

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.298/2004

Tuesday, this the 16th November, 2004.

C O R A M

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

C.K. Rajappan,
Office Superintendent Grade II (Retd.)
Chackalaparambil House,
Thevara, Cochin - 13.

..Applicant.

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

Versus

1. Union of India,
Represented by the Secretary,
Ministry of Defence,
South Block,
New Delhi.
2. The Secretary,
Ministry of Health & Family Welfare,
Nirman Bhavan,
New Delhi.
3. The Flag Officer Commanding-in-Chief,
Southern Naval Command,
Naval Base,
Cochin - 682 004
4. The Material Superintendent,
Material Organisation,
Naval Base,
Cochin - 682 004

1. ..Respondents

[By Advocate Mr. C. Rajendran, SCGSC]

O R D E R

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

Applicant, a Central Government Pensioner, who retired from service on 31.12.1990, is presently residing in Cochin where no CGHS facility is available. It is averred in the O.A. that Trivandrum is the only place in Kerala State where the said facility is available and as such, he has not registered his name under CGHS. He is receiving Medical Allowance of Rs. 100/- per month granted to the Central Government Pensioners. While so, on

14.1.2002, the applicant had a very serious heart attack and was taken to the Medical Trust Hospital, M.G. Road, Ernakulam. Since his condition was very serious, he was admitted in the hospital. Annexure A/1 is the emergency certificate issued by the hospital. The applicant pleaded that the 2nd respondent has issued O.M. dated 5.6.98 (A/2) for extension of CS(MA) Rules, 1944 to the pensioners residing in area not covered by CGHS, and, therefore, he is entitled to avail of hospitalisation facilities as provided in these Rules. He submitted a medical claim for Rs.1,03,423.61 to the 4th respondent on 14.8.2003 with a request for reimbursement of medical expenses vide A3 letter. In turn, the 4th respondent asked the applicant to submit a copy of A2 O.M., which was forwarded by the applicant vide A5 letter. Thereafter, the 4th respondent forwarded the claim of the applicant to the third respondent vide A/6 letter dated 20.1.2004. The applicant underwent a by-pass surgery due to his critical condition and he is entitled to the medical expenses incurred by him. The request of the applicant was turned down vide R/1 order dated 5.8.2004. Aggrieved by the said action on the part of the respondents, the applicant has filed this O.A. seeking following main reliefs:-

"(i) To direct the third respondent to reimburse the medical claim submitted as per Annexure A3.

(ii) Grant such other relief or reliefs that may be urged at the time of hearing or that this Hon'ble Tribunal may deem fit to be just and proper."

2. The respondents have filed a reply statement contending that the claim preferred by the applicant after the retirement is not maintainable since he was paid all retirement/pensionary benefits. The matter under dispute does not come within the



ambit of pension and other retirement benefits as specified in sub rule (q)(i) of Rule 3 of Chapter 1 of the Administrative Tribunals Act, 1985. Also, there was some delay in submitting the claim and, therefore, the claim is barred by limitation. However, the matter was taken up with Naval Headquarters who being the higher authority in respect of the 3rd and 4th respondents for a decision/clarification to Annexure A2 O.M. The respondents No. 3 and 4 cannot ignore the direction/instruction issued by the Headquarters. Since the Government has not accepted the recommendations/suggestions in the A2 OM, the respondents No. 3 and 4 are not in a position to take any action on applicant's claim. On the subject matter, an appeal has also been filed by the Union of India before the Hon'ble Supreme Court against order No. SCA No.5591/2003 dated 15th July, 2003 of the High Court of Gujarat vs. Ratanchand T. Shah in July, 2004 and the matter is subjudice and hence, no action has been taken on applicant's claim.

3. I have heard Shri C.S.G.Nair, learned counsel for the applicant and Shri C. Rajendran, learned counsel for the respondents.

4. Learned counsel on either side took me through various pleadings, material and evidence placed on record. Learned counsel for the applicant argued that as per A2 O.M. dated 5.6.98, the applicant is entitled to the reliefs as claimed in the O.A. It is also submitted on behalf of the applicant that there was no delay in submitting the claim. Admittedly, the applicant is a Central Government Pensioner and the CGHS facility is not available in Cochin. Learned counsel for applicant drew



our attention towards the order dated 23.11.2001 of the Madras Bench of the Tribunal in O.A. No. 194/2001 (R.Rangarajan vs. Union of India and Ors.) and the order of this Tribunal in O.A. No. 250/2003 (R. Sreekantan Nair vs. Union of India) stating that in both the cases, the Tribunal had ordered reimbursement of the amount of medical expenses incurred by them. The applicant claimed that he is a similarly and identically placed employee and is entitled to get the benefit as prayed for. Learned counsel for the respondents on the other hand persuasively argued that as far as the 3rd and 4th respondents are concerned they cannot take a decision since this is a policy matter and they can act only on the order issued by the first respondent. Therefore, the claim of the applicant cannot be granted.

5. I have give due consideration to the arguments advanced by the learned counsel on either side. It is an admitted fact that the applicant is a retired Central Government employee. He was enjoying the CS(MA) Rules, 1944, while he was in service. Since CGHS facility is not available in Cochin, he has not registered under CGHS.

6. At the very outset, I deal with the objection raised by the learned counsel for the respondents on the point of limitation in submitting the claim by the applicant. In the Central Services (Medical Attendance) Rules, 1944 (Swamy's Compilation - 26th edition), the time limit prescribed for presentation of medical claims is three months. The Government of India, Ministry of Health O.M. No. F-29-40/68-M.A, dated 15.10.68 and dated 28.12.1970 is relevant on the subject which reads as under:-

L

"(8) Bills to be preferred within three months:- It has been decided that final claims for reimbursement of medical expenses of Central Government servants in respect of particular spell of illness should ordinarily be preferred within three months from the date of completion of treatment as shown in the last Essentiality Certificate issued by the Authorised Medical Attendant/Medical Officer concerned. The controlling authorities shall also be empowered not to entertain a medical claim not preferred by a Central Government servant within three months of the completion of the treatment where they are not satisfied with the reasons put forth by the Government servant for late submission of the medical claim or where the claim *prima facie* is incomplete."

7. On going through the records, I find that the claim was preferred by the applicant within the specified period and, therefore, the objection raised by the respondents cannot be sustained.

8. When the medical reimbursement claims are being processed the Courts are reminded of Article 21 of the Constitution which enshrines the protection of life and personal liberty and no person shall be deprived of his life or personal liberty except according to the procedure established by law. The right to 'life' is a precious freedom as observed by Field. J. in Munn Vs. Illinois, (1877) 94 US 113, means something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed (AIR 1986 SC 180 in the case of Olga Tellis & Ors Vs. Bombay Municipal Corporation & Ors.). The Central Services (Medical Attendance) Rules 1944 has to be evaluated with the above principles.

9. Interpreting Article 21 of the Constitution in a case reported in AIR 1997 SC 1225, State of Punjab & Ors. Vs. Mohinder Singh Chawla, etc., Hon'ble Supreme Court once again concluded that having had the constitutional obligation to bear the expenses for the Govt. servant while in service or after



retirement from service, the Govt. is required to fulfil the constitutional obligation. In State of Punjab & Ors Vs. Ram Lubhaya Bagga etc.etc., reported in JT 1998(2) SC 136, the Apex Court reiterated the same principle by holding that it is one of the most sacrosanct and valuable rights of a citizen and equally sacrosanct sacred obligation of the State. Further in a case reported in (1989) 4 SCC 286, Pt. Parmanand Katara Vs. Union of India & Ors. Hon'ble Supreme Court observed that the obligation of a doctor in the Govt. Hospitals to extend assistance for preserving the life of the patient is fundamental and the basic feature of our constitution. As a corollary, it follows that right to medical assistance also would be a basic feature in the case of retired Govt. servants. Since this is one of the basic rights, the State has a legal obligation to provide assistance to the Govt. servants who had rendered service during the prime of their life subject to reimbursement and availability of medical facilities.

10. Learned counsel for the applicant also brought to my notice the decision of the Ahmedabad Bench of the Tribunal in O.A. No. 216/2001 filed by one Shri Ratanchand T. Shah, a retired Divisional Accounts Officer, in which the Tribunal held as follows:

"The medical reimbursement claim of the applicant needs to be paid as early as possible in terms of Government of India's O.M. dt. 5.6.98 and the plea that the same would be considered after the CS(MA) Rules are amended or modalities are worked out cannot be accepted. Under the circumstances I direct the respondent No.6 to entertain the medical reimbursement as per GOI Memo dated 5.6.98 in terms of CS(MA) Rules, sanction the admissible amount and pay the same within three months from the date of receipt of a copy of this order".



11. In the case of State of Punjab and Others vs. Mohinder Singh Chawla etc., AIR 1997 SC 1225, Hon'ble Supreme Court once again concluded that having had the constitutional obligation to bear the expenses for the Government servant while in service or after retirement from service, the Government is required to fulfil the constitutional obligation.

12. From Government service, millions of people have retired and settled in different parts of the country. Some of them in remote areas. The Fifth Central Pay Commission while dealing with such Central Government pensioners had recommended that the Medical Attendance Rules should be extended to those pensioners who are residing in areas not covered by the CGHS so that they are enabled to claim expenditure incurred by them on their treatment as well as the treatment of the members of their families. The issue of extension of CS(MA) Rules, 1944 to the Central Government Pensioners who are residing in non-CGHS areas was considered by the Ministry of Health and Family Welfare vide O.M. F.No.S.14025/4/96-MS dated 24.9.2001, which reads as follows:

"F.No.S.14025/4/96-MS
Government of India
Ministry of health & Family Welfare
(Department of Health)

Nirman Bhavan
New Delhi

Dated, the 24th Sept., 2001.

OFFICE MEMORANDUM

Subject: Extension of CS(MA) Rules, 1944 to the Central Government Pensioners who are residing in non-CGHS areas-regarding.

At present, the CS(MA) Rules, 1944, are not applicable to the central Government Pensioners. Consequently, the pensioners residing in areas not covered by CGHS are not able to claim medical expenditure incurred by them on their own treatment as well as the treatment of the members of their family.



2. The Fifth Central Pay Commission have recommended extension of CS(MA) Rules, 1944, to the Central Government Pensioners residing in areas not covered by CGHS so that they are enabled to claim expenditure incurred by them on their treatment as well as the treatment of the members of their family.

3. On the recommendations of the Fifth Central Pay Commission, the Department of Pension & Pensioners Welfare have issued orders for payment of Rs. 100/- per month to Central Government pensioners residing in non-CGHS areas for their day-to-day treatment. However, for indoor treatment, such pensioners are at present, not eligible for reimbursement of medical expenditure as CS(MA) Rules, 1944 are not applicable to them.

4. In this regard, it was considered that although this Ministry agreed in principle to extend the CS(MA) Rules to Central Government pensioners residing outside CGHS areas, yet due to limited resources, financial and administrative, it was found not possible for this Ministry to take over the responsibility of reimbursement of medical expenditure for indoor hospitalisation treatment in respect of such pensioners. It was accordingly proposed and circulated to all the Ministries/Departments vide O.M. of even number dated 12.1.1999 (copy enclosed for ready reference) that the responsibility of reimbursement of medical expenditure of such pensioners should be taken over by the concerned Ministry/department/office as already done in respect of their serving Central Government employees. In this regard, comments received from some Ministries/Departments showed that they were agreeable to accept the responsibility for reimbursement of medical claims throughout the country. CGHS has neither the infrastructure nor the resources to handle this extra load of pensioners and accordingly taking into account the magnitude of the responsibility involved, it was proposed in the O.M. dated 12.1.1999 mentioned above that the responsibility of reimbursement of medical expenditure of such pensioners should be taken up by the concerned Ministries/Departments/Offices as they are already doing in respect of their serving employees.

5. Extension of CS(MA) Rules to pensioners is a matter of policy entailing substantial cost implications. This financial implication would need to be assessed before a decision taken in consultation with the concerned Ministries including the Ministry of Finance. In view of this and to facilitate a decision for extension of CS(MA) Rules, 1944 to Central Government pensioners residing in non-CGHS areas, the Ministries/departments of the Government of India are, therefore, once again requested to convey their views in the matter immediately. This may kindly be given top priority.

Sd/- T.K. MANOJ KUMAR
DIRECTOR (TKS) "



13. The claim of the applicant was rejected on the ground that the Government has not accepted the proposal for extension of CS(MA) Rules, 1944, to the pensioners residing in areas not covered by CGHS. It was also mentioned that the Government has filed an appeal in the Hon'ble Supreme Court against the order of High Court of Gujarat in SCA No. 5591/2003, Union of India vs. Ratanchand T Shah, in July, 2004. The fact that Hon'ble High Court of Gujarat has granted the benefit to a similarly placed pensioner and since there was no stay reported to have been granted by the Apex Court in the said case, I find no reason to reject the claim of the applicant in the case on hand, and the O.A. deserves to be allowed.

14. In the conspectus of the facts and circumstances of the case and the detailed discussions made above, I am of the view that the applicant is entitled to get reimbursement of the medical expenses as per the rates permissible according to rules. Accordingly, I direct the respondents to process the claim of the applicant and disburse the medical expenses incurred by him at the rates permissible according to rules. However, the respondents will be at liberty to obtain an undertaking, if they so desire, that in case the judgement of Hon'ble High Court of Gujarat (supra) is reversed by the Apex Court, the amount so paid to the applicant shall be recovered from him. The entire exercise shall be completed within three months from the date of receipt of a copy of this order.

15. The O.A. is allowed as indicated above. No order as to costs.

(Dated, the 16th November, 2004)

K.V. SACHIDANANDAN
JUDICIAL MEMBER