

**A.B. Colaco S/O Late H.P.D. Colaco**

**vs**

**Coffee Board, represented by its Secretary**

Writ Petition No.39031 of 2003 (S-R)

Karnataka High Court

16 September, 2006

Bench: A Byrareddy

ORDER

Anand Byrareddy, J.

1. The facts of the case are:

The petitioner had joined the services of the first respondent Coffee Board (hereinafter referred to as 'the Board' for brevity) on 30.7.1971 as a Junior Clerk. He was promoted to the post of an Assistant Sales Officer during September, 1974. He continued to hold the said post till the date of his voluntary retirement under the Voluntary Retirement Scheme, 1994 propounded by the Board. He was relieved from service on 3.7.1995, by which time he had put in about 24 years of service. In the matter of service conditions of the employees of the Board, it did not have any Service Rules of its own. The service conditions were regulated under the Fundamental Rules and Supplementary Rules, as applicable to the Government servants of the Central Government. The Board employees were given the scales of pay as applicable to the Government servants of the Central Government and as revised from time to time. The pension of its retiring employees under the Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as 'the Rules' for brevity) has been fixed by the Board. It is therefore the petitioner's case, that the entire service conditions of the petitioner and other Board employees were governed under the aforesaid Rules. Accordingly, the petitioner was paid compensation as provided under the Voluntary Retirement Scheme and his retiral benefits, including pension were fixed under the said Rules.

The Government of India had framed rules making provision for medical assistance/facilities/concessions to all the in-service Government servants and it was decided to grant medical allowance of Rs. 100/- per month per employee working in the interior areas where no Authorised Medical Attendant is available. In the year 1959, the Central Government brought into effect a Health Scheme for its employees - working as well as retired, which is known as Central Government Health Scheme (hereinafter referred to as 'the Scheme' for brevity). This is now available throughout the country. Under the scheme, the persons have to get treatment from the designated health centres only. In areas where the Scheme is not available, the Central Government employees are governed by the Rules for treatment by hospitalisation or non-hospitalisation and get reimbursed, the expenses incurred by them. It is therefore the petitioner's case, that the Central Government employees avail

medical benefit either under the Rules or under the Scheme. In so far as the employees of the Board are concerned, they were governed under the Rules and were sanctioned medical reimbursement up to Rs. 1800/- per annum or Rs. 150/- per month, on production of proof. They were also entitled to be paid expenses incurred towards hospitalisation or treatment at the rates and on the same terms and conditions as is applicable to the Central Government employees. However, once the Board employees demit their office and retire from service, they were subject to unfair treatment and were denied any medical facility under the Rules. It is now the petitioner's case that the first respondent, on the ruse that the petitioner is not entitled to any medical facility, since the Rules do not apply to retired Government officials, and by extension, would not be applicable to retired Board employees, has denied such benefit to the petitioner. It is the petitioner's case that the Board employees, while in service, have the same service conditions as that of the Central Government employees, On retirement, their pension is fixed under the CCS (Pension) Rules and being retirees, there is no change brought about in the case of Board employees so as to make them disentitled to medical facility. Indeed the petitioner would submit, that medical help is needed most during the fading years of one's life when chances of falling sick are all the more. It is contended by the petitioner that the right to life encompasses the right to health and medical care both during and after service. This right to health and medical aid to protect the health and vigour while in service or post-retirement is a fundamental right guaranteed under Article 21 of the Constitution of India, coupled with Articles 39(e), 41, 43 and 48A and Fundamental Human Rights. And, that the respondents would have a constitutional obligation to make the life of a retired Board employee meaningful and purposeful with dignity by providing them health facilities in (he manner as has been done with regard to retired Central Government employees.

The third respondent had issued an Official Memorandum dated 19.12.1997 directing payment of a fixed medical allowance of Rs. 100/- per month to retired Central Government pensioners/family pensioners, residing in the areas not covered by the Scheme. Though this Scheme was made applicable to in-service Government servants, subsequently it was extended to retired Central Government employees. However, by a further letter dated 28.3.2002, the fourth respondent has opined that the grant of fixed medical allowance of Rs. 100/- to retired Board employees was not agreed to, since the Board employees, while in service were not the beneficiaries of the Scheme. In pursuance to this letter, the disbursement of medical allowance has been stopped with effect from 1.4.2002. Aggrieved by this, the petitioner had filed a writ petition before this court in W.P.No. 29062/02. This was disposed of by an order dated 12.6.2003 reserving liberty to the petitioner to challenge Annexure "C" which was not called in question in the said writ petition. The petitioner states that the second respondent is the administering ministry as far as the Rules are concerned, and the said respondent issued an Official Memorandum dated 5.6.1998 extending the Rules to the pensioners of the Central Government, residing in the areas not covered by the Scheme. The pensioners were also given a one time option at the time of their retirement for medical coverage either under the Scheme or under the Rules. However, no further steps having been taken to effect necessary amendments to the corresponding Rules, the benefits flowing under the Official Memorandum dated 5.6.1998, have thus remained on paper. Despite the likeness and similarities in so far as Board employees and Central Government employees are concerned, it is the petitioner's case that it is not justified that the Board employees are left in the lurch once office is demitted and the age of superannuation is attained. When the pay and pension of the petitioner and other Board employees are on par with the Central Government employees, the facility such as medical benefit being denied after retirement is wholly unconstitutional and discriminatory. It is in this background that the present petition is filed.

2. The counsel for the petitioner has relied upon the following judgments in support of his contentions:

Consumer Education and Research Centre and Ors. v. Union of India and Ors.

Kirloskar Brothers Ltd v. Employees' State Insurance Corporation

Laxmi Chand v. Comptroller and Auditor General of India and Ors. 2005(2) (CAT)145:

3. The first respondent has resisted the petition on the ground that since the employees of the Board are not covered under the Central Government Health Scheme or any other Scheme administered by the Central Government, he is not entitled to the same, as the same is provided only to the in-service employees as stated by the petitioner. The first respondent admits that the facility of medical allowance of Rs. 100/- was extended to the petitioner in terms of the Board Regulations in terms of the Government Order dated 19.12.1997. However, since the Board employees were not covered under the Scheme as aforesaid, a clarification was sought from the second respondent with regard to the Official Memorandum dated 19.12.1997 and in accordance with the directions received from the said respondent, the first respondent Board was constrained to stop the grant of Rs. 100/-per month as medical allowance. It is stated that since the first respondent Board functions under the administrative control of the Ministry of Commerce and Industry (Department of Commerce), the Board is bound to act in accordance with the directions issued by the said Ministry and hence, it cannot be held responsible for following such directions.

4. The respondents Nos. 2 to 4 have also filed statement of objections and would contend that the Board has been following the Central Services (Medical Attendance) Rules, 1944 in respect of its employees. However, during the year 1991, the Board revised the Rules governing medical allowances in respect of their employees, wherein the quantum of reimbursement was made subject to a ceiling limit of Rs. 1800/- per annum as medical allowance. And, under the said rules, the medical claims were for specialised medical treatment for heart diseases, kidney transplantation etc. as per the schedule of rates approved for the treatment of Central Government Health Scheme beneficiaries from time to time at private recognised hospitals under the Scheme and all other cases could be settled as per the item-wise ceiling prescribed. Under the Scheme, the Central Government servants and their family members are entitled for medical reimbursement during their tenure of service with the Government and for availing the medical benefits, the Central Government servants need not subscribe any amount to the Government, and after retirement, they are entitled for the medical facility under the Scheme. In the case on hand, the petitioner, during the course of his service with the Board, never raised this issue and never made any request for a change over in medical facilities to be covered under the Scheme and therefore he is not entitled to the benefit available under the Scheme. It is the contention of the respondents that the claim is governed by separate Rules and Regulations and the employees who are covered under the Scheme continue to get medical facility even after retirement by virtue of their subscription made after retirement from service and that the claim of fixed medical allowance, fixed by the Government of India on 19.12.1997 is meant for Central Government pensioners and family pensioners only and does not cover the ex-employees of Coffee Board. The respondent Coffee Board is a statutory body working under the administrative control of the Ministry of Commerce and Industry (Department of Commerce) and provisions governing the Central Government servants, including the Central Civil Service (Pension) Rules, are

applicable to the employees of the Board while they are in service. However, the medical facilities under the Rules are not extended to the employees of the Board after retirement. The employees of the Board would not have the benefit of any medical facility after their retirement under the Rules. The petitioner has never raised any issue while he was in service, nor is covered under the Central Government Health Scheme. It is only after retirement he is seeking the benefit available to members of Central Government Health Scheme. Since the petitioner is like any other employee of the Board while in service, was covered under the provisions of the Rules. He cannot seek the facilities made available under the Scheme.

5. The petitioner, by way of rejoinder, has stated that as admitted by the respondents, when all the rules and relevant considerations are the same in respect of the Central Government employees and the Board employees, the mere fact that the petitioner belongs to the Board, could not be the criteria for denying the benefit of medical allowance and the respondents who seek to categorise the persons who retire under the Rules and are discriminated as pensioners are disentitled to pension and that they would form a different and separate class, could not be sustained in law. The admission by the respondents that the employees of the Board are governed by the Rules applicable to Central Government employees, would not entitle them to discriminate between serving employees and retired employees of the Board as far as medical facilities are concerned, It is contended that after retirement, the pension of the petitioner has been fixed as per the provisions of the Central Civil Service (Pension) Rules and hence, he is governed by the said Rules. The Official Memorandum dated 19.12.1997 need also be interpreted as applicable to the petitioner as well. The decision of the Central Government as per the Official Memorandum dated 5.6.1998 produced as Annexure "G", where the Central Government has taken a decision is as follows:

...pensioners should not be deprived of medical facilities from the Government in their old age when they require them most and that the Ministry has no objection to the extension of the CS (MA) Rules to the Central Government pensioners residing in non-CGHS areas as recommended by the Pay Commission. However, the responsibility of administering the CS (MA) Rules for pensioners cannot be handled by CGHS. It should be administered by the respective

Ministeries/Departments as in the case of serving employees covered under CS (MA) Rules, 1944.

Therefore it is contended by the petitioner that Annexures "A" and "G" were issued recommending extension of the same to the employees of the Board, including the petitioner. By the very language of the Official Memorandum, it could be seen that it was intended to extend the benefit to the retired employees of the Board under the Pension Rules. There was no basis to exclude the petitioner and other similarly placed employees and hence the petitioner would conclude that the stoppage of medical allowance is clearly arbitrary and illegal.

6. On these rival contentions, the admission on the part of the respondents that the Scheme fixing payment of fixed medical allowance of Rs. 100/- per month which was made applicable by an Official Memorandum dated 19.12.1997, is meant for Central Government pensioners and family pensioners only, and does not cover autonomous bodies like the Board, is clearly arbitrary and illegal. Where for all purposes the Board employees are treated on par with the Central Government employees and the very Rules and Regulations applicable to the Central Government employees are uniformly applied to the employees of the Board while in

service, the same being denied to the petitioner and other such employees on the footing that Annexures "A" and "G" ought to be interpreted in a manner as excluding the petitioner is clearly arbitrary. And, Note 2(iv) of Sub-Rule (2) of Rule 1 of the Central Service (Medical Attendance) Rules, 1944 is arbitrary and discriminatory and would certainly be unconstitutional and a blot on the statute book. The petitioner being a retired employee of the Board, is also entitled to avail of facilities on par with that of serving employees of the Board and on par with pensioners covered under the COS (Pension) Rules, 1982, namely, a retired Central Government employee.

7. In the result, the petition is allowed. The impugned Annexures "C" and "D" are quashed. Note 2(iv) sub-Rule (2) of Rule 1 of the Central Services (Medical Attendance) Rules, 1944 is held unconstitutional, invalid and unenforceable against the petitioner. The petitioner is entitled to Post-retirement Medical reimbursement/facility or medical allowance both towards hospitalisation and non-hospitalisation expenses from respondents Nos. 1 to 4 under the Central Services (Medical Attendance) Rules, 1944 as applicable to him while in service.