

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO.357 OF 2004

Tuesday this the 5th day of July, 2005

CORAM

HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN

R.Gopinathan, aged 70 years
S/o R.Raghavan Pillai,
"Shreyus" 59-Krishnavihar,
Panampally Nagar, Ernakulam.Applicant

(By Advocate Mr. R.Muraleedharan)

v.

1. The Comptroller and Auditor General of India,
New Delhi.
2. The Pay & Accounts Officer,
Office of the Accountant General (A&E)
Kerala, Thiruvananthapuram.
3. The Branch Manager,
Union Bank of India,
Panampally Nagar Branch,
Ernakulam, Kochi.36.
4. Union of India, represented by the Secretary,
Ministry of Personnel, Public Grievances
and Pension, Department of Pension and Pensioners
Welfare, New Delhi.Respondents

(By Advocate Mr.Sunil Jose,R.1,2&4)

The application having been heard on 29.6.2005, the
Tribunal on 5. 7.2005 delivered the following:

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant retired from the Accountant General's Office, Trivandrum after completion of 17 years of service and got absorbed in Cochin Shipyard Limited, a Public Sector Undertaking on 19.12.74. The applicant was eligible for pro-rata pension for his service in the Office of the Accountant General and according to the rules in force he received 100 percent commutation value of the pro-rata pension. He retired from the service of the Cochin Shipyard Limited voluntarily on 30.9.92. On the basis of the Supreme Court decision in the case of *Welfare Association of Absorbed Central Government Employees in Public Enterprises and others Vs. Union of India and another*, AIR 1996 SC 1201, 1/3rd of the pension of the applicant was restored to him with effect from 6.1.91. According to the applicant he was also drawing Rs. 100 per month as fixed medical allowance applicable to Central Government Pensioners in areas not covered under the CGHS scheme in accordance with the Office Memorandum of the Government of India, Ministry of Personnel, Public Grievances and Pension dated 19.12.97. The pension of the applicant was also notionally revised granting Dearness Allowance on full pension on the basis of the above mentioned Supreme Court Judgment. When the arrears of Dearness Allowance was ordered to be paid to the applicant a direction was given to the third respondent to recover the fixed medical allowance being paid to him from 1.12.97 till date as it was stated that he was not eligible for the same. Thereafter, the medical allowance already paid was recovered in full and further payment was stopped in respect of the applicant and other similarly placed pensioners. One such affected person

Sm

approached this Tribunal by OA 808/02 and the Tribunal allowed the application declaring that the applicant therein was eligible to get the fixed medical allowance. Thereafter the applicant submitted representations to consider his case on the same lines seeking restoration of the fixed medical allowance but the respondents have not replied to his repeated representations. Hence he has been constrained to approach this Tribunal claiming the following reliefs;

(a) Call for the records leading to the issue of Annexure.A2 and quash the same to the extent it reads as follows:

"On verification of the statement received from bank, it is seen that fixed medical allowance @ Rs. 100 p.m. from 1.12.97 has been paid to him. Since the payment of the same is not admissible to him as per our Headquarters Clarification dated 25.2.2000 payment already made up to 11/2000 has been adjusted from the arrears now authorized. Payment of fixed medical allowance made from 1.12.00 shall be adjusted by bank from the arrears now authorized.

(b) Declare that the applicant is entitled to be granted medical allowance @ Rs. 100 p.m. w.e.f. 1.12.1997 with 12 % interest per annum and direct the respondents to grant the same accordingly.
© Award costs of and incidental to this application.

(d) Pass such other orders or directions as this Hon'ble Tribunal deem fit and necessary on the facts and circumstances of the case.

2. According to the respondents in the reply statement the applicant is not eligible for the reliefs asked for. It is admitted that the Supreme Court had declared that the benefit of restoration of 1/3rd of commuted portion should be granted to all those Government pensioners who had been absorbed in Public Sector Undertakings on par with other Central Government Pensioners and the Government of India accepting the Supreme Court order issued orders to the effect that the beneficiaries in the Supreme Court's orders shall be entitled to the benefit of revision of restored amount of 1/3rd commuted portion of pension. The applicant herein was also a beneficiary of the above judgment. As regards the

payment of fixed medical allowance the respondents have stated that as per clarification dated 25.2.2000 issued by the first respondent, the petitioner was not found to be eligible for the benefit of fixed medical allowance which is applicable to only Central Government pensioners/family pensioners who at the time of retirement/death were governed by CCS (Pension) Rules, 1972 or other corresponding rules and are eligible for medical facilities after retirement. The applicant had resigned from the service of the Central Government consequent on his permanent absorption in the Cochin Shipyard Limited and retired on 30.9.92 as employee of the Cochin Shipyard Limited and was therefore not governed by CCS(Pension)Rules 1972 at the time of retirement. The applicant is eligible for any medical facility provided by the Cochin Shipyard Limited from where he retired and not from the respondents. It is also submitted that the orders of the Tribunal in OA 808/02 are applicable only to the applicant therein and cannot be extended to other persons unless the Government of India desires to extend such facilities to similarly placed persons. SLP has been filed against the order and judgment in OP 17380/02 of the Hon'ble High Court of Kerala and it is still pending on the same issue.

3. I have heard the learned counsel on either side. On the applicant's side it was argued by the learned counsel that the issue whether the Public Sector absorbees who got 1/3rd of their civil pension restored have to be treated as Central Government pensioners has already been decided in their favour by the Tribunal in its judgment on 1st day of October, 2003 in OA 808/02 which has also been confirmed in appeal by the Hon'ble High Court of Kerala in W.P.(C) No.1160/04 dated 13.1.04. The Hon'ble High Court has discussed that no rule or instructions have been pointed out to

show that the mere fact of re-employment results in denial of medical benefits to the pensioners and also that a person who opts for commutation of pension gets disentitled to claim the medical allowance and on that ground dismissed the appeal. In the light of the above judgment the counsel stated that the applicant who is a similarly placed person is entitled for the reliefs asked for. On the respondents' side it was only argued that the benefit of the judgment in OA 808/02 cannot be extended to all pensioners unless the Government of India issues specific orders.

4. I do not find any force in the argument of the respondents since the above points now raised by them were considered in detail by this Tribunal in its judgment in O.A.808/02 and rejected. On the question whether the Central Government employees who got absorbed in Public Sector Undertaking after obtaining full commutation value of pension but later got 1/3rd pension and allowances restored can be considered as Central Government Pensioners eligible for medical benefits; the Scheme itself was examined by the Tribunal in para 9 of the judgment and it was held that though the applicant retired earlier from Central Government service and later from the Cochin Shipyard Limited after absorption; as far as the Central Government is concerned the applicant is still a pensioner. The question whether those who were not entitled to CGHS benefits could be considered for payment of fixed medical allowances was also examined by the Tribunal with reference to the instructions and it was found that all Central Government pensioners who were eligible to avail CGHS facilities while in service whether they were actually enjoying such facilities or not are entitled to avail CGHS facilities after retirement. Such being the case, the applicant who was residing in an area not covered by CGHS automatically becomes eligible for the grant of fixed medical allowance

82

under the Annexure.A.1 scheme of the Government of India, Ministry of Personnel, Public Grievances and Pensions. The respondents have denied the benefit of the above scheme to the applicant basing reliance on the instructions at Annexure.R.2(a) issued by the Comptroller and Auditor General dated 25.2.2000 by which a clarification has been given that the Scheme cannot be extended to permanent absorbees of Public Undertakings. How far the Comptroller and Auditor General is competent to issue such instructions clarifying a scheme brought in by Government of India which also had the concurrence of the Comptroller and Auditor General as seen from para 9 of Annexure.A.1 order was also examined by the Tribunal in para 12 of the judgment and it was held that these clarifications are repugnant to the scheme at Annexure.A.1 and Annexure.A.4 is unenforceable.

5. The only other point raised by the respondents to be settled is whether the benefit of the judgment in OA 808/02 is applicable to all similarly placed persons. It is well settled law that when after due examination of the facts and legal position the courts have passed orders directing that the petitioner was entitled for a benefit granted by the Government all similarly placed persons have to be extended the benefit without driving every individual to approach the courts. In this case the Hon'ble High court has also confirmed the orders of the Tribunal and no S.L.P has been filed against the above judgment. The respondents have mentioned that a similar case is pending in the Hon'ble Supreme Court but no details have been furnished for examining whether the issues are similar.

6. In view of the settled legal position as discussed above, I am of the view that the case of the applicant is squarely covered by the judgment of

by

this Tribunal in O.A. 808/02 as confirmed in appeal by the Hon'ble High Court in OP 1160/04 and hence the applicant is eligible for the reliefs asked for. Annexure A2 is quashed to the extent of the portion in para 1 as extracted in the relief at (a) above. The respondents are directed to restore medical allowance at the rate of Rs. 100/- per month with effect from 1.12.97 to the applicant and any recoveries made thereof shall be refunded to the applicant. This exercise shall be completed within a period of two months from the date of receipt of this order. No order as to costs.

Dated this the 5th day of July, 2005

Sathi Nair

**SATHI NAIR
VICE CHAIRMAN**

S.