

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH, CHANDIGARH.

O.A.NO. 1493-CH-2013

Railway Senior Citizens Welfare Society etc.

Applicants

Versus

Union of India etc..

Respondents

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Place: Chandigarh.

Dated:

(V.K.SHARMA)
Advocate
Counsel for Applicants

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH, CHANDIGARH.

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Railway Senior Citizens Welfare Society (Regd.)

Chandigarh & Others

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REJOINDER BY THE
APPLICANTS TO THE WRITTEN
STATEMENT FILED BY THE
RESPONDENTS.

Respectfully showeth:-

AS TO PRELIMINARY OBJECTIONS:

1. That except for admitted facts, the contents of this para as explained are wrong hence denied. It is denied that the applicants have no nexus with the Central Government pensioners and have no locus standi to espouse their cause for enhanced FMA. The present Original Application is not in the form of a public interest litigation. The applicants are aggrieved persons as provided in the Administrative Tribunals Act, 1985, and as per Rules framed there under, even an Association can file an Original Application on behalf of its members subject to the condition that one person

is to be impleaded in the personal capacity as well which has duly been done in this case. The objection appears to be outcome of ignorance of the position existing in the rules made for conduct of proceedings in this Hon'ble Tribunal. It is further submitted that Applicant No 1 is a Registered Society under Firms and Societies Act - working for the last over 22 years for the welfare of the Pensioners & redressal of their grievances since August 1991. *(Copy of the registration Certificate is attached as Annexure A-21).*

Govt. of India, Ministry of Pension & Pensioners' Welfare (DOP&PW) has Identified and Recognized Applicant No. 1 Railway Senior Citizens Welfare Society (RSCWS) under Pensioners' Portal for the welfare of Pensioners and for Redressal of their grievances *(vide DOP&PW Letter No. 55/ 12/2013-P&PW(C), Dated: 03-03-2014, (Copy attached as Annexure A-22).*

Applicants are directly affected by the impugned orders and as such having the legal right to protect the right of their Members and of their own respectively.

The impugned orders of Central Government Ministry of Pension (DOP&PW - being the nodal Ministry) were directly adopted by the Railways - as per extant orders and Rules and as such the applicants have rightly challenged the same and sought the relief in the OA.

Since the orders of the Respondent Railways are based on the orders of the Central Government with regard to FMA, the action of the Central Government for not enhancing the FMA can be challenged by the applicants.

2. That the objection is too vague and does not require any response, except that it has been taken for the sake of preliminary objection. Annexure A-1 is a letter addressed to applicant No.2 who is general Secretary of applicant No.1 and Annexure A-2 is the basis of Annexure A-3. Thus the applicants have the locus standi to file the Original Application and subject matter falls within the jurisdiction of this Hon'ble Tribunal. The impugned orders of Central Government Ministry of Pension (DOP&PW - being the nodal Ministry) was directly adopted by the Railways - as per extant orders and Rules and as such the applicants have rightly challenged the same and sought the relief in the OA and have the full legal right to do so.

ON MERITS

1. That the respondents have not even cared to file any reply to this para 1 of the O.A which amounts to admission on their part. The applicants have made out their prayer in this para along with grounds also on the basis of which they are entitled to relief sought for by them. The impugned order and action of the respondents are liable to

be quashed and set aside being discriminatory and in sheer violation of equality provided in the Constitution of India. In view of non-reply, the averments made in para 1 of the O.A are clear cut admission and the O.A. can be allowed straightway.

2. That the contents of this para need no reply.

3. That the contents of this para need no reply.

4. FACTS OF THE CASE :

(a) That the contents of paras 4 (a) need no reply. However, the revision of FMA cannot be denied to the applicants, on any of the grounds raised in the reply.

(b) That the contents of this para need no reply except that the revision of FMA cannot be denied to the applicants, on any of the grounds raised in the reply. There does not appear to be any logical explanation for treating two sets of employees differently. Day to day medical expenses for small ailments not requiring hospitalization, cannot be met in the FMA of Rs.300 PM, in view of exorbitant rise of prices of Medicines since 1997 - when the FMA was initially granted - as had been repeatedly pleaded by various Pensioners Organizations as well as by the Ministry of

Health and Ministry of Personnel (DOP&PW) while recommending the higher FMA of Rs. 500 PM and subsequently Rs.800 PM, but which was over ruled by the Ministry of Finance etc. without any cogent reasons.

- (c) That the contents of this para need no reply except that the revision of FMA cannot be denied to the applicants, on any of the grounds raised in the reply. The claim of the applicants is fully justified as per the law. In fact medical care has been taken as a part of right to life under article 19 of the Constitution of India. It is further submitted that the claim of the Applicant for a Monthly Fixed Medical Allowance (FMA) of Rs. 1200 and Rs. 2000 at par with Employees Provident Fund Organization (EPFO) pensioners is fully justified as right of medical care is for the employees and it does not discriminate the employees posted in different organisation particularly when the provisions of the Constitution of India are applicable to all citizens of India. As submitted in the original application the day to day medical expenses for small ailments not requiring hospitalization, cannot be met in the FMA of Rs.300 PM, in view of exorbitant rise of prices of Medicines since 1997 – when the FMA was initially granted – on the Recommendations of

Fifth Pay Commission. 6th CPC had left the decision in this regard on the Government.

Further as per EPFO Act & Regulation, Pay scales & service conditions of the Employees & Pensioners of EPFO are to be the same as those of the Central Government Employees & Pensioners; provided that in case the Board of Directors want any deviation from the same, it could be made only with the approval of the Central Government. The deviation made regarding the Rate of FMA was done with the approval of the Central Government / The Ministry of Finance Expenditure. The case of the EPFO was basically cited to establish the authenticity of the amounts claimed as FMA by the applicants. The very fact that the Revision of FMA of EPFO Employees & Pensioners was based on the average rise of expenditure on OPD under CGHS – as verified by the Ministry of Health and Family Welfare and that too with the consent of the Central Govt. MoF(E) – establishes the relevance of their case to the claim of the applicants.

The same criteria was sought to be followed by the DOP&PW while recommending the revision of FMA – as per average rise of expenditure on OPD treatment per Card Holder under CGHS. But it was not accepted by the MoF (E) etc.

- (d) That the contents of this para need no reply except that the revision of FMA cannot be denied to the applicants, on any of the grounds raised in the reply. The decision quoted by respondents is out of context as in that case the EPFO employees were claiming parity for extension of benefit of CGHS to them which was declined on the ground of being a policy decision. There is no parity of issue raised in that case and one involved in this case. The respondents are trying to mis-lead this Hon'ble Tribunal. Their claim of parity with the Central Government employees was turned down. In this case the issue is comparison of Fixed Medical Allowance which is based on a logical conclusion and the decision in the case of D.S. Nakra & Other is also of no help to the respondents. It is further submitted that even though the EPFO employees & Pensioners are not covered under the CGHS, the Revision of FMA of EPFO Employees & Pensioners was based on the average rise of expenditure on OPD under CGHS - as verified by the Ministry of Health and Family Welfare and that too with the consent of the Central Govt. MoF(E) - establishes the relevance thereof to the claim of the Applicants. However the basic thrust of the claim of the Applicant is that the day to day medical expenses for small ailments not requiring hospitalization cannot be met in the

FMA of Rs.300 PM, in view of exorbitant rise of prices of consultation and Medicines since 1997 – when the FMA was initially granted – on the Recommendations of Fifth Pay Commission. 6th CPC had left the decision in this regard on the Government and the average amount of expenditure on OPD Treatment per Card Holder under CGHS – as cited in the OA – reflected extent of rise in the cost of Medicines and Consultation etc. – since the grant of FMA initially in 1997.

It is highly discriminatory with those who have not joined CGHS/RELHS or opted out of OPD facility, to be granted only Rs.300 PM as Fixed Medical Allowance (FMA) for their day-to-day treatment, whereas the Government spent more than Rs.2000 PM on each patient /per Card holder on OPD facilities on similarly placed other Pensioners who are residing near to the CGHS/Railway Hospitals & Dispensaries and had thus opted for the same.

- (e) That the contents of this para as explained are wrong hence denied. The revision of FMA cannot be denied to the applicants, on any of the grounds raised in the reply. The difference explained by the respondents in the case of the applicants is nothing but is a useless exercise. The distinction being drawn by them between two set of persons one residing in

CGHS/Railway Dispensaries and another out of area is irrelevant in this case. India is a vast country. The number of Central Government and Railway Hospitals & Dispensaries are not adequate enough to provide treatment to over 30 Lakh Central Government and Railway employees and nearly 23 Lakhs Pensioners (including 13 Lakh Railway employees and 10 Lakh Railway Pensioners) – residing at long distances from these Hospitals and Dispensaries. It is humanly impossible for all these Pensioners to travel long distances take day-to-day Medical treatment the Central Government & Railway Hospitals and dispensaries.

Health care of Pensioners is the responsibility of the Central Government as has been held by various Courts in many cases – and they cannot escape from this vital responsibility merely by citing financial implications or resources. Overcrowding and lack of adequate facilities in CGHS & Railway Hospitals & Dispensaries is one of the reasons why some of the Pensioners residing in CGHS Areas/within 2.5 Km of Railway Hospital would like to opt out of the OPD facilities thereof to get day-to-day treatment from a nearby family Doctor or the one practicing the system of their choice and requirement.

- (f) That the contents of this para need no reply except that the revision of FMA cannot be denied to the applicants, on any of the grounds raised in the reply. The Government cannot abdicate its responsibility of revision of FMA on any of the ground including that of financial one. Health care of Pensioners is the responsibility of the Central Government as has been held by various Courts in many cases - and they cannot escape from this vital responsibility merely by citing financial implications or resources.

In this regard the following extracts from the judgment of Hon'ble High Court Delhi in case of *Kishan Chand-vs-Govt. of NCT & Others vide W.P(c) No.889/2007* are vital to be cited to establish the responsibility of the Central Government and the Railways towards the health care of the Pensioners - both for Specialized Treatment in case of emergency as well as for their Day-to-Day Medical Treatment:

"8. It is quite shocking that despite various pronouncements of this Court and of the Apex Court the respondents in utter defiance of the law laid down have taken a position that the pensioner is not entitled to the grant of medical reimbursement since he did not opt to become a member of the

said health scheme after his retirement or before the said surgery undergone by him. It is a settled legal position that the Government employee during his life time or after his retirement is entitled to get the benefit of the medical facilities and no fetters can be placed on his rights on the pretext that he has not opted to become a member of the scheme or had paid the requisite subscription after having undergone the operation or any other medical treatment. Under Article 21 of the Constitution of India, the State has a constitutional obligation to bear the medical expenses of Government employees while in service and also after they are retired. Clearly in the present case by taking a very inhuman approach, these officials have denied the grant of medical reimbursement to the petitioner forcing him to approach this Court. The respondents did not bother even after the judgment of this Court was brought to their notice and copy of the same was placed by the petitioner along with the present petition.

Copy of the judgment is attached as Annexure A-23.

It is further submitted that DOP (P&PW) in its "Note for the Committee of Secretaries"

regarding the enhancement of the FMA to Rs.800/- p.m. and the same being linked to inflation as suggested by Ministry of Health & Family Welfare since the cost of consultation fee which used to be Rs.20 and 50 per visit in the year 1996 had increased from Rs.100/- to Rs.500/- per visit in the year 2010. Cost of diagnostic tests has also increased considerably during the same period. Annexure A-10 is clear on this aspect.

- 4.1 That the contents of this para as explained are wrong hence denied and those of the corresponding para of the Original Application are reiterated. The Original Application is maintainable.
- 4.2 That the contents of this para need no reply except that enhanced FMA cannot be denied to the applicants.
- 4.3 That the contents of this para need no reply.
- 4.4 That the contents of this para need no reply. However, it is submitted that the decision quoted by respondents is out of context as in that case the EPFO employees were claiming parity for extension of benefit of CGHS to them which was declined on the ground of being a policy decision. There is no parity of issue

raised in that case and one involved in this case. The respondents are trying to mis-lead this Hon'ble Tribunal. Their claim of parity with the Central Government employees was turned down. In this case the issue is comparison of Fixed Medical Allowance which is based on a logical conclusion and the decision in the case of D.S. Nakra & Other is also of no help to the respondents.

4.5 That the contents of this para need no reply.

4.6 That the contents of this para need no reply.

4.7 That the contents of this para need no reply.

4.8 That the contents of this para are wrong hence denied and that of the corresponding para of the O.A. is reiterated. The decision in the case of D.S. Nakra and Krishna Kumar cited by the respondents is clearly distinguishable and is not applicable to the issue involved in this case. Even though the EPFO employees & Pensioners are not covered under the CGHS, the Revision of FMA of EPFO Employees & Pensioners was based on the average rise of expenditure on OPD under CGHS - as verified by the Ministry of Health and Family Welfare and that too with the consent of the Central Govt. MoF(E) -

establishes the relevance thereof to the claim of the Applicants.

4.9 to 4.18 That the contents of these paras need no reply. Respondents have failed to reply specifically the issues raised in Para 4.12, 4.14, 4.16 and 4.17.

4.19 That the contents of this para are wrong hence denied and that of the corresponding para of the O.A. is reiterated. The decision in the case of D.S. Nakra and Krishna Kumar cited by the respondents is clearly distinguishable and is not applicable to the issue involved in this case. Even though the EPFO employees & Pensioners are not covered under the CGHS, the Revision of FMA of EPFO Employees & Pensioners was based on the average rise of expenditure on OPD under CGHS - as verified by the Ministry of Health and Family Welfare and revised with the consent of the Central Govt. MoF(E) - establishes the relevance thereof to the claim of the Applicants.

4.20 That the contents of this para need no reply.

4.21 That the contents of this para need no reply.

4.22 That the contents of this para are wrong hence denied and that of the corresponding para of the O.A. is reiterated. The respondents

are taking totally illogical pleas in support of their plea to deny the rightful claim of the applicants. The revision of FMA cannot be denied to the applicants. The financial position of Government of India cannot be determined differently on department to department basis. Government's finances are not so poor that it cannot afford the claim of the applicants more so when health care has been recognized to be part of right to life. Revision of FMA of EPFO Employees & Pensioners was based on the average rise of expenditure on OPD under CGHS - as advised & recommended by the Ministry of Health and Family Welfare and the revision of FMA in these case done in any case with the approval of the Central Govt. MoF(E) - establishes the relevance thereof to the claim of the Applicants at least to the extent of the amount of the FMA claimed by the Applicants.

5. That the contents of this para as explained are wrong hence denied and that of the corresponding para of the O.A. is reiterated. The fact remains that the respondents have not replied to various grounds taken by the applicants in para 5 which amounts to admission on the part of the respondents and therefore, the claim of the applicants may kindly be allowed in toto.

6. That the contents of this para need no reply.

7. That the contents of this para are wrong hence denied and that of the corresponding para of the O.A. is reiterated.

8. That the contents of this para are wrong hence denied and that of the corresponding para of the O.A. is reiterated. The applicants are entitled to relief prayed for by them.

9to12 Need no reply.

It is, therefore, prayed that the O.A. may kindly be allowed as prayed for.

Place: Chandigarh.

Dated: 29.04.2014

Applicant

Through :-

(V.K.SHARMA)
Advocate

VERIFICATION:

I, Harchandan Singh S/o Late Shri Balbir Singh, aged 71 years (Ret.), Senior Section Engineers, Northern Railway, R/o 32, Phase 6, Mohali-160055 (Punjab), do hereby verify that the contents of paras 1, 4 6 to 12 are true and correct to my personal knowledge and those of 2,3 & 5 on merits and those of "As to Preliminary Objections"

are believed to be true on legal advice. I have not suppressed any material fact there from.

Place: Chandigarh.

Dated: 29.04.2014

Applicant

ANNEXURE A-21

D.L.-210

Particular Sent From S.A.S. Nagar

CERTIFICATE OF REGISTRATION OF SOCIETIES
(ACT XXI OF 1860)

No. 1887 of 1952

I hereby certify that INDIAN SOCIAL CITIZENS WELFARE SOCIETY,
CHANDIGARH

has this day been registered under the Societies Registration Act (XXI of 1860) and as amended by Punjab Amendment Act 1957.

Given under my hand at Chandigarh this 24th day of June 1952.

One thousand Nine Hundred & eighty three only.
Fee Rs. 50/-

REGISTRAR OF FIRMS & SOCIETIES
CHANDIGARH.

13

ANNEXURE A-22

LETTER OF APPROVAL OF IDENTIFICATION OF RSCWS BY DOP&PW
Copy of letter No.55/ 12/2013-P&PW(C), Dated: 03-04-2014,
**Govt of India, Ministry of Personnel PG & Pension, Department of Pension
 & Pensioners Welfare,**
 3rd Floor, Lok Nayak Bhawan, Khan Market, New Delhi,
 to the Secretary General, Railway Senior Citizens Welfare Society
 Chandigarh UT,

**Subject: Identification of Pensioners Association, Under
 Pensioners' Portal.**

Sir,

Please refer to your letter dt. 02-02-2012 regarding identification of your Pensioners Association under the Pensioners Portal.

2. With the approval of competent authority this Department has identified your Association, for being associated with the implementation of "Pensioners Portal", a Mission Mode Project under National e-governance Plan. As you are already aware, the Portal envisages welfare of Central (Civil) Pensioners across the country through the redressal of grievances, providing information, guidance etc. on pension and retirement related matters and other activities taken up by the Department as a policy from time to time.

3. The details of the involvement of your Association in implementation of the above said scheme will be communicated to you shortly. It is hoped that your association with this Department through involvement in "Pensioners' Portal" would go a long way in benefiting the pensioners in the area.

4. You are requested to send necessary details in the enclosed Performa which may be required for processing the matter regarding release of Grant-in- Aid under the scheme.

Yours faithfully

Sd/- (Tripti P. Ghosh), Director