

CENTRAL ADMINISTRATIVE TRIBUNAL

CHENNAI BENCH

OA No. 310/00282/2019Dated Tuesday, the 27th day of August, 2019

PRESENT

Hon'ble Mr.T.Jacob, Member(A)

Malle Narasimhalu
Rtd.Chief Office Supdt.
ADME/MS/MAS Divn./S.Rly
No.76-111-46-11-1-AB,
Geetha Nagar,
Kallur Village
Karnool District.

. ...Applicant

By Advocate M/s. Ratio Legis

Vs

1. Union of India represented by
The General Manager
Southern Railway
Park Town, Chennai – 600 003.
2. The Senior Divisional Personnel Officer
Chennai Division, Southern Railway,
N G O Annexe, Park Town,
Chennai- 600 003.

...Respondents

By Advocate Ms R.Sathyabama

ORDER

(Pronounced by Hon'ble Mr.T.Jacob, Member(A))

Heard. The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:

"...To call for the records related to the impugned order No.M/P3/500/SETTLE dated 29.08.2018 and to quash the same and further to direct the respondents to make necessary entries in the PPO/PPA and to pay 'the Fixed Medical Allowance' and to make further order/orders as this Hon'ble Tribunal may deem fit and proper and thus to render justice."

2. The brief facts of the case submitted by the applicant are as follows:

The applicant had joined the Railway Service on 19.11.1977 in Southern Railway and while working as a Senior Technician retired on 31.08.2014 on attaining the age of superannuation. While issuing the 'Pension Payment Order' against the column 'Medical Allowance' 'N E' remark was made. Later on since his place of residence falls beyond 2.5kms the applicant exercised option vide letter dated 25.12.2011 with reference to Railway Board letter dated 07.06.2011 for the Fixed Medical Allowance which was not responded and thereby represented in Pensioner's grievance portal in response to which the impugned order dated 29.08.2018 rejecting the claim for FMA and hence this application is preferred before this Hon'ble Tribunal or necessary intervention and for justice on the following grounds:-

- a. The denial of payment of Fixed Medical Allowance (FMA for short) to the applicant, is arbitrary, and an act coupled with colourable exercise of authority which is non-est in law.
- b. The denial of FMA to the applicant tantamount to violation of Railway Board's letter No.65/1999 dated 21.04.1999 made pursuant to orders issued by the Department of Pensions and Pensioners'

Welfare on the recommendations of the 5th Central Pay Commission that contemplates for grant of Medical Allowance of Rs.100 per month to pensioners and family pensioners, @ Rs. 100 p.m. to railway pensioners/family pensioners residing outside the city/town/municipality limits of places where a Railway hospital/health unit/lock up dispensary is situated, subject to fulfilment of certain conditions and hence untenable in law.

c. In the wake of the facts that the grant of Medical Allowance was intended to meet expenditure on day to day medical expenses that do not require hospitalisation and shall be permissible to the pensioners who are members of any of the existing Health care schemes and still not be debarred from receiving treatment for chronic illnesses requiring specialised investigations or long term treatment for chronic diseases, even if such treatment is received on outpatient basis, the non consideration of the request for 'FMA' to the applicant is against the principles of Good Conscience, Fair-play and Equity and hence impermissible in law.

d. Assuming but not considering that in as much as the nodal Ministry had provided for change of option once on change of residence vide Office Memorandum dated 30.12.1998 and the same was incorporated in RBE No.107/2002 dated 15.07.2002, the act of the respondents in rejecting the change of option as one time measure is in gross violation of the said mandatory orders and hence the impugned order is liable to be quashed.

e. As per RBE No. 96/2006 dated 20.07.2006 it has been decided that the new entrants in the REHLS-97 should be allowed option to switch over from claiming Fixed Medical Allowance to availing OPD facilities leading to their becoming ineligible for FMA, which option may not be reckoned as one-time change of option, restriction on exercise of option for switching over from OPD facility to FMA is discriminatory and as such the impugned order dated 29.08.2018 is liable to be quashed.

3. Respondents have filed reply contesting the O.A. stating that as per Railway Board's letter dated 21.4.1999 [RBE No. 65/1999], the retirees at the time of retirement when residing 2.5 km away from Railway Hospital/ Health Unit shall have to exercise one time option to avail medical facilities at Out patient Department of Railway Hospital/Health Unit or claim FMA. A retiree residing within 2.5 kms distance from Railway Hospital/Health Unit is not eligible for Fixed Medical Allowance and there is no question of option to them. An option can be exercised only when there are two things to be opted. When not eligible for FMA, the retiree is left with no option and compelled to avail OPD. This option whether to avail OPD or FMA is given to the retiree only once either at the time of retirement or even later when he shifts his residence beyond 2.5 kms from Railway Hospital/Health Unit where such change in residential address involves a change over from availing of FMA to OPD facility or vice-versa. Therefore, it is clear "option" means option to either claim Fixed Medical Allowance or to avail OPD facility when both the facilities are available. This has been again vividly clarified in Railway Board's letter dated 26.3.2015 [PBC No. 45/2015]. The pensioners/retirees have to exercise 'one time option' for availing medical facility or OPD at RH or to claim FMA, another option [only once] is available on the ground of change of residence beyond 2.5 kms of Railway Hospital/Health Unit and there is no provision for grant of fresh option, when he has already availed one time option at the time of retirement residing 2.5kms distance from Railway Hospital/Health Unit. In this case the option available through Railway Board's letter dated 26.3.2015 [PBC No. 45/2015] is not applicable to the applicant as he had already availed one time

option at the time retirement and resided 2.5 Kms distance from Railway Hospital/Health Unit. The respondents have relied on the decision of the Tribunal in OA 1851/2016 dated 13.3.2019 in support of their submissions wherein similar claim of applicant therein was dismissed. In view of the above respondents pray for dismissal of the OA.

4. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.

5. The rules provide for either OPD or FMA. Further, in respect of both, for chronic ailment, one could approach the Railway Hospitals for medicines etc., FMA is admissible only when the individual resides at a place situated beyond 2.5 kms from the Railway Health Unit (RHU) while OPD is available irrespective of the distance from the Railway Health Unit. Again, if a person shifts his residence whereby, he has to move away from the Railway Health Unit beyond 2.5 kms, he has an option to switch over to FMA.

6. If a person resides beyond 2.5 km from the RHU and opts for OPD, as long as his RHU remains the same, he cannot exercise his second option to switch over to FMA. The Rules which contains the provisions as above, has not contemplated a situation whereby, when a person shifts his residence from one station to another, his Railway Health Unit also changes. As for example, in the instant case, as long as the applicant was a resident of Chennai, he cannot be permitted to change his option as right from the beginning he has been residing at a place beyond 2.5 kms and he had voluntarily opted for OPD and no FMA has been claimed or paid to him. However, now he has shifted to a village called Kallur, which is near Kurnool district where another RHU is

available. If he resides within a distance of 2.5 kms of the RHU at Kurnool district, he would not be entitled to draw FMA and he has to continue to be entitled to OPD facilities only. Instead, when the distance happens to be more than 2.5 kms from the new RHU, the question is whether his earlier option as OPD when he was attached to the earlier RHU disentitles him to change his option. In my opinion, the said option being related only to that RHU, he should be allowed to exercise a fresh option with respect to the new RHU. Otherwise, it would lead to a great hardship to him. Obviously, such a contingency was not contemplated when the provisions relating to exercise of option were framed.

7. It is trite that right to healthy life is one of the valuable rights and it casts an obligation to the State to ensure that this right is fully available to the citizen. A three judges Bench of the Apex Court has, in the case of *State of Punjab vs Ram Lubhaya Bagga* (1998) 4 SCC 117 held as under:-

"26. When we speak about a right, it correlates to a duty upon another, individual, employer, government or authority. In other words, the right of one is an obligation of another. Hence the right of a citizen to live under Article 21 casts obligation on the State. This obligation is further reinforced under Article 47, it is for the State to secure health to its citizen as its primary duty.Since it is one of the most sacrosanct and valuable rights of a citizen and equally sacrosanct sacred obligation of the State, every citizen of this welfare State looks towards the State for it to perform this obligation with top priority including by way of allocation of sufficient funds. This in turn will not only secure the right of its citizen to the best of their satisfaction but in turn will benefit the State in achieving its social, political and economical goal."

8. Keeping in view the above dictum of the Apex Court if the case of the applicant is examined, there is every justification for his claiming change of

option from OPD to FMA. However, since a decision by this Tribunal may have wide repercussion in addition to the fact that the same involves availability of resources, it would only be appropriate that the same is considered by the Railway Board and make a policy decision in this regard.

9. Accordingly, this OA is disposed of with a direction to the Respondents to prepare a statement of cases and refer the matter to the Railway Board for their consideration to arrive at a judicious conclusion, keeping in mind the State's obligation as reiterated by the Apex Court in the case of Ram Lubhaya Bhagga (supra). Time calendared for Respondent No.1 to prepare and send the Statement of Case to the Railway Board is 8 weeks and the Railway Board may accord priority to the same and frame a sound policy decision in this regard at the earliest. Needless to mention that if the decision is in favour of the applicant, Respondent No. 1 shall accordingly permit the applicant to exercise his option to switch over from OPD to FMA.

10. Under the above circumstances, there shall be no orders as to costs.

(T.Jacob)
Member(A)

27.08.2019