

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No. 309 of 2020****Wednesday, this the 22nd day of September, 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Alok Kumar Yadav S/O Yash Pal Singh (No 14584809-P, Ex Nk R/O
591/612, Baldev Vihar Colony, Telibagh, District-Lucknow-226029.

.... Applicant

Ld. Counsel for the: **Shri Parijaat Belaura**, Advocate.
Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi.
2. The Managing Director, Central Organization, ECHS (L&D),
Adjutant General Branch Integrated Headquarters of Ministry of
Defence (Army), Maudi Line, Delhi Cantt-10, Post Office-New
Delhi.
3. The Commandant Command Hospital (CC), Lucknow.
4. Regional Centre ECHS, 3-Rani Laxmibai Marg, Lucknow-226002
5. ECHS Centre, 95, Usman Road, Lucknow Cantt, Lucknow-
226002.

... Respondents

Ld. Counsel for the: **Dr. Shailendra Sharma Atal**, Advocate
Respondents. Govt Standing Counsel.

ORDER (Oral)

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

(a) To direct opposite party No 3-5 to ensure continue treatment of applicant in the light of Govt of India, Ministry of Defence letter dated 05.12.2017.

(b) Any other suitable relief this Hon'ble Court deems fit and proper may also be granted.

Interim Relief Prayed

This Hon'ble Court may graciously be pleased to direct opposite party No 3-5 to ensure continue treatment of applicant who is 90% disable.

2. Brief facts of the case are that applicant is a son of Ex-Nk Yash Pal Singh who is suffering from 'Renal Disorder' and his disability is 90% as per certificate dated 08.03.2014 issued by Central Command Hospital, Lucknow (Annexure No. 4). On 09.10.2020 this O.A. was filed in which an interim prayer was made for continuance of applicant's treatment in the aforesaid hospital. This Tribunal vide order dated 13.10.2020 issued directions to respondents to continue applicant's medical treatment. This O.A. is filed for continuous treatment of applicant in terms of Govt of India, Ministry of Defence letter dated 05.12.2017.

3. Learned counsel for the applicant submitted that in the year 2011, applicant was detected to be suffering from 'Renal Disorder'. He underwent Renal Transplantation and since then he has been regularly under treatment in Nephrology Department of Command Hospital, Lucknow. In the year 2020 when applicant's medical condition deteriorated he was referred to Charak Hospital and Research Centre,

Lucknow, an empanelled hospital of ECHS, for dialysis and since then he is being provided dialysis twice a week. Medicines worth Rs 2,000/- were issued by empanelled hospital and beyond Rs 2000/- were issued by ECHS after countersignature of concerned specialist. Head of the Department, Nephrology had refused to countersign papers related to issue of medicines beyond Rs 2,000/- saying that kidney failure and transplant of kidney is not covered in ECHS disability list. His submission is that Govt of India, Ministry of Defence policy letter dated 05.12.2017 clearly provides that dependent son/daughter of an ex-serviceman is eligible for medical treatment if the disability (physical/mental) is 40% or more. His contention is that since his son is 90% disabled as per disability certificate dated 08.03.2014 issued by Command Hospital, Lucknow, he is entitled for regular treatment irrespective of his age. Relying upon judgment and order dated 31.08.2018 passed in O.A. No. 381 of 2018, ***Dilip Kumar Yadav vs Union of India & Ors***, learned counsel for the applicant submitted that applicant is entitled for continuance of his treatment in view of the relief granted in aforesaid case.

4. On the other hand, learned counsel for the respondents conceded that dependent son/daughter of army personnel are entitled to treatment through ECHC till attaining the age of 25 years or till their marriage whichever is earlier in terms of policy letter dated 05.12.2017 but submitted that applicant is not entitled for treatment related to kidney in terms of Persons with Disability (PWD) Act 2016.

5. We have heard learned counsel of both the sides and perused the material placed on record.

6. We find that keeping in view of urgency and the fact that life of a person was at stake, an interim order dated 31.08.2018 was passed in the case of ***Dilip Kumar Yadav*** (supra). In the instant case the applicant is undergoing treatment of 'Renal Disorder' through ECHS in Charak Hospital, Lucknow from the year 2011. He is 90% disabled as per certificate dated 08.03.2014 issued by Command Hospital, Central Command, Lucknow. As per records, applicant has to undergo dialysis twice a week in Command Hospital/Charak Hospital.

7. It is true that applicant is suffering with 'Renal Disorder'. As per Government of India, Ministry of Defence letter dated 05.12.2017, as eligibility for ECHS benefit to the son of ECHS member being subject to PWD Act, 2016 and the disease with which applicant is suffering being not included in the list of disabilities under the PWD Act, 2016, his treatment has rightly been stopped. Case of the applicant cannot be treated as special case for providing ECHS benefit to him as Policy letter No. B/49711-NewSmartCard/AG/ECHS dated 15.05.2019 in this regard has been cancelled by the respondents vide their letter of even number dated 01.10.2019. It is evident that earlier only five disabilities were included in PWD Act, 1995 for providing ECHS benefits to the son of ECHS member which was later extended to seven disabilities, but kidney disease was never included therein. After PWD Act, 2016 coming into existence the list has been extended to 21 disabilities but kidney disease has still not been included in the list. Respondents while filing counter affidavit have averred that kidney disease is not included in the list of PWD Act, 2016. Ld. Counsel for the respondents has also contended that kidney disease was never included in the list of disabilities meant for

extending the benefit of ECHS membership to the dependents of ECHS members. He has also contended that despite this being the position, applicant who is suffering with permanent disability of kidney and which has been assessed at 90%, benefit of ECHS membership was uninterruptedly extended to him from 2011 onwards.

8. It is made clear that interim order dated 13.10.2020 was passed as applicant's life was at stake. In view of the above, kidney disease being not included in the list of 21 disabilities under the PWD Act, 2016, the applicant is not entitled to get treatment related to kidney through ECHS.

9. In view of the above, the Original Application is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

10. No order as to costs.

11. Pending application(s), if any, shall stand disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : September 22, 2021
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