



न्यायालय मुख्य आयुक्त निःशक्तजन
Court of Chief Commissioner for Persons with Disabilities
सामाजिक न्याय एवं अधिकारिता मंत्रालय
Ministry of Social Justice & Empowerment
निःशक्तता कार्य विभाग / Department of Disability Affairs

Case No. 366/1028/11-12

Dated: 20.01.2014

In the matter of:

Shri Chander Mohan,
H. No.554A/15B, Bhim Gali,
Near Mata Mandir,
Vishwas Nagar,
Shahdara,
Delhi-110032.

.... Complainant

Versus

National Buildings Construction Corporation Limited,
(Thru Chairman),
NBCC Bhawan,
Lodhi Road,
New Delhi-110003

.... Respondent

Date of Hearing – 12.08.2013, 16.09.2013 & 12.12.2013

Present :

12.08.2013

1. Shri Chander Mohan, Complainant.
2. S/Shri Ronvijay Gohain, AM (Law) on behalf of the respondent .

16.09.2013

1. Shri Chander Mohan, Complainant.
2. S/Shri Ronvijay Gohain, AM & J. Chandran, DM(HRM) behalf of the respondent .

12.12.2013

1. Shri Chander Mohan, Complainant.
2. S/Shri Ronvijay Gohain, AM & J. Chandran, DM(HRM) behalf of the respondent .

O R D E R

The above named complainant filed a complaint dated 07.03.2013 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act regarding arbitrary denial of indoor facilities to dependent mentally challenged (40%) divorced sister.

2. The complainant submitted that respondent-NBCC Limited denied indoor medical facilities to his dependent mentally challenged and divorced sister Ms. Sunita Rani. He further submitted that NBCC Limited allowed this facility for dependents of superannuated employees w.e.f. 17.11.2010 which is as under:-

....2/-

“The retired employees have now an option to add maximum two dependents besides spouse, if any, within the meaning of ‘family’ as defined in the policy. They may submit the particulars and photo in the prescribed proforma immediately for such addition, if any.”

3. The complainant further submitted that the respondent had issued circular in this regard in November, 2010 and November, 2011. He stated that as he was superannuated from the post of DGM(HRM) in NBCC Limited w.e.f. 30.06.2005 and had enrolled himself under Post Retirement Medical Scheme applicable to superannuated employees for availing indoor medical facilities, all required formalities in respect of his dependent mentally challenged divorced sister Ms. Sunita Rani were completed with NBCC Limited. He further submitted that the cashless photo card for his sister was provided by NBCC Limited for the period from 17.11.2010 to 16.11.2011 and further from 16.11.2012. He further submitted that though the medical facilities for his sister was allowed for 2 years by the NBCC Limited but suddenly the NBCC Limited discontinued the medical facilities w.e.f. 17.11.2012 onwards which is discriminatory in nature and amounts to so much harassment. He requested the CMD, NBCC Limited on 17.01.2013 for restoration of indoor medical facilities for his sister but his request was turned down vide letter dated 04.03.2013.

4. As per Ministry of Health and Family Welfare’s OM No.4-24/96-C&P/CGHS(P) dated 25.02.2009, definition of ‘Family’ for the purpose of extending medical facilities to a beneficiary under CGHS/CS(MA) Rules is primarily based on the definition of ‘family’ as indicated in the CCS (Pension) Rules, 1972.

5. Department of Pension and Pensioners’ Welfare vide OM No.1/15/2008-P&PW(E) dated 17.08.2009 have included the dependent disabled siblings (i.e. brother/sisters) of Government servants/pensioners in the definition of ‘Family’ for the purpose of eligibility for family pension. Such Disabled siblings shall be eligible for family pension for life in the same manner and following the same disability criteria as laid down in Rule 54 of the CCS (Pension) Rules, 1972 in the case of son/daughter of Government employees/pensioners suffering from any disorder or disability of mind (including mentally retarded) or physically crippled or disabled, so as to render him/her unable to earn a living even after attaining the age of 25 year.

6. The matter was taken up with the Chairman, National Buildings Constructions Corporation Limited, New Delhi vide this Court’s letter dated 11.04.2013.

7. General Manager (PMG), NBCC vide letter No.NBCC/PMG/2011/628 dated 07.05.2013 informed that the scope of NBCC medical benefit scheme was extended to the retired employees and their spouse who have retired on superannuation or after 01.07.1988 with the approval of Board of Directors in its 248th meeting on 05.09.1990. thereafter, the shape of facility has been modified from time to time. From the year 2005 onwards, NBCC has been taking group mediclaim policy for its regular and superannuated employees for indoor medical treatment and the same is renewed on yearly basis. While renewing the policy for the year 2011-12, the insurance agency during discussions, as a special case, was kind enough to extend the cashless medical facility to dependents of superannuated employees (within the definition of family) also within their quoted rates. This was also accepted by NBCC as there was no additional financial involvement. The guidelines issued by Department of Public Enterprise to all Public Sector Undertakings, from time to time, are being followed by NBCC in relation to service matter related to serving as well as ex-

employees. Shri Chander Mohan was superannuated on 30.06.2005 and thereafter he has been availing medical facility for himself and his spouse. The medical facility for dependent family members was also extended to him, for a certain period, without any financial liability on NBCC. However this cannot be claimed as a right for future. Keeping in view the facts stated above and rules of NBCC, complaint of Shri Chander Mohan cannot be accepted to.

8. After considering the letter dated 07.05.2013 of the respondent, hearing was scheduled on 12.08.2013.

9. During the hearing, the representative of the respondent requested for some time to file a detailed response. The complainant resisted dragging of; the case and requested for an earlier decision as many other PSUs are providing the medical facility to the dependents of the retired employees. However, in the interest of justice, 10 days time from the date of receipt of this ROP was allowed to the respondent to file reply with a copy to the complainant, who is directed to submit his response to the respondent's reply, if any, within a week thereafter. The matter was next fixed for hearing on 16.09.2013 at 04.00 P.M.

10. In the meantime, the detailed written submissions on behalf of the respondent in this case were received in this Court on 10.09.2013.

11. During the course of hearing on 16.09.2013, the representatives of the respondent submitted that they have filed a reply in the matter on 10th September, 2013 in the Court. The complainant submitted that he has received the copy of reply just two days back and sought 20 days time for filing the comments/rejoinder to the reply filed by the respondent alongwith supporting document. The complainant was also handed over a copy of letter No.32(56)/2012-BS-3 dated 15.02.2013 of the NBCC as per which "provision of indoor medical facility under mediclaim policy with enhancement of coverage as per Table-II of item No.414/4 to the regular & superannuated employees & their dependant including board level executives, will be borne by Company w.e.f. 17.11.2012." The representatives of the respondent were advised to submit the comments on this para alongwith supporting document. The representatives of the respondent were asked to show the Medical Rules containing the definition of family but they showed their inability and requested for short time for filing copy of the medical rules, policy etc. Accordingly 20 days time from the date of receipt of these Record of Proceedings was allowed to both the parties for filing their respective documents. The matter will be next heard after receipt of the above documents.

12. The respondent vide letter No.Nbcc/Law/2013/848 dated 'nil' (received in this Court on 11.10.2013) submitted the additional submissions. The complainant also vide his letter dated 24.10.2013 submitted his rejoinder to the reply on the additional submissions of the respondent.

13. After considering the respondent's letter dated 'nil' (received in this Court on 11.10.2013) and complainant's letters dated 23.05.2013, 14.08.2013, 09.10.2013, hearing was scheduled on 12.12.2013.

14. During the hearing, reiterating his written submissions, the representative of the respondent challenged the jurisdiction of the Chief Commissioner for Persons with Disabilities citing ruling by the Hon'ble Supreme Court in the case of State Bank of Patiala v. Vinesh Kumar Bhasin, (2010) 4 SCC 368, para 19 with illustration of which is reproduced below:-

“19. The grievances and complaints of persons with disabilities have to be considered by courts and authorities with compassion, undertaking and expedition. They seek a life with dignity. The Disabilities Act seeks to provide them a level playing field, by certain affirmative actions so that they can have adequate opportunities in matters of education and employment. The Act also seeks to ensure nondiscrimination of persons with disabilities, by reason of their disabilities that the provisions of the Disabilities Act cannot be pressed into service to seek any relief or advantage where the complaint or grievance relates to an alleged discrimination, which has nothing to do with the disability of the person. Nor do all grievances of persons with disabilities relate to discrimination based on disability.

Illustration:

Let us assume a case where the age of retirement in an organization is 58 years for all class II officers and 60 years for all class I officers. When a Class II officer, who happens to be a person with disability, raises a dispute that such disparity amounts to discrimination, it has nothing to do with disabilities. Persons with disability as also persons without disability may contend in a court of law that such a provision is discriminatory. But, such a provision, even if it is a discriminatory, has nothing to do with the person's disability and there no question of a person with disability invoking the provisions of the Disabilities Act, to claim relief regarding such discrimination.

Persons with disabilities are no less afflicted by human frailties like ego, pride, jealousy, hate or misunderstanding, when compared with persons without disabilities. Many of their grievances and disputes may have nothing to do with disability. The fact that respondent claimed to be person with disability appears to have swayed the Chief Commissioner and the High Court, to ignore the absence of any legal right and grant an interim remedy which in the normal course would not have been considered. Issuing interim orders when not warranted, merely because the petitioner is a person with disability, is as insidious as failing to issue interim orders when warranted.”

15. Stating that no discriminatory treatment was meted out to the complainant on ground of disability, the respondent added that the extant policy of the respondent organization allows the mediclaim facility to the superannuated employees and her/his spouse and not to any other dependent unlike the serving regular employees, whose dependents are also allowed the same benefit subject to stipulation of the scheme.

16. Reaffirming his written submissions, the complainant highlighted the following:-

- (i) the benefit of mediclaim insurance was extended in favour of his sister who happens to have a disability, namely, mental illness, in the year 2010-11 and

2011-12. Therefore, he asserted that this benefit which was extended to his disabled sister could not be arbitrarily withdrawn in the year 2012-13. It would be quite in context for the Court to observe here that while the complainant has submitted corroborative documents to support his contention that the benefit of mediclaim was extended in favour of his sister as stated above, the respondent stated that such benefit could only be extended to the complainant's sister under policy for the year 2011-12. Somehow, the respondent had no comments to offer with regard to the mediclaim Card for the year 2011-11 submitted by the complainant to substantiate his contention.

- (ii) Citing the respondent's response to a RTI application of the complainant, the complainant alleged that the respondent organization failed to submit any document disallowing Medical Authorities by the CMD/Board of Directors to two dependents as was the case immediately prior to 2012-13.

17. It would be appropriate to reproduce below the relevant portion of the said response of the respondent vide letter No.NBCC/RTI/1522/2013/2316 dated 02.05.2013 to the complainant's RTI Application No.1522 dated 18.04.2013 is reproduced below:-

S. No.	Information required	Our reply/details of information
1.	Category-wise and name-wise break up of superannuated employees belonging to Group A, B, C & D who were covered under Group Medical Insurance Scheme during the period 17.11.2010 to 16.11.2011 and from 17.11.2011 to 16.11.2012.	At the time of renewal of policy on 17.11.10 and on 17.11.11, 312 & 392 ex-employees respectively were covered under Group Medical Insurance Scheme.
5.	Premium paid to NIC for allowing medical insurance coverage to physically challenged and mentally challenged dependants of superannuated employees.	No premium has been paid to NIC for allowing medical insurance coverage to physically challenged and mentally challenged dependants of superannuated employees.

18. The complainant further pointed out that the respondent organization allows the benefit of mediclaim in favour of the spouse and dependants of those employees who die in harness subject to prescribed norms.

19. In the above view of the matter, the issue before this Court is whether any discriminatory treatment has been meted out to complainant's sister who happens to have a disability. While it is apparent that prima facie, there has been no disability based discrimination against the sister of the complainant, it is not fully clear as to why a benefit which was extended to her for 2 years was withdrawn, thereby subjecting the complainant's sister to hardship.

20. It would also be in the fitness of things for this Court to observe that the policies of the Government and the Public Sector Undertakings etc. must have a human face. It would be appropriate to place on record here that after this Court's Order in Case No.11/1093/12-13, Shri Arun Kumar Diwan vs. Department of Health & Family Welfare, Ministry of Health & Family Welfare had revised its policy guidelines thereby modifying the definition of "Family" for the purpose of CGHS benefits to the disabled brother irrespective of their age. Besides, it would only be fair not to withdraw any benefit which was allowed to a dependent with disability to a superannuated employee. This Court also express its surprise that the respondent organization failed to account for the benefit which was made available to the dependents and disabled of the complainant during the year 2010-11 and 2011-12, more particularly for the year 2010-11. Moreover, why nothing exits on record with regard to discontinuance of this benefit as is evident from the respondent's response through RTI's reply dated 19.03.2013.

21. In the light of the foregoing facts, this Court hereby advises the respondent to suitably revise and modify the relevant policy in a manner that its policies acquire a human face. If need be, the superannuated/retired employees may be asked to pay reasonable contribution/premium for this purpose. Action taken in respect of the matter may please be intimated to this Court within two months from the date of receipt of this order.

22. Matter stands dispose of with above advice.

Sd/-

(P.K. Pincha)

Chief Commissioner for
Persons with Disabilities