

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.673/1999

Friday, this the 4th th Day of August 2000

Shri M.D. Kulkarni Applicant.

(Applicant in person)

Versus

Union of India & Ors.... Respondents

(Respondents by R.K.Shetty, Advocate)

CORAM

Hon'ble Shri B.N. Bahadur, Member (A)

(1) To be referred to the Reporter or not? Yes

(2) Whether it needs to be circulated to No
other Benches of the Tribunal?

(3) Library. No

B.N.B.
(B.N. Bahadur)
Member (A)

sj*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.673/99

DATED: Friday, this the 4th TH DAY OF AUGUST, 2000.

CORAM:

HON'BLE SHRI B.N.BAHADUR, MEMBER (A)

Shri Murlidhar Dinkar Kulkarni S/o Late Dinkar
Waman Kulkarni,
"Prashant" Bldg. Gr. Floor,
Valji Ladha Road,
Mulund (W),
Mumbai - 400 080.
Last employed at Canteen Stores Department
"Adelphi" Bldg.,
119, Maharshi Karve Road,
Churchgate, Mumbai 400 020.

..... Applicant

(Applicant in person)
vs.

1. The Union of India
through Secretary of Defence,
Depot. of Defence,, South Block,
New Delhi.

2. The General Manager,
Canteen Stores Department,
119, M.K. Road,
Mumbai 400 020.

.... Respondents.

(By Shri R.K.Shetty, Advocate)

O R D E R

[Per: B.N.Bahadur, Member (A)]

This is an application made by Shri M.D.Kulkarni, who seeks the relief from this Tribunal for a declaration that he be provided with CGHS benefits or equivalent medical facilities on par with other civilian pensioners of Government of India (GOI). He also seeks the relief for provision of compensation for the period from the date of his retirement since no medical aid was provided to him and hence prays for payment of Rs.300/- per month. Shri Kulkarni also seeks the relief for re-fixation of his Pension and Family Pension as detailed at para-8c of his OA.

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2. The case made out by the Applicant, who appeared in person to argue his case, is as follows:-

The Applicant has stated that he had pleaded for the benefits claimed vide his letter dated 12/5/98 (page-19) and was informed that the matter was referred to the Board of Control Canteen Services, (BOCCS). Thereafter, he describes the correspondence made by him to the various authorities in Government and also describes the details of some of the replies he received. These are contained in the OA, as Annexures.

3. The Applicant took me over to the facts of the case by referring to the various documents filed by him and the Respondents. He drew attention to page-40, where he sought medical allowance by writing to the General Manager of the CSD. He also drew my attention to the instructions issued by Government of India vide their communication dated 5/6/98 titled "Extension of CS(MA) Rules, 1944 to pensioners residing in areas not covered by CGHS." Shri Kulkarni submitted written arguments also, and since he was party in person, these have been also referred to (Learned Counsel for the Other side stated that he had no objection).

4. The Applicant argues that Central Government pensioners cannot be divided for entitlement to medical facilities, and being part and parcel of the Government of India, CSD employees cannot be discriminated against, and deprived of medical facilities after retirement. The Applicant has again referred to several letters and correspondences in his written statement of arguments and these and some of his views on general policy necessary for equity are not being reproduced. Suffice it to say

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that the Applicant states that the Respondents are failing in their constitutional duty in applying neither CS(MA) Rules nor the CGHS to the Applicant and similar persons who retired from Canteen & Stores Dept. (CSD).

5. The Respondents in the case have filed a reply stating first that the benefit claimed was basically for payment of medical allowance at the rate of Rs.100/- per month by relying upon the Government decision on the recommendations of Fifth Pay Commission, as contained in Government OM dated 19/12/1997(R-1).

It is averred that this OM is not applicable to the applicant who is not entitled to any medical benefits after retirement. The Learned Counsel, Shri Masurkar, also reiterated this during arguments and added that free medical facilities are offered to those CSD employees who are in service, in Defence Hospitals while they are in service but since no post-retiral medical facilities are available, they cannot get any benefit from CGHS also. He made the point that CGHS was a scheme which entailed contribution during, and after, service. The Learned Counsel stated that there was a demand for extension of medical facilities to retired CSD employees, but that demand could be considered only by the Government and that this involved taking of a policy decision. Such a relief cannot be provided by a Court/Tribunal, and the Applicant cannot compare himself to CGHS beneficiaries.

6. The basic point that has been made by the Applicant is that he has been deprived ^{of his} the provision of any kind of medical facilities after his retirement and secondly that CSD employees

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being Govt. employees, such kind of deprivation is discriminatory in nature. Although pleadings have been made in detail, and copious correspondence has been alluded to by furnishing of copies, *I* will ^{*But*} *confine myself* to the main issues at hand and while appreciating the difficult position of pensioners who are not provided with any kind of medical facility after retirement, the examination of the case will necessarily have to be done with reference to the hard reality of rules applicable.

7. It has been stated by the Respondents that the applicant is not entitled to any medical facilities nor covered by the CGHS Scheme. The Ministry of Defence (Canteen Stores Department) has also clarified this position, in the communication dated 24.3.1999, annexed at page 13. The Applicant has also annexed and depended on Orders of the Govt. of India, relating to implementation of Govt's decision on Fifth Pay Commission recommendations but these are applicable to the generality of Govt. servants and do not talk of their applicability to the CSD pensioners. There are a number of applications on record as made by the Applicant to various authorities, and these can be seen from at pages 19 onwards. Unfortunately there is no communication that will show that the Applicant or CSD employees are authorised to receive medical benefits. It was strenuously argued by the Applicant that this kind of situation amounts to discrimination in terms of the Constitution of India.

8. It must be stated here that I have carefully considered the argument of discrimination vis-a-vis the facts of the case. It is not a case of the Applicant not being

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provided a facility which is being provided to another CSD employee. The case is that CSD employees are not provided the facilities that are provided to other Govt. of India Pensioners. Now it has to be concluded that this matter falls within the realm of Policy and has to be decided by the Govt. of India and cannot be provided by judicial determination. It is true that provision of medical facilities is a basic requirement and becomes all the more relevant after retirement because of old age. There could perhaps be a very strong case in favour of by employees, like the present Applicant and those similarly placed (CSD) employees) for being considered for provision of such benefits. However, as stated above, the Tribunal would be restricted by the law settled in this regard by the Apex Court. It is clear that such matters of policy are to be decided by Govt. It was mentioned, in passing, at the time of arguments, that representations have been made to the Govt. in this regard. It would be open to Govt. to consider this and take such a decision that it deems fit as a part of its policy. No directions can, however, be given in this regard.

9. Learned Counsel for the Respondents had pointed out that this issue has been decided already by a Bench of this Tribunal in this Order O.A.No.590/99 made on 13.4.2000. I have seen these orders and find myself in full agreement *with them. But* accordingly, the reasons with regard to rules, discussed in that order are not being repeated here.

10. The Applicant has also made a prayer at para 8 (c) for refixation of pension/family pension with reference to the communication of Ministry of P.G. dated 19th September, 1999 (page 14). In their reply on this point dated 5th November, 1999 the

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Respondents have stated that revised pension will be released after audit verification for which the case has been sent. The latest position, in this regard has not been mentioned in the written arguments submitted by the Applicant and I am not able to give directions in this regard. However, it is to be hoped that action in this regard would be completed as soon as possible and the Applicant given his rightful dues.

11. In view of ^{the above} discussions, the Application is hereby dismissed subject to the observations made in para 10. There ~~are~~ no orders as to costs.

B.N. Bahadur

(B.N. Bahadur)

Member (A)

sj*