

AFR**Reserved****ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION No. 86 of 2018**Tuesday, this the 21st day of December, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**Ex Sgt A K Das, S/o Shri Nalamani Das, Present Address 22
F/2 Chak Mundera No. 19, post : Dhumanganj,
Allahabad(U.P).**..... Applicant**Learned counsel for the : **Shri Shiv Kant Pandey,**
Applicant **Advocate.**

Versus

1. Union of India, Through the Secretary, Ministry of Defence, Govt. Of India, South Block, New Delhi - 110011.
2. Station Commander, HQ Purva UP and MP Sub Area Allahabad (UP).
3. Officer in Charge, ECHS Station Cell (ECHS) HQ Purva and MP Sub Area, Allahabad (U.P) Pin 900479 C/O APO.
4. Officer –in Charge ECHS Polyclinic Near Military Hospital Sub Area Allahabad.

.....RespondentsLearned counsel for the : **Dr. Shailendra Sharma Atal,**
Respondents. **Central Govt. Counsel**

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- 8.1 *This Hon’ble Tribunal may graciously be pleased to set aside final order dated 04.01.16 (Annexure A-3), passed by respondent No.3*
- 8.2 *This Hon’ble Tribunal may graciously be pleased to pass an order directing the respondent 4 to provide required and the proper Medicare and treat applicant and his family as when required, in term of Govt. of India ECHS Policy 2002.*
- 8.3 *This Hon’ble Tribunal may be pleased to grant compensation as it deem just fit proper to applicant and his wife and direct the respondent No.4 to pay the same.*
- 8.4 *This Hon’ble Tribunal may be pleased to direct respondent No.4 to reimburse the amount Rs. 1000/- which incurred in private treatment of applicant’s wife.*
- 8.5 *This Hon’ble Tribunal may grant any other and further relief to applicant as it deem fit, just and proper in the facts and circumstances of the case.*
- 8.6 *This Hon’ble Tribunal may award the cost of petition to applicant.*

2. Brief facts of the case giving rise to this application are that the applicant was discharged from Air Force on 01.06.2014 and presently residing in Allahabad with his family. Applicant along with his family are members of Ex-servicemen

Contributory Health Scheme (ECHS) by paying required contributory membership fees. Applicant and his family are entitled for medical treatment at polyclinics and Armed Forces Clinics, including Air Force Hospital, Naval Hospital and Military Hospital as also empanelled private hospital/Nursing home and Govt Hospital, across the country. Respondent No 2 and 3 have passed order that 'outsider' ECHS Card holders shall be given only routine medicines and for getting proper treatment, they have to go to their respective ECHS polyclinic. Applicant's wife Nilima Das was suffering from toothache. The applicant took his wife to ECHS polyclinic Allahabad- Respondent No 4, for dental treatment thrice on 27.02.2016, 03.03.2016 and 25.04.2016 but every time he was told by the doctor that his wife is not authorised for filling or tooth extraction and she will only be given tablets for seven days because he and his wife are ECHS Card holders of ECHS Polyclinic Bhubaneswar. On 02.05.2016, the applicant went to Singh Dental Clinic, Allahabad for treatment of his wife and paid Rs, 1,000/- for ten days medicine. Feeling aggrieved with the conduct of doctor, the applicant made representation on 24.05.2016 before respondent No 2, Station Commander, Allahabad, requesting him for proper treatment but no action was taken by him. Being

aggrieved, applicant has filed present Original Application with the prayer that order dated 23.12.2015 and 04.01.2016, passed by respondent No 2 and 3 be set aside and every ECHS Card holder be given proper treatment irrespective of place of residence as per ECHS scheme 2002 framed by Govt of India.

3. Learned counsel for the applicant submitted that the applicant was discharged from service on 31.05.2014. Applicant is presently residing at Allahabad with his family. Govt of India, Min of Def vide letter No 22(1)/01/US(WE)/D(Res) dated 30 Dec 2002 sanctioned health care scheme for Ex servicemen namely Ex Servicemen Contributory Health Scheme (ECHS). In terms of said policy, the applicant along with his family was made member of the said scheme at the time of discharge on 31.05.2014 by paying the required contributory membership fees. Applicant and his family became entitled to get medical treatment at polyclinics and augmented Armed Force clinics including Air Force Hospital, Naval Hospital and military Hospital across the country. The applicant and his family also became entitled to get treatment in empanelled private hospital/nursing homes and Govt hospitals across the country of his choice, including those at Allahabad. While filing the application for membership for ECHS at the time of

discharge, the applicant was asked to mention his permanent home address as per service records, in the said application form of ECHS and therefore, applicant gave his home address in said application and thus in ECHS membership card, the address of applicant is mentioned as his permanent home address i.e. Village- Kunnrpur, PO- Darabish, Tehsil- Kendrapara Orissa- 754289, but that does not forfeit applicant's and his families right to get medical treatment across the country, as stated, including at Allahabad in such hospitals.

4. Station Commander, UP and MP Sub Area, Allahabad issued letter No. 028/R/69/ECHS dated 23 Dec 2015, directing respondent No. 4 that seven days of medicine at a time will be given to such card holders who are not on the permanent strength of the concerned polyclinic. 30 days of medicine will not be issued to patients and any deviation in this regards will be given by the station commander. Respondent No 3 provided a copy of letter No 2180/7/Q/181 dated 04.01.2016, which has the reference of said letter dated 23.12.2015. Respondent No 3, vide said letter dated 04.01.2016 also directed the respondent No 4 to comply with letter dated 23.12.2015, issued by respondent No. 2. Direction as aforementioned, issued by respondent No 2, is violative of ECHS policy 2002, issued by

Union of India Respondent No. 1 but respondent No 4, by treating the direction of respondent No 2 and 3, as authority, is enforcing the same on ECHS members.

5. Applicant's wife Nilima Das was suffering from toothache in the month of Feb 2016, therefore the applicant took his wife to ECHS polyclinic at Allahabad- Respondent No 4, for Dental treatment and applicant was directed to report sick to dentist Dr. Sumandeep Basra and therefore, applicant reported to said doctor on 27.02.2016 but the doctor informed applicant's wife that her teeth will not be filled or removed, she will only be given tablets for seven days as applicant and his wife are ECHS Card holders with permanent address of Bhubaneswar. Dr. Sumandeep Basra gave only a few tablets and discharged the applicant's wife without proper and required treatment/ medicare. Due to severe toothache the applicant again reported sick on 03.03.2016 to said doctor Sumandeep Basra and again doctor Sumandeep Basra informed that wife of the applicant is 'outsider' patient, hence she is not authorised for filling or extraction of her teeth and gave some tablets and dispatched the applicant's wife without giving proper and required treatment. On 25.04.2016, due to intolerable toothache, the applicant again took his wife to said doctor and she refused to

give proper and needed treatment. On 02.05.2016, the applicant went to Singh Dental Clinic, Allahabad for treatment of his wife and paid Rs, 1,000/- for ten days medicine. The applicant also paid Rs 1,000/- for treatment. Feeling aggrieved with the conduct of doctor the applicant preferred a representation on 24.05.2016 to respondent No 2, requesting him for proper treatment but no action has so far been taken. Learned counsel for the applicant pleaded that order dated 23.12.2015 and 04.01.2016, passed by respondent No 2 and 3 are violative of ECHS scheme 2002 framed by Govt of India and are liable to be set aside. Learned counsel for the applicant pleaded that order of respondent No 3 dated 04.01.2016 be set aside and respondents be directed to provide proper medicare and treat ECHS members as per Govt of India policy 2002 irrespective of place of stay, reimburse the amount of Rs. 1,000/- paid by the applicant and compensation for pain and mental agony suffered by the applicant and his wife.

6. On the other hand, learned counsel for the respondents submitted that applicant at the time of discharge from service opted for parent polyclinic of his choice for treatment after retirement from service. In the instant case, applicant opted and got registered with ECHS polyclinic Bhubaneshwar in Orissa.

Applicant and his family were regularly given treatment at ECHS, Allahabad as an outstation patient. The applicant was advised by the staff at polyclinic, Allahabad to get his parent polyclinic changed from Bhubaneswar to Allahabad by giving an application which is a mandatory requirement as contained in Central Organisation, ECHS, Adjutant General's Branch, Integrated Headquarters, Min of Def letter No B/49711/AG/ECHS dated 25.03.2011 but applicant did not do so. He further submitted that policies of ECHS have not been framed by Respondents No 2 and 3 or 4. These policies and procedures are laid down by Central Organisation, ECHS, Army Headquarters. The guidelines on reporting sick by an outstation patient at a polyclinic other than his parent polyclinic are elaborated at Paragraph 5 (a) to 5 (g) of the letter dated 25.03.2011 which is being followed by ECHS polyclinics all over the country.

7. Wife of the applicant reported sick on 27.02.2016. She was suffering from severe infection and swelling in her tooth and gum accordingly, she was given medicine for five days and thereafter from time to time. On 25.04.2016 she requested doctor for extracting her tooth but due to infection in her tooth, the doctor refused to do so. The dental officer has a very good

professional reputation. The applicant was never denied medical treatment by the ECHS polyclinic, Allahabad.

8. Learned counsel for the respondents submitted that letter issued by respondent No 2 and 3 for restricting medicine issue to 'outsider' ECHS card holders is extension of policy of ECHS letter dated 25.03.2011 which is being followed in letter and spirit by all ECHS clinics all over the country. Quashing the policy will have inherent drawbacks in running the administration and accounting of medicines by Officer in Charge, polyclinic, Allahabad. Forecasting the monthly maintenance figures of medicines for both registered as well as for outstation members will pose problem of surpluses or deficiencies at various polyclinics all over India. To obviate these problems all ECHS members have the option of seeking change in dependant polyclinic on changing their permanent address after retirement. This can be done by giving a simple application. The applicant has not submitted the application for change of polyclinic in spite of advice given to him. The ECHS policy neither violates right of the applicant nor does it infringe Article 21 of Constitution of India. The applicant went to civil hospital without approval of this polyclinic, hence he is not liable to seek compensation either from Government or from the

Dental Officer. The applicant has wilfully violated rules and procedures of ECHS, hence he is not entitled for any relief. Learned counsel for the respondents submitted that this Original Application is devoid of merit and lacks substance, hence liable to be dismissed.

9. Heard learned counsel for the parties and perused the relevant documents available on record.

10. The question before us to decide is whether the applicant can be denied medical care by ECHS polyclinic Allahabad merely because his address in ECHS Card is mentioned as Bhubaneswar and whether doctors in ECHS polyclinics can be directed by executive orders, to prescribe medicines for seven days at a time only.

11. The Hon'ble Supreme Court in case of Jacob Mathew vs State of Punjab AIR 2005 SC 3180 has laid down the law with regards to medical negligence on part of doctors and has held as under:-

(1) Negligence is the breach of a duty caused by the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. The definition of negligence as given in Law of Torts, Ratanlal & Dhirajlal (edited by Justice GP Singh), referred to hereinabove, holds good. Negligence becomes actionable on account of injury resulting from the act or omission amounting to negligence attributable

to the person sued. The essential components of negligence are three: 'duty', 'breach' and 'resulting damage'.

(2) *Negligence in the context of medical profession necessarily calls for treatment with a difference. To infer rashness or negligence on the part of a profession, in particular a doctor, additional considerations apply. A case of occupational negligence is different from one of professional negligence. A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional. So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed. When it comes to the future of taking precautions what has to be seen is whether those precautions were taken which the ordinary experience of men has found to be sufficient, a failure to use special or extraordinary precautions which might have prevented the particular happening cannot be the standard for judging the alleged negligence. So also, the standard of care, while assessing the practice as adopted, is judged in the light of knowledge available at the time of the incident, and not at the date of trial. Similarly, when the charge of negligence arises out of failure to use some particular equipment, the charge would fail if the equipment was not generally available at that particular time (that is, the time of the incident) at which it is suggested it should have been used.*

(3) *A professional may be held liable for negligence on one of the two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices. A highly skilled professional may be possessed of better qualities, but that cannot be made the basis or the yardstick for judging the performance of the professional proceeded against on indictment of negligence.*

(4) *The test for determining medical negligence as laid down in Bolam's case [1957] 1 W.L.R. 582, 586 holds good in its applicability in India.*

(5) *The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence, the element of mensrea*

must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much higher i.e. gross or of a very high degree. Negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis for prosecution.

(6) The word 'gross' has not been used in [Section 304A](#) of IPC, yet it is settled that in criminal law negligence or recklessness, to be so held, must be of such a high degree as to be 'gross'. The expression 'rash or negligent act' as occurring in [Section 304A](#) of the IPC has to be read as qualified by the word 'grossly'.

(7) To prosecute a medical professional for negligence under criminal law it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do. The hazard taken by the accused doctor should be of such a nature that the injury which resulted was most likely imminent.

(8) Res ipsa loquitur is only a rule of evidence and operates in the domain of civil law specially in cases of torts and helps in determining the onus of proof in actions relating to negligence. It cannot be pressed in service for determining per se the liability for negligence within the domain of criminal law. Res ipsa loquitur has, if at all, a limited application in trial on a charge of criminal negligence.

12. Hon'ble Supreme Court in case of Nizam's Institute of Medical Vs Prasanth S Dhananka JT 2009 (6) SC 651 (three judges bench) while granting compensation to patient held as under:-

33. *In the light of the above facts, we have no option but to hold that the attending doctors were seriously remiss in the conduct of the operation and it was on account of this negligence that the Paraplegia had set in. We accordingly confirm the findings of the Commission on this score as well.*

37. *However, keeping in view the need for continuous medical aid which would involve expensive medicines and other material, and the loss towards future earnings ect, we direct a lump sum payment of Rs. 25/- lacks under each of these two heads making a total of Rs. 50 lacks. In addition, we direct a payment of Rs. 10 lacks towards the pain and suffering that the appellant has undergone. The total amount thus computed would work out to Rs 1,00.05,000 (Rs 1 crore 5 thousand) which is rounded off to Rs one crore plus interest at 6%*

from 1st March, 1999 to date of payment, giving due credit for any compensation which might have already been paid.”

13. Hon'ble Supreme Court in case of Shiva Kant Jha Vs UOI WP(C) 694/2015 vide order dated 13.04.2018 on the point of negligence has held that:-

”A professional may be held liable for negligence on one of the two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices. A highly skilled professional may be possessed of better qualities, but that cannot be made the basis or the yardstick for judging the performance of the professional proceeded against on indictment of negligence.

(4) The test for determining medical negligence as laid down in Bolam's case [1957] 1 W.L.R. 582, 586 holds good in its applicability in India.

(5) The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence, the element of mens rea must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much higher i.e. gross or of a very high degree. Negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis for prosecution.

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doctor should be of such a nature that the injury which resulted was most likely imminent.

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14. Govt of India, Min of Def policy letter No 22(1)/01/US(WE)/D (Res) dated 30.12.2002 stipulates that ECHS card holders are authorised to get medical treatment at polyclinics and augmented Armed Force clinics including Air Force Hospital, Naval Hospital and Military Hospital, across the country. The applicant and his family become entitled to get the treatment from empanelled private hospital/nursing home and Govt hospital across the country of his choice including at Allahabad. In 1999, the Confederation of Ex servicemen Association and others filed Writ before Hon'ble Apex Court, seeking mandamus to ensure full and free medicare and medical aid to ex-servicemen and their family and dependents at par within serving Armed Forces Personnel and the Hon'ble Apex Court sought response from Govt of India. During pendency of the Writ Petition (Civil) 210 of 1999, the Govt of India, came out with proposal to have ECHS to which Hon'ble Apex Court agreed and thereafter the Govt of India vide GO No

22(1)/01/US(WE)/D (Res) dated 30.12.2002 made provision of ECHS and same was vetted by the Constitution Bench and the Hon'ble Apex Court as reported in AIR 2006 SC 2945 held as under:-

“In our considered opinion, though the right to medical aid is a fundamental right of all citizens including ex-servicemen guaranteed by [Article 21](#) of the Constitution, framing of scheme for ex-servicemen and asking them to pay 'one time contribution' neither violates Part III nor it is inconsistent with Part IV of the Constitution. Ex- servicemen who are getting pension have been asked to become members of ECHS by making 'one time contribution' of reasonable amount (ranging from Rs.1,800/- to Rs.18,000/-). To us, this cannot be held illegal, unlawful, arbitrary or otherwise unreasonable.

Keeping in view totality of facts and circumstances, in our considered view, the ends of justice would be met if we hold the Ex-servicemen Contributory Health Scheme, 2002 (ECHS) to be legal, valid, intra vires and constitutional but direct the respondent-Government either to waive the amount of contribution or to pay such amount on behalf those ex- servicemen who retired prior to January 1, 1996 and who intend to avail medical facilities and benefits under the said scheme by exercising option by becoming members of ECHS. In other words, it is open to ex- defence personnel, who retired prior to January 1, 1996 to become members of ECHS and to claim medical facilities and benefits under the said scheme without payment of contribution amount. They are, however, not entitled to claim medical allowance in future. The writ petition is accordingly disposed of. Rule is made absolute to the extent indicated above.”

15. Para 2 of policy letter dated 30.12.2002 stipulates that the scheme would cater for medicare of all ex-servicemen. Para 2 (a) says that there would be no restriction on age or medical condition. Para 2 (c) says the scheme would cater for medical aid to ex-servicemen by establishing new polyclinic and augmented armed forces clinics at 227 stations spread across

the country. Thus there is no restriction in the policy with regard to places, where the ex-servicemen is bound to seek medical aid, and it cannot be so also. Getting medical aid is fundamental right under Article 21 of Constitution of India and therefore the contention of respondents that applicant filled his home town address in the form and therefore, he has been treated as an outstation patient, with certain restriction, is wholly arbitrary and against ECHS Policy, 2002, made by Govt of India, after giving undertaking to Hon'ble Apex Court. Letter dated 25.03.2011 cannot take away the right of ex-servicemen as conferred upon them by ECHS policy 2002, made by Govt of India. Para 4 of the letter clearly says that ECHS beneficiary may receive treatment/referral from any ECHS polyclinic on production of ECHS smart card, therefore the letter itself negates the contention of respondents. The crucial paras of the letter of Central Organisation, ECHS dated 25.03.2011 read as under:-

“1. to 3. x x x x x x

4. *In light of the above feedback the entire procedure of TAC was deliberated upon at length at the Central Organisation. Consequently, it has been decided to abolish the procedure of temporary attachments. Hereafter, ECHS beneficiaries may receive treatment/referral from any ECHS Polyclinic on production of ECHS Smart Card.*

5. *In order to minimize procedural hassles and hardship to veterans following simplified procedure will be followed:-*

(a) to (b) x x x x

(c) In case the veteran opts for treatment without change in parent Polyclinic, he will be entitled to draw medicines only for a duration of seven days at a time. All other facilities for medical treatment except non expendable med eqpt such as hearing aid will be entitled to him at par with those available at present Polyclinic.

(d) to (g) x x x x x x

Sd/- x x x"

16. It is clear from the two paras that they are self contradictory. While on the one hand in para 4, it is stated that an "ECHS beneficiary may receive treatment/referral from any ECHS Polyclinic" but on the other hand in para 5 (c) it is stated that "he will be entitled to draw medicines only for a duration of seven days at a time".

17. In the instant case the applicant, was discriminated by respondent No 2, 3 and 4 as they have treated him as outstation patient and have issued medicines with certain restrictions and, therefore, they have acted in arbitrary manner. Respondent No 4 has insisted repeatedly that the applicant should apply for change of polyclinic and thus admittedly respondent No 4 has acted against the ECHS policy made by Govt of India and which resulted in mental agony to the

applicant. The attending doctor issued medicines but swelling of the patient's gum was not cured. In such circumstances the doctor should have referred the applicant's wife to some dental specialist, which was not done and applicant had to get his wife's tooth extracted on 02.05.2016 at a private clinic, therefore the contention of the respondents that doctor acted with full sincerity is incorrect and misleading. The respondents have relied upon the letter dated 10.09.2016 of Wg Cdr (Retd) U Thakur, President of Ex Servicemen Association Allahabad to prove that the service rendered by polyclinic Allahabad is free from any blame. Wg Cdr (Retd) U Thakur, himself had complained on 05.03.2010 against ECHS polyclinic Allahabad and threatened to organize Dharna against polyclinic Allahabad. Similar complaint was made on 28.06.2012 by the Secretary Ex servicemen Association against Polyclinic Allahabad to Defence Minister, Chief of Army Staff and Chief of Air Staff. It is primary duty of a doctor, while treating a patient, to be courteous and have patience with her patients and to provide good medical care.

18. Respondents have relied upon policy letter dated 25.03.2011. Bare reading of this letter indicates that this letter was issued by Director (Ops & Cord) for MD Central

Organisation, ECHS, Delhi Cantt and it has not been issued by Min of Def of Govt of India, therefore, letter dated 25.03.2011 cannot take away the right of Ex-servicemen, including applicant as conferred upon them by ECHS policy 2002, made by Govt of India. The sole aim of this policy letter of 2002 is to provide proper medical facilities to veterans and not to harass them.

19. Providing medical aid by Central Govt Health Scheme (CGHS), which is alike to ECHS, for Defence personnel, is no more res integra. The Hon'ble Apex Court in case of Shiva Kant Jha Vs UOI WP (C) 694/2015 order dated 13.04.2018 has held as under:-

“12) With a view to provide the medical facility to the retired/serving CGHS beneficiaries, the government has empanelled a large number of hospitals on CGHS panel, however, the rates charged for such facility shall be only at the CGHS rates and, hence, the same are paid as per the procedure. Though the respondent-State has pleaded that the CGHS has to deal with large number of such retired beneficiaries and if the petitioner is compensated beyond the policy, it would have large scale ramification as none would follow the procedure to approach the empanelled hospitals and would rather choose private hospital as per their own free will. It cannot be ignored that such private hospitals raise exorbitant bills subjecting the patient to various tests, procedures and treatment which may not be necessary at all times.

13) 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. It is acceptable to common sense, that ultimate decision as to how a patient should be treated vests only with the Doctor, who is well versed and expert both on academic qualification and experience gained. Very little scope is left to the patient or his relative to decide as to the

manner in which the ailment should be treated. Speciality Hospitals are established for treatment of specified ailments and services of Doctors specialized in a discipline are availed by patients only to ensure proper, required and safe treatment. Can it be said that taking treatment in Speciality Hospital by itself would deprive a person to claim reimbursement solely on the ground that the said Hospital is not included in the Government Order. The right to medical claim cannot be denied merely because the name of the hospital is not included in the Government Order. The real test must be the factum of treatment. Before any medical claim is honoured, the authorities are bound to ensure as to whether the claimant had actually taken treatment and the factum of treatment is supported by records duly certified by Doctors/Hospitals concerned. Once, it is established, the claim cannot be denied on technical grounds. Clearly, in the present case, by taking a very inhuman approach, the officials of the CGHS have denied the grant of medical reimbursement in full to the petitioner forcing him to approach this Court.

14) This is hardly a satisfactory state of affairs. The relevant authorities are required to be more responsive and cannot in a mechanical manner deprive an employee of his legitimate reimbursement. The Central Government Health Scheme (CGHS) was propounded with a purpose of providing health facility scheme to the central government employees so that they are not left without medical care after retirement. It was in furtherance of the object of a welfare State, which must provide for such medical care that the scheme was brought in force. In the facts of the present case, it cannot be denied that the writ petitioner was admitted in the above said hospitals in emergency conditions. Moreover, the law does not require that prior permission has to be taken in such situation where the survival of the person is the prime consideration. The doctors did his operation and had implanted CRT-D device and have done so as one essential and timely. Though it is the claim of the respondent-State that the rates were exorbitant whereas the rates charged for such facility shall be only at the CGHS rates and that too after following a proper procedure given in the Circulars issued on time to time by the concerned Ministry, it also cannot be denied that the petitioner was taken to hospital under emergency conditions for survival of his life which requirement was above the sanctions and treatment in empanelled hospitals.

15) In the present view of the matter, we are of the considered opinion that the CGHS is responsible for taking care of healthcare needs and well being of the central government employees and pensioners. In the facts and circumstances of the case, we are of opinion that the treatment of the petitioner in non-empanelled hospital was genuine because there was no option left with him at the relevant time. We, therefore, direct the respondent-State to pay the balance amount of Rs.

4,99,555/- to the writ petitioner. We also make it clear that the said decision is confined to this case only.

16) Further, with regard to the slow and tardy pace of disposal of MRC by the CGHS in case of pensioner beneficiaries and the unnecessary harassment meted out to pensioners who are senior citizens, affecting them mentally, physically and financially, we are of the opinion that all such claims shall be attended by a Secretary level High Powered Committee in the concerned Ministry which shall meet every month for quick disposal of such cases. We, hereby, direct the concerned Ministry to device a Committee for grievance redressal of the retired pensioners consisting of Special Directorate General, Directorate General, 2 (two) Additional Directors and 1 (one) Specialist in the field which shall ensure timely and hassle free disposal of the claims within a period of 7 (seven) days. We further direct the concerned Ministry to take steps to form the Committee as expeditiously as possible. Further, the above exercise would be futile if the delay occasioned at the very initial stage, i.e., after submitting the relevant claim papers to the CMO-I/C, therefore, we are of the opinion that there shall be a timeframe for finalization and disbursement of the claim amounts of pensioners. In this view, we are of the opinion that after submitting the relevant papers for claim by a pensioner, the same shall be reimbursed within a period of 1 (one) month.

20. The purpose of the ECHS introduced by Govt of India is to provide proper treatment to all ECHS card holders irrespective of place of residence. The concept of parent polyclinic has been introduced to facilitate the veterans and not to inconvenience them. Govt of India has issued various policies on this matter from time to time. Central Organisation ECHS, Delhi Cantt, has issued policy letter No B/49701-PR/AG/ECHS/2015 dated 07.12.2015 regarding policy of parent polyclinic based on the choice of ESM. Policy of Govt to provide complete treatment by parent ECHS Polyclinic only has resulted in number of representations by ECHS members

and filing of Court cases by veterans, due to the inconvenience being caused to them. This policy letter stipulates that ex-servicemen shall draw medicines only from their parent ECHS polyclinic yet at para 3 of this letter it clearly states that **‘in all circumstances continuation of medical care to all beneficiaries will be ensured at all times by every ECHS polyclinic’**.

21. In exercise of the powers conferred under Section 20A read with Section 33 (m) of the India Medical Council Act, 1956), the Medical Council of India, with the previous approval of the central Govt, hereby had framed “The Indian Medical Council (Professional Conduct, Etiquette and Ethics), Regulations, 2002 which has issued Code of Medical Ethics with stipulates that:-

(a) A physician shall uphold the dignity and honour of his profession. Prime object of the medical profession is to render service to humanity, reward or financial gain is a subordinate consideration. Who so ever chooses his profession, assumes the obligation to conduct himself in accordance with its ideals. A physician should be an upright man, instructed in the art of healing. He shall keep himself pure in character and be diligent in caring for the sick, he should be modest, sober, patient, prompt in discharging his duty without anxiety, conducting himself with propriety in his profession and in all the actions of his life. A physician should expose, without feat or favour, incompetent or corrupt, dishonest or unethical conduct on the part of members of the profession. No physician shall arbitrarily refuse treatment to a patient. A physician once having undertaken a case, should not neglect the patient, nor should he withdraw from the case without giving adequate notice to the patient and his family. Provisionally or fully registered medical practitioner shall not wilfully commit an

act of negligence that may deprive his patient or patients from necessary medical case. A physician shall not aid or abet torture nor shall he be a party to either infliction of mental or physical trauma or concealment of torture inflicted by some other person or agency in clear violation of human rights.

22. Armed Forces Tribunal, Jaipur in **T.A. No 218 of 2009, Om Prakash Yadav vs Union of India**, decided on 18.05.2010 has held that if a member of ECHS is treated in a Private Hospital without consent of ECHS polyclinic, he being the member of ECHS is entitled for reimbursement of medical bills given at the time of his treatment. A serious patient has no option left except to approach another Hospital (other than an empanelled one) for treatment in emergency. If expenditure on account of emergency treatment made by the applicant is not refunded, the applicant is forced to approach the court. The respondents cannot deny this facility simply on the basis that he on his own got treated in a private hospital.

23. Part III of Constitution of India provides fundamental right, which included right to life as guaranteed in Article 21 of Constitution of India. The right to life has been interpreted by Hon'ble Supreme Court of India, to live life with full dignity and not a mere animal existence, which implies right to live with full social dignity. Right to life also means right to health and right to medical aid. It is well settled in law that 'Right to Medical Aid' is Fundamental right of all citizens including the Ex-servicemen

as guaranteed in Article 21 of Constitution of India. Hon'ble Apex Court in case of Akhil Bhartiya Soshit Karmachari Sangh vs Union of Hiddia (1981) 1 SCC 246 held that:-

“Maintenance and improvement of public health have to rank high as there are indispensable to the very physical existence of the community and on the betterment of these depend the building of the society of which constitution maker envisaged. Attending to public health is of high priority- perhaps the one at top.”

24. In the case of Pt. Paramanand Katara vs Union of India 1989 (4) SCC 286 the Hon'ble Apex Court held:-

“No doctor/hospital can deny medical aid in emergency cases rendering the immediate medical aid to injured person to preserve life, is obligation of doctors.”

25. Operative portion of Para 26 and 27 of the Hon'ble Apex Court judgment passed in the case of Sqn Ldr (Retd) R.V. Nathan vs. Union of India & Ors in Writ Petition No. 54482/2014 dated 08.07.2019 are reproduced below :-

“26. For the reasons stated above, the Writ Petition is allowed. The impugned order dated 8.8.2014 passed by 4th respondent as per Annexure-H is hereby quashed. A Writ of mandamus is issued to Respondent Nos. 1, 2 and 4 to effect the payment of Rs.4,10,260/- (Rupees four lakhs ten thousand two hundred and sixty only) in terms of entitlement of the petitioner under Ex-Servicemen Contributory Health Scheme together with interest at 9% per annum from the date of filing the application for reimbursement i.e., 20.1.2008 till the date of payment. The respondents shall ensure payment of the above sum within a period of six weeks from the date of receipt of copy of this order, failing which the petitioner is at liberty to initiate contempt proceedings against the concerned respondents.

27. The authorities of the Central Government have dragged the petitioner unnecessarily before the Armed Forces Tribunal and this Court and deprived him

the legal reimbursement of full medical expenses incurred, in terms of ECHS for more than 11 years unnecessarily without any reason. Therefore the respondents are hereby directed to pay costs of Rs.50,000/- (Rupees fifty thousand only) to the petitioner in the form of litigation expenses within a period of six weeks from the date of receipt of copy of this order. Liberty is reserved to the respondents to recover the costs from the 4th respondent from his pocket.”

26. A soldier renders valuable services to the nation while in service. Soldiers serve the nation during their youth, subjecting their lives to high risk and dangers. As a mark of respect and gratitude, therefore, they must at the very least be assured of reliable medical care after retirement. It is indeed true that men and women in uniform are the pride of the nation and protectors of the country's sovereignty. It is because of their eternal vigil that ordinary citizens are able to sleep peacefully every night, for it is these men and women guarding the frontiers of our nation that makes our nation safe. It would be appropriate to quote here an epitaph from the Kohima War Cemetery which conveys eloquently that our soldiers, sailors and airmen are cheerfully willing to sacrifice their lives; ***‘when you go home, Tell them for us, for your tomorrow, we gave our today’***. It has been observed that during war and serious situations, defence personnel are remembered but as soon as the grave situation is past, they are forgotten and ignored, We are reminded what Francis Quarrels said; ***“Our Gods and***

***Soldiers we alike adore, At the time of danger, not before;
After deliverance both are alike requited, Our Gods
forgotten and our Soldiers slighted.”***

27. Our Armed Forces have won world wide renown for their valour, dedication and devotion. The achievements of the Armed Forces in varying roles since Independence are a matter of pride for all of us in the country and that of envy of other nations. Men from all castes, creeds, religions and from all parts of India join the Armed Forces and their integration as a secular homogeneous and dedicated team is remarkably total. Armed Forces personnel have sterling qualities of head and heart, courage, discipline, loyalty and implicit obedience to orders. They are the guardians of the safety and honour of the country and are ever prepared to sacrifice their lives to preserve the freedom and sovereignty of the Country. In addition to their preparedness for war, during peace time, our Armed Forces have always risen to the occasion to assist the Administration during natural calamities and internal unrest. The sacrifices made by the personnel of the Armed Forces from 15 August, 1947 to date have been so innumerable that they can best be described by the following quotation of Sir Winston Churchill who had on 20th August 1940 said: ***“Never in the***

field of human conflict was so much owed by so many to few”.

28. It has been observed that, several retired Army personnel, in their old age have suffered and even died due to unfair treatment meted out to them by the ECHS and its controlling organisation in discharge of their duties. It is settled legal position that a 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. Very little scope is left to the patient to decide in which manner the ailment should be treated. Specialty Hospitals are established for treatment of specified ailments and services of Doctors specialized in a specific discipline are approached by patients only to ensure proper, required and safe treatment. Can it be said that taking treatment in Specialty Hospital by itself would deprive a person of his right to claim reimbursement solely on the ground that the said Hospital is not included in the Govt Order? The right to medical claim, especially in an emergency situation cannot be denied merely because the name of the hospital is not included in the Govt order. In fact rules of getting treatment in an emergency have been well established and promulgated by the ECHS. The real test must be the factum of

treatment. Before any medical claim is honoured, the authorities are bound to ensure as to whether the claimant had actually taken treatment and the factum of treatment is supported by records duly certified by Doctors/Hospital concerned. Once, it is established, the claim cannot be denied on technical grounds. This is hardly a satisfactory state of affairs. The relevant authorities are required to be more responsive and cannot in a mechanical manner deprive an employee of his legitimate reimbursement. ECHS was setup with the purpose of providing medical care to Armed Forces personnel, so that they are cared for even after retirement. It was in furtherance of the object of a welfare state, which must provide for such medical care, that the scheme was brought in force. Moreover, the law does not require that prior permission has to be taken in a situation where the survival of the person is of prime consideration.

29. In catena of cases, the Hon'ble Apex Court as well as Armed Forces Tribunals have held that expenditure incurred by ECHS Card holders on account of treatment obtained outside ECHS polyclinic in emergency shall be reimbursed by ECHS. In the present view of the matter, we are of the considered opinion that the ECHS is responsible for the healthcare needs and well

being of the Armed Forces pensioners. In the facts and circumstances of the case, we are of the opinion that the treatment of the applicant in non empanelled hospital was genuine because there was no option left with the applicant at the relevant time. In our considered view, the ends of justice would be met only if we hold the ECHS, 2002 policy to be legal, valid, intra vires and constitutional. In view of the categorical decision of the Govt of India and especially Min of Def letter with regard to this scheme, we fail to understand how a small employee of the Govt of India can over ride the authority of the Govt and issue his own clarification and impose certain prohibitions which were not contemplated by the Govt. This action of the respondents is absolutely illegal and against the scheme as well as the decision of the Govt of India as quoted above. Intermediate authorities should be refrained from issuing directions contrary to main ECHS policy letter 2002 issued by Govt of India. This type of negative attitude on part of Officer in charge ECHS Cell Allahabad is not appropriate and causing unnecessary harassment to ECHS Card holders. In absence of universal policy, intermediate authorities are issuing their own guide lines. ECHS authorities are required to adhere to the standard policy as prescribed by Govt of India vide policy

letter, 2002. In order to help ECHS card holders and to avoid unnecessary mental, physical and financial harassment meted out to pensioners who are senior citizens, we feel that the ECHS policies must be simplified further.

30. In Armed Forces, jawans and officers join the service from all over the country and after retirement they settle in the place of their choice. Canteen Stores Department facilities as per choice are available to armed forces personnel in every Canteen, irrespective of place of residence. This has been facilitated by introduction of modern facility and smart cards. One can draw any amount from any ATM of any Bank (irrespective of bank in which one has opened his account). When such technology is already available and such things can be done with ease it is strange that a similar facility cannot be provided to ECHS Card holders i.e. getting treated and issued with drugs/medicines from any polyclinic of his choice. The policy of restricted ECHS facilities to 'outsider' is not sustainable in the eyes of law and is liable to be set aside. The applicant was left with no other remedy except to approach a private hospital for treatment of his wife in an emergency. The amount is very petty and for this the applicant is rather forced to approach this Tribunal for redressal of his grievances. ECHS

Polyclinic, Allahabad is, therefore, liable to reimburse the medical bills furnished by the applicant for treatment of his wife.

31. It is emerged from the perusal of records that wife of the applicant was neither provided proper medical treatment by the ECHS Polyclinic, Allahabad, nor by an empanelled hospital, hence, the applicant took treatment of his wife from a private dentist which was essential to treat the ailment and there seems no fault on the part of the applicant.

32. In view of above, Original Application is allowed. The impugned order dated 04.01.2016 passed by the respondents is set aside. The respondents are directed to refund Rs. 1,000/- to the applicant incurred for treatment of tooth of his wife. Applicant shall submit medical bills to ECHS Polyclinic, Allahabad within fifteen days from the date of this order and respondents shall reimburse the amount to the applicant within one month from the date of receipt of medical bills. Default will invite interest @ 8% per annum till actual payment. Intermediate authorities of ECHS Cell shall not issue any direction contrary to main ECHS policy letter, 2002 issued by Govt of India. It is also directed that ECHS polyclinics shall not deny any 'outsider' ECHS card holder from availing proper and complete treatment. Necessary instructions related to ECHS

matters will be framed and issued within six months from the date of issuance of this order by MD. ECHS for pan India implementation in due course.

33. Pending applications, if any, stand disposed off.

34. Copy of this order be provided to learned counsel for the respondents for implementation.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 21 December, 2021

Ukt/-