

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

Original Application No.172/2019

Ahmedabad, this the 11th day of November, 2019

CORAM:

Hon'ble Sh. M.C.Verma, Member (Judicial)

1. Radheyshyam S/o Ramcharita Mishra,
Age 62 years, Retired, Hindu by Religion,
Residing at: A/3, Sumukh Appt., Jawahar Chowk,
Maninagar, Ahmedabad – 380 008.
2. Mahendrasingh S/o Udhavsinh Ailsinghani
Age 68 yrs., Retired, Sikh by Religion,
Residing at :B/204, Popular Paradise,
Satyam Vista Lane, Gota, Ahmedabad – 382 481.
3. Sanjay S/o Mangaldas Shah,
Age 61 yrs., Retired, Hindu by Religion,
Residing at :B9, Aadesh Apartment,
Nr.Hasubhai Park, Jodhpur, Ahmedabad – 380 015.
4. Anil S/o Rammanoharlal Khare,
Age 62 yrs., Retired, Hindu by Religion,
Residing at:B-23, Parth Apartment, Ramdevnagar,
Satellite, Ahmedabad – 380 015.
5. Smt.Ruksana, W/o Hiyas Jariwala,
Age 62 yrs., Retired, Muslim by Religion,
Residing at : A-2, Diamond Apartment,
Kocharab, Paldi, Ahmedabad – 380 007.
6. Rameshkumar S/o.Maniram Gorkha,
Age 62 yrs, Retired, Hindu by Religion,
Residing at: E/203, Darshanam Antica,
Danteshwar-Tarsali Road,
Vadodara – 390 009.

.....Applicants

[By Advocate : Shri Mahesh H.Chandarana]

Versus

1. Director General,
E.S.I. Corporation,
Panchadeep Bhavan, C.I.G. Marg, New Delhi – 110 002.
2. Regional Director,
E.S.I. Corporation, Panchadeep Bhavan,
Ashram-Road, Ahmedabad–380014

...Respondents

[By Advocate: Shri Joy Mathew]

O R D E R (Oral)

M.C.Verma, Member (J)

1. The challenge in the instant O.A., which is being decided,
is to increase by the respondents, with retrospective effect, of

rate of medical contribution paid by the pensioner/applicants for claiming benefits under the Pensioners Medical Scheme, 2006.

2. Instant O.A. has been preferred by six applicants jointly, with MA for joint application, all applicants are retired employees of E.S.I. Corporation functioning under the Ministry of Labour and Employment Government of India. Grievances of the applicants, as has been pleaded, is that they opted for life-time validity card under Pensioners Medical Scheme, 2006, deposited prescribed amount of subscription amount applicable at the time and were issued life-time validity card in year 2017 itself. That subsequently, vide Memo No. D-12/16/1/2017-E-VI(Annex.-A/26) dated 06.03.2018, respondents' took a decision to revise and enhance the rates of contribution w.e.f. 01.02.2017 and it was also provided in para 3(i) of said Memorandum that pensioner beneficiaries who had already obtained ESIC card with life time validity by paying a lump sum amount of contribution will not be required to pay any additional amount for availing ESIC facility. That enhancement was illegal and apprehending that enhanced rate of contribution might be charged from them also applicant preferred OA No.536/2018 on the file of the Tribunal and quoting aforesaid para 3(i) of said memorandum and observing that applicants are those who had already obtained ESIC Card with life time validity and cannot be said to be affected by memo No. D-12/16/1/2017-E-VI dated 06.03.2018 this Tribunal disposed of the OA. However, the matter did not end, the respondents demanded enhanced amount from applicants and it has been directed to applicants, vide different letters

(Annexs.A-2 to A-7) to deposit the difference amount of PMS contribution, informing them that it has been clarified by Memo No.D-12/16/1/2017-E-VI-Vol.I dated 17.08.2018 (Annex.-A/1) that the Instructions dated 06.03.2018 are effective with effect from 01.02.2017 and pensioners who had obtained medical cards on or after 01.02.2017, with life-time validity are also required to pay the difference in contribution rates. It has also been pleaded that respondents has stopped the medical facilities to the applicants. Contention of the applicants, as has been raised in OA is that contribution rates could be enhanced but not from retrospective date.

3. Prayer as has been made in the OA is as under:-

“(A) Quash the order No.D-12/16-1-2017 E-VI Vol-I dt. 17.8.2018 of the respondent regarding, revision of rate of subscription with retrospective effect.

(B) Not to recovery any amount from the applicants, due to such revision.

(C) Revision of rate should be applicable only after expiry of validity period of the card already issued.

(D) Allow cost of this application to the applicants.”

4. Respondents did contest the matter, mainly on the ground that ESIC follows the instructions being issued by the Ministry of Health and Family Welfare and that whenever the Ministry revised the medical allowances of CGHS and ESIC, same is also adopted by the ESIC and that this practice is being followed by ESIC for the last several decades. That Ministry of Health and Family Welfare has revised the rates of subscription under CGHS after Revision of pay scales pursuant to Recommendation of the 7th CPC and thereafter, ESIC had also revised the rates and that the rate of subscription and entitlement in the CGHS Scheme are also the same as applicable to CGHS beneficiaries. It has been explained in the pleadings by respondents that Ministry of Health and Family Welfare revised the rates with effect from 01.02.2018 and therefore ESIC following the decision of the Ministry of Health and Family Welfare has also,

with effect from 01.02.2018 has revised the rates of contribution and same treatment are given to the retired persons while issuing the ESI Cards. It has also been pleaded that persons who had obtained life-time card on or before 31.01.2017 are not required to pay any additional amount as a result of revision but all the applicants were issued life-time validity card after 31.01.2017 and therefore, they are required to pay contribution as per revised rates.

5. Learned counsel Shri Mahesh H.Chandarana appearing for applicants pressing the M.A. for joint application and the O.A. submitted that ESIC promulgated Pensioners Medical Scheme in the year 2006, that applicants are pensioners of ESIC and they opted for life-time validity cover for medical facilities under Pensioners Medical Scheme of year 2006 and did deposit the amount and were issued life-time validity card. He gave details as to when life-time facility for medical card was applied by respective applicant, date of depositing of amount of contribution and issuance of medical card. It has been urged by him that all the applicants were issued life-time medical cards in year 2017 and suddenly applicants were directed to deposit extra amount as per rate enhanced by Circular dated 06.03.2018. He contended that when applicants had deposited the amount as per prevailing rate in year 2017 and had been issued life-time validity card in year 2017 itself, enhancement of subscription from retrospective date cannot be said legal and permissible. He also pointed out that CGHS vide its memo Annexure A-9 dated 09.01.2017 did revise the rates of subscription under Central Government Health Scheme with effect from 01.01.2017 but later on the Ministry observed that Memo, **Annex. A-9** is of 09.01.2017 and the revising of rates from 01.01.2017 thus can invite litigation and grievances so it would be appropriate to made the revised rate with effect from

01.02.2017 instead of 01.01.2017. He invited attention of undersigned towards **Annexure A-12**, the noting whereby, it was proposed to revise the rates with effect from 01.02.2017 instead of 01.01.2017 and also urged that Ministry of Health and Family Welfare thereafter another Memo dated 13.01.2017; Annexure A-10 made the change rates effective from 01.02.2017 was issued. He contended that giving effect to change of revised rates of retired persons who have retired previously and have obtained medical cards with life-time validity prior to 17.08.2018 is neither logically nor legally sustainable and hence the O.A. needs to be allowed in view of prayer made therein.

6. Learned counsel Shri Joy Mathew submits that ESIC Pensioners Medical Scheme whereby extension of medical facility to ESIC employees was granted, was introduced on 13.01.2006 and submitting so he placed on record Memorandum of Compilation of Scheme dated 13.01.2006. Learned counsel urged that as per this Scheme three options are available to the employee at the time of retirement viz., they may opt for fixed medical allowance, they may opt for life time validity card by depositing fixed amount provided in the scheme or they may opt for monthly contribution. That under Rule IX Director General is empowered to adopt any provisions as applicable to the pensioners from time to time and to exercise such powers may delegate any of such power to authorise subordinates. That Director General, under Rule X also has the power to relax any of the provisions laid down in Rules. He referring Para 4-A of the Scheme urged that this para provides that the rates in this Scheme is subject to revision from time to time. That ESIC follows the instructions being issued by the Ministry of Health and Family Welfare and that whenever the Ministry revised the Medical Allowances of CGHS

and ESIC, same is also adopted by the ESIC and that Ministry of Health and Family Welfare has revised the rates of subscription under CGHS with effect from 01.02.2018 and therefore ESIC has also enhanced the rates with effect from 01.02.2018. He also contended that once a person is appointed to his post or office by the Government servant, his rights and obligations are no longer determined by consent of both parties and his terms of service are governed by the statute or statutory rules which unilaterally may be altered by the Government. He emphasised that respondent authorities were empowered under the Rules to make change suitably and after 7th pay Commission, emoluments of Government employees has enhanced and contribution had to be according to emoluments and salary, so rate of contributions were enhanced and this enhancement was given effect from the date 01.02.2017 as was chosen by the Central Government. He, to fortify his submission that rules governing terms of service public servant may be unilaterally altered, placed reliance on the decision of Hon'ble Supreme Court in *Union Public Service Commission Vs. Girish Jayanti Lal Vaghela & Others in Civil Appeal No.933 of 2006*.

7. Considered the submissions and perused the record minutely. Having glance of the record, it transpires that for Pensioners of ESIC, vide No.D-12/16/1/2003-E.VI dated 13.01.2006, a Scheme, namely ESIC Pensioners' Medical (E.S.I.C.-PMC) was introduced, as per facilities provided to Central Government Pensioners covered under CGHS. The Scheme was optional and contributory in nature and Pensioners of ESIC who did not opt for the scheme are allowed to fix monthly medical allowance. However respondent vide E.S.I.C. Headquarter Office letter dated 06.03.2018 revised the PMS contribution based on the C.G.H.S. rates applicable to

Central Government pensioners and according to Para 3(i) of the said letter, Pensioner beneficiaries, who had already obtained E.S.I.C. card with life-time validity by paying a lump sum amount equivalent to 10 years contribution, will not be required to pay any additional amount as a result of the revisions in the rates of contribution for availing E.S.I.C facility. Letter dated 06.03.2018 thus was protecting the pensioners who had already obtained ESIC cards with life time validity. However, further instructions were issued vide letter dated 17.08.2018 (Annexure A-1), impugned in the O.A. whereby this clarification was also issued that the instructions dated 06.03.2018 are effective with effect from 01.02.2017 and pensioners who had obtained medical cards on or after 01.02.2017, with life-time validity are also required to pay the difference in contribution rates. Applicants had been issued medical cards, with life time validity in year 2017 but after 01.02.2017 and taking recourse of this instruction, enshrined in letter dated 17.08.2018 (Annex. A-1) amount of difference in contribution rates has been demanded from applicants and their medical facility has also been stopped.

8. From the facts enumerated herein above, it is clear that question that arise for consideration is whether the enhancement which has been sought to be made by the respondents' from retrospective date is in accordance with Pensioner Medical Scheme, 2006 and is tenable in law but before adverting to said controversy it is significant to take note of some indisputable facts.

9. It is not disputed that applicant No.1 superannuated on 31.01.2017, he opted for PMS on 02.02.2017, deposited requisite amount Rs.60, 000/- for life-time validity card on 03.02.2017 and was issued PMS card with life-time validity on 23.02.2017. Applicant No.2 superannuated on 31.05.2010,

deposited requisite amount of Rs. 11,700/- for life-time validity card on 01.02.2017 and was issued PMS card, with life-time validity in July 2017. Applicant No.3 superannuated on 30.09.2011, deposited requisite amount Rs. 39,000/- for life-time validity card and was issued PMS card with life-time validity on 18.10.2017. Applicant No. 4 superannuated on 31.07.2017, opted for PMS on and deposited requisite amount of Rs. 39,000/- for life-time validity card on 24.08.2017 and was issued PMS card with life time validity in September 2017. Applicant No.5 superannuated on 30.09.2017 opted for PMS and deposited requisite amount of Rs. 39,000/- for life-time validity card in November 2017. Applicant No 6 superannuated on 31.07.2017, opted for PMS life-time validity card, deposited requisite amount of Rs. 39,000/- and was issued PMS card with life time validity in October 2017. That after disposal of OA No. 536/2018 respondents had directed the applicants to deposit difference amount of PMS contribution by letter, addressed to Applicant No. 1 to Applicant 6 during the period from 28.12.2018 to 11.01.2019, which are Annexure A-2, A-3, A-4, A-5, A-6, & A-7.

10. It is the contention of the learned counsel for respondents that ESIC follows the instructions being issued by the Ministry of Health and Family Welfare and that whenever the Ministry revised the rates, same is also adopted by the ESIC and that said Ministry had revised the rates of subscription under CGHS with effect from 01.02.2018 and therefore ESIC has also enhanced the rates with effect from 01.02.2018. Said submission of learned counsel cannot be said to hold water. C.G.H.S. rates were revised by the Ministry of Health and Family Welfare as per letter No.S.11011/112016 C.G.H.S. (P)/E.H.S. dated 09.01.2017 effective from 01.01.2017 but later on realizing, as illustrated by Annexs. A/12 & A/13, that some

CGHS Pensioners card have already been issued in between 1st January and 9th January at the old rates and making the changed rates effective from 1st January may cause inconvenience to beneficiary and the administration the Ministry changed the date of effect and made it effective from prospective date 01.02.2017 and issued letter dated 13.01.2017 (Annex. A/10). It can safely be construed that the Ministry of Health and Welfare was of the view that change of rates from retrospective date would not legally be sustainable and hence the change was made from prospective dates. It is true that rates of contribution can be revised by ESIC and same has been revised in wake of revision notification by the Central Government. In present case the ESIC though, has issued notification qua enhancement of rates on 06.03.2018 but has made the enhanced rates effective from 01.02.2017 meant to say from a retrospective date *The ESIC ignored this aspect that* the Central Government did change the rates prospectively. Revised rates by ESIC should be made effective from a prospective date.

11. Enhancement of rates, if followed in true spirit of revision notification of the Central Government, the same ought to have been made effective prospectively. Learned Counsel Sh. Joy Mathew also has submitted that applicant No.1 has raised his grievance before the Ministry and his request was rejected by the Ministry. He referred Annexure A-15 where the request of the applicant is there as well as on Annexure A-16 whereby it has been rejected. It is hardly of any significance. Such administrative rejection cannot render legality to an act, which if on review in its scrutiny by a judicial forum is found legally not sustainable.

12. This direction to giving effect retrospectively cannot, otherwise be said to be legally sustainable. Retrospective

operation is decided in the case of ***Mukesh Kumar versus Prem Bihav***, AIR 1989 SC 1247 and it has been held therein that retrospective operation is not given to the statute so as to impair existing right or obligation, otherwise than as to regards matter of procedure unless that effect cannot be avoided without doing violence to the language of the enactment.

13. The applicants had obtained life cards in year 2017. The principle of promissory estoppels which are now firmly enshrined in our jurisprudence is clearly applicable in present case. A promise was held out by the respondents' to the pensioners namely Pensioners Medical Scheme, 2006 and applicants acted upon this promise to their detriment. The amount which was demanded at that time was paid by the applicants. Respondents then issued the Medical Cards for life-time validity. Respondents now cannot go back on the promise given earlier and charge a sum higher than that the rates which were applicable at that time. Demand of higher amount prejudicially affect vested right or impair contract. Retrospective legislation is looked upon with disfavour, as a general rules, and properly so because of its tendency to be unjust and oppressive and tantamount to inject life into a matter which had already died before. Thus, higher amount cannot be recovered from the applicants and as such, demand as has been made cannot sustain being legally not sustainable.

14. In view of legal and factual scenario, discussed above, the clarification/instruction/guidelines recorded in Para 4 of Memorandum/Order No.D-12/16/1/2017 E-VI Vol-I dated 17.08.2018 (Annex.-A), issued by ESIC, which reads:

“The instructions dated 6/3/2018 are effective w.e.f. 1/2/2017. Therefore, pensioners who had already obtained medical cards on or after 1/2/2017 with life-time validity are required to pay the difference in contribution rates”,

stand quashed and is set aside. The Respondents are directed to make available medical facilities to the applicants/pensioners on the basis of contributions as per rates prevailed at the time when they applied for medical card for life-time validity and such card was issued and not to press additional amount of contribution pursuant to above said Memorandum dated 17.08.2018.

15. With above said observation and direction, instant O.A. stands disposed of. M.A. for joint application consequently also stands allowed. No order as to costs.

(M.C. VERMA)
MEMBER (J)

mehta