay Commission. Sincere efforts have been made by the Organisation for extending the facility of CGHS to its retired employees and the proposals in this regard was turned down by the Government due to resource constraints and as an alternative, a Group Mediclaim Policy of Oriental Insurance Company Ltd. was entered into by an agreement with EPFO. The order No. HRM-V/12/1/2003/FMA/Vol.II dated 6.2.2004 issued by the Central Provident Fund Commissioner



enhancing the rate of Fixed Medical Allowance is applicable only to the serving employees of EPFO, which was sanctioned to them in lieu of the facilities for outdoor treatment available under CCS (MA) Rules.

5. We have heard Shri C.S.G. Nair, learned counsel for the applicant and Shri George Joseph, learned ACGSC for the respondents.

6. The learned counsel for the applicant argued that EPFO is a self financing body and the expenses are met from the administration accounts collected under Para 38 of the EPF Scheme from the participating Institutions and of from the National Exchequer or the Consolidated Fund of India. By virtue of Section 5D(7) of the EPF (Miscellaneous Provisions) Act, 1952, the applicants are entitled to parity with the pensioners of Central Government in respect of all matters, therefore, CGHS benefits should be extended to the retired employees of EPFO also. The Group Mediclaim Policy is not an adequate or a substitute to the CGHS benefits. When the Central Government employees are enjoying full medical benefits under the CGHS, the applicants, who retired from EPFO, and their spouses are denied of the said benefits. The present Mediclaim Policy is insufficient to meet the actual need. Though the employees of Employees State Insurance Corporation, Kanpur, Non-Governmental Agencies like the employees of Kendriya Vidyalaya Sangathan, as also the freedom fighters etc. etc. are availing the CGHS facilities, the applicants are denied of this benefit, which according to the applicants, is a clear discrimination and violative of Articles 14 of the Constitution.



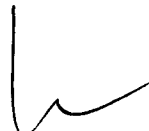
7. The learned counsel for the respondents, on the other hand, persuasively argued that the EPFO cannot be treated as a Central Government department. EPFO is created by a statute with liberty to make its own rules and the authority to formulate schemes beneficial to its employees. There are innumerable Organisations, like that of the applicants, in India which are not covered by CGHS. The formulation of new scheme involves larger policy issues having financial implication. The EPFO is having its own funds and need not depend upon the Government funds in giving the CGHS facility. The CGHS is limited to the Central Government employees only. Therefore, the applicants have no claim and, therefore, the OA deserves to be dismissed.

8. We have given due consideration to the arguments advanced by both the parties and gone the material placed on record. The short question for consideration before us is whether the benefit of CGHS can be extended to the applicants' Organisation, EPFO, which is a Body Corporate/Autonomous Body.

9. In the vast country, millions of people have retired. They have settled in different parts of the country, some of them in remote areas. The question is whether the medical facilities now available to certain employees in a particular stations can be extended to a Governmental Organisation , Quasi-Governmental Organisation, Corporations and Autonomous Bodies etc. In this case, the grievance of the applicants is that the Central Board of EPFO under the 4th schedule has formulated a regulation for granting of pension and other retirement benefits in accordance with a scheme to be prepared on the line of the liberalised pension-cum-gratuity scheme as applicable to corresponding



Central Government Employees from time to time. The Board has adopted the Central Government rules governing pension and retirement benefits in terms of the said provisions in the regulations and the retired employees are being paid pension and retiral benefits as applicable to Central Govt. employees in terms of CCS Pension Rules. Therefore, one of the arguments advanced by the learned counsel for the applicants is that the CGHS benefits which is applicable to the Central Government employees also to be granted to the applicants. In this context, it is to be mentioned here that though the applicants are praying for granting the CGHS facility to them, nothing has been brought to our notice to show that their proposal has been accepted by the Government agreeing to extend the said facility to them. A unilateral proposal cannot culminate granting of a scheme or rule to be extended to its employees. Agreement, if any, must be mutual and by such an agreement, the Government should have a contractual obligation to implement the same. The Government acceptance is most important in granting the benefit to the employees of the Organisation and in the absence, the legal effect will be that the applicants cannot aspire for the same. This is more so, because even though the contention of the applicants that they should be treated on par with the Central Government employees, they are not ipso facto Government servants. The applicants Organisation is an autonomous body enjoying its own powers to make rules, its own funds to formulate schemes and its own Body to take appropriate decision in all matters, such as to extend the benefit to its employees or otherwise. This is quite evident from the fact that the Organisation is taking every endeavour to tie up with the 6th respondent in formulating the "Group Mediclaim Policy", which is



in existence. Also, sincere efforts have been made by the EPFO to explore the possibility to extend the CGHS benefits to its employees, but that request was turned down by the CGHS Authority. It is profitable to quote Annexure R/1 as under :

"Government of India,
Office of the Additional Director,
Central Government Health Scheme,
Nirman Bhawan, New Delhi : 110 001

F.No.7-1/2001/C&P/Sec/CGHS Dated the : 22.4. 2002

To:

The Assistant Provident Fund Commissioner,
Employees Provident Fund Organisation,
H.Qrs., Bhavishya Nidhi Bhawan,
New Delhi - 110 066

Reference letter No.HRM-V/12(2)/89/cghs/Vol
V/7832 dated 12.2.2002 regarding benefits to the
serving/retired employees of your Organisation.

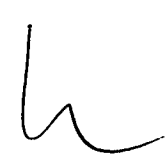
Your request has been considered in
consultation with Ministry of Health & Family Welfare, but
it is regretted that it may not be possible to extend the
Central Government Health Scheme benefits due to resource
constraints.

Yours faithfully,


sd/-

(Dr. (Mrs.) Kaur)
Joint Director (CGHS)(HQ)"

10. The reasons given in rejecting the applicants' claim is that "it may not be possible to extend the CGHS benefits due to resource constraints." The question now arises for consideration is whether the reason given above is justified or not in rejecting the claim of the applicants and whether the applicants are discriminated. It is an admitted fact that the CGHS Scheme has been introduced with a view to provide comprehensive medical care facilities to the Central Government employees and members of their families. The Scheme which was initially introduced in Delhi had been extended to few other cities by now. Under the



said Scheme, residence is to be considered as criteria for determining the eligibility of the said persons to avail of the medical facilities. So far as the pensioners are concerned, if they are staying at places in the CGHS covered cities, they can avail of the said facility on contributing a specific amount. Regarding the applicability of CGHS facility to the serving employees and retired employees in the Central Government itself, a question arose before the Full Bench in O.A. No. 686/HR/1999 (Chandigarh Bench) that even if one is the member of the scheme and resides within an area where the facility is available, when he leaves to some other area where the facility is not available, he loses all the benefits and in that event this act is discriminatory. The Full Bench of the Tribunal while disposing of the aforesaid case as well as O.A. No. 542/HR/2000 and O.A. No. 447/PB/2001 on 17.3.2003, held that this will not amount to discrimination under Article 14 and 16 of the Constitution nor it will attract Article 21 of the Constitution and directed the Central Government to draw a scheme keeping in view its resources. In this case, the main contention of the respondents is that the applicants cannot be treated on par with the Central Government employees as defined under the CCS (Pension) Rules. However, in their reply dated 16.7.2004, the respondents further stated that the order No.HRM-V/12/1/2003/FMA/Vol.II dated 6.2.2004 issued by the Central Provident Fund Commissioner enhancing the rate of fixed medical allowance is only to the serving employees of the EPFO and the the said allowance was sanctioned to the employees of the Organisation in lieu of the facilities for outdoor treatment available under CCS (MA) Rules. This shows that they are to certain extent, being treated on par with the Central Government employees for the purpose of medical



reimbursement.

11. The request of the applicants for extending the CGHS benefit was turned down on the pretext of financial constraints. As already stated, the respondents, to some extent, have considered the serving EPFO employees under the Central Services (Medical Attendance) Rules, 1944, for outdoor medical treatment as evidenced in the order dated 6.2.2004 by which the fixed medical allowance was enhanced from Rs. 150/- to Rs. 250/- per month with effect from 1.1.2003. The intention of the Pay Commission is to extend the maximum possible benefits to the employees and the recommendations are to be implemented only after getting the approval of the Government.


12. The learned counsel for the applicants has brought to our notice the following decisions of Hon'ble Supreme Court in support of his argument:

- (i) Consumer Education & Research Centre and Others vs. Union of India (AIR 1995 SC 922) - In this case, it was held that 'right to health, medical aid to protect the health and vigor of a worker while in service or post retirement is a fundamental right under Article 21, read with Articles 39(F), 41, 43 and 48A and all related to articles and fundamental human rights to make the life of the workman meaningful with dignity of person."
- (ii) Maheendra Singh vs. State of Punjab (AIR 1997 SC 1225), Apex Court held that 'having had the constitutional obligation to bear the expenses for the Government servants while in service or after retirement from service as per the policy of the Government, the Government is required to fulfil the constitutional obligation. Necessarily, the State has to bear the expenses incurred in that behalf."


13. We are in respectful agreement with the propositions and the broad principles laid down by the Apex Court. The application of the same depends upon the facts and circumstances



of each case. In this case, the applicants are not successful in proving that they are Government servants and their service conditions are similar to that of Central Government employees. Admittedly, EPFO is a corporate body having powers to make its own rules and having its own funds, therefore, they need not to look forward to CGHS, which is very limited to the Central Government employees alone. Even many of the Central Government employees are not being extended this facility for the reasons discussed in the preceding paras. This involves larger financial implications. Muchless to say that the EPFO has its own funds which itself can formulate a scheme for the benefit of its employees. Every efforts have been made by the Organisation to extend the medical benefits to its employees and as a result, an agreement was entered into by EPFO with Oriental Insurance Co. Ltd. (6th respondent) for "Group Mediclaim Policy " enabling the serving/retired employees of EPFO to avail of the benefits. Therefore, it is interesting to evaluate whether the applicants are discriminated in the matter of medical benefits. Article 14 of the Constitution condemns discrimination in all spheres. The majority expressed the view that Article 14 forbids class legislation but not reasonable classification. In a decision reported in AIR 1952 SC 235, Lachmandas Kewalram and another vs. State of Bombay, Hon'ble Supreme Court declared that the classification must be founded on an intelligible differentia and that differentia must have a rational relation to the object sought to be achieved. What is necessary is that there must be a nexus between the basis of classification and object of the Act. In another decision reported in Hari Krishna Bhargav vs. Union of India and Another, AIR 1966 SC 619, it was held that if a classification is based on some real and substantial distinction,




bearing a just and reasonable relation to the objects sought to be achieved, the same was held to be valid. From this, it is clear that this Tribunal would not interfere unless the classification results in pronounced inequality but mini classification would not be upheld where distinction between a class and categories is inconsequential. While accepting the principle that self preservation of one's life is necessary concomitant of the right to life enshrined in Article 21 of the Constitution of India, which is fundamental in nature, whether the Government is justified in rejecting such requests by way of a policy decision. It is an admitted fact that the CGHS had been introduced with a view to provide comprehensive medical care facilities to the Central Government employees. There is also no dispute that the applicants Organisation is a Corporate Body. In a decision reported in (1985) 2 SCC 457, Karampal vs. Union of India, Hon'ble Supreme Court has held that the Courts shall not interfere with working of the Scheme brought out by the Government and implementation of the rules and regulations thereof merely on the ground of hardship. Further, in a decision reported in 1998 (2) SLJ 35, State of Punjab and Others vs. Ram Lubhaya Bagga & etc. etc., the Apex Court held that the policy is framed based on many consideration and Court cannot take this administrative work on itself, and if the policy is reasonable Court cannot interfere. The policy here was guided by financial resources of State and was reasonable. In the case of Commander Headquarter, Calcutta and Ors. vs. Capt. Biplabendra Chanda, 1997 (1) SC 143, it was observed by the Hon'ble Supreme Court that the persons falling in different classes may be treated differently.



14. In the case on hand, the specific case of the respondents is that the CGHS facility cannot be extended to the EPFO, which is a Corporate Body, due to financial constraints and this facility is extended to the Central Government employees only. Therefore the claim of the applicants has been rejected. It is a fact that a member of the CGHS has to contribute a particular amount either on monthly basis or as per the Scheme and thereupon in accordance with the Scheme and the facilities that are provided, reimbursement is permissible. It is also not in dispute that the retired Government servants are paid a specific amount every month for day to day medical facilities. If a person, therefore, being not a member of CGHS is denied of the said facility, indeed he cannot complain of being discriminated. As regards the EPFO is concerned, it has its own resources and got the authority of rule making power and formulating schemes etc. to the benefit of its employees. Since there is no privity of contract between the Government and this Organisation as also it is the exclusive domain within its resources, we are not inclined to give a declaration that the CGHS facility is to be extended to the applicants and similar other employees and the prayer in this regard deserves to be rejected and we do so accordingly.

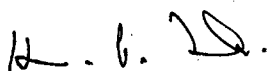
15. However, from the reply statement we find that vide order No.HRM-V/12/1/2003/FMA/Vol.II dated 6.2.2004 issued by the Central Provident Commissioner, the rate of fixed medical allowance was enhanced from Rs. 150/- to Rs. 250/- per month and the same was made applicable only to the serving employees of the Organisation. The right to life is a basic feature of the Constitution. As a corollary, it follows that right to medical



assistance also would be a basic feature in the case of retired Government servants. Since this is one of the basic rights, the Organisation has a legal obligation to provide assistance to its servants who had rendered service during the prime of their life subject to reimbursement and availability of medical facilities and the resources of the Organisation. In short, we are of the view that the decision in not granting the fixed medical allowance at the enhanced rate to the retired employees of the EPFO is not correct and accordingly, we direct the respondent No.3, Central Board of Trustees, to consider the case of the applicants for granting enhanced fixed medical allowance as per order dated 6.2.2004 referred to above and pass appropriate orders within a period of three months from the date of receipt of a copy of this order.

16. The O.A. is disposed of as indicated above. The parties are directed to bear their own costs.

(Dated, the 29th October, 2004)



H.P. DAS
ADMINISTRATIVE MEMBER



K.V.SACHIDANANDAN
JUDICIAL MEMBER

cvr.