

E-Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No 455 of 2021

Tuesday, this the 26rd day of April, 2022

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Ravi Shankar Singh, S/o Late Gauri Shankar Singh, Ex JC-35118-A, retired Hony/Capt from Army Medical Corps (AMC) Lucknow & residing at Rajiv Nagar, Kharika, Telibagh, Lucknow.

.....Applicant in person

Versus

1. Union of India, through Secretary Ministry of Defence, South Block, New Delhi.
2. Managing Director, Central Organisation ECHS, Adjutant General's Branch, Integrated HQ of MoD (Army), ECHS Bhavan, Thimayya Marg, Near Gopinath Circle, New Delhi.
3. Director, Regional Centre ECHS Lucknow, 3 Rani Laxmi Bai Marg, Lucknow (U.P)-226002.

..... Respondents

Ld. Counsel for the
Respondents

: **Shri GS Sikarwar,**
Central Govt. Counsel.

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, 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) To direct the respondents to re-imburse the full claim by paying less payment of Rs. 1,55,284.00 along with interest.

(ii) To allow the cost of application in favour of applicant.

(iii) To issue any other direction or order in favour of applicant which this Hon’ble Tribunal deems fit, proper & necessary under circumstances of the case.

2. The facts of the case, in brief, are that father of the applicant Late Ex Hony Capt Gauri Shanker Singh retired from service in April 1980. 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 father of the applicant became a member of (ECHS). On 02.04.2020 father of the applicant fell ill and reported ECHS Centre Lucknow. He was referred to Central Command Hospital, Lucknow for investigation. He was provided treatment and

discharged on the same day. On 05.04.2020 father of applicant again fell ill, after giving treatment, he was discharged from Command Hospital on the same day. Condition of the father of applicant was deteriorated and to save his life, he was admitted in Appolo Hospital. He was treated till 15.04.2020 and discharged from Hospital on 15.04.2020. On 28.04.2020 father of the applicant died. An amount of Rs. 3,64,164/- incurred on account of treatment of Ex Late Hony Capt Gauri Shakar Singh and bill for the same was submitted to respondent for re-imburement. Respondent has sanctioned an amount of Rs, 2,08,880/-. Being aggrieved by non grant of actual expenditure incurred, applicant submitted supplementary claim for payment of balance amount but it was turned down vide letter dated 16.02.2021 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 1,55,284/-.

3. Submission of applicant is that his father was admitted in Command Hospital twice on 02.04.2020 and 05.04.2020 for Stool Blockage and Vomiting and after primary medication, he was discharged. Condition of his father started deteriorating again in night of 05.04.2020 and in acute emergency his father was hospitalized in nearby Appollo Hospital in ICU during peak of

COVID-19 situation as other hospitals were closed for COVID-19 patients. His father was in hospital from 05.04.2020 to 15.04.2020. He paid hospital bills amounting to Rs. 3,64,164/- through credit card. After discharge from hospital his father expired on 28.04.2020. Applicant submitted claim for re-imburement of amount incurred on account of medical expenses but respondents passed only Rs. 2,08,880/- on 06.01.2021. Applicant submitted that he is entitled to full re-imburement of expenses incurred in connection with his treatment 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 applicant submitted that balance amount of Rs. 1,55,284/- is reimbursable. 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.***

4. Per contra, learned counsel for the respondents submitted that applicant preferred bill for re-imburement of an amount of Rs. 3,64,164/- incurred on account of treatment of his father. After due deliberation, Regional Centre ECHS, Lucknow passed Rs. 2,08,880/- only after deducting Rs. 1,55,284/- 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 Late Ex Hony Capt Gauri Shankar Singh has been settled. Appollo Hospital, Lucknow is not empanelled with ECHS. 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 has 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 ramification, 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. It is not disputed that father of the applicant was brought to Command Hospital, Lucknow on 04.04.2020 for illness but after providing some treatment, he was discharged on the same day. On 05.04.2020 again he was brought to Command Hospital, Lucknow in critical position where he was provided primary treatment and discharged on the same day. Therefore, in an emergency and to save life of the father of the applicant the family

members decided to admit the applicant in Appollo Hospital, Lucknow. On admission he was diagnosed to be suffering from Stool Blockage and Vomiting. He was treated there and discharged on 15.04.2020.

8. Appollo Hospital, Lucknow issued bill for Rs 3,64,164/- which the applicant submitted for payment but ECHS has paid Rs 2,08,880/- 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-imburement of the amount expended by him.

9. 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.

10. 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 Appollo Hospital, Lucknow on 05.04.2020 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.

11. Thus, from the aforesaid it may be inferred that the referred hospitals were closed for non COVID-19 patients and to save life of the father of the applicant there was no option but to admit him 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 the applicant was taken to Appollo Hospital under emergency conditions for his survival, 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 variants and applicant was admitted by others when in an unconscious state.

12. 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 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.1,55,284/- to the applicant.

13. For the reasons stated above, the O.A. is **allowed**. The respondents are directed to reimburse balance amount of medical claim of Rs. 1,55,284/- to the applicant within a period of one

month from the date of receipt of copy of this order, failing which the applicant shall be entitled to interest @ 8% p.a.

14. No order as to costs.

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

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 26 April, 2022

Ukt/-