

Central Administrative Tribunal  
Principal: New Delhi

**OA No.2771/2015**

Reserved on: 22.12.2015  
Pronounced on: 05.01.2016

**Hon'ble Dr. B.K. Sinha, Member (A)**

Ashwani Kumar Singh  
S/o late Sh. Suraj Pal Singh  
R/o H.No. 302, Sector P-3,  
Greater Noida, Gautam Budh Nagar,  
Uttar Pradesh. ....Applicant

(By Advocate: Mr. Vijendra Pal Singh for Mr. Rajat Kumar Rathee)

**Versus**

1. Union of India through  
Secretary,  
Ministry of Health & Family Welfare,  
Nirman hawan,  
New Delhi – 110 011.
2. Additional Director (HQ)  
Central Govt. Health Scheme,  
Sector XII, R.K. Puram,  
New Delhi. ....Respondents

(By Advocate: Sh. Gyanendra Singh and Mr. Rajat Gaur)

**O R D E R**

The applicant, who was working as Sub Post Master in the respondent-organization, took voluntary retirement w.e.f. 31.07.2010. He is aggrieved with the OM of the respondent dated 01.08.1996 which states that the P&T pensioners, who had been members of the CGHS Scheme prior to their retirement, would be allowed to transfer their CGHS cards from one CGHS covering city to another, while such pensioners who had not been participating in CGHS Scheme while in service are not to be extended this facility.

2. The case of the applicant is that he joined the services of the respondent-organization on 19.12.1972 and took voluntary retirement w.e.f. 31.07.2010 as Sub Post Master at Bulandshahr, (UP).

While in service, it is the case of the applicant, he had been posted at places where CGHS facilities were not available. The applicant shifted after retirement to Greater Noida, Gautam Budh Nagar, UP along with family where he gathered that CGHS facility was available at that station. He visited the CGHS office located in Sector 12, R.K. Puram, New Delhi but the officials there refused to accept his application for issuance of CGHS Card on the ground that postal employees could not avail of the benefits of CGHS facilities after their retirement. The applicant submits that since he has now shifted to Greater Noida, UP where the CGHS facilities are available and that the postal department is also covered under CGHS Scheme, he should, therefore, be allowed to avail the medical facilities under the CGHS Scheme by issuing him CGHS Card. He has prayed for the following relief(s):-

- (i) *That the Hon'ble Tribunal may graciously be pleased to quash the impugned OM No.S-11011/46/95-CG. S.D-IICGHS, Dated 01/08/1996 (Annexure A-1) qua the applicant only.*
- (ii) *That the Hon'ble Tribunal may graciously be pleased to direct the respondent no.2 to take the application of the applicant for making the CGHS card and issue the CGHS card to applicant and his wife as soon as possible.*
- (iii) *Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicant along with the cost of litigation, in the interest of justice.*

3. The applicant has relied upon the decision of the Hon'ble High Court of Karnataka in *Union of India & Ors. Vs. N. Nanjundaiah* [WP

No.6051/2002 with connected petitions decided on 31.07.2009]. He has also relied upon Tribunal's decisions in *Subhash Goyal (Retd. Senior Post Master) Vs. Union of India & Anr.* [OA No.1198/2015 decided on 30.03.2015]; *Murari Lal Mathur Vs. Union of India & Anr.* [OA No.3646/2011 decided on 19.10.2011]; *Badri Prakash Vs. Union of India & Ors.* [OA No.262-PB-2013 decided on 15.03.2013]; etc.

4. Per contra, the respondents have submitted in their counter affidavit that Greater Noida (UP) is a CGHS covered area with an area demarcation of Greater Noida Municipal area since 13.12.2012. The respondents clarified that CGHS facilities are not available to such postal employees who had not availed of the same during their service period. The guidelines issued on 01.08.1996 have been challenged and the case is pending consideration at the level of the Hon'ble Supreme Court. The respondents have also sought immunity from judicial intervention on the ground that the present issue falls within the policy domain and, as such, is not to be questioned in courts of law.

5. I have carefully gone through the pleadings of the parties and patiently heard the arguments advanced by the learned counsel for both the parties. The simple issue for determination is that whether the applicant is entitled to the CGHS benefit or not under terms of the OM dated 01.08.1996 which is being extracted herein below for the sake of greater clarity:-

*"Sub: Extension of CGHS to the pensioners of Post and Telegraph Department.*

*Sir,*

*I am directed to say that the issue of extension of CGHS medical facility to the retired employees of Post and Telegraph Department has been under consideration of this Ministry for some time past. It has now been decided that those Post and Telegraph pensioners who were members of CGHS Scheme prior to retirement may be allowed to transfer their CGHS cards from one CGHS covered city to another CGHS covered city. However, the Post and Telegraph pensioners who were not participating in CGHS while in service may not be extended this facility."*

6. I have taken note of the averments in the OA that since the applicant had been posted in or around Bulandshahr (UP) where the facilities of CGHS were not available he could never avail of the same during his service period. It is only after the applicant has been shifted to Greater Noida (UP) that he learnt that the CGHS facilities were available there. Hence, it was none of his fault that he could not avail of the CGHS facility during his service period and, therefore, he seeks extension of such a facility on the ground that it was not for him to decide his postings.

7. It is an admitted fact that the applicant during his service tenure had been posted at such stations where CGHS facilities were not available. The contents of the OM dated 01.08.1996 are also not in dispute that only persons who had been availing the CGHS facilities during their active service period would only be entitled to the facilities in the post retirement stage. However, I find that a major reliance has been placed by the learned counsel for the applicant upon the decision in *Union of India & Ors. Vs. N. Nanjundaiah* (supra), wherein the Division Bench of Hon'ble High Court of Karnataka

examined the matter in some detail. It also examined the Memorandum dated 17.12.1990 and recorded -

*"11. The material on record would clearly show the fact that the applicants before the Tribunal have retired from service on attaining the age of superannuation after serving in Posts and Telegraphs Department is not disputed. It is clear from the Office Memorandum issued on 17.12.1990 by the Department of Personnel, wherein the Central Government fixed the eligibility criteria for all the retired Central Government employees irrespective of any department for availing Central Government Health Scheme facility after retirement. Under Clause 1 Sub-clause 1.1, 1.2 and 1.4 it has been categorically stated as follows:*

**1. ELIGIBILITY**

*1.1 All Central Government Pensioners (except Railway pensioners and Armed Forces Pensioners) who were eligible for availing CGHS facilities while in service are eligible for availing CGHS facilities after retirement. The scheme is also applicable to Central Government employees who retired with contributory provident fund benefits. Similarly families of Central Government employees in receipt of family pension are also eligible to avail of these facilities, if the deceased Government servant was eligible for these facilities while in service.*

*1.2. It is not that on those Central Government employees who were actually availing of CGHS facility during service are eligible to enjoy them after retirement. All retired personnel of Ministries, Departments, Offices which are eligible to enjoy CGHS facility while in service are eligible to enjoy them after retirement, even if immediately prior to their retirement, they were not actually availing or never availed these facilities on account of their posting to a station where CGHS facilities were not available.*

xxx xxx xxx xxx

*1.4. Even though CGHS facilities are at present available only at specified places and it may not be possible for Central Government pensioners living away from these places to avail of the CGHS facilities on day to day basis as in the case of persons living at these places, it may be in the interest of the pensioners to enroll themselves as beneficiaries of the CGHS scheme so that at least in the case of major ailments/major surgery they will be able to come to the CGHS station to avail of these facilities if and when such a need should arise.*

*It is clear from the above said Government Order issued by the Central Government that even persons who had not availed Central Government Health Scheme facility before retirement, would be entitled to avail the benefit after retirement and the said order is applicable to all the employees in the Central Government."*

The Hon'ble High Court has also taken note of OM dated 01.08.1996 and clearly found it discriminatory and arbitrary. For the sake of greater clarity, relevant portion of which is being extracted hereunder:-

*"11...However, an order has been passed on 01.08.1996 imposing restrictions for applicability of the benefit of the Central Government Health Scheme only in respect of employees who have retired from Posts and Telegraphs Department and the applicants in all the O.A.'s are the respondents in the above Writ Petitions, who have retired from the Posts and Telegraphs Department and as per the order, they would be entitled to Central Government Health Scheme only if they had availed the benefit of the said scheme while in service and at the time of attaining the age of superannuation and if the retired employees of the Posts and Telegraphs Department were not availing the benefit of Central Government Health Scheme while in service, they would not be entitled for the benefit of the said scheme after retirement. The said order is clearly discriminatory and arbitrary as only the pensioners from Posts and Telegraphs Department are subjected to the said restriction and pensioners from all other department are entitled to the benefit of Central Government Health Scheme even though they had not availed the benefit while in service. Therefore, the said order cannot be sustained as arbitrary and discriminatory and violative of Article 14 of the Constitution of India and the employees/pensioners of the Posts and Telegraphs Department would be entitled to the benefit of Central Government Health Scheme even if they had not availed the benefit under the said scheme while In service and at the time of attaining the age of superannuation.*

*12. Having regard to the above said facts, the Central Administrative Tribunal has rightly held that the said order of the Government cannot be sustained and the consequential order rejecting the applications of the applicants for granting the benefit of Central Government Health Scheme is erroneous and liable to be set aside. The said finding of the Central Administrative Tribunal is justified and does not suffer from any error or illegality, so as to call for any interference in exercise of the writ jurisdiction of this Court."*

8. This Tribunal in *Murari Lal Mathur Vs. Union of India & Anr.* (supra), which also involves similar contention, remitted the matter to the respondent authorities for re-consideration of the claim of the applicant therein.

9. I also take note of the decision in *Subhash Goyal (Retd. Senior Post Master) Vs. Union of India & Anr.* (supra) involving similar and identical issue as that of the present OA, wherein the Tribunal, placing reliance on a number of decisions of the Tribunal e.g. *Raj Kumar Jain (Retd.) Vs. Union of India & Anr.* [OA No.372/2011 decided on 14.07.2011]; *R.C. Duggal Vs. Union of India & Ors.* (OA No.3312/2013 decided on 21.01.2014); *O.P. Virmani Vs. Union of India & Anr.* (OA No.3514/2013 decided on 18.03.2014); and of Hon'ble High Court of Karnataka in *Union of India & Ors. Vs. N. Nanjundaiah* (supra), remitted the matter to the competent authority for examining the applicant's claim for extension of CGHS benefits.

10. In view of the clear cut findings of the Hon'ble Karnataka High Court that the OM dated 01.08.1996 is in derogation of the vires of Article 14 of the Constitution of India, nothing survives in this case. I hold unequivocally that the applicant could not avail of CGHS facility during his service period on account of his postings to CGHS non-compliance stations. However, I see a good deal of merit in the argument of the learned counsel for the applicant that the applicant's postings were not within his control and as such he should not be penalized for the same during his entire period. Therefore, I hold

that the applicant is entitled to the benefits of the CGHS facilities in his post retiral subject to fulfilment of formalities. The applicant is, therefore, directed to approach the Additional Director (HQ), Central Government Health Scheme, Sector 12, R.K. Puram, New Delhi (respondent no.2 herein), who, in turn, will complete the formalities involved in issuing the CGHS Card to the applicant within a period of three months. The OA is accordingly allowed in these terms without costs.

**(Dr. B.K. Sinha)**  
Member (A)

*/AhujA/*