

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 9.12.2004

OA 579/2003

Shyam Sunder Dua s/o Shri S.S.Dua r/o 69A, Gopal Bari, Jaipur.

... Applicant

Versus

1. Union of India through Secretary, Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi.
2. Director, CGHS, Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi.
3. Addl. Director, CGHS, Hotel Radha Krishna, Near Railway Station, Jaipur.

... Respondents

CORAM:

HON'BLE MR.A.K.BHANDARI, MEMBER (A)

For the Applicant

... Mr. Shiv Kumar

For the Respondents

... Mr. Pankaj Jain, proxy  
counsel for Mr. Manu Bhargava

ORDER (ORAL)

The short question to be decided in this OA is regarding eligibility of the applicant for CGHS facility as pensioner from Audit Office (Workshop) Ajmer, Western Railway. The exact prayer clause reads as under :

"That the impugned orders dated 12.9.2003 & 10/11.6.2003 (Ann.A/1 & A/2) rejecting the request for providing the CGHS facility to the applicant may please be declared illegal, arbitrary and the same may be quashed and further the respondents may be directed to provide/enroll applicant in CGHS facility."

2. Brief facts, as enumerated in the OA, are that the applicant who retired as Audit Officer (Workshop) Ajmer on 31.3.2003 under the control of Principal Director of Audit, Western Railway, is a subordinate of Chief Accountant General (C&AG) of India. That the staff working under administrative control of C&AG are Central Government servants and none of the Railway authorities have any administrative control over their work. All through his service career, applicant was availing CGHS facility but after retirement when he submitted an application dated



9.6.2003 (Ann.A/3) to respondent No.3 for grant of CGHS facility, he got a swift reply dated 9.6.2003 (Ann.A/2) stating that as per order No.11011/1/87-CGHS.D.I/CGHS(P) dated 7.7.1987 all the Central Government pensioners (except Railway and Defence) have the option to get their name registered with CGHS. However, the applicant's pension is debited to Western Railway, therefore, he cannot be made a member of the CGHS. He then made a representation to respondent No.2 and further reminded him about his case but he has been informed again by respondent No.2 that decision in this matter remains same as already conveyed, in other words, he cannot be made a member of the CGHS for medical facility (Ann.A/1). The applicant then wrote to the office of Audit Officer (Administration), O/o Principal Director of Audit, Western Railway, Churchgate, Mumbai, to take up the matter with CGHS. The former wrote to CGHS explaining whole situation specifically that Railway Audit employees are not railway employees and that they are governed by CCS (Pension) Rules, 1972. Therefore, the applicant is eligible to avail the CGHS facility vide letter dated 22.10.2003 (Ann.A/6), but to no avail.

3. In the grounds it is pleaded that the applicant belongs to the Audit Service which is a Central Service and his pension is governed by CCS (Pension) Rules, 1972 and that he is eligible to avail CGHS facility, that he was appointed as a Central Government employee and never as a Railway employee, that he remained all along under administrative control of C&AG of India, due to which reason not giving CGHS facility under mistaken belief that he is a Railway employee is illegal and arbitrary, and lastly, this denial amounts to abrogation of provisions of the Constitution because it is discriminatory inasmuch as many members of his service who worked in the Railway Audit are members of CGHS for medical facility after retirement. The applicant undertook to give details of such employees in due course.

4. Respondents have filed a detailed reply. While agreeing that

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while in service although the applicant worked in the Railway Audit, he was member of the CGHS for the purposes of medical facilities, however, due to the fact that for his pension debit is raised to the Railway, which is proved by entry in column-2 of his PPO dated 9.5.2003 (Ann.R/1), he cannot be afforded CGHS facilities. Referring the OM dated 7.7.1987 (Ann.R/2) on the subject; "Extension of CGHS facilities to Central Government pensioners in Delhi, Bombay, Calcutta, Madras and Pune", it is stated that those persons who are getting pension through Central Service head only are entitled to CGHS facility. However, in some cases facilities were extended to others also namely ex MPs, retired Judges of Hon'ble High Courts and Supreme Court but the same cannot be given to the applicant in absence of such specific orders. Respondent No.3 in his reply at para 4.5 declined to comment about the contention that other pensioners belonging to Railway Audit Service are receiving CGHS facility due to lack of knowledge about them.

5. The applicant has filed a rejoinder reasserting his prayer and stating that the reply of the respondents is wrong. In course of deliberation over the case applicant was asked to submit information about retired officers of Railway Audit getting facility of CGHS and he through his additional affidavit dated 23.8.2004 has given following information. Firstly, the office of Principal Director of Audit, Western Railway, Churchgate, Mumbai, has by his letter dated 28.9.2004 (Ann.A/1 with the affidavit) conveyed name of S/Shri N.B.Kurhekar, retired Sr.Audit Officer, retired on 31.8.2002, and P.A.Mokar, retired Sr.Audit Officer, retired on 31.5.2004, as those drawing CGHS facility. Secondly, as per his information Shri S.L.Nog, who retired as Assistant Audit Officer from Railway on 30.4.93, is getting CGHS facility with his Card No.68136. Thirdly, as per his own information following eight persons are getting CGHS facility at Jaipur. Their Card number and Dispensary number are also mentioned against their names :

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<u>S.Nl.</u>	<u>Name</u>	<u>Card No.</u>	<u>Disp.No.</u>
1.	Smt.Amita Goyal	059897	Not Known
2.	Smt.Hemlata Singhani	059898	Not Known
3.	Shri Vinod Kumar Sharma	081290	05
4.	Shri P.N.Siingh	058882	04
5.	Shri O.P.Parikh	059899	04
6.	Shri Sanjay Kumar Mishra	058885	04
7.	Shri Niraj Dhamija	081288	05
8.	Shri J.R.Raijwa	081289	03

It is also stated in this affidavit that while in service applicant was getting CGHS facility and not Railway Health Service facility and that after retirement he is without doubt eligible for continuation of the same.


6. Counsel for respondents vide order-sheet dated 5.10.2004 was given opportunity to respond to the facts stated in the additional affidavit. On his request, vide order-sheet dated 2.11.2004, a further opportunity to file information by 9.12.2004 was given but on the day of hearing counsel for the respondents declined to given any information and struck to his stand that on the basis of facts already stated in the reply the applicant is not entitled to avail of CGHS medical facility as a pensioner. On the counter, contrary to this, counsel for applicant has drawn my attention to Rule-18 of Railway Audit Manual, Fifth Edition, on the subject; "Medical Attendance", under which for the purpose of medical attendance the staff of the Railway Audit Department and their family members are governed by the Central Services (Medical Attendance) Rules, 1944 as amended from time to time.

7. After careful consideration of all facts and pleadings I am inclined to dismiss the plea of the respondents which is on the face of it misconcieved because firstly; the applicant without doubt belongs to



Audit Service with full administrative control of C&AG of India over him. In these circumstances, the railway administration have absolutely no locus standi as his superior or supervisory officer and by all accounts he belongs to a Central Civil Service. Secondly, CCS (Pension) Rules, 1972 are applicable to him for the purposes of pension and not the Pension Rules of the Railway. Thirdly, all through his service career applicant has enjoyed CGHS facility, which fact has not been disputed by the respondents, and lastly, in face of overload information about a number of other pensioners of Railway Audit Service in Jaipur and elsewhere enjoying the CGHS medical facilities plea of the respondents makes their action in denying CGHS facility to applicant discriminatory, therefore, arbitrary and illegal. I also like to refer in this regard to a decision of this very Bench of the Tribunal in OA 507/2002 dated 12.8.2004, Central Government Pensioners Association, Rajasthan, Jaipur, & Another - v. - Union of India & Ors., in which similar prayer of Central Government Pensioners Association on behalf of the pensioners of P&T Department was accepted. In this decision the matter was examined at length before directing the respondents to extend CGHS facility to P&T employees who are also governed under Central Services (Medical Attendance) Rules, 1944.

8. In view of what has been stated above, the OA is allowed and the orders dated 12.9.2003 and 10/11.6.2003 (Ann.A/1 and A/2) are quashed and set aside. The applicant is directed to make a fresh application to respondent No.3 within 15 days of receipt of this decision for extending CGHS facility to him. Respondent No.3 is directed to entertain the same and issue orders in his favour within one month of receipt of the said application. It is also made clear that in view of the fact that applicant is a pensioner, respondent No.3 should act diligently because in old age applicant can require emergent medical attendance without notice. No order as to costs.

  
(A.K.BHANDARI)

MEMBER (A)