

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CHANDIGARH.

OA No. 1493/CH/2013

Railway Senior Citizen Welfare Society & others vs UOI & others

Para wise reply on behalf of Respondents

Respectfully Showeth That:

PRELIMINARY OBJECTIONS

I. Applicant NO.1 purports to be a Railway Senior Citizen Welfare Society of Railway pensioners) and applicant Nos 2 to 3 are stated to be Railway pensioners and members of the society. They claim:

(a) Monthly Fixed Medical Allowance (FMA) of Rs. 1200 and Rs. 2000 at par with Employees Provident Fund Organisation (EPFO) pensioners.

(b) Monthly FMA for the Central Govt./Railway pensioners residing in the area covered by CGHS Dispensaries/within 2.5 Km of Railway Dispensary/ Hospital.

The applicants have no nexus with Central Govt. pensioners & have no locus standii to espouse their cause for FMA or claim any relief for them. The present OA is not a Public Interest Litigation on behalf of the Central Govt. pensioners. The reliefs prayed for by the applicants on behalf of Central Govt. pensioners are not maintainable.

II. The applicants have no jurisdiction to challenge Ann. A-1 & Ann. A-2 passed by Resp. nos. 2 to 4 in respect of Central Govt. pensioners.

REPLY ON MERITS

Para 1. Applicant NO.1 purports to be a Railway Senior Citizen Welfare Society of Railway pensioners and applicant Nos 2 to 3 are stated to be Railway pensioners and members of the society.

Para 2. Matter of law.

Para 3. Matter of law.

Para 4.

4(a) 19.12.1997 Ann. A-4 : Central Government introduced the Scheme of Fixed Medical Allowance (FMA) @ RS.100 per month based on the recommendations of the 5th Central Pay Commission for Central Government pensioners residing in the areas not covered by the CGHS dispensaries/ hospitals to meet their day to day medical expenses for small ailments

not requiring hospitalisation. The beneficiaries had to exercise the option to avail FMA in lieu of availing GPO facility from CGHS dispensaries.

4(b) 21.4.1999 Ann. A-S: The Ministry of Railways while adopting the instructions Ann. A-4, extended the benefit of FMA to those Railway pensioners/Family pensioners residing outside the City/town/municipality limits of places where a Railway hospital/health unit/lock up dispensary is situated and also specified the list of places where these Railway facilities are available.

1.3.2004 (Ann.R- 1) & (24.7.2007 Ann. R-2) Pursuant to the observations of the Ernakulam Bench of the CAT, the Railway Ministry issued Ann. R-1 & Ann. R-2 allowing FMA to Railway pensioners who resided more than 2.5 Km. away from than the nearest Railway Hospital/Health unit provided they furnish an Undertaking to that effect.

18.10.2004 Ann. R-3 Further instructions were issued by the Railway Board clarifying that Railway pensioners /Family pensioners must give an undertaking that from the day they avail FMA, they will not avail of OPD facility at Railway Hospital/Health unit.

Thus, from the very beginning, the very basis of the FMA scheme was to make a financial provision for the Central Govt. /Railway pensioners who were residing beyond prescribed area and opt not to avail the OPD facilities of Railway hospitals /Health units /CGHS.

The 2.5 Km criteria for grant of FMA to Railway pensioners is analogous to Central Govt. pensioners in CGHS covered area.

On implementation of 6th Central Pay Commission recommendation I the rate of FMA has been raised to Rs. 300/-P.M. w.ef 1-9-2008.

4(c) The present applicants claim:

- i) Monthly Fixed Medical Allowance (FMA) of Rs. 1200 and Rs. 2000 at par with Employees Provident Fund Organisation (EPFO) pensioners.
- ii) Monthly FMA for the Central Govt./Railway pensioners residing in the area covered by CGHS Dispensaries/within 2.5 Km of Railway Dispensary/ Hospital.

The claim is not justified as benefits to EPFO employees are determined/regulated by a different set of Retirement and Medical rules/ instructions than those applicable to Central Govt./ Railway pensioners. EPFO pensioners are not Central Govt. or Railway servants and are not comparable to Central Govt./Railway pensioners who constitute a different class of beneficiaries.

4(d) 29.10.2004 In Employees Provident Fund Pensioners Association vs UOI OA No. 236 of 2003 decided on 29.10.2004, the Ernakulam bench of CAT held as follows:

“9. The question is whether the medical facilities now available to certain employees in a particular station can be extended to the governmental organisation, Quasi governmental organisation, corporations and autonomous bodies etc. In this case the grievance of the applicants is that the Central board of EPFO under the fourth schedule has formulated a regulation for granting of pension and other retirement benefits in accordance with the scheme to be prepared on the line of liberalized pension cum gratuity scheme as applicable to corresponding central Government employees from time to time. The Board has adopted the Central Government rules governing pension and retirement benefits in terms of the said

provisions in the regulations and the retired employees are being paid pensions and retiral benefits as applicable to Central government. Employees in terms of CCS pension rules. Therefore, one of the arguments advanced by the Ld. counsel for the applicants is that the benefits which is applicable to the Central government employees also to be granted to the applicants. In this context it is to be mentioned here that though the applicants are praying for granting the CGHS facility to them, nothing has been brought to our notice to show that their proposal has been accepted by the government agreeing to extend the said facility to them. A unilateral proposal cannot be culminate granting of a scheme or rule to be extended to its employees. Agreement, if any, must be mutual and by such an agreement, the government should have a contractual obligation to implement the same. The government acceptance is the most important in granting the benefit to the employees of the organisation and in the absence; the legal effect will be that the applicants cannot aspire for the same. This is more so, because even though the contention of the applicants that they should be treated on par with the Central government employees, they are not ipso facto government servants. The applicants organisation is an autonomous body enjoying its own power to make rules, its own funds to formulation schemes and its own body to take appropriate decisions in all matters such as to extend the benefit to its employees or otherwise. This is quite evident from the fact that the organisation is taking every Endeavour to tie up with the sixth respondent in formulating the "Group Medic/aim Policy" which is in existence. Also, sincere efforts have been made by the EPFO to explore the possibility to extend the CGHS benefits to its employees, but that request was turned down by the CGHS authority.

10. The reasons given in rejecting the applicant's claim is that it may not be possible to extend the CGHS benefits due to resource constraints. The question now arises for consideration is whether the reason given above is justified or not in rejecting the claim of the applicants and whether the applicants are discriminated. It is an admitted fact that the CGHS scheme has been introduced with a view to provide comprehensive medical care facilities to the Central comment employees and members of their families will stop the scheme which was initially introduced in Delhi has been extended other cities by now. Under the said scheme, residence is to be considered as criteria for determining the eligibility of the said persons to avail of medical facilities. So far as the pensioners are considered, if they are staying at places in the CGHS covered cities, they can avail of the said facility on contributing a specific amount. Regarding the applicability of CGHS facility to the serving employees and retired employees in the Central comment itself, a question arose before the full bench in OA No. 686/HR/1999(Chandigarh bench) that even if one is the member of the scheme and resides within an area where the facilities available, when he leads to some other area where the facilities not available he loses all the benefits and in that event this act is discriminatory. The full bench of the Tribunal while disposing of the aforesaid case as well as OA No. 542/HR/2000 and OA No. 447/PB/2001 on 17.3.2003, held that this will not amount to discrimination under article 14 and 16 of the Constitution nor it will attract article 21 of the Shishan and directed the Central government to draw or scheme keeping in view its resources. In this case, the main contention of the respondents is that the applicants cannot be treated on par with the Central government employees as defined under CCS(pension) rules. However, in their reply dated 16.7. 2004, the respondents further stated that the order number HRM - V/12/1/2003/FMA/volume 2 dated 6.2.2004 issued by the Central Provident fund Commissioner enhancing the rate of fixed medical allowance is only to the serving employees of EPFO and the said allowance was sanctioned to the employees of the organisation in view of the facilities for outdoor treatment available under CCS(MA) rules. This shows that they are to certain extent, being treated on par with the Central government employees for the purpose of medical reimbursement

13 In this case, the applicants are not successfully in proving that they are government servants and their service conditions are similar to that of Central government employees. Admittedly, EPFO is a corporate body having powers to make its own rule and having its own

funds, therefore, they need not to look forward to CGHS, which is very limited to the Central government employees alone. Even many of Central government employees are not being extended this facility for the reasons discussed in the proceedings Paras. This involves larger financial implications. Much less to say that the EPFO has its own funds which itself can get a scheme formulate a scheme for the benefit of its employees. Every efforts have been made by the organisation to extend the medical benefits to its employees and as a result, an agreement was entered into by EPFO with Oriental insurance company limited. Sixth respondent for group medically policy enabling the serving or retired employees of EPFO to avail of the benefits.

14. In the case on hand the specific case of the respondents is that the CGHS facility cannot be extended to the EPFO, which is, due to financial constraints and this facility is extended to the Central government employees only stop therefore the claim of the applicants has been rejected stop it is a fact that a member of CGHS has to contribute a particular amount either on monthly basis or as per the scheme and there upon in accordance with the scheme and the facilities that are provided, reimbursement is permissible. It is also not in dispute that the writ government servants paid a specific amount every month for day to day medical facilities. If a person, therefore, being not a member of CGHS is denied of the said facility in it he cannot complain of being discriminated. As regards the EPFO is concerned, it has its own resources and got the authority of rule making power and formulating schemes etc. to the benefits of its employees. Since there is no privity of contract between the government and this organization as also it is the exclusive domain within its resources, we are not inclined if a declaration that CGHS facility is to be extended to the applicants and similar other employees and the prayer in this regard deserves to be rejected and we do so accordingly.

As held by the Hon'ble Supreme Court's ruling in D.S. Nakara & Others Vis UOI & others (1983) (I-SCC- 305) & Krishna Kumar Vis UOI & others (JT-1990 (3) SC 173L incomparables cannot be equated.

4(e). The option for allowing FMA to the central Government/Railway pensioners residing in area covered by CGHS Dispensaries/ within 2.5 Kms respectively, cannot be allowed inter alia because the Central Govt./Railways have established a set of Dispensaries/ Hospitals to cater to the medical needs of serving/ retired central Govt./ Railway employees at huge expense. Allowing option of FMA to the Central Govt. / Railway pensioners residing in the area covered by CGHS dispensaries/ hospitals and residing within 2.5 Kms. of the nearest Railway dispensaries/ Hospitals will only cause unnecessary duplication of medical care, overburden the existing hospitals/ dispensaries infrastructure/medical staff and cast dual financial burden on the Railways/Central Govt. of not only running the CGHS/ Railway dispensaries but also paying FMA to pensioners residing in the command area of such dispensaries/hospitals (2.5Km.) Thus, pensioners residing in areas beyond 2.5Kms. of the nearest Railway hospital/Health unit /Government hospital are not similarly situated to those residing in the area covered by CGHS / Railway hospitals/ dispensaries.

4(f). The various communications, Minutes of the meetings, notes cited/ mentioned by the applicants in their O.A. merely reflects the process of deliberation between various departments of the Government for the purpose of determining the rate of F.M.A. In such matters, fiscal constraints are a vital consideration for arriving at a decision. The Government's absence of further upward revision in FMA being a matter of policy determined on a large number of factors especially monetary limitations, is not open to judicial review.

4.1 The present OA is not maintainable as elaborated in paras I & II of the Preliminary Objections.

4.2 The FMA has been allowed in lieu of the non utilization of OPD facilities available at CGHS/ Railway Dispensaries to employees residing beyond the command area of these CGHS/railway dispensaries.

4.3 Matter of record.

4.4 Matter of record. There was a dispute before the Ernakulam Bench of CAT regarding territorial jurisdiction for grant of FMA to Railway Pensioners, pursuant which the Railway Ministry issued Ann. R-1 & Ann. R-2 allowing FMA to Railway pensioners who resided more than 2.5 Km. away from than the nearest Railway Hospital/Health unit provided they furnish an Undertaking to that effect.

The criteria of residence beyond 2.5 Km. a Central Govt/ Railway dispensary for grant of FMA to Railway pensioners is analogous to Central Govt. pensioners not residing in CGHS covered area.

4.5 Matter of record.

4.6 Matter of record.

4.7 Matter of record.

4.8 The retiral benefits of EPFO employees are determined/regulated by a different set of rules/ instructions than those applicable to the Central Govt./ Railway pensioners. As the two categories are not comparable and constitute two different classes, the FMA payable to EPFO employees cannot be extended to CGHS Railway employees. The inequality between incomparables has been aptly brought out by the Hon'ble Supreme Court rulings in D.S. Nakara & Others V /s UOI & others (1983) (1-SCC- 305) & Krishna Kumar Vls UOI & others (JT-1990 (3) SC 173).

4.9 to 4.18 Matter of record.

4.19 The retiral and medical benefits of EPFO employees are determined/regulated by a different set of rules/ instructions than those applicable to the Central Govt./ Railway pensioners. The two categories are not comparable and constitute two different classes. The inequality between incomparables has been aptly brought out by the Hon'ble Supreme Court rulings in D.S. Nakara & others (1983) (1-SCC- 305) & Krishna Kumar Vls UOI & others (JT-1990 (3) SC 173).

4.20 Matter of record.

4.21 Need no reply.

4.22 The retiral benefits of EPFO employees are determined/ regulated by a different set of rules/ instructions than those applicable for Central Govt./ Railway pensioners. As such the two categories are not comparable and constitute two different classes. As the Central Government/ Railway Pensioners constitutes a different class than EPFO pensioners, the facilities to the CGHS/Railway pensioners cannot be equated and there is no case of violation of Article 14 &16 of the constitution.

Para 5. Denied. The applicants claim for grants of FMA at par with the EPFO pensioners is not tenable inter alia because the central Government / Railway Pensioners altogether constitute a different class and are not comparable. Fixed Medical Allowance is allowed to both serving & retired EPFO employees, whereas, Central Government /Railways allow FMA only to retired employees. Thus, Central Government /Railway pensioners cannot be placed at par with EPFO pensioners .There is no case of alleged violation of Article 14 & 16 . Deciding the rate of

any allowance after considering various relevant considerations, including its financial feasibility/capacity is the prerogative of the Government which is not open to judicial review.

Para 6. Matter of law.

Para7: Denied for want of knowledge.

Para 8: The present OA is not maintainable for the reliefs claimed by the applicants as clarified in the Preliminary Objections I & II of the present Reply.

Paras 9 to 12: Need no reply.

PRAYER

It is therefore prayed that the present OA be dismissed with costs as not maintainable as well as on merits.

Chandigarh

FOR RESPONDENTS

11.4.2014

Sd/-
N.P. Singh, Deputy Director PC V
Railway Board, Ministry of Railways
New Delhi

Through

Lakhinder Bir Singh
Advocate

Verification

I, N.P. Singh, Deputy Director PC V, Railway Board, Ministry of Railways New Delhi do verify that the contents of the above reply in paras I, II, 1, ,4, 5,7 are true to my knowledge as derived from records and nothing material is concealed therein.

The contents of paras 2,3, 6,8,9 to 12 are believed to be true on advice received.

Chandigarh

FOR RESPONDENTS

11.4.2014

Sd/-
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