

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 180/00680/2017

Tuesday, this the 11th day of September, 2018.

CORAM:

**HON'BLE Mr. E.K. BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr. ASHISH KALIA, JUDICIAL MEMBER**

1. P. Haridas, 65 years,
S/o. Purushothaman (late),
Assistant Director (Retd.),
Andaman & Nicobar Administration,
Aluvila House, Nedumparambu (P.O),
Via Alamacode, Thiruvananthapuram District – 695 102.
2. V. Ramadas, 70 years,
S/o. K. Vasu,
Superintendent (Retd.),
Andaman & Nicobar Administration,
“Nalinam” Opp. S.N. Library,
Kodampalli, Vaikkom (P.O),
Thiruvananthapuram District – 695 308.
3. General Secretary represented by T.I Sudhakaran,
Central Government Pensioners' Association,
Pension Kendra, Capital Towers,
Patturaickal Junction, Shornur Road,
Thiruvambady (P.O), Thrissur – 680 022. - Applicants

[By Advocate Mr. C.S.G. Nair]

Versus

1. Union of India represented by its Secretary,
Ministry of Health & Family Welfare,
Nirman Bhavan, New Delhi – 110 011.
2. Director General,
Central Government Health Scheme,
Nirman Bhavan, New Delhi – 110 011.
3. Director,

Central Government Health Scheme,
Nirman Bhavan, New Delhi – 110 011.

4. Additional Director,
Central Government Health Scheme,
Mosque Lane, Kesavadasapuram,
Thiruvananthapuram – 695 004. - Respondents

[By Advocate : Mr. V.A.Shaji, ACGSC]

The application having been heard on 06.09.2018, the Tribunal on 11.09.2018 delivered the following:

ORDER

Per: Ashish Kalia, Judicial Member:

Applicants are seeking a direction to the respondents to continue to extend the CGHS facilities to the pensioners of Union Territories without any discrimination.

2. The brief facts of the case are that applicant No.1 is a pensioner who retired as Assistant Director (Administration) from the Andaman and Nicobar Administration on 31.5.2012. The 2nd Applicant is a pensioner who retired as Superintendent from the Andaman and Nicobar Administration on 1.11.2006. Both the applicants are now settled down near Thiruvananthapuram and have obtained CGHS permanent cards on payment of required subscription, from CGHS dispensaries at Thiruvananthapuram. The 3rd applicant is the General Secretary of Central Government Pensioners' Association, Kerala with its Headquarters at Thrissur, having District Level Units and Local Units as well as 13 Affiliate Units throughout the State of Kerala with over 23000 as its members who are Central Government Pensioners. This Association was formed for the welfare of the Central Government Pensioners and for assisting them to redress their grievances in matters relating to Pension, Medical facilities etc. The applicants No.1 and 2 are members of the CGPA.

3. It is submitted by the applicants that all of a sudden the 3rd respondent has

issued Annexure A6 order proposing to deny CGHS facilities to the pensioners of Union Territories. No reason is given for such denial in Annexure A6. The 3rd respondent is an incompetent authority to deny the CGHS facilities. Any such decision can be taken only by the Government. Pensioners of Union Territories are Central Government pensioners as the Union Territories are administered by the President of India through Lt. Governors/Administrators. They are directly under the Ministry of Home Affairs. Expenses towards the Administration of Union Territories are met from the budget estimates of the Ministry of Home Affairs. It is submitted that Ex.Lt. Governors are entitled for CGHS facilities and denying the same facilities to pensioners like applicants are discrimination and arbitrary. Feeling aggrieved the applicants are praying for quashing the Annexure A6 order.

4. Notices were issued and respondents put up their appearance and filed detailed reply statement contesting the claim of the applicants.

5. It is submitted in the reply statement on behalf of the respondents that applicants 1 and 2 are pensioners who were retired from Andaman and Nicobar Administration Service, they are not at par with Central Government Pensioners as they were recruited and appointed by the Andaman and Nicobar Administration. They are not entitled for CGHS facilities, like other Central Government employees who were selected through SSC/UPSC and are liable for all India transfer. In the similar way association members are also not entitled for CGHS facilities. It is further submitted that Central Government Health Scheme (CGHS) is meant for the Central Government Employees and Pensioners drawing their salary/pension from the Central Civil Estimates to Government of India as notified vide Annexure R.1 Memorandum dated 1.5.1954. of Ministry of Health.

6. Therefore, the respondents contended that employees of Union Territories are not entitled to CGHS benefits. The applicants 1 and 2 are pensioners, who were retired from Andaman Nicobar Administration Service. Therefore, they are not entitled to CGHS facilities as they were recruited and appointed by the Union

Territory and Andaman and Nicobar Administration. It is contended that CGHS cards were issued to them inadvertently and the same were rectified through the order of the Director (CGHS) dated 21.7.2017 by giving one month's grace period and the balance amount of the CGHS subscription will be refunded to such beneficiaries.

7. On the basis of the said order the applicants were informed accordingly to surrender the CGHS cards and balance amount of CGHS subscription will be refunded for the remaining period. The Government of India is providing Fixed Medical Allowance (FMA) at R.1000/- per month with monthly pension to all those Central Government pensioners every month who are not covered under CGHS. It is further contended that Annexure A.6 order was issued as a policy decision of the Government to correct the irregularity. They prayed for dismissal of the O.A. which has no merits.

8. Applicants have filed rejoinder reiterating their pleadings in the O.A.

In the rejoinder its submitted on behalf of the applicants that the contention of the respondents that the pensioners who retired from Andaman and Nicobar Administration Service are not on par with Central Government Pensioners is absolutely incorrect, misleading and contrary to facts. It is contended by the applicants that Govt. of India Ministry of Home Affairs, U.O. No. U-14026/1/84 Delhi (D III) dt. 24.3.1984 states that:

“the Employees of Delhi Administration as well as other Union Territories Administrations in the matter of pensionary benefits are governed by Central Civil Service (Pension) Rules, 1972”

It is contended that a Central Government Employee on his retirement becomes a Central Government Pensioner. Para 3.11 of the VIIth Central Pay Commission (CPC) defines, Central Government Employee as “ *all persons in the Civil Services of the Central Government or holding Civil Posts under that Government and paid salaries out of the Consolidated Fund of India. This however does not include such persons appointed to service Parliament or the Union Judiciary.*” The Andaman

and Nicobar Administration is under the administrative control of the Ministry of Home Affairs (MHA) and annual allocation of funds to these Island Administration is being made from the demands for grants pertaining to the Ministry of Home Affairs. Hence it is well within the Central Civil Estimates. As it is undisputable that the salary and allowances as well as the pension payments are made from the Consolidated Fund of India, there is no scope for any discrimination amongst the U.T. Employees/pensioners with other Central Govt. employee/pensioners. Based on the recommendations of the 5th CPC Fixed Medical Allowance was granted to all Central Government Pensioners who were not enjoying the facilities of CGHS as per OM. dt. 19.12.1997 issued by the Department of Pension & Pensioners' Welfare. Every Central Government Employees at the time of retirement was asked to exercise an option to avail of medical facilities under CGHS or other similar Health Scheme or to claim Fixed Medical Allowance.

9. It is contended by the applicants that the employees of Andaman and Nicobar Administration are recruited and appointed by the Union Territory Administration. The contentions that only those recruited through SSC/UPSC and are liable for all India transfer, are entitled for CGHS facilities is absolutely incorrect. As far as the eligibility for CGHS benefits by the Central Government Pensioners are concerned, the only condition is that they should be receiving pension from Central Civil Estimates.

10. We have heard Mr. C.S.G. Nair, learned counsel for the applicant and Mr. M.A. Shaji, ACGS for the respondents.

11. Having heard the learned counsel for the parties at length and having perused the pleadings in the O.A., and also the rival submissions, it can be summarised that the Central Govt. Health Scheme was started way back in 1954 and covered Central Govt. Employees and Pensioners who are drawing their salary and pension from the Civil Estimates (other than those employed in Railway Services and those employed under the Delhi State Govt.) and having their headquarters in Delhi or New Delhi

and their families as notified by the Ministry of Health, Govt. of India, Office Memorandum dated 1st May 1954.

Clause 6(a) and (b) of the said OM is reproduced hereunder for convenience.:

“ 6. The concessions admissible under the Scheme shall be applicable to:

(a) All Central Government servants paid from Civil Estimates (other than those employed in Railway Services and those employed under the Delhi State Government) and having their headquarters in Delhi or New Delhi and their families;

(b) Civilian Government servants paid from the Defence Services Estimates and having their headquarters in Delhi or New Delhi, and their families;

12. After a careful reading of the above clauses 6(a) and 6(b) this Tribunal is in agreement with the submissions made by the learned counsel for the applicant. It can be seen that there is distinction made in the O.M. dated 1.5.1954 between Central Government employees and Central Government employees who are working in the Union Territories. Nowhere it is mentioned that Central Government employees working in Union Territories are not entitled for the said CGH Scheme.

13. It is further submitted that on an application under RTI the Administration of Union Territory of Lakshadweep (Secretariat) has confirmed in reply given to Shri K.P.Thangakoya, Kakkinipura House, Kavarathy as to the status of employees of UT administration is as that of Central Government Employees.

13. Learned counsel for the applicant referred to Article 239 and 240 of the Constitution of India.

Administration of Union territories

“[Arti.239\(1\)](#)Save as otherwise provided by Parliament by law, every Union territory shall be administered by the President acting, to such extent as he thinks fit, through an administrator to be appointed by him with such designation as he may specify.

[\(2\)](#) Notwithstanding anything contained in Part VI, the President may appoint the Governor of a State as the administrator of an adjoining Union territory, and where a Governor is so appointed, he shall exercise his functions as such administrator independently of his Council of Ministers...”

Art. 240: Power of President to Make regulations for certain Union territories – (1) The President may make regulations for the peace, progress and good Government of the Union Territory of ---
 (a) The Andaman and Nicobar Islands;
 (b) The Lakshadweep...
 (c).....”

14. A plain reading of Article 239 and 240 of the Constitution it is clear that every Union Territory is administered by the President of India through the Administrator so appointed in order to make regulations for peace, progress and good government of the Union Territory. As per Section 3 (8) (b) (iii) of General Clause act, the word “Central Government” includes the Administrator of Union Territories.

“(iii) in relation to the administration of a Union Territory, the administrator thereof acting within the scope of the authority given to him under article 239 of the Constitution]”

“Sec.3(8) of the General Clauses Act defines “Central Government” as the President in relation to anything done or to be done after the commencement of the Constitution. The Central Government is not an individual but an organization. Whether a function is exercised by the President as the Head of the Union of India or whether a power is vested by the Constitution on the President as such as a persona designata, the procedure for the exercise of the power would be the same, namely, either the one prescribed by the Rules of Business framed under Art. 77 (3) of the Constitution or under the law and the rules made under the proviso to Art. 309 of the Constitution. When an authorised officer is acting in the name of Central Government or President, he is not acting as a delegate. He is merely authenticating the order of the President or the Central Government accordingly to the prescribed procedure. The order is that of the President or of the Central Government and not of the officer who authenticates it. “

15. Thus, the conjoint reading of Article 239, 240 and Sec. 3(8) of General Clauses Act cover up beneficial legislation/rule/schemes shall be applicable to all Central Govt. employees as well as to the Central Govt. employees of the Union Territories. Nowhere in the O.M. dated 20.5.1954 and in the Constitution such a distinction has been made to the effect that Central Govt. Employees working other than Union Territories are different than the Central Govt. employees working at Union Territories. Thus, it can be construed that CGHS facilities applicable to Central Government Health Scheme will be applicable for both the set of employees as narrated herein above. The CGHS is a beneficial piece of social welfare scheme which was

implemented with an intention to cover all the Central Govt. employees irrespective of place of living/place of work as in Union Territories or other places.

16. The only embargo in the said CGHS Scheme (supra) is that where CGHS Scheme is not available at such places this benefit cannot be claimed by the Central Govt. Employees. The stand taken by the respondent in the reply is to be believed, there cannot be such a distinction between two set of Central Govt. Employees, then it would tantamount to discrimination under Article 14, 16 and 21 of the Constitution of India and not tenable in the eyes of law. There cannot be two sets of rules within same set of employees of Central Govt. on the basis of place of posting.

17. Thus, considering all facts and circumstances and legal position placed before us, we come to the conclusion that present O.A. has merit on its side and deserves to be allowed and reliefs prayed for is granted. Applicants herein are entitled for C.G.H.S. facilities on payment of prescribed charges/fee. Original Application is allowed accordingly. Respondents are hereby directed to grant the benefits of C.G.H.S. facilities to the applicants herein with immediate effect and the order shall be implemented at any rate within a period of 30 days from the date of receipt of a copy of this order.

18. No order as to costs.

(Ashish Kalia)
Judicial Member
sj*

(E.K. Bharat Bhushan)
Administrative Member

O.A No. 180/00680/2017Applicant's Annexures

- Annexure A1- True copy of the Registration Certificate dt: 28.12.1998
- Annexure A2 - True copy of the Resolution
- Annexure A3 - True copy of the list of eligibility criteria for availing CGHS facilities.
- Annexure A4 - True copy of the identity card No. 4285238 issued by the 4th respondent.
- Annexure A5 - True copy of the Identity Card No. 3388520 issued by the 3rd respondent.
- Annexure A6 - True copy of the O.M No. Z 15025/58/2017/DIR/ CGHS/Pt. dt. 21.7.2017 issued by the 3rd respondent.
- Annexure A7 - True copy of the representation dt: 25.7.2017 submitted to the 3rd respondent.

Annexures of Respondents

- Annexure R1 - True copy of the Memorandum dated 01.05.1954 by the Ministry of Health.
