



CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Common order in
O.A.242/2005, OA 293/2005,
OA 489/2005 & OA 629/2005

Friday this the 3rd day of February, 2006

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

Q.A. 242/05:

V.Gopalakrishnan,
Superintendent of Central Excise (Retd)
Kalyan, Santhi Nagar,
Balai K.Nair Road,
Kozhikode.6. Applicant

(By Advocate Mr.CSG Nair)

V

- 1 Union of India, represented by the Secretary
Department of Revenue, North Block,
New Delhi. 1.
- 2 The Secretary
Ministry of Health & Family Welfare,
Nirman Bhavan,
New Delhi.
- 3 The Commissioner of Central Excise
and Customs, Central Excise Building,
Mananchira.
Kozhikode.
- 4 The Deputy Commissioner of Central Excise,
Kozhikode Division.
Iranipalam, Kozhikode.

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

O.A. 293/05:

T.V.Gopalakrishnan
 aged 74 years S/o late M.K.Padmanabhan Nair,
 Retd. Assistant Post Master General.
 C/o B.Ashok, B.9, Sreshta Apartments,
 473, Kilpauk Garden Road,
 Chennai.10.

.....Applicant

(By Advocate Mis.K.P.Dandapani and U.Balagangadharan)

V.

- 1 The Union of India. represented by
 Secretary, Ministry of Communications,
 Sanchay Bhavan, New Delhi.
- 2 The Secretary, Ministry of Health and Family
 Welfare, Nirman Bhavan, New Delhi.
- 3 The Chief Postmaster General
 Kerala Circle, Thiruvananthapuram.Kerala.Respondents

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

O.A 489/05:

P.Ryu Menon,
 Administrative Officer of
 Central Excise (Retired)
 Madhavan, Near Blue Pearl English
 Medium school, Pottammal
 Nellicode PO.Kozhikode.673016.

.....Applicant

(By Advocate Mr.CSG Nair)

V.

- 1 Union of India. represented by the Secretary
 Department of Revenue, North Block,
 New Delhi.1.
- 2 The Secretary
 Ministry of Health & Family Welfare,
 Nirman Bhavan.

New Delhi.

3 The Commissioner of Central Excise
and Customs, Central Revenue Buildings,
I.S.Press Road,
Cochin-682018.

4 The Assistant Commissioner of Customs (Preventive)
Housefed Complex,
Eranhipalam PO
Kozhikode.6. Respondents

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

O.A.629/05:

A.D.Jose,
Income Tax Officer (Retd)
Alappat,
44/553 Link Avenue
Kaloor,
Cochin.17.

.....Applicant

(By Advocate Mr. CSG Nair)

V.

1 Union of India, represented by the Secretary
Department of Revenue, North Block,
New Delhi.1.

2 The Secretary
Ministry of Health & Family Welfare,
Nirman Bhavan,
New Delhi.

3 The Chief Commissioner of Income Tax,
Central Revenue Buildings,
I.S.Press Road,
Cochin-682018.

4 The Commissioner of Income Tax
Central Revenue Building,
IS Press Road,
Cochin-682018. Respondents

(By Advocate Mr.TPM Ibrahim Khan,SCGSC)

These four applications having been heard jointly on 9.12.2005, the Tribunal on 3.2.2006 delivered the following:

ORDER

All these cases are identical. Therefore, they are disposed of by this common order with the consent of the parties. The applicants in all the aforesaid cases are retired Central Government Employees residing at various places in Kerala which are not covered by the CGHS facility. For the adjudication of all these OAs, the facts in OA 242/05 are considered. The applicant in this case has retired as Superintendent of Central Excise on 31.12.1984 and is a resident of Kozhikode. In the State of Kerala, Trivandrum is the only place where CGHS facilities are available and as such he has not been registered under the CGHS. He is in receipt of Medical Allowance of Rs. 100/- pm along with his pension. On 8.10.2004 the applicant's wife fell ill and she was rushed to Malabar Institute of Medical Sciences, Kozhikode in a very serious condition. She was admitted there and underwent coronary angiogram test. She was discharged on 12.10.2004

with the advice to be on certain medicine and for review after two weeks. The hospital bill for the above treatment amounts to Rs. 15,663/- On 3.11.2004 she had to be rushed to the same hospital again and the by-pass surgery was conducted on 5.11.2004 and she was discharged on 12.11.2004. The surgery was done on a package of Rs. 1,20,000, Rs. 4000 for blood Rs. 1850/- for incidental charges. The total amount came to Rs. 1,25,850/-. The applicant submitted the aforesaid two medical claims for an amount of Rs. 15,663/- and Rs. 1,25,850/- on 12.1.2005 to the third respondent. The third respondent rejected the claim vide Annexure A7 order No.CII/22/2/2005-Accts.I(Exp)/82 dated 8.2.2005 stating that the Central Services (Medical Attendance)Rules, 1944 is not applicable to retired government officials as per Note-2(iv) in Rule 1(2) and as clarified by the Ministry of Health and Family Welfare vide OM No. S.14025/4/96-MS dated 20.8.2004. The applicant has annexed a copy of the said Office Memorandum dated 20.8.04 as Annexure A4 to this OA and according to the said Memorandum the CS(MA) Rules, 1944 is not

applicable to the Central Government pensioners.

The 5th Central Pay Commission has recommended extension of CS(MA) Rules, 1944 to the Central Government pensioners residing in the area not covered by the CGHS. The Department of Pension and Pensioners Welfare vide OM No.45/74/97-PP&PW© dated 15.4.97 referred the aforementioned recommendation of the 5th CPC to the Ministry of Health and Family Welfare. After due examination of the recommendation, the Ministry of Health and Family Welfare vide OM No.S.14025/4/96-MS dated 5.6.98 issued the Annexure A3 Memorandum which is reproduced below:

"The undersigned is directed to refer to the Department of Pension and Pensioners' Welfare, OM No.45/74/97-PP&PW(C), dated 15.4.1997 on the above subject and to say that it has been decided by this Ministry that the pensioners should not be deprived of medical facilities from the Government in their old age when they require them most. This Ministry has, therefore, no objection to the extension of the CS(MA) Rules to the Central Government pensioners residing in non CGHS areas as recommended by the Pay Commission. However, the responsibility of administrating the CS(MA) Rules for pensioners cannot be handled by CGHS. It should be administered by the respective Ministries/Departments as in the case of serving employees covered

under CS(MA) Rules, 1944. The department of Pension and Pensioners' Welfare would need to have the modalities worked out for the implementation of the rules in consultation with the Ministries/Departments prior to the measure being introduced to avoid any hardships to the pensioners. The pensioners could be given a one-time option at the time of their retirement for medical coverage under CGHS or under the CS(MA) Rules, 1944. In case of a pensioner opting for CGHS facilities, he/she would have to get himself/herself registered in the nearest CGHS city for availing of hospitalization facilities. In such cases, the reimbursement claims would be processed by the Additional director,CGHS of the concerned city. For those opting for medical facilities under the CS(MA)Rules, the scrutiny of the claims would have to be done by the parent office as in the case of serving employees and the payment would also have to be made by them. The list of AMAs to be appointed under CS(MA) Rules would be decided Ministry/Department-wise as provided under the rules. The beneficiaries of the CSA(MA)Rules, 1944 would be entitled to avail of hospitalization facilitates as provided under these rules.

The Department of Pension and Pensioners' Welfare are requested to take further necessary action in the matter accordingly."

On the basis of the aforesaid decision of the Ministry of Health and Family Welfare ,the claims of medical reimbursement of the retired government employees who were not covered by the CGHS were being

processed and reimbursements made by the respective departments from where the Government employee concerned has retired. After a couple of years, the Department of Health, Ministry of Health and Family Welfare again issued the clarification to the aforesaid OM dated 5.6.98 vide Annexure A4 O.M.No.14025/96/MS dated 20.8.04 stating that they did not have any objections to the proposal of extension of CS(MA) Rules, 1944 to Central Government pensioners residing in non-CGHS areas as recommended by the 5th Central Pay Commission subject to the condition that the responsibility of administering the CS (MA) Rules, 1944 for pensioners would be that of the concerned Departments/Ministries and said OM dated 5.6.98 was only in reply to a reference from the Department of Pension and Pensioners Welfare and the final decision was to be taken only ascertaining the views of the various Ministries/Departments. But the OM dated 5.6.98 was mis-interpreted by some pensioners as the final order of the Government of India to extend CS(MA)Rules, 1944 to pensioners. Therefore, the Ministry of Health and Family Welfare

(Department of Health) has clarified that the OM dated 5.6.98 was not intended to be the final order extending the applicability of CS(MA) Rules, 1944 to pensioners. They have contended that after the matter has been examined in consultation with the various Ministries/Departments including the Department of Expenditure, the Department of Expenditure has informed them that the recommendation of the 5th CPC cannot be accepted because of the huge financial implications involved and therefore it is not feasible to extend the CS(MA) Rules, 1944 to the pensioners.

2. The question whether the benefit of medical reimbursement is applicable to Central Government Pensioners residing outside the area where CGHS facility is available has come up for consideration before this Tribunal in a number of cases earlier. In OA 250/03 decided 16.7.03, it was observed/ordered as under:

"3. I have gone through the pleadings and materials placed on record and have heard the learned counsel of the applicant as also the counsel of the respondents. The identical issue as in this case as to whether in the absence of finalization of modalities the benefit of hospitalization expenses can be extended to the pensioners residing

outside CGHS area was considered by the Madras Bench of the CAT in R.Rangarajan Vs. Union of India in OA No.194/01 as also by Ahmedabad Bench of the Tribunal in OA No.216/01 in Sri Ratanchand T.Shah Vs. Union of India & Ors. The identical contentions of the respondents as raised in this case were rejected and the respondents were directed to make available to the applicants the amount as admissible as per rules irrespective of the fact that the modalities for implementation had not been finally stated by the government. The above rulings of the Madras Bench and Ahmedabad Bench of the Tribunal have become final and these orders are in conformity with the principles laid down by the apex Court in D.S.Nakara and others Vs. Union of India that the pensioners who fall within a uniform group cannot be discriminated forward of the liberalized pension scheme on the basis of dates of retirement. In State of Punjab Vs. Mohinder Singh Chawla (AIR 1997 SC 1225) the Apex Court observed as follows:

"It is settled law that right to health is an integral right to life. Government has constitutional obligation to provide the health facilities. It is but the duty of the State to bear the expenditure incurred by Government servant. Expenditure thus incurred required to be reimbursed by the State to the employee. Having had the constitutional obligation to bear the expenses for the Government servant while in service or after retirement from service as per policy of the government, the Government is required to fulfill the constitutional obligation. Necessarily, the State has to bear the expenses incurred in that behalf (paras 4 and 5)

4 In the light of what is stated above, I find that the contention of the respondents regarding eligibility of the applicant for

reimbursement is only to be rejected. In the result, the application is allowed in part. The respondents 4&5 are directed to look into the claims of the applicant submitted along with Annexure A4 and to reimburse the medical expenses to the extent as admissible as per rules and the packages. The above direction shall be complied with as early as possible at any rate within a period of two months from the date of receipt of a copy of this order. No order as to costs."

3. Subsequently, this Tribunal has considered a similar case in OA 242/04. On the basis of the decision in OA 250/03 (supra) the OA 242/04 (supra) was also decided on 25.11.2004 with the direction to the respondents to process the claim of the applicant therein for medical reimbursement and make available to the applicant reimbursement of the expenses incurred by him for his treatment in the light of the order issued by the Respondent No.2 in OM dated 5.6.98 (supra).

4. The respondents challenged the aforesaid orders of this Tribunal in OA 242/04 dated 25.11.2004 in the Hon'ble High Court of Kerala at Ernakulam in WP© No.1977/05 (S). However, the Respondents have not challenged the orders in OA 250/03. The petitioners in the aforesaid Writ Petition (respondents herein) contended that the claim for

reimbursement of medical expenses was rejected in terms of the Office Memorandum dated 20.8.04 (supra). The Hon'ble High Court dismissed the Writ Petition after observing as under:

"It is contended by the learned counsel that in view of Ext.P3 Office Memorandum dated 20.8.200 the claim of the respondent for reimbursement of the medical expenses is liable to be rejected. We are not impressed by this argument. In the Office Memorandum dated 5.6.1998 issued by the Ministry of Health and Family Welfare it was categorically stated that it was decided by the Ministry that the pensioners should not be deprived of medical facilities from the Government in their old age when they required them most. It was also stated that the Ministry had no objection to the extension of the CS(MA) Rules to the Central Government Pensioners residing in non CGHS areas as recommended by the Pay Commission. It was in the light of the Office Memorandum dated 5.6.1998 that the retired employees submitted claim for reimbursement and whenever it was rejected they approached the Tribunal and the Tribunal upheld the claim. Going by the wording of the Office Memorandum dated 5.6.98, the employees cannot be blamed for believing that they were entitled for reimbursement of the medical expenses and the Tribunal cannot be blamed for upholding the claim of the retired employees. If the Ministry of Health and Family Welfare chose to give a different interpretation through Ext.P3 Office Memorandum dated 20.8.2004, the claims submitted and processed after 20.8.2004 may be governed by Ext.P3. But the expenditure incurred and the claim submitted and processed prior to 20.8.2004 cannot be governed by Ext.P3. The respondent incurred the expenses in

November, 2003. He submitted the claim for reimbursement in January, 2004. The claim was rejected on 12.3.2004. The petitioners rejected the claim of the respondent when the Office Memorandum dated 5.6.1998 held the field. Naturally the Tribunal upheld the claim on the basis of the Office Memorandum dated 5.6.1998 as understood till then. Further, Ext.P3 office Memorandum dated 20.8.2004 was not brought to the notice of the Tribunal and the Tribunal had no occasion to consider its relevance or applicability to the case of the respondent. Similarly situated retired pensioners like the respondent were given the benefit of reimbursement of medical expenses on the basis of the Office Memorandum dated 5.6.1998 and the orders passed by the different benches of the Central Administrative Tribunal in their favour. Such orders were accepted and were not challenged by the Department concerned. Hence we do not find any rationale or justification for denying such a benefit to the respondent who incurred the medical expenses and submitted his claim before Ext.P3 Office Memorandum dated 20.8.2004 was issued by the Ministry of Health and Family Welfare. We make it clear that we have not considered the correctness or validity of the clarification or interpretation contained in Ext.P3 Office Memorandum dated 20.8.2004 as it is unnecessary in this case.

In the light of the discussion above, we are of the view that there is no merit in the writ petition and that the writ petition is liable to be dismissed. Hence the writ petition is dismissed."

5. In OA 242/05 a reply statement has been filed by the Commissioner of Central Excise and Customs, Cochin Commissionerate, Cochin on

behalf of all the respondents. They have submitted that the OM dated 5.6.98 (supra) not being the final one and it was issued during the consultative process among the departments of the Government of India. They have also produced another OM No. S.14025/4/96-MS dated 12.1.1999 issued by the Ministry of Health & Family Welfare to all the Ministries /Departments of Government of India stating as under:

"recommendation of the Fifth Central Pay Commission for extension of CS(MA) Rules,1944 to Central Government Pensioners residing in non-CGHS areas has been examined in detail by this Ministry. Although this Ministry is inclined to extend CS(MA) Rules, 1944, to such Central Government Pensioners yet due to limited resources pertaining to financial and administrative, it is not possible for this Ministry to take over the responsibility of reimbursement of medical expenditure for indoor hospitalization treatment in respect of such pensioners. It is, therefore, proposed that the responsibility of reimbursement of medical expenditure to such pensioners should be taken over by the concerned Ministry/Department/Office as they are already doing this job in respect of their serving Central government Employees. They have also mentioned in the said Office Memorandum that before the final decision for extension of CS(MA) Rules,1944, to Central Government Pensioners residing in non-CGHS areas is taken by this Ministry, all the Ministries/Departments of the Government of India are required to send their comments/views in the matter within a

period of two weeks from the date of issue of this OM positively."

The aforementioned OM dated 12.1.99/12.99 was produced by the respondents to prove their point that the OM dated 5.6.98 was not the final one. According to them the final order is the Office Memorandum dated 20.8.04 which has been issued after consultation with all the Ministries/Departments of the Government of India including the Department of Expenditure which according to them has rejected the recommendation of the 5th CPC stating that it involves huge financial obligations and therefore, it is not possible to extend the CS(MA) Rules, 1944 to the pensioners.

6. The Applicant in OA 293/05 is a retired Assistant Post Master General and now settled at his native place at Palakkad, a non-CGHS area. For better medical facilities he had moved to Coimbatore which is also a non- CGHS area where his son was residing. While staying at Coimbatore he suffered renal failure and was admitted to the Kovai Medical Centre and Hospital, Coimbatore and had undergone treatment there for the period from 5.9.04 to 17.9.04 and from 13.10.04 to 16.10.04 for which an amount

of Rs. 57,220/- was billed. He sought the reimbursement of the said amount from the respondents, which was rejected. The Chief Postmaster General, on behalf of all the respondents, filed a reply statement which is similar to that of the one filed in OA 242/05. The Respondent has also stated that the Department of Posts has already filed six SLPs in the Hon'ble Supreme Court of India challenging the orders of the Tribunal and the High Court of Gujarat regarding medical reimbursements to the pensioner and the Hon'ble Supreme Court was pleased to issue notice in those cases and the contempt proceedings initiated in those cases were ordered to remain in abeyance.

7. In OA 489/05 the applicant retired from the Office of the Commissioner of Central Excise and Customs, Cochin and he is a resident of Kozhikode, a non CGHS area. He was rushed to the Baby Memorial Hospital at Kozhikode in a serious condition and he was admitted there on 15.12.04 and discharged on 23.12.04. The hospital authorities billed an amount of Rs. 15,416/- from him. He has

submitted a claim before the respondents for reimbursement of the above said amount, but the same was rejected. The respondents' reply in this case is also the same as that in OA 242/05.

8. In OA 629/05 the applicant is a retired Income Tax Officer, a resident of Cochin which is also a non CGHS area. On 25.4.05 while walking on the road he fell down due to uneasiness and suffocation and he was rushed to the nearby Lissie Hospital where he was admitted and he underwent coronary angiogram test and disguised that he was suffering from Triple Vessel Disease and he underwent bypass surgery on 12.5.2005 and was discharged on 21.5.2005. The total expenditure was Rs. 1,30,846/. He submitted a claim for reimbursement of the amount before the respondents, but the same was rejected. The reason for rejection of the claim was the same as that mentioned in the aforesaid three OAs.

9. I have heard the learned counsels for the the parties in the O.As and perused the records. The only question left out for consideration by this Tribunal; as observed by the Hon'ble High Court of

Kerala in its order dated 31.1.2005 in W.P(C) 1977/2005(S) (supra), is the validity of clarifications or interpretations contained in the Office Memorandum dated 20.8.2004 issued by the M/o Health & Family Welfare (Department of Health, Government of India). It was based on the said OM that the Respondents have challenged the orders of this Tribunal in OA 242/04 before the Hon'ble High Court. First of all, it is seen that the OM dated 20.8.2004 is only a clarification on the views of the Department of Health, Ministry of Health and Family Welfare on the recommendation of the Vth Central Pay Commission on extension of CS (MA) Rules, 1944 to the Central Government Pensioners residing in areas not covered by CGHS. According to the Department of Health, the OM dated 5.6.98 was only their response on a reference received in this matter from the Department of Pension and Pensioners Welfare. Their response was that they "did not have any objections to the proposal of extension of CS (MA) Rules, 1944 to Central Government Pensioners residing in non-CGHS areas as recommended by the 5th Pay Commission, subject to the condition that the

responsibility of administering the CS(MA) Rules, 1944 for pensioners, would be of the Departments/Ministries concerned". However, the only obstacle in the way of implementing the said recommendation of the Vth Pay Commission is the objection of "huge financial implications" involved in the matter as raised by the Department of Expenditure subsequently. Now, the question is the validity of the objection of "huge financial implications" raised by the Department of Expenditure on extending the CS(MA) Rules, 1944 to Central Government Pensioners residing in non-CGHS areas. It is in this context that the judgment of the Hon'ble Supreme Court in State of Punjab Vs. Mohinder Singh Chawla, AIR 1997 SC 1225 becomes very relevant. The Apex Court in the said judgment held as follows:

"4. It is contended for the appellants – State that the Government have taken decision, as a policy, in the Resolution dated January 25, 1991 made in Letter No. 7/7/85/5HBV/2498, that the reimbursement of expenses on account of diet, stay of attendant and stay of patient in hotel/hospital will not be allowed. Permission given was subject to the above resolution, and therefore, the High Court was not right in directing the Government to bear the expenses for the stay in the

hotel/hospital contrary to para (vii) of the Resolution of the Government. We find no force in the contention. It is an admitted position that when specialized treatment was not available in the Hospitals maintained by the State of Punjab, permission and approval having been given by the Medical Board to the respondent to have the treatment in the approved hospitals and having referred him to the AIIMS for specialized treatment where he was admitted, necessarily, the expenses incurred towards room rent for stay in the hospital as an inpatient are an integral part of the expenses incurred for the said treatment. Take, for instance a case where an inpatient facility is not available in a specialized hospital and the patient has to stay in a hotel while undergoing the treatment, during the required period, as certified by the doctor, necessarily, the expenses incurred would be integral part of the expenditure incurred towards treatment. It is settled law that right to health is an integral right to life. Government has constitutional obligation to provide the health facilities. The Government servant has suffered an ailment which requires treatment at a specialized approved hospital and on reference where at the Government servant had undergone such treatment therein, it is but the duty of the State to bear the expenditure incurred by the Government servant. Expenditure, thus incurred requires to be reimbursed by the State to the employee. The High Court was, therefore, right in giving directions to reimburse the expenses incurred towards room rent by the respondent during his stay in the hospital as an inpatient.

5 The learned counsel then contends that the State would be saddled with needless heavy burden, while other general patients would not be able to get the similar treatment. We appreciate the stand taken

that greater allocation requires to be made to the general patients but unfortunately due attention for proper maintenance and treatment in Government Hospitals is not being given and mismanagement is not being prevented. Having had the constitutional obligation to bear the expenses for the Government servant 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.

When the Hon'ble Supreme Court has held in such unequivocal and categorical terms that right to health is integral to right to life and it is the constitutional obligation of the Government to provide health facilities, there cannot be any valid excuse for the Government for not fulfilling this obligation. Interestingly, one of the contentions of the Government in Mohinder Singh Chawla's case (supra) was also that 'State would be saddled with needless heavy burden'. The Apex Court while appreciating the contention of the Government has categorically held that "having had the constitutional obligation to bear the expenses for the Government servant while in service or after retirement from service, as per the policy of the

Government, the Government is required to fulfil the constitutional obligation." The Government is only left with the choice of the modalities of extending such facilities to its retired employees. The Ministry of Health and Family Welfare (Department of Health) has already made a positive response to the recommendation of the Vth CPC to extend the CS(MA) Rules, 1944 to the Central Government Pensioners residing in the areas not covered by the CGHS and proposal in the OM dated 5.6.1998 was that the pensioners opting for medical facilities under the CS(MA) Rules, the scrutiny of the claims would have to be done by the parent office as in the case of serving employees and the payment would also be made by them. This proposal appears to be most practical one and the concerned Departments have been settling the claims of their pensioners in the past including those Applicants in OA 250/2003.

10. In this view of the matter, the Office Memorandum dated 20.8.2004 is, accordingly,

quashed and set aside to the extent that it denies the benefit of CS (MA) Rules, 1944 to the Central Government Pensioners residing in areas not covered by CGHS on the ground of financial implications. However, it is left to the Respondents to decide the modalities for administering the said Rules to such pensioners and fix the responsibility. Till such time a decision is taken in this regard, the concerned Departments/Ministries from where the employees have retired shall administer the CS (MA) Rules for their respective pensioners. The claims of the Applicants in these O.As shall be reimbursed to them in accordance with the rules, within a period of two months from the date of receipt of this order. There is no order as to costs.

Dated this the 3rd day of February, 2006

GEORGE PARACKEN
JUDICIAL MEMBER

S.