

**A.F.R.**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**Reserved**

**Court No. 2**

**ORIGINAL APPLICATION NO. 658 of 2022**

**Tuesday, this the 31<sup>st</sup> day of January, 2023**

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

**Hon'ble Maj Gen Sanjay Singh, Member (A)**

Ex Sub Umakant Tiwari (JC-642423M) S/o Late Shri Chandra Pal Tiwari,  
R/o House No 107, Old Jhunsi, Post- Jhunsi, Allahabad U.P.

Learned Counsel for the Applicant: Shri Amit Pandey,  
Shri Shiv Kant Pandey and  
Ms. Nisha Pandey

Versus

1. Union of India, through Defence Secretary, Govt of India, South Block, New Delhi- 110011.
2. The Chief of Staff Committee, Army HQ, New Delhi – 110010.
3. Managing Director, Central Organisation ECHS, Adjutant General Branch, Integrated HQ of MOD (Army) Maude Line Delhi Cantt- 110010.
4. The Director (Complaints and Litigations), Central Organisation ECHS, Adjutant General Branch, Integrated HQ of MOD (Army) Maude Line, Delhi Cantt- 110010.
5. The General officer Commanding (GOC) HQ Purva UP and MP Sub Area, Allahabad, Pin – 900334, C/o 56 APO.
6. The Director Station Cell (ECHS HQ Purva UP and MP Sub Area, Allahabad, Pin – 900334.
7. Station Commander, Station HQ, Allahabad, U.P.).

8. Officer In Charge, Polyclinic ECHS Allahabad, Military Hospital,  
Allahabad Sub Area Allahabad (U.P.)

..... Respondents

Ld. Counsel for the Respondents : **Dr. Chet Narayan Singh,  
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:-

*8.1 This Hon’ble Tribunal may graciously be pleased to set aside the impugned order/ letter No 2180/Complaint/ECHS passed by Dir ECHS for General Officer Commanding, (GOC), Station Cell (ECHS) HQ Purva UP and MP Sub Area Pin- 900334, C/o 56 APO dated 22.01.2022 (Annexure A-8 to this O.A.).*

*8.2 This Hon’ble Tribunal may graciously be pleased to set aside the additional demand of Rs. 27,000/- for delivering the duplicate ECHS Smart Card to applicant wife as demanded vide impugned order dated 22.01.2022 aforementioned.*

*8.3 This Hon’ble Tribunal may graciously be pleased to direct respondents to deliver the duplicate ECHS Smart card to applicant for his wife, which is already made.*

*8.4 This Hon’ble Tribunal may graciously be pleased to direct respondent No 8 to provide all necessary medical treatment/ medical aids to applicant wife for her life.*

*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. The facts of the case, in brief, are that Ex Subedar (Sub) Uma Kant Tiwari was enrolled in Indian Army on 11.08.1981 and retired from service on 30.11.2010 after rendering 29 years, three months and 21 days of service on completion of terms of engagement. He was issued PPO No S/039780/2010 (Army) dated 25.10.2010 and granted basic pension Rs, 13,105/- per month. The Principal Controller of Defence Account (Pension), Allahabad, while issuing the aforementioned PPO, deducted Rs. 12,000/- from pension of the applicant towards contribution to Ex-Servicemen Contributory Health Scheme (ECHS) and 32 KB Smart ECHS Card was issued to the applicant and his family. Thus, the applicant became the life time member of ECHS since the next date of discharge on 01.12.2010 and the applicant was issued with ECHS Smart Card for self and for his wife. In the year 2018, while taking medicine from ECHS polyclinic, Allahabad, smart card of wife of applicant misplaced and applicant applied for duplicate ECHS Smart Card for his wife by paying Rs. 177/- for printing and transaction charges. After proper verification of the facts and terms and conditions by Record Office, duplicate ECHS Card of wife of the applicant was prepared and lying in ECHS Cell, Station HQ, Allahabad since 2019. Applicant requested ECHS Cell Station HQ, Allahabad for delivery of ECHS Card of his wife but he was told to deposit Rs. 27,000/- on account of increased rate of ECHS membership. Applicant submitted application to ECHS Cell, Station Headquarters, Allahabad stating that increased rate of contribution is not applicable to

him as he is already a member of ECHS since 01.12.2010 and requested for delivery of duplicate ECHS Card of his wife but delivery of duplicate ECHS card was denied. Being aggrieved, applicant has filed instant O.A. for issuing direction to the respondents to handover his duplicate ECHS Card duly updated and activated without paying any charge.

3. Learned counsel for the applicant submitted that applicant Ex Subedar Uma Kant Tiwari retired from service on 30.11.2010 on completion of terms of engagement. On retirement he was issued PPO dated 25 November 2010 and granted Pension Rs 13,105/- per month with grade Pay Rs 46,00/- per month. Till introduction of Ex Servicemen Contributory Health Scheme (ECHS) all Ex Army personnel were treated at par with serving soldiers in different Army Hospitals, but later on ECHS was established for medical treatment of Ex Army personnel and their families and applicant became lifetime member of ECHS by paying contribution of Rs. 12,000/- which was deducted from his PPO at the time of retirement.

4. Learned counsel for the applicant submitted that Hon'ble Apex Court has interpreted right to life as *"to live life with full dignity, which implies right to live with full social dignity. Right to life also means right to health and right to Medical Aid. It is also the mandate of constitution to maintain health and strength of applicant ensuring a decent standard of life and full enjoyment of leisure, social and cultural opportunities. These constitutional mandates are not merely academic but obligatory and the*

*state/ authorities concerned cannot shirk away from its responsibilities”.*

The sacrifices and services of the applicant to nation for more than 28 years, has to be acknowledge by respondents now, when he is in need to save life of self and his family. This Hon'ble Tribunal while dealing with ECHS matter in case of **Ex Sgt AK Das Vs Union of India**, O.A. No 86 of 2018, decided on 22.12.2021, while appreciating the sacrifice of soldiers for the nation, observed as under:-

*“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.”***

5. Learned counsel for the applicant further submitted that during service, the applicant and his family were provided free medical treatment in Military Hospitals as per terms and conditions of service. In the year 1999, the Confederation of Ex Serviceman Association and others filed

Writ before Hon'ble Apex Court, seeking mandamus, to ensure full and free medicare to ex servicemen and their families at par with serving Armed Forces Personnel and the Hon'ble Apex Court sought response from Govt of India. During the pendency of the Writ Petition (Civil) 210 of 1999, Govt of India, came out with proposal to have "Ex servicemen Contributory Health Scheme (ECHS) to which Hon'ble Apex Court agreed and thereafter Govt of India vide GO No 22 (1)/01/US(WE)/D(Res) dated 30 Dec 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 that ex-servicemen who retired prior to January 1, 1996 and who intend to avail medical facilities and benefits under the said scheme can exercise option and become member of ECHS. It was 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 any contribution amount. They were however, not entitled to claim medical allowance in future.

6. Thus, the Supreme Court approved the ECHS Scheme on the condition that the contribution by Ex-servicemen will be on the basis of pension received by them and the contribution shall be only onetime in the life and the membership will be for life time. The medical aid to members of ECHS and their dependent family members cannot be denied on technical reasons and the contribution of Rs. 1800/- to Rs 18000/- as onetime membership fees from Jawan to Chief of Army Staff,

with equivalent rank in Navy and Air Force was held valid by the Hon'ble Supreme Court. Any violation of these conditions will entail the contempt of court action. The relevant parts of said ECHS 2002 order is extracted and reproduced as under:-

No. 22(1)/01/US(WE)/D(Res)  
Government of India Ministry of Defence  
New Delhi, dated the 30 Dec, 2002

To The Chief of the Army Staff

The Chief of the Navy Staff

The Chief of the Air Staff

Subject: EX-SERVICEMEN CONTRIBUTORY HEALTH SCHEME (ECHS)

1. I am directed to convey the sanction of the Government for a health care Scheme for Ex-Servicemen namely 'Ex-Servicemen Contributory Health Scheme (ECHS)'.

2. The scheme would cater for medicare for all Ex-servicemen in receipt of pension including disability pension and family pensioners, as also dependents as applicable in CGHS. The scheme will comprise as follows:- (\* Para 2 amended vide 18(17)/2011/US(WE) dated 31 Oct 2012)

(a) ECHS would be a contributory scheme. On retirement, every service personnel will compulsorily become a member of ECHS by contributing his/her share and the scheme would be applicable for life time. Similarly, ex-servicemen who have already retired as on 1st Jan2003 can become members either by making a onetime contribution or in three consecutive yearly instalments. There would be no restriction on age or medical condition. The contribution will be according to the rates prescribed for CGHS pensioners as per revised Appendix A attached. (\* Para 2(a) amended vide 22(1)/01/US(WE)/D(Res) dated 01 Apr 03 and 29 May 03)

(b) Retired personnel joining the scheme will forfeit the medical allowance of Rs. 100/- presently admissible to them and those who do not join the Scheme would continue getting Medical Allowance as hithertofore. Such persons would not be entitled to any medical facility from Armed Forces Clinics/ Hospitals or Polyclinics set up under the Scheme.

(c) xx xx xx xx

7. There were total 28 Regional Centre in the country as on Sep 2015, including the one at Allahabad, headed by Director. The General Officer Commanding, HQ Purva UP and MP Sub Area, Allahabad and The Commandant Military Hospital, New Cantt, Allahabad U.P. are equally controlling authority of Regional Centre ECHS at Allahabad, though there is a Director also. Establishing of ECHS is a Medicare system which could provide quality medicare to the retirees of the Armed Forces. The ECHS was launched with effect from 01 Apr 2003. With the advent of this scheme, Ex servicemen, pensioners and their dependents, are now authorised for treatment, not only in service hospitals, but also in those civil/ private hospitals which are specifically empanelled with the ECHS. As per ECHS Scheme, on retirement, every service person has to become a compulsorily member of ECHS by paying onetime contribution and the Scheme would be applicable for life time. Therefore, to get the benefit of ECHS Scheme, becoming the member of same is mandatory, which is for life time and once the ex-serviceman become member of scheme, he and his family shall be entitled for free medical aid for life time and there cannot be any denial to medical aid. ECHS made policy to provide medical aid to ECHS members on the basis of smart card and ECHS Organisation decided to issue smart card to ECHS members. ECHS Organisation decided to issue Master Card to Ex-servicemen and secondary/ additional card to spouse/dependents of Ex servicemen and secondary/ additional card is controlled by Master Card.



8. After becoming the member of ECHS, the applicant was given smart ECHS Card for self and his wife by ECHS Organisation and ECHS Organisation was fully aware with regards to contribution made by applicant through his PPO. No additional demand was made by any of the authority from applicant towards contribution for ECHS membership from 01.12.2010 till the year 2018. Had there been any deficiency in contribution amount, then certainly the additional demand would have been made by the ECHS organisation. Meaning thereby, the contribution of Rs. 12,000/- made from PPO of the applicant was correct and the demand, if any, after 08 years from the date of retirement is after thought, illegal and barred by Principle of Estoppel. The applicant became lifetime member of ECHS Scheme in the year 2010 by paying lifetime contribution. Changing rates of subscription of December 2010 retirees by ECHS Organisation vide letter dated 16.11.2017 is not applicable to applicant and it is applicable only for Ex servicemen who become member of ECHS for first time. The ECHS Organisation vide GOI, MoD, Dept of Ex Servicemen Welfare Sena Bhawan, New Delhi letter No 22D(04)/2010/WE/D (Res-1) dated 29.12.2017 again revised contribution money for ECHS membership with effect from 29.12.2017 and increased contribution amount to Rs 30,000/- for Havildar and below and equivalent in Navy and Air Force, Rs. 67,000/- for JCOs and equivalent in Navy and Air Force and Rs. 1,20,000/- for all officers. A copy of letter dated 29.12.2017 is annexed as Annexure A-4 to this O.A.

9. On 18 October 2018 applicant's wife reported sick to polyclinic ECHS Allahabad and she misplaced her ECHS smart card and the applicant applied for duplicate ECHS Smart Card for his wife by paying Rs 135/- for printing and transaction charges and after thorough checking by Record Office, the same was accepted and duplicate ECHS card of applicant's wife was prepared and is lying in ECHS Cell, Station Headquarters, Allahabad. The duplicate card of the applicant's wife was not delivered and ECHS Cell Station HQ Allahabad demanded Rs. 27,000/- to hand over duplicate ECHS Smart Card of applicant's wife stating that subscription of smart ECHS Card of Subedars have been revised to 39,000/- with effect from 01.06.2009 vide letter dated 16.11.2017 out of which Rs. 12,000/- have already been deducted from PPO of the JCO. Applicant visited ECHS Cell, Station Headquarter Allahabad many times but duplicate card of his wife was not delivered to him. The applicant submitted application to Station Commander, Station HQ, Allahabad and requested for delivery of duplicate card of his wife stating that increased rate of contribution is applicable to new ECHS Members and not to him. In reply vide letter dated 22.01.2022 Col Daniel Kholi, Director ECHS, Station Cell, Allahabad told the applicant that contribution for ECHS wef 01.06.2009 for Subedars was revised to Rs. 39,000/- in terms of Page 23 of Chapter 4 of Central Org ECHS, AG Branch IHQ of MoD (Army) letter No B/49779-outsourcing/AG/ECHS dated 16.11.2017. This letter has been signed by Col DM Anand, Dir

(Stats & automation), which relates to online application for ECHS New Smart Card and it has nothing to do with issuing of duplicate ECHS Card for family of Ex -servicemen, already holding Master ECHS Card and thus the Director ECHS Station Cell Allahabad relied on irrelevant material/documents and the additional demand of Rs. 27,000/- on the basis of irrelevant material is illegal, unconstitutional and violative of Article 14 and 21 of Constitution of India, as non-delivery of duplicate ECHS card to applicant's wife, deprived her from medical aids by polyclinic ECHS Allahabad. On bare perusal of second page of Annexure of letter dated 22.01.2022, there is a paper mentioning page 23 on the top of it, but the paper does not reveal the source of power from where it has been carved out. On the top of it, rate of contribution has been given, without specifying as to from which date the rates would be applicable. Learned counsel for the applicant submitted that charging of additional demand of Rs. 27,000/- for providing duplicate ECHS Card after eight years of retirement from a defence person who is already a lifetime member of ECHS since his date of retirement i.e. 30.11.2010 is wholly contradictory, not only to Hon'ble Apex Court judgement in case of **Confederation of Ex Servicemen** (Supra) but also even contrary to policy of MoD and, therefore, violative of Article 14 of Constitution of India and liable to be set aside by this Hon'ble Tribunal. The letter dated 16.11.2017 issued by Dir (Stats & Automatic), as relied by Director ECHS Station Cell Allahabad, cannot operate retrospectively. It is well settled in

law that executive orders always operate prospectively and not retrospectively. Letter dated 16.11.2017 as relied upon is not applicable to present case as applicant became life time member in the year 2010 by paying the contribution which was charged by the service HQ itself as per policy applicable at that time. At the time of applying for duplicate card, temporary slip for taking medicine was issued to the applicant for six months. Once, duplicate ECHS card of wife of the applicant was prepared, period of temporary slip was not extended for further six months. Polyclinic ECHS Allahabad has stopped giving medical treatment to applicant's wife for want of duplicate ECHS Card which was already prepared. During crucial period of COVID-19 when there was urgent need of medicare, wife of the applicant was unable to take medicine from ECHS Polyclinic due to non-availability of her duplicate ECHS Smart Card which was lying with ECHS Cell, Station Headquarters, Allahabad. Such act of Officer in Charge, ECHS Cell, Station Headquarters Allahabad is wholly arbitrary and illegal for the reason that applicant is a life time member of ECHS Scheme since 01.12.2010, and duplicate smart ECHS Card of his wife is secondary, therefore, there is a urgent need that this Hon'ble Tribunal may direct ECHS Cell, Station Headquarters, Allahabad, Respondent No 6 to provide duplicate ECHS Smart Card of wife of the applicant to enable her to take medicines from Polyclinic ECHS Cell, Allahabad. Learned counsel for the applicant prayed that impugned letter dated 22.01.2022 be quashed and

respondents be directed to issue duplicate ECHS Card of wife of the applicant duly renewed and activated without paying any additional amount at the earliest.

10. Per contra, learned counsel for the respondents submitted that ECHS facilities were launched for Ex Servicemen with effect from 01.04.2003. Accordingly, Ex- serviceman started to become member of ECHS to avail medical facilities. For correct accounting and monitoring it was decided to issue a smart card to individuals and their dependents for availing medical facilities. The members were required to pay Rs. 1800/- to Rs. 18,000/- as per pension drawn vide ECHS letter dated 29.10.2003. Payment of contribution for ECHS membership fees is mandatory to be made through Military Receiver Order (MRO). Contribution wef 01.06.2009 to a Subedar drawing Grade Pay from Rs 46,00/- to Rs. 6600/- was increased to Rs. 39,000/- vide Para 8 of SOP Instructions for online applications for ECHS Smart Card received by Central Organisation ECHS vide letter dated 16.11.2017. The rate of contributions with affect from 29.12.2017 for Subedars was further increased to Rs. 67,000/- in terms of Govt of India, Min of Def letter dated 29.12.2017. The applicant was retired from service on 01.12.2010 and a sum of Rs 12,000/- was deducted from his PPO on account of onetime ECHS contribution. The applicant and his family were continuously getting medical facility from ECHS after retirement. ECHS Smart Card in respect of his spouse was lost in the year 2018 and applicant applied for

the duplicate Card of his wife. Duplicate ECHS card of the applicant was prepared and applicant was asked to deposit Rs. 27,000/- in terms of Central Org ECHS, AG's Branch, IHQ of Min of Def (Army) letter dated 16.11.2017. Due to late receipt of policy letter dated 16.11.2017, the same could not be recovered from the applicant at the time of his retirement. Now on receipt of the letter dated 16.11.2017, applicant is liable to deposit the amount through MRO. Learned counsel for the respondents pleaded that applicant has to deposit Rs. 27,000/- then only duplicate ECHS card of his wife can be issued to him.

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

12. The question before us to decide is "whether the applicant who is already a life time member of ECHS by paying Rs. 12,000/- at the time of retirement on 30.11.2010 has to pay additional Rs. 27,000/- for collection of duplicate ECHS Card which was misplaced in the year 2018"?

13. On perusal of policy it reveals that while introducing ECHS scheme, Govt of India, Min of Def vide policy letter dated 30.12.2002 issued detailed guidelines for its membership. As per this policy letter Rate of subscription of ECHS membership was fixed from Rs 18,00/- to 18,000/- based on the pension. Relevant portion of said policy letter reads as under:-

*Subject: EX-SERVICEMEN CONTRIBUTORY HEALTH SCHEME (ECHS)*

1. I am directed to convey the sanction of the Government for a health care Scheme for Ex-Servicemen namely 'Ex-Servicemen Contributory Health Scheme (ECHS)'.

2. The scheme would cater for medicare for all Ex-servicemen in receipt of pension including disability pension and family pensioners, as also dependents as applicable in CGHS. The scheme will comprise as follows: -

(\* Para 2 amended vide 18(17)/2011/US(WE) dated 31 Oct 2012)

(a) ECHS would be a contributory scheme. On retirement, every service personnel will compulsorily become a member of ECHS by contributing his/her share and the scheme would be applicable for life time. Similarly, ex-servicemen who have already retired as on 1st Jan'2003 can become members either by making a onetime contribution or in three consecutive yearly instalments. There would be no restriction on age or medical condition. The contribution will be according to the rates prescribed for CGHS pensioners as per revised Appendix A attached.

(\* Para 2(a) amended vide 22(1)/01/US(WE)/D(Res) dated 01 Apr 03 and 29 May 03) (b) Retired personnel joining the scheme will forfeit the medical allowance of Rs. 100/- presently admissible to them and those who do not join the Scheme would continue getting Medical Allowance as hitherto. Such persons would not be entitled to any medical facility from Armed Forces Clinics/ Hospitals or Polyclinics set up under the Scheme.

REVISED APPENDIX 'A' \*

Rates of Subscription of ECHS  
(w.e.f 01 Apr 2004)

New Slab Contribution (in Rupees) Revised Pension/Family Pension  
(Uncommuted Basic Pension + Dearness Pension) (Rupees per month)

Upto

Rs. 3000	1800/-
Rs. 3001 To 6000	4800/-
Rs. 6001 to Rs. 10000	8400/-

Rs. 10001 To Rs. 15000 12000/-

Rs. 15001 and above 18000/-

*(New Slabs for subscription of ECHS amended vide GOI, Min of Health and Family Welfare, Department of Health OM No. S-11011/6/98 CGHS (P) dated 20 Sep 04 and Central Organisation ECHS letter No. B/49784/AG/ECHS dated 15 Jan 05)*

Note:

1. The ECHS subscription may be charged from the pensioners/dependents on the basis of their pension as per the option given by the pensioners/dependents.

2. As and when the rates of subscription for CGHS beneficiaries are revised by the Ministry of Health and Family Welfare, the rate of subscription of ECHS would be deemed to have been revised from the same date.

3. The pensioners would be making similar onetime payment towards ECHS contribution as the civilian pensioners making payment for availing CGHS facilities by contributing 10 times the annual contribution payable at the time of retirement.

4. The ex-servicemen who would be making payment in three consecutive yearly instalments will be issued a ECHS Membership card initially with validity for one year only. The validity of the card to the second and third year would be extended only after the ex-servicemen has paid and given proof of the second and third instalments.

\* (Appendix A Revised vide 22(1)/01/US(WE)/D(Res) dated 01 Apr 03 and 22(1)/01/US(WE)/ D(Res) dated 29 May 03).

14. This letter was amended vide Govt of India Min of Def letter dated 01.04.2003. Relevant portion of this policy letter are as under:-



### **Corrigendum**

The following amendments may be made in paras 2 of Ministry of Defence letter No 22(1)/01/US(WE)/D(Res) dated 30 Dec' 2002.

2. The scheme would cater for medicare of all Ex-servicemen in receipt of pension including disability pension and family pensioners, as also dependents to include wife/husband, legitimate children and wholly dependent parents. The son with permanent disability of any kind (physical or mental) of entitled category of ECHS would be eligible for life long facility of medical treatment. The scheme will comprise as follows:-

(a) ECHS would be a contributory scheme. On retirement, every service personnel will compulsorily become a member of ECHS by contributing his/her share and the scheme would be applicable for life time. Similarly, ex-servicemen who have already retired can become members by making a one time contribution. There would be no restriction on age or medical conditions. The contribution will be according to the rates prescribed for GCHS pensioners as per revised Appendix A attached.

### **Annexure 'A'**

#### **Rates of Subscription of ECHS**

<b><i>Pension/ Family Pension (Rupees per month)</i></b>	<b><i>Contribution (in Rupees)</i></b>
Upto Rs. 1500/-	1,800/-
Rs. 1501 to Rs. 3000	4,800/-
Rs. 3001 to Rs 5000	8,400/-
Rs. 5001 to 7500	12,000/-
Rs. 7501 and above	18,000/-

**Note:**

1. The ECHS subscription may be charged from the pensioners/Dependents on the basis of their pension as per the option given by the pensioners/dependents.
  2. As and when the rates of subscription for CGHS beneficiaries are revised by the Ministry of Health and Family Welfare, the rate of subscription of ECHS would be deemed to have been revised from the same date.
  3. The pensioners would be making similar one time payment towards ECHS contribution as the civilian pensioners making payment for availing CGHS facilities by contributing 10 times the annual contribution payable at the time of retirement.
15. Letter dated 30.12.2002 was further revised vide Govt of India Min of Def letter dated 29.05.2003. Relevant paras of Policy letter No 22(1)/01/US(WE)/D(Res) dated 29.05.2003 reads as under:-

**CORRIGENDUM**

*The following amendments may be made in Ministry of Defence letter No 22(1/01/US(WE)/D (Res) dated 30 December 2002.*

*2(a). ECHS would be a contributory scheme. On retirement, every service personnel will compulsorily become a member of ECHS by contributing his/her share and the scheme would be applicable for life time. Similarly, Ex servicemen who have already retired as on 1 January 2003 can become members either by making a one time contribution or in three consecutive yearly instalments. There would be no restriction on age or medical condition. The contribution will*

*be according to the rates prescribed for CGHS pensioners as per revised Appendix A attached.*

*2(m). The scheme will be implemented by a project organisation. This would comprise a Headquarters located at Delhi and twelve Regional Centres. Detailed organisation, infrastructure required and manpower required to man the Headquarters and Regional Centres would be as per revised Appendix G Attached. Army, Navy and Air Force will provide manpower for these administrative organisations from within their existing resources.*

*3. x x x x*

**Revised Appendix 'A'**

**Rates of Subscription of ECHS**

<b><i>Pension/ Family Pension (Rupees per month)</i></b>	<b><i>Contribution (in Rupees)</i></b>
<i>Upto Rs. 1500/-</i>	<i>1,800/-</i>
<i>Rs. 1501 to Rs. 3000</i>	<i>4,800/-</i>
<i>Rs. 3001 to Rs 5000</i>	<i>8,400/-</i>
<i>Rs. 5001 to 7500</i>	<i>12,000/-</i>
<i>Rs. 7501 and above</i>	<i>18,000/-</i>

**Note:**

*1. The ECHS subscription may be charged from the pensioners/Dependents on the basis of their pension as per the option given by the pensioners/dependents.*

*2. As and when the rates of subscription for CGHS beneficiaries are revised by the Ministry of Health and Family Welfare, the rate of*

*subscription of ECHS would deemed to have been revised from the same date.*

*3. The pensioners would be making similar one time payment towards ECHS contribution as the civilian pensioners making payment for availing CGHS facilities by contributing 10 times the annual contribution payable at the time of retirement.*

*4. The ex-servicemen who would be making payment in three consecutive yearly instalments will be issued a ECHS Membership Card initially with validity for one year only. The validity of the card to the second and third year would be extended only after the ex-servicemen has paid and given proof of the second and third instalments.*

16. On perusal of Para 3 of policy letter dated 29.05.2003 it reveals that all Ex Servicemen pensioners are required to make a onetime contribution based on their pension, at the time of retirement and every service personnel will compulsorily become a member of ECHS by contributing their share and the scheme would be applicable for life time. Since the applicant had paid Rs. 12,000/- for ECHS Smart Card at the time of retirement, hence no question arises for further contributing Rs. 27,000/- as stated by the respondents.

17. Central Organisation, ECHS, New Delhi is overall controller of the ECHS membership. They have issued detailed Guide Lines dated 06.04.2014, covering all points and policy letters relating to ECHS membership. Part – I, page 5 and 6 of these instructions deals with matters relating to issue of **New Smart ECHS Card**. Chapter -3 Page 19

of these Instructions deals with Instructions for filling up online Application Form for changing 16KB/32 KB Smart Card into 64 KB Smart Card which reads as under:-

**16KB/32KB Card Holders.** *The ex-servicemen/ family pensioners who are in the possession of Old Smart Card will be covered under this category. They are required to fill the online small Card Application under Existing Card Holders category available on the online portal and thereafter select relevant category i.e. 16KB Card holder or 32 KB Card Holder. 16 KB Cards will stop working in the new system with effect from 01 Sep 2018. Applying for new 64 KB cards for 32 KB Cards holders is optional till the year 2020. However, they can also apply to get the benefits of new Smart Card. For difference between 16KB/ 32 KB Smart Card refer Appendix G.*

18. Sub Para (f) of Chapter 3 deals with payment to be made for change of Smart Card from 16/32 KB to 64 KB. It states that *'you will be directed to a new window for payment of ECHS Smart Cards. Please note that the cost of one Smart Card is Rs. 177/- (inclusive of all taxes) plus transaction charges extra (as applicable). Separate card will be needed for all members. Record Office will check complete particulars of the applicant, if any observation is raised the applicant is informed through SMS. For changing 16/32 KB Smart ECHS Card to 64 KB Smart Card, no amount shall be charged except processing fees and transaction charged'*.

19. Chapter 6, Page 30 of these instructions deals with Guidelines & Instructions for Applying for Loss of Card.

**For Loss of 32 KB Card**

1. *Applying for new 64 KB ECHS Smart Card is compulsory for temporary slip holders and 16 KB Card holders. Hence, these instructions are only for 32 KB Card holder ECHS beneficiaries who have lost their cards.*
2. *The guidelines and instructions for filing of application will be same as enumerated in Chapter 3 of Part of this document. The applicant has to fill full application with details of every member. The attachments as asked needs to be uploaded for each member.*
3. *After successful completion of application, applicant will be provided an option to select the member for which new Card is to be printed. On selecting member/ members for whom Smart Card is to be issued a self declaration for loss of Smart Card will be presented to the applicant for accepting.*
4. *After selecting the members and accepting self declaration, Proceed for payment option will be made available. The payment required will be only for the number of cards applied.*
5. *The flow of application will be same as other applications i.e. verification by Record Office and then printing of Smart Card. Verification of application by Record Office will be for full application.*
6. *Smart Cards needs to be collected from Station HQ by each beneficiary. Temporary slip issued for lost card is required to be submitted at Station HQ at the time of collection of new Smart Card.*
7. *Since, the date of all the members has already been captured and verified by the Record Offices, individual can apply for printing of new 64 KB Smart Card in future by just paying the Smart Card fee. However, a re-check of eligibility in terms of age for dependent, son, daughter, brother and sister will be carried out at the time of*

*actual applying for upgradation of 64 KB Card. This will save time of the verification by the Record Offices.*

20. Central Organisation, ECHS, New Delhi vide letter No B/49711/AG/ECHS dated 10 Oct 2012 has issued policy for issuance of **duplicate ECHS card in case of Loss of Smart ECHS Card** which states that *“in case of loss of ECHS Smart Card, the same shall be blocked immediately on intimation of the same by the member concerned. ECHS Member will submit online application giving details of lost card and he shall be issued a receipt by Station Headquarters which would be authority for seeking treatment from ECHS Polyclinic till the time the card is issued”*.

21. 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 for life time. 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 G.O. 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.”*

22. Para 2 of policy letter dated 30.12.2002 stipulates that the scheme would cater for medicare of all ex-servicemen. Para 2 (a) states that there would be no restriction on age or medical condition. Para 2 (c) states 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. There is no instruction that subscription will be enhanced after 10 years of issuance of ECHS card. Getting medical aid is fundamental right under Article 21 of Constitution of India and therefore the contention of respondents that applicant has to deposit Rs. 27,000/- then his card would be delivered in against the law. If, Rs. 27,000/- was required to be paid by the applicant for issuance of duplicate card, then the duplicate card would not have been prepared without full payment of amount due therefore, Central Organisation ECHs letter No. B/49770-outsourcing/AG/ECHS dated 16.11.2017 cannot take away the right of ex-servicemen as conferred upon them by ECHS policy 2002, made by Govt of India.

23. 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.

*(b) Retired personnel joining the scheme will forfeit the medical allowance of Rs. 100/- presently admissible to them and those who do not join the Scheme would continue getting Medical Allowance as hithertofore. Such persons would not be entitled to any medical facility from Armed Forces Clinics/ Hospitals or Polyclinics set up under the Scheme.*

*Life time premium ranges from Rs 1800/- to Rs 18000/- (depending upon basic uncommuted pension)*

*(a) To become an ECHS Member an initial contribution as per laid down rates in mandatory. Thereafter, no payment is to be made for any medicines or treatment provided under the scheme.*

24. 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 etc, 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."*

25. Wg Cdr (Retd) U Thakur, 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 ECHS dignitaries to be courteous and assist ex-servicemen patients and to provide good medical care.

26. Hon'ble Apex Court in case of Akhil Bhartiya SoshitKarmachari 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."*

27. 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.”*

28. Our Armed Forces have won worldwide 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 20<sup>th</sup> August 1940 said: **“Never in the field of human conflict was so much owed by so many to few”**.

29. 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. The real test must be the factum of treatment. 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 right of medicare. Gross injustice done to the applicant is a case of such mind set. It requires hammering by administration of justice so as to obey and respect law and remains within the four corners of empire of law. ECHS was setup with the purpose of providing medical care to Armed Forces retirees, so that they are caredfor evenafter retirement. It was in furtherance of the object of a welfare state, which must provide for such medical care, for which the ECHS policy was brought in force.

30. Respondents have relied upon policy letter dated 16.11.2017. Para 1 of policy this policy letter reads as *“Enclosed please find CD containing detailed instructions for online filing and processing of **New ECHS Smart Card**”*.Further on page 6 of ECHS Instructions rates of subscription upto Havhave been enhanced to Rs. 30,000/-, subscription upto Sub have been enhanced to Rs. 67,000/- and subscription for Officers have been enhanced to Rs. 1,20,000/- respectively. In Note column of these

instructions, it is written that ***“The members who are joining the scheme for first time are required to pay above stated ECHS Contribution”***. Applicant had not applied for New ECHS Smart Card first time in the year 2018 as he was already a member of ECHS since December 2010 and was in possession of 32 KB Smart Card by paying lifetime contribution of Rs. 12,000/- at the time of his retirement. The sole aim of this policy letter of 2002 is to provide proper medical facilities to veterans and not to harass them. The purpose of the ECHS introduced by Govt of India is to provide proper treatment to all ECHS card holders. As per policy a sum of Rs. 12,000/- as lifetime ECHS contribution was deducted from the PPO of the applicant by PCDA (P), Allahabad at the time of his retirement on 30.11.2010 in terms of policy issued by the Govt of India and applicant was issued ECHS Smart Card of self and family, hence applicant is not liable to pay Rs 27,000/- as additional contribution at this stage.

31. As per Government of India, Ministry of Defence, New Delhi letter dated 02.06.2017 issued on ***“Clarification regarding rate of subscription of ECHS membership”*** as per sub para (b) of this letter ***“Once subscription has been deducted and endorsed in PPO, old rates will be applicable for this category of Ex serviceman, irrespective of the date on which they apply for membership”***. In this case applicant retired from service on 30.11.2010 and a sum of Rs. 12,000/- was deducted from his PPO by PCDA (P) Allahabad at the time

of retirement as per existing policy and applicant was issued 32 KB ECHS Smart Card for self and family. Master ECHS Smart Card of the applicant is active and held with him. Secondary ECHS Card of his wife was misplaced while taking medicine at ECHS Polyclinic Allahabad. He applied for issuance of duplicate ECHS Smart Card for his wife against misplaced card. After checking every detail by Record Office, duplicate ECHS Smart Card of his wife was prepared. At the time of delivery, applicant was asked to deposit additional Rs. 27,000/-. Since applicant is already member of ECHS from the date of retirement, hence, demand of additional amount of Rs. 27,000/- for issuing of duplicate ECHS Smart (Not New) is illegal and not sustainable.

32. The question of award of cost is meant to compensate a party who has been compelled to enter litigation unnecessarily for no fault on its part. The purpose is not only to compensate a litigant but also to caution the authorities to work in a just and fair manner in accordance to law.

33. In the case of ***Centre for Public Interest Litigation and others v. Union of India and others***, (2012) 3 SCC 1, the Hon'ble Supreme Court after considering the entire facts and circumstances and keeping in view the public interest, while allowing the petition, directed the respondents No 2, 3 and 9 to pay a cost of Rs. 5 crores each and further directed respondents No 4, 6, 7 and 10 to pay a cost of Rs. 50 lakhs each, out of which 50% was payable to the Supreme Court Legal Services Committee for being used for providing legal aid to poor and indigent litigants and the

remaining 50% was directed to be deposited in the funds created for Resettlement and Welfare Schemes of the Ministry of Defence.

34. Apart from aforesaid judgments of Hon'ble Supreme Court, under Section 18 of the Armed Forces Tribunal Act, 2007, Tribunal has been conferred statutory power to impose cost while deciding application under Section 14 and an appeal under Section 15 of the Armed Forces Tribunal Act, 2007 as it may deem just, to quote :-

*“18. Cost.- While disposing of the application under section 14 or an appeal under section 15, the Tribunal shall have power to make such order as to cost as it may deem just.”*

35. The purpose of statutory provision seems to compensate Armed Forces person who is representing his grievance keeping in view facts of each case depending upon the gravity of injustice caused to them. Respondents must care for the sufferings of their subordinates. They should never forget that once a matter comes before the Court or Tribunal, then it shall be obligatory to uphold the truth, which is the foundation of our civilisation. Keeping in view the humiliation suffered by the applicant on account of medicare during COVID-19 period due to not providing duplicate ECHS Card and the mental pain and agony suffered by the family of the applicant, being the low rung of the Army, we assess the cost at Rs. 25,000/-, which shall be paid by the respondents to the applicant.

36. In view of above, it is the solemn duty of Armed Forces Tribunals or courts to uphold the truth and do justice to the aggrieved. In categorical decision of the Govt of India and especially Min of Def letter with regard to this scheme, we fail to understand how an employee can override the authority of the Govt of India and issue his own clarification which was never contemplated by the Govt of India. 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. In absence of universal policy, intermediate authorities are issuing their own guide lines by misinterpretation of policy as per their own will. Action of Officer in charge ECHS Cell, Station Headquarters, Allahabad of refusing delivery of duplicate ECHS Card is not appropriate and caused unnecessary harassment to the applicant.

37. In the instant case as per policy a sum of Rs. 12,000/- as life time ECHS contribution was deducted from the PPO of the applicant by PCDA (P), Allahabad at the time of his retirement on 30.11.2010 in terms of policy letter in existence issued by the Govt of India. Wife of the applicant is a patient of Asthma. She suffers a lot during COVID Period due to non-availability of duplicate ECHS Card which was prepared in the year 2019 but not yet delivered to the applicant.

38. 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. Policy letter dated 16.11.2017 and



letter dated 22.01.2022 relied upon by the respondents cannot operate retrospectively for collecting additional contribution of Rs. 27,000/- from 30.11.2010 retiree who is already member of ECHS since date of his retirement, hence liable to be quashed being not sustainable in the eyes of law. In the facts and circumstances of the case, we are of the view that applicant is not required to pay excess charge for collection of duplicate ECHS Card of his wife. The respondents are therefore, liable to activate the ECHS Card of wife of the applicant (Smt Sudha Tiwari) and handover the same to the applicant without any charge to enable applicant's wife to take medicine from Polyclinic ECHS, Allahabad.

39. For the reasons stated above, the O.A. deserves to be allowed and is hereby allowed with following orders: -

### **ORDER**

(a) Impugned order dated 22.01.2022 along with annexures demanding excess money for issuance of duplicate Smart Card is quashed.

(b) Respondent No 6 and 7 are directed to issue duplicate smart ECHS Card to the applicant duly activated without any further charge within one month from the date of production of certified copy of this order.

(c) Cost is quantified to Rs. 25,000/- which shall be paid to the applicant by the respondents expeditiously, say within a period of one month from today. The cost shall be deposited in the Registry of this Tribunal and the same shall be released in favour of the applicant through cheque.

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

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

**(Maj Gen Sanjay Singh) (Justice Ravindra Nath Kakkar)**  
**Member (A) Member(J)**

Dated:31 January, 2023

BLY/-