

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. No. 333 OF 2005

Wednesday, this the 30th day of November, 2005.

CORAM :

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

K.I.Chinnamma
Work Experience Teacher (Retired)
57/3 130 "Anjali", Diwans Road
Cochin – 682 016

Applicant

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

Versus

1. The Commissioner
Kendriya Vidyalaya Sangathan
New Delhi.
2. The Assistant Commissioner
Kendriya Vidyalaya Sangathan
Chennai Region, IIT Campus
Chennai – 600 636
3. The Secretary
Ministry of Health & Family Welfare
Nirman Bhawan, New Delhi
4. Union of India represented by the Secretary
Department of Human Resources
New Delhi – 110 001

Respondents

(By Advocate M/s Iyer & Iyer (R1-2)
Mr. T.P.M.Ibrahim Khan, SCGSC (R3-4)

The application having been heard on 08.11.2005, the Tribunal on 30.11.2005, delivered the following :

OR D E R

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

The applicant retired on 31.07.1996 as Work Experience Teacher. She is a resident of Cochin and there is no Central Government Health Scheme (CGHS) available at Cochin. Since no facility is available at Cochin she did not get registered under CGHS. She is in receipt of medical allowance of Rs.100/- granted to Central Government pensioners. It was averred in the OA that the applicant's daughter was admitted to V.G. Saraf

Memorial Hospital Private Limited. On 14.05.2003, while the applicant was on her way to hospital to see her daughter, she got severe pain and swelling in her right arm. She was rushed to casualty immediately and X-ray was taken, which gave an indication that she had a fracture of right humerus. The applicant's case was referred to Amla Cancer Hospital for having bone scan and accordingly, she was admitted there. She underwent a surgery. Besides five radiation, one bone strengthening injection and one chemotherapy dose were administered. She was discharged on 06.06.2003. Every month she was required to be present herself at the Amala Hospital. She had to undergo a series of blood tests, bone scan etc as well as MRI brain scan. The applicant submitted that a total expenses of Rs.2,52,822/- were incurred for her treatment. The KVS Employees/Pensioners are on par with Central Government employees / pensioners for all purposes as per Medical Attendants Rules, 1944 and vide OM dated 05.06.1998 (Annexure A-2) the CS(MA) Rules, 1944 were extended to the pensioners who were not covered under CGHS. As per the said O.M the medical reimbursement claim would be processed and the claim would be settled by the parent office from where the pensioner retired. By Annexure A-3 OM dated 20.08.2004 also, the pensioner comes under the purview of CS(MA) Rules, 1944. The applicant submitted certain medical claims to the 2nd respondent vide Annexure A-4. But the 2nd respondent rejected the claims by Annexure A-5. Aggrieved by the said rejection, the applicant has filed this O.A seeking the following main reliefs:-

- i. To call for the records leading upto Annexure A-3 and A-5 and quash the same.
- ii. To direct the 2nd respondent to reimburse the medical claims submitted alongwith Annexure A-4

2. The respondents have filed a detailed reply statement contending that the applicant preferred the claim for reimbursement on 28.12.2004 and the competent authority returned the claim on 29.03.2005 rejecting her claim on the ground that CS(MA) Rules do not apply to retired government officials. In the O.M dated 20.08.2004 it is clarified that " O.M dated 05.06.1998 was not intended to be a final order extending the applicability of CS(MA)Rules, 1944 to pensioners." The Department of Expenditure has informed that extension of CS (MA) Rules to the pensioners involves a huge



expenditure of Rs.1,820/- crores per annum and in view of such huge financial implication, it will not be possible to support the proposal for extension of CS(MA)Rules at this stage to the pensioners. The matter of grant of pensionary benefits, the nature and quantum thereof, is a policy matter lying squarely within the discretion of the executive. The Government decided not to extend the benefits of CS(MA) Rules to pensioners in view of the huge financial implication . Annexure A-3 O.M being clarificatory for benefits under CS(MA)Rules, 1944, it is applicable to all claims. At any rate the decision of the Tribunal relied on by the applicant has been rendered prior to passing of O.M dated 20.08.2004. The applicant's claim in the instant case had been filed on 28.12.2004. Identical matters have been filed by way of SLPs before the Hon'ble Supreme Court challenging the orders of the Ahmedabad Bench of the Tribunal and High Court of Gujarat regarding reimbursement of medical claim to the pensioners under CS (MA) Rules, 1944. All the contempt proceedings initiated by the Courts above have been stayed by the Hon'ble Supreme Court vide its order dated 02.05.2005.

3. On behalf of the Respondents 3 & 4 learned SCGSC have filed a counsel statement reiterating the same contention that has been taken by the other respondents in identical and connected matters.

4. Mr. C.S.G.Nair, learned counsel appeared for the applicant and M/s Iyer & Iyer , learned counsel appeared for R 1 & 2 and Mr. T.P.M.Ibrahim Khan, SCGSC appeared for R 3 & 4.

5. The learned counsel for parties took us to various pleadings, material and evidence placed on record. The learned counsel for the applicant submitted that the Ahmedabad Bench of the Tribunal as well as Gujarat High Court had declared that reimbursement claims of the retired employees are to be paid as per Government of India O.M dated 05.06.1998 and therefore, the applicant is entitled to get the benefit. The learned counsel for the respondents on the other hand persuasively argued that the said OM has been superseded by the O.M. Dated 20.08.2004 clarifying the earlier O.M dated 05.06.1998 that " pensioners are not entitled to get the benefit." Therefore, the benefit cannot be granted to the applicant.



6. Vide order dated 14.10.2005, identical matters were directed to be posted alongwith this case. In this case, this Court vide interim order dated 06.09.2005 directed to pay a sum of Rs.50,000/- to the applicant within two weeks from the date of receipt of the copy of that order considering the pathetic and sympathetic condition of the applicant as she was suffering from cancer. The matter was taken before the Hon'ble High Court and the Hon'ble High Court in WP(C)No. 1977/05(S) disposed of the appeal directing to dispose of the OA itself as expeditiously as possible. Therefore, this OA was delinked from other cases for early hearing. As per the direction of the Hon'ble High Court this case was finally heard and the order was reserved on 08.11.2005.

7. Now the short question for our consideration is whether the applicant who retired as Teacher of Kendriya Vidyalaya will be a government servant and If so, whether the retired persons , like the applicant is entitled the benefit under the CGHS Scheme.

8. It is an admitted fact that the CGHS facility is not available in Cochin and since it is only available in Trivandrum, the applicant could not register her name under CGHS. The CS(MA) Rules was not admissible to retired Central Government employees. There is no dispute that the applicant being a retired employee from the KVS under the Department of Human Resources, which is a Government institute for all purposes, she will squarely come under the definition of 'Government servant' so as to attract the facility available under CGHS/CS (MA) Rules. The CS(MA) Rules was not originally applicable to pensioners. But by virtue of Annexure A-2 O.M dated 05.06.1998 it is contented that this facility is extended to pensioners as well. For better elucidation Annexure A-2 is reproduced as under :-

“ Extension of CS (MA) Rules, 1944 to pensioners residing in areas not covered by CGHS.

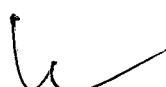
The undersigned is directed to refer to the Department of Pension and Pensioners' Welfare, O.M. No. 45/74/97-PP&PW (C), dated 15.04.1997 on the above subject and to say that it has been decided by this Ministry that the pensioners should not be deprived of medical facilities from the Government in their old age when they require them most. This Ministry has, therefore, no objection to the extension of the CS (MA)

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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 & 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 hardship to the pensioners. The pensioners could not 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 hospitalisation 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 CS (MA) Rules, 1944 would be entitled to avail of hospitalisation facilities as provided under these rules.

The Department of Pension & pensioners' Welfare are requested to take further necessary action in the matter accordingly. “

9. Interpreting Annexure A-2, this Court in many identical cases, like OA 242/04 and 250/05 have granted the reliefs. Ahmedabad Bench and Madras Bench of the Tribunal also upheld the claim of the retired employees which has become final. The respondents have submitted that even though those orders have become final and in some of the cases reliefs had been granted but in view of clarification in the O.M dated 20.08.2004 which is impugned in this OA as Annexure A-3 issued by the Ministry of Health & Family Welfare, the O.M dated 05.06.1998 was not intended to be a final order extending the applicability of CS(MA) Rules, 1944 to pensioners. In view of the said O.M, the claims of the applicant for medical reimbursement is liable to be rejected. The order in O.A.No. 242/04 was taken in appeal before the Hon'ble High Court in WP(C)No.1977-2005(S) in which the Hon'ble High Court has observed as follows:-



" Learned counsel for the petitioners submitted that though the order in OA No.250/03 was not challenged by the petitioners, they decided to challenge Ext.P2 order in view of Ext.P3 O.M.No.S.14025/4/96-MS dated 20.08.2004 issued by the Government of India, Ministry of Health & Family Welfare clarifying that the Office Memorandum dated 05.06.1998 was not intended to be a final order extending the applicability of CS (MA) Rules, 1944 to pensioners. It is contended by the learned counsel that in view of Ext.P3 Office Memorandum dated 20.08.2004 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 05.06.1998 issued by the Ministry of Health & 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 05.06.1998 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 05.06.1998, 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 20.08.2004, the claim submitted and processed after 20.08.2004 may be governed by Ext.P3. But the expenditure incurred and the claim submitted and processed prior to 20.08.2004 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 12.03.2004. The petitioners rejected the claim of the respondent when the Office Memorandum dated 03.06.1998 held the field. Naturally the Tribunal upheld the claim on the basis of the Office Memorandum dated 05.06.1998 as understood till then. Further, Ext.P3 Office Memorandum dated 20.08.2004 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 05.06.1998 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 20.08.2004 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 20.08.2004 as it is unnecessary in this case.”

10. Now the matter has been settled by the aforesaid decision of Hon'ble High Court. But the counsel for respondents submitted that identical matters are also taken in appeal before the Hon'ble Supreme Court by filing an SLP which are pending disposal but no stay has been granted.

11. The learned counsel for applicant has cited the decision of the Hon'ble Supreme Court in State of Punjab Vs. Mohinder Singh Chawla (AIR 1977 1225) in which it was held 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.”

In another decision rendered by Hon'ble Delhi High Court in Narendra Pal Singh Vs. Union of India and Ors (1999 LABIC 1861) it was observed as follows:-

“The law is, therefore, well settled that right to health is an integral part to life and the government has constitutional obligation to provide the health facilities to its employees or retired employees and in case an employee requires a specified treatment in an approved hospital it is the duty of the Government to bear or reimburse the expenses”. It was also held that the “petitioner is entitled to take recourse to emergency treatment in any area if the circumstances and the nature of disease so warrant.” (The petitioner in this case was an Asst. Engineer retired from service on 31.07.1998). The Hon'ble Court has also awarded cost of Rs.10,000/- to the petitioner in this case.”



KVS employees are on par with all Central Government employees for all purposes and the same benefit which was granted to others as per O.M dated 05.06.1998 should be extended to the applicant also.

12. The learned counsel for respondents, on the other hand, submitted that it being a policy matter of the Government and huge financial implication is involved, it is not possible to extend the CS (MA) Rules to pensioners. The Central Pay Commission has not envisaged for outdoor OPD treatment. The O.M dated 05.06.1998 (Annexure A-6) has been mis-interpreted as of a proposal by the Ministry concerned. It is only a communication between the various Departments / Ministries which cannot be interpreted as Government orders. This is clarified in O.M. Dated 20.08.2004 (Annexure A-3), which reads as follows:-

“ It is therefore considered necessary to clarify unequivocally that the O.M dated 05.06.1998 was not intended to be a final order extending the applicability of CS (MA) Rules, 1944 to pensioners Therefore, any interpretation based on O.M dated 05.06.1998 of this Department that the pensioners come within the purview of CS (MA) Rules, 1944 is wholly misplaced.”

13. Now the short question for my consideration is whether the applicant is eligible for the benefit. Admittedly, the KVS employees are on par with Central Government employees for all purposes. Various Benches of the Tribunal as discussed supra had declared that as per OM dated 05.06.1998 (Annexure A-2) the benefit should be extended to the pensioners as well. But the clarificatory letter Annexure A-3 dated 20.08.2004 states that the said O.M was not intended to be a final order extending the applicability of CS (MA) Rules , 1944 to pensioners. This was approved by the Hon'ble High Court as well and when it came in WP(C)No. 1977/2005-S, the Hon'ble High Court had observed that the impugned order, Annexure A-3 dated 20.08.2004 need not be considered elaborately or its correctness or validity of the clarification or interpretation since all the claims that have been considered by this Tribunal were the claims prior to that date. The Hon'ble High Court has made it clear that the expenditure incurred and the claims submitted after 20.08.2004 can be governed by Ext.P3. Admittedly, the



treatment of this applicant starts from 14.05.2003 and the bills were submitted to the respondents on 20.08.2004 and the same were rejected. The issue of granting CGHS benefits to the retired is also pending before the Hon'ble Supreme Court in various SLPs.

14. Considering the judgment in WPC 1977/05 quoted supra, I am of the considered view that the applicant is also entitled to get the benefit of Annexure A-2 O.M dated 05.06.1998. Accordingly, for all expenditures incurred in respect of medical treatments upto the date of O.M dated 20.08.2004, the applicant *is* eligible to get reimbursement (No matter the bills submitted later on).

15. In the circumstances, I direct that the applicant shall resubmit her claim again within two weeks from the date of receipt of a copy of this order to the respondents or to the concerned authority and on receipt of the same, they shall consider all the claims upto the period of 20.08.2004 as declared by the Hon'ble High Court in WP(C) No. 1977/2005(S) and grant the relief to the applicant within six weeks on receipt of such bills. Since the applicant is suffering from terminal disease of cancer, it is made clear that the time granted should be strictly adhered to.

16. The OA is allowed as indicated above. In the circumstances, no order as to costs.

Dated, the 30th November, 2005.



K.V.SACHIDANANDAN
JUDICIAL MEMBER

vs