

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9101 OF 2016

1 Union of India
Through The Secretary,
Government of India, Ministry of Home
Affairs, North Block, Central Secretariat,
New Delhi 110 001

2 The Registrar General, India
Kotah House Annex, 2/A, Mansingh
Road, New Delhi 110 011

3 The Assistant Director of Census
Operation Directorate of Census
Operations,
Exchange Building, 2nd Floor,
Ballard Estate, Sir Shivsagar Ramgulam
Marg, Mumbai 400 001,
Maharashtra

.....Petitioners

V/s.

1 Mr. Sebastian S. Dias
Retired as Statistical Investigator
Director of Census Operation
Exchange Building, 2nd Floor,
Ballard Estate, Sir Shivsagar
Ramgulam Marg, Mumbai 400 001
And also having address at
Gloria, Dhobi Talao-Kolapur Road,
Ashahi, via Virar (W) Pin 401 301

.....Respondent

Mr. R.M.Harida , Advocate for Petitioners.
Ms. Swapna V. Gokhale , Advocate for Respondent.

**CORAM : SMT. V.K. TAHILRAMANI, &
SANDEEP K. SHINDE, JJ.**

DATE : 6th June, 2017.

ORAL JUDGMENT (Per Shri Sandeep K.Shinde, J.) :

Rule. With consent of the learned counsel for the Parties, Rule is made returnable forthwith and heard. The writ jurisdiction of this Court is invoked against the judgment and order dated 18.3.2016 passed by the learned Member (A) of the Central Administrative Tribunal, Mumbai Branch Mumbai in Original Application NO.718 of 2014.

2 The facts giving rise to the filing of the above writ petition can in brief be stated thus:

The Respondent joined the duty as Assistant Compiler in April, 1968 in the office of the Superintendent of Census Operation Maharashtra, Bombay. During the service tenure, he had undergone major heart surgery in the Government panel hospital in Mumbai. The treating hospital had recommended life time drugs. The Respondent voluntarily retired on 1.3.2007. It may be stated that in 1954, the Central Government had introduced the Central Government Health Scheme ('**CGHS**' for short) with the objective of providing comprehensive medical care facilities

to Central Government employees, pensioners and their Dependants residing in CGHS covered cities. Under this scheme, pensioners residing in non-CGHS areas also may obtain CGHS card from nearest CGHS covered city. It may be stated that the employees who do not reside in the jurisdiction of the CGHS Scheme covered areas, the Central Government had appointed Authorised Medical Attendants ('**AMA**' in short) under the Central Services (Medical Attendance) Rules, 1944 ('**Said Rules**' in short). The Respondent stays at Virar which does not come under the CGHS Scheme and hence, the Respondent was availing medical facilities under the said Rules. It may be stated that the said Rules are not applicable to the retired employees and, therefore, in order to avail medical facilities after retirement, a retired pensioner has to enroll under the CGHS Scheme. On 29.1.2007 well before the date of retirement , the Respondent had applied to the Director of Census Operation, Mumbai, Maharashtra ('**DCO**' In short) requesting to issue certain documents, which were otherwise required to enroll under the CGHS Scheme. After retirement, the Respondent wanted to enroll himself

and his wife under the CGHS Scheme for medical reimbursement. The office of the DCO did not respond to his application dated 29.1.2007 and as such, the Respondent sent reminder on 29.6.2007 requesting the DCO to issue necessary documents which would enable him to enroll under the CGHS Scheme. It appears that the office of the DCO asked the Respondent to surrender AMA Card in order to take further action. The Respondent immediately returned his AMA Card in original on 8.9.2007. The Respondent reminded the office of the DCO on 15.4.2008 and again on 6.2.2009 but there was no response from that end. During this period, the Respondent could not stop his medical treatment but he had to continue costly medication and undergo the pathology test for himself and his wife during the period between 1.3.2007 till 9.4.2010. Since there was no response from the office of the DCO, the Respondent sought particulars/information by making applications under RTI Act. The record further indicates that the DCO vide letter dated 30.11.2009 threatened the Respondent not to correspond department repeatedly and for the first time

informed him that the AMA Card which was surrendered by him was not genuine. Finally on 10.3.2010, the CGHS authorities enrolled the Respondent under CGHS (Pensioners' Scheme) on the basis of letter dated 30.11.2009 of the Deputy Director of Census Operation, Mumbai.

That after securing enrollment under the CGHS Scheme on 10.3.2010, the Respondent/Original Applicant corresponded to the department regarding medical reimbursement for a period between 1.3.2007 to 9.4.2010. On 1.7.2010 the Joint Director of Census Operations asked the Respondent to submit all his previous medical claims to CGHS Authorities for settlement. The said authority vide letter letter 18.7.2011 clearly informed the Respondent that since he became CGHS Card holder with effect from 10.3.2010, his claim for medical re-imbursement prior thereto could not be processed and granted.

It appears the Respondent and his wife being cardiac patients could not cope up with the increasing rates of medicines and, therefore, applied for granting fixed medical allowance which was finally sanctioned by the Pay

and Accounts Department Census in April, 2014. It further appears that the Respondent finally informed the Registrar General, India vide letter dated 31.4.2014 regarding entire situation of his medical claim; whereupon office of the Registrar General informed to the DCO, Maharashtra about the Respondent's case for medical reimbursement. The Assistant Director of Census Operations, Maharashtra instead of making reimbursement good, informed the Respondent on 6.8.2014 that since he had retired in February, 2017, Department cannot re-imburse his medical claim for the period between 1.3.2007 to 9.4.2010.

3 The aforesaid facts clearly indicate that at the first instance, the Original Respondents Authorities delayed the enrollment of the Original Applicant under the CGHS Scheme for no fault on his part. That pending his enrollment under the CGHS Scheme, he had incurred the medical expenses in a sum of Rs.58,313.73 Paise. The CGHS Authorities denied to re-imburse the claim pertaining to the period prior to his registration. More so, office of the Original Respondent No.3 denied to process and pay claim of the Original Applicant since reimbursement pertains to

period his post retirement. That under this circumstance, he was left with no remedy but to approach the Central Administrative Tribunal, Mumbai Branch, Mumbai vide Original Application No.718 of 2014 under Section 19 of the Administrative Tribunals Act, 1985 wherein he prayed thus:

“(i) That Hon'ble Tribunal be direct Respondent to reimburse total medical expenses amounting to Rs.58,313.73 incurred during the period between 1.3.2007 to 31.3.2010.”

4 The Original Application was contested by the Petitioners herein on various grounds including that of delay, on the part of the Respondent herein in approaching the Tribunal. The issue of delay has been deliberated by the learned Member of the Central Administrative Tribunal and rejected the contention of the Original Respondent Authorities by recording the reasons. The learned Member, Central Administrative Tribunal after perusing the file records and the pleadings of the parties recorded a finding that the Original Respondent Nos.1 to 3 were duty bound to ensure that the medical reimbursement on the claims made by the Respondent herein be paid along with interest and accordingly, the Original Application was allowed by

the judgment and order dated 18.3.2016. The learned Member imposed a cost of Rs.5,000/- on the Original Respondent No.3, i.e., the Assistant Director of Census Operations, Directorate of Census Operations, Maharashtra and further directed to deposit the cost with the State Legal Services Authority within a period of 15 days from the date of receipt of the certified copy of the order.

5 Aggrieved by the order as aforesaid passed by the learned Member of the CAT, the Union of India (Original Respondent No.1) before the CAT preferred this Writ Petition under Articles 226 and 227 of the Constitution of India seeking relief to quash and set aside the judgment and order dated 18.3.2016 passed by the Member (A) of the CAT Mumbai Bench, Mumbai in Original Application No.718 of 2014.

6 The learned counsel for the Petitioner-Union of India has taken us through the Original Application and the pleadings of the contesting Respondent and such other documents. The learned counsel contended that the claim of the Respondent was barred by the law of limitation and, therefore, the learned Member ought not to have granted

the application.

The learned Member of the CAT in its order and in particular paragraph 30 has re-produced entire correspondence exchanged between the Respondent and his employers. It would clearly establish a fact that the Respondent/Original Applicant had applied to his employers with request to supply him necessary documents for enrolling himself and his wife to receive the benefits under the CGHS Scheme. In paragraph 30, the learned Member has taken pains to re-produce the correspondence right from 2007 in 2009 and further proceedings under the RTI from June, 2009 till December, 2010. Therefore, a finding recorded by the Member that the Original Applicant cannot be held responsible for the delay in making the claim which cannot be faulted with.

7 The issue in the Original Application was whether the Respondent was eligible for reimbursement of medical expenses between the period from the years 2007 to 2010, i.e., following his retirement with effect from 1.3.2007 till the time he was issued CGHS Card on 10.3.2010 and if at all he was eligible, then who should

reimburse the medical expenses the CGHS or RGI.

8 After hearing the learned counsel for the Petitioners and the Respondent and after perusing the pleadings and the relevant documents, it cannot be disputed that as per Rules, the Original Applicant/Respondent had right to be covered by some health schemes after retirement. In fact, in his first representation 29.1.2007, he made it clear that he was not covered by CGHS and, therefore, was getting medical benefits from the AMA. It is an admitted fact that the Respondent/Original Applicant was getting medical facilities from AMA and, therefore, the Respondent No.3 ought to have proceeded to enroll the Respondent under the CGHS Scheme, obtaining his AMA Card immediately. The Original Respondent Authorities neither enrolled the Original Applicant under the CGHS Scheme immediately nor entertained reimbursement claim, pending his enrollment. It cannot be disputed that the Respondent/Original Applicant is/was entitled to reimbursement of medical expenses from the Original Respondents Authorities. He cannot be denied his

legitimate claims for no fault on his part. In the circumstances, the Tribunal has correctly held and directed the Original Respondent No.3 to reimburse medical claim of the Original Applicant/Respondent in a sum of Rs.58,313.73 Paise. The Respondent was receiving medical reimbursement in the past on the basis of AMA card and, therefore, the Tribunal correctly held and directed Original Respondent No.3 to reimburse medical claim of the Respondent in a sum of Rs.58,313.73 Paise.

Taking into consideration facts of the case and the manner in which claim of the Original Applicant/Respondent has been dealt with, we are of the opinion that judgment and order passed by the learned Member, CAT requires no interference and the Petition is, accordingly, dismissed.

At this point of time, the learned counsel appearing for the Petitioners submitted that there was no intention on the part of the Respondent No.3 to misdirect the Original Applicant/Respondent in getting him enrolled under the CGHS Scheme and there were some complications in his case for granting reimbursement claim

post retirement particularly when he was not enrolled during said period under CGHS Scheme. He further submitted that the office of the Respondent No.3 could not have taken the decision independently without first consulting the higher authorities. He, therefore, urged that the order imposing cost of Rs.5,000/- as against the Original Respondent No.3 may kindly be set aside.

It is true that reimbursement claim pertains to the period post retirement of the Original Applicant and before securing enrollment under the scheme. It appears the Original Respondent No.3 could not have taken the decision independently and, therefore, the delay on the part of Respondent No.3 in processing the claim of the Original Applicant/Respondent was not intentional and, therefore, the order imposing the cost of Rs.5,000/- against the Original Respondent No.3 is hereby set aside.

9 That considering facts and circumstances of the case, the order passed by the CAT is confirmed and further Original Respondents are directed to satisfy/reimburse the claim of the Original Applicant/Respondent herein within a period of 30 days from the date of receipt of the copy of

this order. With this direction, the Writ Petition is dismissed with no order as to costs.

(SANDEEP K. SHINDE, J) (SMT. V.K. TAHILRAMANI, J)