

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.579/99

THIS THE 27TH DAY OF AUGUST, 2002

CORAM: HON'BLE SMT. SHANTA SHASTRY. .. MEMBER (A)

Smt. Indubai M. Mahalle,
Widow of late Shri Mankrao
Anantrao Mahalle, 702,
Godavari, Worli Sagar Co-
operative Housing Society,
Sir Pochkhanwala Road,
Worli, Mumbai-400 025.

... Applicant

By Advocate Shri P.A. Prabhakaran.

Versus

1. Union of India,
through Secretary,
Ministry of Health &
Family Welfare, New Delhi.
2. The Director, Central
Government Health Scheme,
545/A Nirman Bhavan, New Delhi.
3. Additional Director, Central
Government Health Scheme,
2nd Floor, United India Building,
Ssir Phirozshah Mehta Road,
Mumbai-400 001. ... Respondents

By Advocate Shri V.G. Rege.

O R D E R

Hon'ble Smt. Shanta Shastry. Member (A)

The applicant was employed in the Incometax Department and retired as Deputy Commissioner of Incometax (since redesignated as Joint Commissioner of Incometax) on superannuation on 28.02.1985. At the time of his retirement, he was in Mumbai. During his service period, the applicant was contributing to the CGHS all through. In 1982, OM dated 28.4.1982 was issued deciding that pensioners deciding to continue to avail

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the CGHS facility, had to pay subscription on six monthly basis for three or four years in lump sum at a time. Thereafter, the applicant took a fresh CGHS card on 21.9.1987 by paying an amount of Rs.108/-. The CGHS card was valid upto 30.6.1988, the applicant did not renew the card further.

2. On 26.8.1991, Ministry of Health and Family Welfare issued a circular laying down certain guidelines for renewal of CGHS card entitling the pensioners, who were covered by CGH Scheme but whose claim could not be entertained due to expiry of CGHS card, the applicant did not do anything. In the meantime he had already undergone by-pass surgery. At that time he had not claimed reimbursement of the medical expenses.

3. In 1997, the applicant had to be admitted to the Breachcandy Hospital in Mumbai as he suffered Heart-attack and by-pass surgery was performed on him. The applicant had to overstay in the hospital due to certain shortcomings in the treatment. He incurred an expenditure of Rs.8,08,682/-. The applicant had obtained CGHS card on 13.6.1997 in terms of Government of India orders dated 26.3.1991. He accordingly, preferred a claim vide his letter dated 09.02.1998 addressed to the Additional Director of CGHS, Mumbai. However, his claim was rejected on the ground that the applicant was not a subscriber to the CGHS when the

applicant was treated in the Breachcandy hospital, only his claim from 13.6.1997 can be considered. Being aggrieved, the applicant has approached this Tribunal for a direction to the respondents to allow his claim for medical reimbursement in full and pay him interest at market rate from the date of preferring of the claim i.e. from 09.02.1998 till the date of actual payment.

4. The main contention of the applicant is that denying his claim is against the preamble of the Constitution of India as the applicant is entitled to social and economic justice. As per circular dated 26.3.1991 of the Ministry of Health and Family Welfare, one of the reasons for condonation of delay in renewal of the card was, stated to be old age. Therefore, according to the applicant, fixing the period of one month for renewal of CGHS card in such cases was unreasonable and devoid of any logic. Also, the applicant had already attained 68 years, which is the life expectancy fixed by circular dated 17.10.1991. According to the applicant, therefore, following the wooden criteria even after the age of 68 years was unreasonable. The applicant further contended that he had to pay for 10 years contribution even though he had crossed the age of 68 years on 12.02.1995. Also he was made to pay for the period from 13.6.1987 to 30.6.1988 for which had already paid once. Having paid the subscription for 10 years period starting from

13.6.1987, it has to be held that the issue of the permanent CGHS card was with effect from 13.6.1987 and he was continuously holding the same. Therefore to hold that there was no valid card from 01.7.1988 to 30.6.1997 is wrong. CGHS cannot be compared or operated on the line of medical insurance which is operative from the date of execution of policy. CGHS has a social and moral obligation. According to the applicant, though he had not bothered to get the CGHS card, by making lump sum payment equal to the contribution of 10 years he tried to get the CGHS card in 1996 by entering into correspondence with the concerned authority. He could not pursue the matter due to his old age. Finally he was granted the CGHS card on 13.6.87, whereas he got heart attack on 12.02.1997. Having paid the contribution for 10 years his CGHS card ought to have been treated as renewed card, in that, the applicant submits that he was not issued with any new CGHS card, but the old card was renewed. Therefore all along he was CGHS card holder, even when he was admitted in the Breachcandy hospital on 12.02.1997. Therefore, he is entitled for reimbursement of medical expenses incurred by him.

5. During the pendency of this OA the applicant expired and his legal heir was brought on record through MP No.527/2002.

6. The respondents submit that the applicant has misconstrued the relevant instructions on the subject and have suppressed material facts bearing on the issue. He is not entitled to the relief prayed for. The respondents admit that the applicant, on his retirement had obtained a fresh CGHS card by paying the subscription for availing the benefit of the CGHS card and the CGHS card was valid upto 30.6.1988. He did not take any action thereafter to get his CGHS card renewed. He had knowledge about the OM dated 17.10.1991 which permitted payment of contribution on one time basis by the pensioners and he did not take any steps till June, 1997. The applicant also had mentioned that his card was misplaced after his retirement and therefore, he did not take steps to intimate the concerned authority about the misplacement of the card. When the applicant was admitted for treatment on 12.02.1997 in Breachcandy hospital, which is a unrecognised hospital, he was not in position of any valid CGHS card issued under the CGHS. It is only when the applicant found that the expenses were substantial that he took steps to acquire permanent card by making one time payment with the sole intention to claim reimbursement of the expenses already incurred. Thereafter a further OM was issued on 26.3.1991 wherein it has been stated in an unambiguous manner, if the card is not renewed within the grace period of one month from the date of expiry of the valid period of the card, any treatment taken prior to the

date of renewal of the card cannot be considered for reimbursement. Such pensioners will not be entitled to get any medical reimbursement. The applicant had full knowledge about various instructions of the Government of India, but had not bothered till 1997 to get his CGHS card renewed or to get a new card. Further, the respondents, inspite of the fact that the applicant had taken treatment in a unrecognised hospital allowed reimbursement of the expenses incurred by the applicant after 13.6.1997 and accordingly, he was paid an amount of Rs.10,888/- on 18.11.1999 vide Cheque No.876950 drawn on Bank of Baroda. The respondents thus submit that the applicant is not entitled to reimbursement from the date when he did not possess a valid CGHS card.

7. The applicant argued further that as part of enlargement and liberalization of the scheme by Ministry of Health & Family Welfare vide OM dated 13.5.1994 have allowed the reimbursement for repeat angioplasty and by-pass surgery to Central Government employees/pensioners to both CGHS beneficiaries and beneficiaries covered under CS (MA) Rules. Thus the OM establishes the entitlement eligibility on being Central Government Employee /Pensioner only and not necessarily on being a member or token holder of the CGHS card for which only the residence given during the service period is material. He has further contended that prior to his superannuation, there was no option for an employee who

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happened to be a resident of the notified area whether he utilised the service or not he had to pay the subscription throughout his service till his retirement. The applicant also cited a judgment of the Ernakulam Bench of this Tribunal, which disposed of nine applications by canteen employees. A judgment was delivered by the Apex Court in M.M.R. Khan/C.K. Jha & Others observing that the canteen employees are not required to be registered with the DOP Directorate of Canteen for the employees to be regularised. The SLP filed against the order of Ernakulam Bench was dismissed. Just as the condition of registration was not insisted upon as a precondition for regularisation in case of canteen employees in applicant's case he being a Government servant the possession of the CGHS card should not have been insisted. The card is only a token of being a Government servant.

8. I have heard the learned counsel for the applicant at great length so also the learned counsel for the respondents. The factual position is that after the CGHS card held by the applicant had expired on 13.6.1988, the applicant made no move to get his card renewed or to obtain a fresh card till 1997 when he had to be admitted to a unrecognised hospital on 01.02.1997, he got his card on 13.6.1997. The Government gave enough opportunities to the pensioners to obtain permanent CGHS card by paying the lump sum amount

equivalent to contribution for 10 years. Even one month's grace period was given for those, who had failed to get their cards renewed or made out. In respect of this, the applicant did not take any steps till 1996 according to him. The applicant's contention that since he had paid a lump sum amount, which covered the period from 01.7.1988 is not at all tenable. It is not that he paid for that period, but it is only for determining the amount of lump sum to be paid for obtaining the permanent CGHS card that ten months period was taken into consideration. Therefore, it cannot be said that the applicant was a CGHS card holder from 01.7.1988. The applicant had undergone by-pass surgery earlier also, but he had not claimed any reimbursement at that time. This shows that applicant was indifferent towards renewing his CGHS card and perhaps did not need it. It is only as an after thought that when the expense was substantial, he thought of claiming reimbursement the CGHS card. I do not find any convincing ground whereby the applicant can be entitled to the reimbursement of the expenses incurred by him prior to his getting his CGHS card. According to me the OA is devoid of any merit. In the result, the OA is dismissed. No costs.

Shanta Shastri

(SMT. SHANTA SHASTRY)
MEMBER (A)

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