

**Central Administrative Tribunal  
Principal Bench**

OA No. 2850/2015

Order reserved on: 26.05.2016

Order pronounced on: 14.07.2016

***Hon'ble Mr. V. Ajay Kumar, Member (J)***

***Hon'ble Mr. V. N. Gaur, Member (A)***

Raghbar Singh  
(Aged about 66 years)  
Ex Dy. Manager,  
S/o Sh. Ranjit Singh  
A-I, Bara Mohalla,  
Khanpur,  
New Delhi-110062.

- Applicant

(By Advocate: Sh. S.N.Kaul)

Versus

1. Managing Director,  
Delhi State Industrial & Infrastructure  
Development Corporation Ltd.,  
N-36, Bombay Life Building,  
Connaught Place, New Delhi-110011.

2. Divisional Manager (P),  
DSIIDC,  
N-36, Bombay Life Building,  
Connaught Place, New Delhi-110011.

- Respondents

(By Advocate: Ms. Deepali Gupta)

**ORDER**

**Hon'ble Mr. V.N.Gaur, Member (A)**

The present OA has been filed claiming the following relief:

“(a) To direct the respondent to allow the applicant benefit of Insurance Backed Cashless Medical Scheme that came

into effect from the year 2012 for the retired employees of the DSIIDC, respondent department.

(b) To direct the respondent to allow benefit of related scheme 2012 by treating him that there was no due Notice of the Medical Scheme that was introduced by the respondent department in the year 2008 vide orders dt.1.1.2008 and 4.1.2008.

(c) To direct the respondent to charge one time payment towards the Scheme aforesaid of year 2012 from the applicant as has been charged from the similarly situated retired employees of the respondent department.

(d) Pass any other appropriate order or directions which this Hon'ble Tribunal may deem fit and proper under the circumstances of the case.

(e) Award exemplary cost towards litigation.”

2. The applicant, while holding the post of Dy. Manager in Delhi State Industrial Infrastructure Development Corporation (DSIIDC), took voluntary retirement with effect from 30.09.2002. At that time there was no medical scheme in DSIIDC for the retired employees. The respondents by order dated 04.01.2008 introduced a scheme for the retired employees called Post Retirement Medical Facilities Scheme (PRMFS) with effect from 01.01.2008. According to the applicant, at the time of introduction of the Scheme, the respondents did not circulate it properly among the retired employees and he never got any communication regarding the new scheme. Therefore, he could not opt for the same. In January 2015 the applicant came to know about another scheme called Insurance Backed Cashless Medical Scheme (IBCMS) introduced by DSIIDC in 2012 and he immediately approached the respondents vide letter dated

19.02.2015 for issuing of medical card for himself and his wife. The respondents vide letter dated 21.05.2015 for the first time provided him a copy of the scheme introduced in 2008 and the new scheme of 2012. The respondents further informed the applicant by letter dated 06.04.2015 that his request could not be accepted because those who were not members of PRMFS could not be enrolled in the new cashless scheme. The applicant gave a legal notice on 07.04.2015. However, the respondents again rejected the request of the applicant vide letter dated 11.06.2015 mentioning the following reasons:

- (i) The respondents had circulated the policy decision about PRMFS by displaying on the notice boards of all DSIIDC offices and also through the forum of retired employees of DSIIDC.
- (ii) The applicant had not responded to the circular dated 04.01.2008 meant for retired employees.
- (iii) The applicant had not given his correct address for communication.
- (iv) Only the existing members of PRMFS were enrolled in IBCMS.

The applicant has, therefore, filed this OA.

3. Learned counsel for the applicant submitted that though the applicant had taken voluntary retirement effective from 30.09.2002 but he was eligible for enrolment in the PRMFS, 2008 as the notional date of retirement of the applicant was 28.02.2009. The respondents, however, failed to circulate the Scheme of 2008 to all the retired employees. The plea that they have circulated it on the notice board and given a copy to the forum of retired employees of DSIIDC cannot be accepted because all the retired employees will not visit the office of the respondents regularly to know what is being put on the notice board. Similarly, neither all retired employees are member of the forum of retired employees nor the forum circulated the Scheme to all retired employees. Therefore the rejection of the request of the applicant by the respondents on this ground was arbitrary and illegal. The IBCMS introduced in 2012 has made only those retired employees eligible who were already enrolled in the PRMFS and have deposited the required contribution. In such an eventuality the applicant should have been allowed to opt for 2008 Scheme with retrospective effect by allowing him to deposit any charge that was required for the membership of that scheme and that would make him eligible for IBCMS. According to learned counsel, the purpose of these schemes is welfare of the retired employees and therefore, respondents should not put procedural hurdles in extending benefits of their ex-employees.

The applicant though is staying at Greater Noida by shifting some of his household goods, he has been maintaining his old address at Delhi which is in the records of DSIIDC. Respondents are, therefore, only making excuses for not informing him individually.

4. Learned counsel for the applicant relied on the order of Ahmedabad Bench of this Tribunal in **Manhar Lal D. Barot vs. Union of India & ors.**, OA No.305/2012.

5. Learned counsel for the respondents, on the other hand, submitted that the respondents have taken all the required steps to give publicity to the scheme in 2008 among the retired employees. Normally also the retired employees are regularly in touch with the parent office either directly or through other retired friends and they are aware of the developments with regard to the retirement benefits and any changes in the rules governing retired employees that affect them. Only for the argument sake, the applicant is emphasising on the fact that he did not get any individual communication. The fact is that he did not opt for the 2008 scheme thinking that it was not beneficial to him but later realising the benefits of cashless scheme under IBCMS he approached the respondents in the year 2015. However, it is one of the conditions of the new scheme that only the members of the 2008 scheme will be eligible for enrolment, and as such, the applicant cannot become a member of the

IBCMS as he had chosen not to be a member of the PRMFS. Learned counsel for the respondents further submitted that Hon'ble High Court of Delhi in **Dal Chand Vashisht vs. Government of NCT of Delhi & ors.**, WP (C) No.539/2007 has held that where there is an option – whether or not to subscribe to the scheme and the scheme is contributory and voluntary in character, the claimant cannot claim any benefit under the scheme unless he exercises his option to get covered by the scheme and also takes necessary steps by paying the subscription therefor. He also relied on the order of the Principal Bench of this Tribunal in **Sh. Jai Kumar vs. DTC**, OA No.355/2009, in which this Tribunal had observed that laying down the service conditions of its employees is exclusively within the executive domain. The scope for judicial review in these matters is extremely limited.

6. We have heard the learned the counsels and perused the record. The applicant took voluntary retirement with effect from 30.09.2002 while his notional retirement date was 28.02.2009. The respondents had introduced PRMFS in 2008 for the benefit of its retired employees. If any scheme is introduced where all retired employees are eligible the employer should have given wide publicity, or alternatively given information individually to the employees about the scheme. In this case the respondents claim that information about the scheme was displayed on the notice

boards of DSIIDC offices as well as a copy was also given to the association of retired employees. There is nothing on record to show that the association circulated that information further to all retired employees. We, therefore, agree with the applicant that the respondents had not taken adequate steps to bring the scheme to the notice of all the retired employees. However, it can also be not denied that it is the responsibility of the retired employees as well to be on the alert and be aware of the developments in their parent organisation especially the ones that are going to affect their interest.

7. The present grievance of the applicant relates to the membership of the IBCMS for which the membership of PRMFS is a precondition. The applicant does not fulfil this condition. As held in **Sh. Jai Kumar** (supra), this Tribunal cannot interfere or advise the respondents about the structure or contours of the scheme formulated by them. It is in the exclusive domain of the executive. Further the scheme itself is not under challenge in this OA. Once the IBCMS envisages that only the members of the PRMFS will be beneficiary of IBCMS the applicant has to comply with that requirement. In **Dal Chand Vashisht** (supra) the dispute was with regard to the admissibility of a claim pertaining to the period prior to the date on which the petitioner became a member of the scheme and therefore the judgment is not relevant in the present case. Concluding that the 2008 scheme was not

given adequate publicity, and admittedly, the retired employees were not individually informed about the scheme, the applicant had a case for consideration for membership of the PRMFS. However, the scheme does not exist anymore. He cannot be made member of the non-existent 2008 scheme with retrospective effect.

8. At the same time the IBCMS is a new scheme introduced with effect from 18.07.2012. There may be some retired or serving employees who consciously opted out of the PRMFS in 2008 but there may be retired employees like the applicant who could not opt for the medical scheme earlier for lack of timely information. The IBCMS is an insurance based scheme for the welfare of the employees and therefore the intention of the respondents would obviously be to reach it to the maximum number of employees, serving or retired. The respondents could have possibly considered giving a fresh opportunity to those who were left out of the earlier medical scheme for some reasons but may be desirous of joining the new scheme, by charging the lumpsum contribution calibrated to the stage of delay in opting for the scheme. The rationale of restricting its scope only to those who had accepted the existing medical scheme is not indicated in the Circular dated 17.07.2012 (Annexure A-6 Colly. of the OA). In the context of the hiatus between the medical facility available to the serving and



the retired employees of the Government the Ahmedabad Bench had the following to say in **Manhar Lal D Barot** (supra):

“20. If the serving Government Officials and the retired Government Officials are treated differently in the matter of protecting their health, keeping a wide hiatus between the two categories in the context of granting medical facilities, the same would be violative of the fundamental right of equality guaranteed in Article 14 of the Constitution of India. It is worth reminding that when policies relating to retired Government servants and pensioners are formulated, they should be in consonance with the directive principles of State policy envisaged in Articles 41 and 47 in Part-IV of the Constitution of India. Medical assistance and facilitating emergency treatments to the old retired Government servants and their dependants will be a step forward in mitigating their “underserved want” arising out of their health situation in the post-retirement life. This is a situation contemplated in Article 41 of the Constitution. Therefore, this matter requires a benevolent approach from the Central and State Governments.”

9. In this background we dispose of the OA with a direction to the respondents to place the matter before the Board of Directors of the respondent Corporation to reconsider the stipulation that the retired employees who had earlier opted for PRMFS alone can become member of IBCMS and consider giving a fresh opportunity to the applicant for opting for IBCMS. The Board of Directors may take a decision within a period of three months from the date of receipt of a copy of this order by the respondent Corporation. No costs.

**(V.N. Gaur)**  
**Member (A)**

**(V. Ajay Kumar)**  
**Member (J)**

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