

**CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH**

OA 310/00540/2019

Dated Tuesday the 27th day of August Two Thousand Nineteen

P R E S E N T

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

L.Vasudevan,
Chief Ticket Inspector (Retd)
Chennai. and Residing at:
No.4, Perumal Koil Street,
Sorepur Village,
Veeranam (PO), Villupuram(Dt)

....Applicant

By Advocate M/s R.Pandian

Vs

Union of India Rep by

1. The General Manager,
Southern Railway,
Park Town,
Chennai – 600 003.
2. The Principal Chief Personnel Officer,
Southern Railway,
Park Town,
Chennai – 600 003.
3. The Senior Divisional Personnel Officer,
Southern Railway,
Chennai Division, NGO Annexe,
Park Town, Chennai – 600003.
4. The Secretary,
Railway Board, Rail Bhavan,
New Delhi- 110 001.

...Respondents

By Advocate Mr.D.Hariprasad.

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 reliefs:

"... To call for all the records relating to the denial to grant Fixed Medical Allowance (FMA) to the applicant; to quash the impugned order No.M/P3/500/I&II/LV/Dec-2014 passed by the Senior Divisional Personnel Officer, Chennai Division (the 3rd Respondent) consequently to direct the 3rd respondent:-

I. To grant Fixed Medical Allowance in favour of the Applicant, from the date he changed his residence to a new place, which is 2.5 km away from the nearest Railway Hospital/Health Unit (I.e from April 2017).

II. To workout and pay arrears of Fixed Medical Allowance as is due; and

III. To Pass such other further order or orders as this Hon'ble Tribunal may deem fit and proper and thus to render justice."."

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

The applicant retired from service on superannuation on 31.12.2014. On retirement he joined Retired Employees Liberalised Health Scheme- 1997 (RELHS-97) and opted for out patient treatment (OPD) instead of Fixed Medical Allowance (FMA) as he was residing at Chennai. During April 2017 he shifted his residence to a village near Veeranam, Villupuram (Dt) and hence submitted a request changing his option from OPD to FMA. The 3rd respondent through the impugned order rejected the claim of the applicant though as per RB orders he is entitled to FMA. In these circumstances, as there is no other efficacious remedy available to him, this Original

Application is preferred seeking the aforesaid reliefs on the following grounds:-

"(a) As per Para 3 of RB Letter No. PC-V/98/I/7/1/1 dated 21.4.1999 (RBE.No.65/99) the applicant is entitled to grant of FMA.

(b). As per RB Letter No. PC-V/98/I/7/1/1 dated 15.07.2002 (RBE No. 107/2002) a pensioner/family pensioner can change his option from OPD treatment to FMA or from FMA to OPD treatment once in life time. As the applicant changed his residence only once and opted for change only once he is entitled to the benefits. Rejection of the claim of the applicant even after necessary proof have been submitted is against all cannons of law.

(c) The 3rd Respondent rejected the claim of the applicant by quoting R B letter No. PC-V/2010/A/Med/I dated 26.03.15. Whereas, the said RB Letter permits change of option for one time in life time of the pensioner/family pensioner. The relevant portion of the RB letter is reproduced hereunder for ready reference please:-

“....As per policy instructions on FMA the pensioners/retirees have to exercises one time option for availing medical facility of OPD at Railway Hospital or to claim FMA. Further, another option (only once) is available on the ground of change of residence beyond 2.5 kilometers of Railway Hospitals/Dispensaries.”

(d) As per the Railway Board's information vide No. PC-V/2016/A/Med/1(FMA) dated 28.07.2017 (RBE No. 75/2017), the previous order issued by it with regard to FMA was No. PC-V/2010/A/Med/1 dated 19.12.2014. Hence, it is clear that no change of policy with regard to grant of FMA was taken later to the RB order dated 19.12.2014 and that the RB letter dated 26.03.2015 was issued only as a clarification to the query raised by the 2nd respondent. Moreover through the said letter also the Railway board permitted change of option for once by the pensioners/family pensioners. Because of the above

mentioned reasons the rejection of the claim of the applicant for grant of FMA was without any basis and hence unsustainable in the eyes of law.

3. Respondents have filed reply contesting the O.A. stating that the grant of Fixed Medical Allowance is subject to the exercise of one time option either at the time of retirement or one time option is given when the retired employee changes his residence beyond 2.5 Kms of hospitals/dispensary in terms of Railway Board's letter No.PC-V/2010/a/Med./1 dated 26.3.2015. In this case, the applicant at the time of retirement exercised the option for OPD facilities and resided more than 2.5 KM away from Railway Hospital/Health Unit. Therefore, he is not entitled for the claim of FMA under one time option guidelines provided in PBC No. 45/2015. The respondents submit that impugned rejection for grant of FMA is valid as the same has been done in accordance with law and rules.

4. The respondents would submit that the applicant request for grant of FMA was rejected since the change of his residential address did not involve the change over option. The applicant once again shifted his residence only beyond 2.5Kms from the nearest Railway Health Unit/Hospitals. He has shifted his residence from Adambakkam to Sorepur Village, Veeranam Post, Villupuram which also does not involve changeover option. Therefore his request for FMA was validly rejected by the authority. 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 rejected. In view of the above respondents pray for dismissal of the OA.

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

6. 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.

7. 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 Veeranam, which is near Villuppuram where another RHU is available. If he resides within a distance of 2.5 kms of the RHU at Villuppuram, 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.

8. 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.”

9. 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.

10. 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.

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

(T.Jacob)
Member(A)
27.08.2019

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