

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 214 of 2018****Tuesday, this the 28th day of September, 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)No. 14907706-K Ex. Nk/TS Dilip Kumar
S/o Shri Kashi Ram
R/o 252-M, Nai Basti, Kuiyanboot, Post – Pachpukhra
(Near Railway Station) Farrukhabad,
Distt – Farrukhabad (UP), Pin – 209625

..... Applicant

Ld. Counsel for the Applicant: **Shri Virendra Kumar Gupta**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, Govt. of India, New Delhi-110011.
2. Managing Director, Central Organisation, Ex-servicemen Contributory Health Scheme, Adjutant General's Branch, South Block, Room No. 278 A, Army Headquarters, New Delhi – 110011.
3. The Officer-in-charge, ECHS Polyclinic, Fatehgarh, UP, Pin – 209601.
4. The Officer-in-charge, Military Hospital, Fatehgarh, UP, Pin – 209601.
5. Managing Director, Regency Hospital, A-2, Sarvodaya Nagar, Kanpur-208005.

..... Respondents

Ld. Counsel for the Respondents : **Shri Amit Jaiswal**,
Central Govt Counsel.**ORDER**

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:-

- “(A) To quash the impugned letter No. B/49762/AG/ECHS dated 31 October, 2016 (Annexure A-1 of instant O.A.) wherein claim of the applicant has been denied for grant of reimbursement of payment.
- (B) To issue suitable orders or directions to the respondents for grant of reimbursement of payment of Rs. 89,006/- with 18% interest p.a. on payable amount till actual payment.
- (C) The cost of this application Rs. 20,000/- may kindly be awarded against respondents in favour of applicant.
- (D) Any other relief as considered proper by the Hon’ble Tribunal be awarded in favour of the applicant.”

2. The brief facts of the case are that applicant is a member of ECHS having Membership Registration No. LKO134061. The applicant was ill so he went to Polyclinic, ECHS, Fatehgarh (UP) on 16.02.2016 from where he was sent to Regency Hospital, Kanpur for investigation and applicant went to Regency Hospital, Kanpur on 17.02.2016 where he was diagnosed as HCV + (Hepatitis C) and advised to take medicines Cap Ribavirin 200, Tab Sofacure 400 and Palsiclear 60. Applicant was not provided prescribed medicines neither from Regency Hospital nor from ECHS Polyclinic, Fatehgarh, so he purchased medicines from local market and consumed. Since the applicant has purchased/consumed the medicines from his own pocket, he moved an application dated 15.10.2016 before Central Organisation, ECHS, New Delhi and Regional Centre, ECHS, Lucknow for reimbursement of ECHS medicine bills but he has not been reimbursed the expended amount for purchase of medicines.

Being aggrieved, the applicant has preferred the present Original Application.

3. Learned counsel for the applicant submitted that applicant is a member of ECHS having Membership Registration No. LKO134061. The applicant was ill so he went to Polyclinic, ECHS, Fatehgarh (UP) on 16.02.2016 from where he was sent to Regency Hospital, Kanpur for investigation and applicant went to Regency Hospital on 17.02.2016 where various samples of blood and urine were taken for investigation and on the basis of reports, Doctor admitted the applicant in Regency Hospital on 05.04.2016 where he was diagnosed as HCV + (Hepatitis C) and advised to take medicines Cap Ribavirin 200, Tab Sofacure 400 and Palsiclear 60. Applicant went to take medicines from medical store of Regency Hospital where he was refused stating that hospital can provide you medicines of Rs. 2000/- only but medicines costing more than 2000/- will be provided by your parent polyclinic. The applicant went to ECHS Polyclinic, Fatehgarh and met to OIC ECHS Polyclinic and put his demand of prescribed medicines where OIC ECHS said to note his demand since the medicines prescribed by Regency Hospital are not available right now and further instructed to collect the demanded medicines as and when these are received in ECHS Polyclinic but no medicines were provided to the applicant till 20.09.2016. Therefore, as advised by the Doctor, applicant has purchased/consumed these medicines from available medical store and lastly purchased on 20.09.2016 because no gap was allowed by the Doctor in taking medicines.

4. Learned counsel for the applicant further submitted that on 22.09.2016, OIC, ECHS Polyclinic, Fatehgarh informed the applicant on his mobile to collect the medicines as his requisite medicines have been received by him. Since the applicant has purchased/consumed the medicines from his own pocket, he moved an application dated 15.10.2016 before Central Organisation, ECHS, New Delhi and Regional Centre, ECHS, Lucknow for reimbursement of ECHS medicine bills. In response to his letter dated 15.10.2016, respondent No. 2 sent a letter dated 31.10.2016 to Regional Centre, ECHS, Lucknow for investigation of the matter but no matter was enquired so far, Hence, he pleaded for reimbursement of Rs. 89,006/- which the applicant has expended to purchase requisite medicines.

5. Learned Counsel for the respondents submitted that applicant is ECHS member dependent on ECHS Polyclinic, Fatehgarh, UP. On reporting for treatment on 16.02.2016, he was diagnosed by MH Fatehgarh being a case of Hepatitis C and was referred to Regency Hospital, Kanpur vide Referral Form dated 16.02.2019. He was investigated/treated at Regency hospital (an empanelled hospital), as per policy in vogue for ECHS beneficiaries. As per policy all empanelled hospitals are restricted to prescribe generic drugs to ECHS beneficiaries as per Central Organisation ECHS letters dated 05.08.2004 and 27.10.2014. However, in contravention to the ibid policy, the petitioner on discharge from hospital, was prescribed Capsule Ribavirin 200, Sofacure 400 & Dalsiclear 60 (all being branded medicines) by the doctor at Regency Hospital, Kanpur. Due to non availability of prescribed medicines at ECHS Polyclinic on 07 &

08.11.2016, MH Fatehgarh was requested to resort to local purchase of medicines. However, delay was caused in procurement of the medicines and these medicines were made available to ECHS Polyclinic, Fatehgarh on 22.09.2016. Immediately on receipt of requisite medicines, the applicant was informed about availability/collection of medicines from ECHS Polyclinic.

6. Learned Counsel for the respondents further submitted that as per statement of applicant, since the Doctor had advised him to take medicines regularly without any gap and therefore, in view of likely delay in making the medicines available through local purchase by ECHS Polyclinic, Fategarh, he purchased the medicines from local market. There being no provision existed for reimbursement of cost of medicines, the applicant approached MD, Central Organization, ECHS, New Delhi for reimbursement of expenditure incurred on purchase of medicines as also travels undertaken for the purpose, amounting to Rs. 89,006/- vide his application dated 15.10.2016. Central Organization, ECHS, New Delhi vide their letter dated 31.10.2016 directed Regional Centre, ECHS, Lucknow to investigate the complaint of the applicant and forward the comments. The Central Organisation, ECHS also conveyed that there is no provision for reimbursement of cost of medicines. He pleaded for dismissal of O.A.

7. Learned counsel for the respondent No. 5 (Regency Hospital, Kanpur) submitted that as per provisions contained in Govt. of India letter dated 22.04.2015, Regency Hospital as an empanelled hospital was only authorized to issue medicines to a ECHS beneficiary not

exceeding Rs. 2000/-, hence, the applicant was not issued prescribed medicines from his hospital being cost of the medicines was exceeding the limit of Rs. 2000/-.

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

9. It is emerged from the perusal of records that applicant was not issued/provided the prescribed medicines neither by the empanelled hospital (Regency Hospital, Kanpur) nor by dependent ECHS Polyclinic, Fatehgarh, hence, the medicines as prescribed by the Doctor to be used daily without any gap, were purchased by the applicant from local market and were consumed which were essential to cure his disease and for upkeep of his health and there seems no fault on the part of the applicant with regard to purchase/consume of requisite medicines.

10. In view of judgments of the Hon'ble Apex Court in ***Sqn Ldr (Retd) R.V. Nathan vs. Union of India & Ors*** in Writ Petition No. 54482/2014 dated 08.07.2019, an amount of Rs, 89,006/- incurred on account of purchase of requisite medicines which were not provided by dependent ECHS Polyclinic, Fatehgarh is liable to be refunded to the applicant. The operative portion of the judgment i.e. Paras 26 & 27 of ***Sqn Ldr (Retd) R.V. Nathan*** (supra) 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

