

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 598/99

DATE OF DECISION: 13/4/2000

_____Shri J.Jaganathan _____Applicant.

_____Shri R.P.Saxena _____Advocate for
_____Applicant.

Versus

_____Union of India & Anr,.. _____Respondents.

_____Shri R.K.Shetty _____Advocate for
_____Respondents.

CORAM:

Hon'ble Shri S.L.JAIN, MEMBER(J)

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. yes.

S.L.JAIN
(S.L.JAIN)
MEMBER(J)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION: 598/99
DATED THE 13th DAY OF APRIL, 2000

CORAM: HON'BLE SHRI S.L.JAIN, MEMBER(J)

Shri J.Jaganathan,
Flat-B-111, Laxmi Tower,
Anand Nagar, Navghar
Vasai(West)-401 202
Dist.Thane (Maharashtra).

... Applicant

By Advocate Shri R.P.Saxena

V/s.

1. Union of India, through
The Secretary,
Board of Control, Canteen Services
L-1 Block, Room No.16,
Church Road,
New Delhi-110 001.
2. The General Manager,
Canteen Stores Department,
ADELPHI 119, M.K.Road,
Mumbai - 400 020.

... Respondents

By Advocate Shri R.K.Shetty

(ORDER)

Per Shri S.L.Jain, Member(J).

This is an application under section 19 of the
Administrative Tribunals Act 1985 seeking the following reliefs:-

- 8.01 To call for the records and set-aside impugned orders dated 27/1/99 and 24/3/99, after examining the same.
- 8.02 To hold and declare that all the pensioners/family pensioners of the Canteen Stores Department are entitled to medical allowances @ Rs.100/- per month with effect from 1/1/96, the date for implementation of all the recommendations of Fifth Central Pay Commission by the Government of India.
- 8.03 To direct the respondents to make the payment of medical allowance @ Rs.100/- per month with effect from 1/1/96 to the pensioners of the Canteen Stores Department.
- 8.04 To order cost and such other reliefs as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

S.Us/-

2. At the commencement of hearing, applicant's counsel is asked whether it is ^a claim in respect of the Pensioners/Public Interest Litigation and whether the validity of the scheme is being challenged. He stated that neither the validity of the scheme is being challenged nor it is claim in respect of Public interest litigation but he is claiming the relief on the recommendations of the Vth Pay Commission and orders passed by Government of India in this respect. In view of the above submission, the judgement reported in JT-1997(1)S.C.416 State of Punjab V/s. Mohinder Singh Chawls etc which lays down the ^h proposition that

"Right to health is integral to right life to and government has constitutional obligation to provide the health facilities to its servants or retired servants - Where employee requiring specialised treatment in an approved hospital, duty of Government is to bear or re-imburse expenses."

and JT-1996(11)S.C.109 - Air India Statutory Corporation etc.

V/s. United Labour Union & Ors. etc. ~~1996(11)S.C.109~~

^h alongwith 1999(4)SLR-648, Narendra Pal Singh Vs. Union of India & Ors which also lays down the same proposition of law has no bearing in the present case.

3. The applicant claims that Canteen Stores Department employees are governed by the Fundamental Rules and Supplementary Rules, Central Services (Medical Attendance)Rules 1944, Central Civil Services (Classification, Control and Appeal) Rules, 1965, Central Civil Services (leave) Rules, 1972 and Central Services (Pension) Rules, 1972, etc as amended from time to time. On the recommendation of the Vth Central Pay Commission

which is at Annexure A-4, the Government of India Department of Pension and Pensioners Welfare issued an Office Memorandum No.45/57/97-P & PW(C) dated 19/12/97 for implementation of Government's decision on the recommendations of the Vth Central Pay Commission to grant fixed Medical allowance @Rs.100/- p.m. to the Central Government Pensioners residing in area not covered by CGHS. Para-2 of the said order reads as under:-

"2. These orders shall apply to Central Government Pensioners/family pensioners, who at the time of retirement/death were governed by CCS(Pension) Rules, 1972 or other corresponding rules in operation prior to commencement of these rules and are eligible for medical facilities after retirement. Separate orders will be issued by the respective administrative authorities in respect of members of Armed Forces, All India Services and Railway pensioners/family pensioners."

4. The Government of India, Department of Pension and Pensioners Welfare vide Office Memorandum dated 24/8/98 have clarified the position with regard to para-2,3 & 4 of the said memorandum by stating that the said memorandum applies to Pensioners/Family Pensioners residing in areas not covered by CGHS, the area where CGHS facilities are available, if the pensioners are residing in the said area, they cannot opt for medical allowance of Rs.100/- p.m., in view of OPD facilities, as CGS facility is not compulsory to all Central Government Pensioners, Pensioners who have not opted for such facility at the time of their retirement, any such fixed medical allowance is not payable if they are residing in area where CGS facility exists. The fixed medical allowance of Rs.100/- p.m. in lieu of OPD facility has to be paid to Pensioners on the basis of

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declaration submitted by them that they are residing in the area where CGS facility is not available.

5. The respondents contend that order dated 19/12/97 is not applicable to Canteen Stores Department notwithstanding the fact that the applicant being pensioner has constitutional right to have health facilities, provisions of the Civil Service (Medical Attendance) Rules 1944 are yet to be extended to the Pensioners and the modalities have to be worked out for the implementation of the same. Even after finalisation of modalities, this will facilitate reimbursement of expenditure on hospitalisation in a Government Hospital/Private Hospital, recognised under the Canteen Stores Department, CS(MA) rules 1944. The applicant is entitled to get a fixed amount of Medical Allowance @ Rs.100/- p.m. for meeting the expenditure of day to day medical expenses that do not require hospitalisation as per the recommendation of the Vth Pay Commission and expenses of the same.

6. The claim is resisted by the respondents on the ground that applicant's case is not covered by the order of the Central Government order dated 19/12/97. The text of the para-2 of the order dated 19/12/97 which is mentioned in para-3 of the order is worth consideration.

7. On perusal of para-2 of the same, it is clear that the said office memorandum applies to (a) Central Government Pensioners/family pensioners who at the time of retirement/death are governed by CCS(Pension) Rules 1972 or other corresponding rules in operation prior to commencement of this scheme. (b) if such pensioners are eligible for medical facilities after

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retirement. It cannot be read in this way that Central Government Pensioners/Family Pensioners who at the time of retirement/death were governed by CCS(Pension) Rules 1972 are entitled to medical facilities after retirement for the reason that in the first part of the order eligibility of the Pensioners governed by Pension Rules as mentioned and then in second part criteria regarding eligibility is mentioned. As the applicant is governed by CS(MA) Rules 1944, not eligible for medical facilities after retirement, therefore his contention that he is governed by CCS(Pension) Rules 1972, hence entitled to the said medical facilities, cannot be accepted.

8. The clarification to the said office memorandum vide office memorandum dated 24/8/98 in no way helps the applicants for the reason that it only specifies regarding the pensioners residing in an area where CGS facilities are available, not available and where in view of the same, an option can be exercised.

9. In the result, I do not find any merit in the OA and hence it deserves to be dismissed and is dismissed accordingly with no orders as to costs.

S.L.JAIN
(S.L.JAIN)
MEMBER(J)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

REVIEW PETITION NO:23/2000
IN O.A.NO.598/1999.

DATED THE 5th DAY OF JUNE, 2000.

Shri J.Jaganathan,
Flat -B-111, Laxmi Tower,
Anand Nagar, Navghar
Vasai (West) - 401 202
Dist.Thane (Maharashtra). ... Applicant

V/s.

1. Union of India, through
The Secretary,
Board of Control, Canteen Services,
L-1 Block, Room No.16,
Church Road,
New Delhi-110 001.
2. The General Manager,
Canteen Stores Department,
ADELPHI 119, M.K.Road,
Mumbai - 400 020. ... Respondents.

ORDER BY CIRCULATION

The Applicant, whose OA-598/99 has been decided vide order dated 13th April,2000, has filed this review petition under Rule ⁵ Section 17 of the Central Administrative Tribunal Procedure Rules 1987 on 1st May,2000.

2. The applicant has sought the review of the order on the ground that the right to health is integral to right to life and Government has constitutional obligation to provide the health facilities to the servants or retired servants, as per the decision of the Apex Court which is the law as per Article 141 of the Constitution which is to be regarded irrespective of the rules framed under Article 309 of the Constitution of India i.e. C.S.(M.A.) Rules. In view of the recommendation of the Vth

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Central Pay Commission regarding medical facilities to retired Government servants, the acceptance and intention of the Government of India as reflected in O.M. dated 19/12/97 and 5/6/98 are to be interpreted logically and harmoniously being a welfare measure.

The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court. AIR 1963 SC 1909 Disting."

Keeping in view the above said principle the Review Application deserves to be considered.

3. The grounds as stated above for review of the order does not exist. The review cannot be a mode of rehearing or reconsidering the matter again. The order passed by this Bench has considered the contention of the applicant which are again reiterated.

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4. In the result, I do not find any merit in the review petition, it is liable to be dismissed and is dismissed accordingly without notice to the opposite parites.

S.L.JAIN
(S.L.JAIN)
MEMBER(J)

16/6/00
order/Judgement despatched
to Applicant/Respondent(s)
on 16/6/00

22/6/00