

A.F.R.Reserved

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(CIRCUIT BNCH AT NAINITAL)

Original Application No 1034of 2022

Wednesday, this the 11thday of October, 2023

Hon'ble Mr. Justice Ravindra Nath Kakkar, Member (J)

Hon'ble Vice Admiral Atul Kumar Jain, Member (A)

JC-726156F Sub Maj (Retired) Navin Chandra Mathpal, S/o HB Mathpal, R/o Jali Gaon, Bell Road, Clamant Town, Dehradun, District- Dehradun, Uttarakhand – 248002.

.....**Applicant**

Ld. Counsel for the : **Shri Kishore Rai, Advocate.**
Applicant

Versus

1. Union of India, Ministry of Defence through its Secretary, South Block, New Delhi- 110001.
2. Managing Director, Central Organisation ECHS, Adjutant General's Branch, South Block, Room No 278A, Army Headquarters, New Delhi- 110011.
3. The Officer in Charge ECHS Polyclinic, Dehradun.
4. The officer in Charge, Regional Centre, ECHS, Dehradun, C/o Headquarters Uttarakhand Sub Area, PIN- 900461, C/o 56 APO.

..... **Respondents**

Ld. Counsel for the : **Shri Neeraj Upreti,**
Respondents **Central Govt.Counsel.**

ORDER

“Per Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”

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

- (i) A direction to quash the order dated 02.07.2022 passed by respondent No 4 (contained as annexure No 5 to this Original Application).*
- (ii) To issue suitable order or direction to the respondents for grant of reimbursement of payment of Rs. 2,83,921/- with 18% interest per annum on payable amount till actual payment.*
- (iii) To summon the entire records of the applicant pertaining to grant of the benefit under ECHS Scheme.*
- (iv) Any other relief to which the applicant is found entitled may also very kindly be granted to the applicant.*

2. The facts of the case, in brief are that the applicant is a member of ECHS having Membership Registration No 726156. During pandemic period Covil-19, the wife of the applicant fell ill and she was admitted in ECHS polyclinic Hospital Dehradun. In second wave of Covil-19, due to non availability of any ICU Bed in any emergency ward of government Hospital as well as in empaneled hospitals of ECHS, she was admitted in Civil Hospital Well Care, Dehradun from 11.05.2021 to 20.05.2021. Her oxygen level suddenly fell down and she was transferred from Private

Hospital Well Care, Dehradun to Military Hospital, Dehradun on 20.05.2021. Unfortunately, wife of the applicant was left to heavenly abode on 21.05.2021 at Military Hospital Dehradun. Applicant has incurred expenditure of a sum of Rs. 4,22,029/- in treatment of his wife in private hospital till her death in MH Dehradun. Bill for the same was submitted to respondent for reimbursement. Respondents have sanctioned an amount of Rs. 1,38,108/- only. Being aggrieved by non reimbursement of actual expenditure incurred, applicant submitted supplementary claim for payment of balance amount but it was turned down vide letter dated 02.07.2022 stating that applicant's medical re-imburement bill has been sanctioned as per ECHS rates. This O.A. has been filed for issuing direction to the respondents to pass the remaining amount of Rs 2,83,921/-.

3. Submission of learned counsel for the applicant is that wife of the applicant was admitted in Well Care Hospital, Dehradun on 11.05.2021 as neither any ICU Bed nor any emergency treatment was available in any government hospital empaneled with ECHS. Due to sudden fall of Oxygen level of wife of the applicant, she was transferred from Civil Hospital to Military Hospital Dehradun where she left to heavenly abode on 21.05.2021. Applicant has incurred expenditure of a sum of Rs. 4,22,029/- in treatment of his wife in private hospital till her death in MH Dehradun. Applicant

had taken necessary approval from the Central Organization ECHS and his bill was processed. He was informed that his claim has been settled and a sum of Rs. 1,38,108/- was credited in his account. Claim for Rs 2,83,921/- was not settled by respondent. Applicant requested Respondent No 4 vide his letter dated 30.05.2022 for payment of balance amount. He was informed by the respondents vide letter dated 02.07.2022 that medical claim of remaining amount has been rejected citing the reason that he is entitled for semi private ward. Learned counsel for the applicant submitted that he is entitled to full re-imburement of expenses incurred in connection with treatment of his wife in terms of policy letter dated 22.05.2018. Relying upon para 2 and para 4 (b) (iii) of Govt of India, Min of Def letter dated 19.12.2003 learned counsel for the applicant submitted that applicant is entitled reimbursement of balance amount of Rs.2,83,921/-. Applicant has also relied upon Hon'ble Rajasthan High Court judgment dated 13.08.2015 rendered in Civil Writ Petition (PIL) No 5049 of 2015, **Ms Neena Thakkar vs State of Rajasthan** and the Hon'ble Apex Court judgment dated 13.04.2018 passed in Writ Petition (civil) No 694 of 2015, **Shiv Kant Jha vs Union of India & Ors**. Learned counsel for the applicant pleaded that respondents be directed to credit the balance amount of medical claim in his account.

4. Per contra, learned counsel for the respondents submitted that applicant preferred bill for re-imbusement of an amount of Rs.4,22,029/- incurred on account of treatment of his wife. After due deliberation, Regional Centre ECHS, Lucknow passed Rs. 1,38,108/- only after deducting Rs. 2,83,921/- in accordance with SOP in Inline Bill Processing and existing policies. All claims are processed as per CGHS/AIIMS rates or actual when rates not available. Accordingly, the medical claim in respect of wife of the applicant has been settled. His other submission is that the case relied upon by for the applicant is not applicable in the instant case as such matters are decided on case to case basis and no blank sanction can be accorded in all cases as held in para 15 of **Shiv Kant Jha** (supra). In support of his contention learned counsel for the respondents relied upon order dated 20.04.2012 passed by this Tribunal in O.A. No. 85 of 2010, **Lt Col KB Singh (retd) vs Union of India & Ors.** Advancing his arguments learned counsel for the respondents has cited another judgment passed by the Hon'ble Apex Court reported in (1998) 4 SCC 117, **State of Punjab & Ors vs Ram Lubhaya Bagga & Ors** and submitted that in view of the aforesaid judgment the fixation of rate and scale is justified and cannot be held to be violative of Article 21 or Article 17 of the Constitution of India. He pleaded for dismissal of O.A.

on the ground that applicable rates as approved by CGHS/ECHS have already been paid to the applicant.

5. We have heard learned counsel for the parties and perused the material placed on record.

6. With a view to provide medical care to retired ECHS beneficiaries, the Government has empanelled a large number of hospitals. However, the claims for treatment in these hospitals are limited to the CGHS rates and, hence, such hospital bills are settled as per the approved rules and procedure. Though respondents have pleaded that ECHS has to deal with large number of such retired beneficiaries and if the applicant is compensated beyond the policy provisions, it would have large-scale ramifications, as ECHS beneficiaries would rather choose to be treated in any private hospital as per their own free will. It cannot be ignored that such private hospitals raise exorbitant bills by subjecting the patient to various tests, procedures and treatment, which may not be necessary at all times.

7. Well Care Hospital issued bill for Rs 4,22,029/- which the applicant submitted for payment but ECHS has paid Rs 1,38,108/- only. On query it was stated by the respondents that the amount has been admitted as per ECHS rates only and the applicant is not entitled to full re-imbursment of the amount expended by him.

8. It is a settled legal position that the government employee during his lifetime 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 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 in critical position to decide in which manner the ailment should be treated. Specialty hospitals are established for treatment of specified ailments and services of doctors specialised in a discipline are availed 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 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 more so and especially if, the said treatment became necessary due to a

medical emergency and in a life threatening situation. We fully respect the view of the respondents regarding treatment in empanelled hospital but a life threatening medical emergency is to be treated on a different footing. Clearly, in the present case, by taking a very inhuman approach, the respondents have denied the grant of medical reimbursement in full to the applicant forcing him to approach this Tribunal.

9. 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 especially in emergencies. The ECHS has been set up with the purpose of providing a health care scheme for retired armed forces personnel, 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. It cannot be denied that the applicant was admitted in the Well Care Hospital, Dehradun in critical state. The law does not require that prior permission has to be taken in such situation, where the life of a person is in danger.

10. Thus, from the aforesaid it may be inferred that the referred hospitals were closed for non COVID-19 patients and to save life of wife of the applicant there was no option but to admit her in a non-empanelled hospital. Applicants, who are retirees/ pensioners,

are also entitled to reimbursement of medical claims of the amounts spent on their treatment and any redundant rule or instructions, or impugned order having the effect of denial of such reimbursement of medical claims to them are arbitrary, illegal inoperative and hit by the Constitutional provisions. The ratio of law laid down by Hon'ble Apex Court is applicable to the present controversy and is the complete answer to the problem in hand. It also cannot be denied that wife of the applicant was taken to Well Care Hospital, Dehradun under emergency conditions for hersurvival, which consideration was over and above the rules for treatment in empanelled hospitals. The case of the applicant is covered under Para 3 (2) (a)of Department of Health and Family Welfare letter dated 20 Feb, 2009 (which is applicable for ECHS beneficiaries also) and which states that "In emergency treatment can be obtained in a private, non empanelled hospital". In the instant case there was also medical emergency as all the hospitals were full due to COVID-19 variantsand wife of the applicant was admitted by others when in an unconscious state.

11. In the present view of the matter, we are of the considered opinion that ECHS is responsible for taking care of healthcare needs and well-being of the armed forces pensioners. In the facts and circumstances of the case, we are of the view that the treatment of wife of the applicant in a non-empanelled hospital

was genuine because of an emergency and there was no other option left with him at the relevant time. We, therefore, direct the respondents to further process the claim forwarded by the applicant and reimburse the balance amount of Rs.2,83,921/- to the applicant.

12. For the reasons stated above, the O.A. is partly **allowed**. The respondents are directed to reimburse balance amount of medical claim of Rs.2,83,921/- to the applicant within a period of three month from the date of receipt of copy of this order, failing which the applicants shall be entitled to interest @ 8% p.a.

13. No order as to costs.

14. Miscellaneous application(s), pending if any, shall stand disposed of.

15. Major Danish Farooqui, Departmental Representative for the respondents orally submitted to grant Leave to Appeal against the above order which we have considered and no point of law of general public importance being involved in the case the plea is rejected.

(Vice Admiral Atul Kumar Jain) (Justice Ravindra Nath Kakkar)
Member (A) Member(J)

Dated: 11 October, 2023
Ukt/-

