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ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 380 of 2018

Thursday, this the 06th day of July, 2023

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

“Hon’ble Maj Gen Sanjay Singh, Member (A)”

Ex Junior Warrant officer Vishnu Deo Tiwari (Service No 65059-L)
S/O (Late) Ram Pyare Tiwari, R/O : H. No : 525D, Transport Nagar,
Allahabad (U.P.)

..... **Applicant**

Ld. Counsel for the : **Shri Shiv Kant Pandey,
Shri Amit Pandey,
Ms. Nisha Pandey, Advocates**

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. The 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 (UP) PIN : 900479, C/o 56 APO
6. The Commandant Military Hospital Sub Area New Cantt Allahabad UP

7. The Officer - In - Charge, ECHS Station Cell (ECHS) HQ Purva UP and MP Sub Area Allahabad (UP).

..... Respondents

Ld. Counsel for the Respondents.

:**Shri Amit Jaiswal,**
Central Government Counsel.

ORDER

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

1. The instant Original Application has been filed 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 / circular / guideline, making invalid the ECHS Smart Card of 16 KB wef 01.09.2018, issued by Respondents No. 2.3 (Annexure A-3 of this O.A).*

8.2 *This Hon’ble Tribunal may graciously be pleased to direct respondents to hold the applicant ECHS Smart Card of 16 KB valid for his life period, as was originally issued by respondents.*

8.3 *This Hon’ble Tribunal may graciously be pleased to direct respondents to allow the applicant to avail the medical aid through respondents by using his ECHS Smart Card of 16 KB for life period.*

8.4 *This Hon’ble Tribunal may graciously be pleased to direct respondents to dispense with subjecting the applicant from making fresh application and becoming fresh member of ECHS, under the garb of changing 16 KB ECHS Card to 64 KB ECHS Card and allow the applicant to be a member of ECHS for his life on the basis of 16 KB ECHS Card, which was issued to him by Central Organisation of ECHS, when he became the member of ECHS for his life time.*

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. Brief facts of the case giving rise to this application are that the applicant was enrolled in the Indian Air Force on 13.08.1976 and discharged from service on 31.08.2005 (AN). He is presently residing in Allahabad with his family. Applicant along with his family, are members of Ex - Servicemen Contributory Health Scheme (ECHS) by paying required contributory membership fees and he was issued 16 KB ECHS Smart Card for life period. Applicant and his family are entitled for medical treatment at polyclinics and Armed Forces Clinics, including Air Force Hospital, Naval Hospital and Military Hospital as also empanelled private hospital/Nursing home and govt Hospital, across the country. Now ECHS has introduced 64 KB card policy for every ex-servicemen and 16 KB card issued to ex-servicemen has been seized wef 01.09.2018. Ex- servicemen who did not prepare new 64 KB Card their facility of treatment has been stopped by ECHS Polyclinic. Applicant has filed present Original Application with the prayer to automatically upgrade ECHS Smart Card of 16 KB to 64 KB ECHS Card and allow the applicant to be a member of ECHS for his life on the basis of 16 KB ECHS Card, which was issued to him by Central Organisation of ECHS, when he became the member of ECHS for his life time.

3. Learned Counsel for the applicant submitted that the applicant was enrolled in Air Force and with passage of time he was promoted to the rank of Leading Aircraft Man, Corporal, Sergeant and thereafter

he was promoted to the rank of Junior Warrant Officer on 01.07.2002. He was discharged from service on 31.08.2005 (AN). He was issued PPO No 08/14/B/13409/2005. Applicant is presently residing at Allahabad with his family. He is member of ECHS and holding 16 KB of ECHS Card. Govt of India, Min of Def vide letter No 22 (1)/01/US (WE)/D(Res) dated 30 Dec 2002 sanctioned health care scheme for Ex servicemen namely Ex Servicemen Contributory health Scheme (ECHS). In terms of said policy, the applicant along with his family was made member of the said scheme at the time of discharge on 31.05.2005 by paying the required contributory membership fees. Applicant and his family became entitled to get medical treatment at polyclinics and augmented Armed Force clinics including Air Force Hospital, Naval Hospital and Military Hospital across the country. The applicant and his family also became entitled to get treatment in empanelled private hospital / nursing homes and Govt hospitals across the country of his choice, including those at Allahabad. While filing the application for membership for ECHS at the time of discharge, the applicant was asked to mention his permanent home address as per service records, in the said application form of ECHS and therefore, applicant gave his home address in said application and thus in ECHS membership card, the address of applicant is mentioned as his permanent home address i.e. R/O : H. No : 525D, Transport Nagar, Allahabad (U.P.). General Officer Commanding

(GOC) HQ Purva UP and MP Sub Area, Allahabad and the Commandant Military Hospital Sub Area New Cantt Allahabad UP are equally controlling authority of Regional Centre ECHS at Allahabad, though there is a Director also. The applicant became member of ECHS scheme by paying required membership fees and he became the member for life long and he has been issued with ECHS Smart Card of 16 KB for life time.

4. 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 requisite contribution which was deducted from his retiral dues at the time of retirement.

5. 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, has to be acknowledged 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 case 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."***

6. 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.

7. 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 one time 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 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 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

8. 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 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.

9. Now there is another move to take away service of ECHS from Ex Servicemen, under the garb of issuing 64 KB Card and under this move, it has been proposed that 16 KB Card will stop working in new system wef 01.09.2018 and the member who do not get made 64 KB Card, will cease to be member of ECHS and will not be entitled for

service and medical aid of ECHS. This is what has been published in Boucher issued by Central Organization ECHS New Delhi. Chapter 3 of Part 2 of ECHS Boucher is Annexed with this O.A. On bare perusal of guidelines and instructions for filing for ECHS Smart Card 64 KB, it is apparent that entire exercise as contemplated therein amounts to applying for fresh ECHS Card for becoming ECHS member is not in consonance with ECHS Scheme 2002, which was projected before the Hon'ble Supreme Court and such move is not only contempt of Supreme Court, but also a defeat, Unfair trade practice and restrictive trade practice by the Central Organization of ECHS. Central Organization ECHS has taken membership fees of Rs. 1800/- to 18000/- after giving undertaking to Hon'ble Supreme Court and made ECHS Card of 16 KB and this card was valid for life period of members and now the Central Organization ECHS is going to seize 16KB ECHS card from 01.09.2018 during the life period of members is misappropriate and in violation of law and in violation of legal contract and in violation the trust imposed on it and such a move will amount to not only a Breach of Contract under Civil law abut also amount to Criminal Breach of Trust as contemplated by section 405, 406, 408 and 409 of Indian Penal Code 1860. There is need to allow the 16 KB Card of applicant for his life time and not to subject him to make a fresh application and to become fresh member, under the grab of changing card from 16 KB to 64 KB which is prima facia a futile exercise and is

an harassment not only to the applicant but also other members who are living their end of life in the remote village area and have no access to internet and have no resources to expend the money on affidavit as exposed by Central Organization of ECHS.

10. Learned counsel for the applicant submitted that such type of practice of upgraded ECHS Card with 64KB after retirement from a defence person who is already a lifetime member of ECHS is not only against 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. It is well settled in law that executive orders always operate prospectively and not retrospectively. Learned counsel for the applicant submitted that the applicant being life time member of ECHS since the year 2005, impugned order dated 16.11.2017 rejecting validity of 16 KB ECHS Card wef 01.09.2019 is liable to be quashed.

11. 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. 16 KB ECHS card was issued to applicant for whole family by paying requisite fees for life time membership. It was felt to introduce new 64 KB ECHS Card with good quality of photographs and more data storage facility for capturing of medical data to ex-servicemen and their dependents. Accordingly, Central Org IHQ of MoD letter dated 16.11.2017 was issued for online applying for 64 KB ECHS Card to those who were holding 16 KB and 32 KB ECHS Card. Rates of subscription for ECHS Cards are charged once for each member for whole life. The increase/revision in charges in rate was based on sanction of Govt of India letter dated 29.12.2017. Ex-service and their dependents will not cease to be member of ECHS. They shall be issued temp slip to avail benefits of ECHS membership till 64 KB Card is received by them after applying for it. By upgrading 16 KB ECHS card into 64 KB ECHS Card, record of diagnosis treatment shall be maintained in respect of Ex-servicemen which is not possible with the 16 KB ECHS Card. As per para 01 page 18 of Central Org, IHQ letter dated 16.11.2017, 16 KB ECHS card is valid only upto 01.09.2018.

12. Learned counsel for the respondents further submitted that applicant at the time of discharge from service opted for ECHS membership and 16 KB ECHS card was issued for whole family. The order passed by respondents is in interest of ex- servicemen based on recommendation received from sources to upgrade the existing cards.

Applicant can apply online for new 64 KB ECHS Card. He shall be issued temporary slip which shall be valid till new 64 KB ECHS card is issued. Learned counsel for the respondents pleaded that instant O.A. has no substance and is liable to be dismissed.

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

14. The question before us to decide is “whether the applicant who is already a life time member of ECHS by paying requisite contribution at the time of retirement has to apply a fresh online for preparing new 64 KB ECHS card”?

15. 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 hithertofore. 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 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).*

16. 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

<u>Pension/ Family Pension (Rupees per month)</u>	<u>Contribution (in Rupees)</u>
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 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.

17. 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 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.

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.

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Revised Appendix 'A'

Rates of Subscription of ECHS

<i>Pension/ Family Pension (Rupees per month)</i>	<i>Contribution (in Rupees)</i>
<i>Upto Rs. 1500/-</i>	<i>1,800/-</i>
<i>Rs. 1501 to Rs. 3000</i>	<i>4,800/-</i>

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 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.*

18. 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 his contribution for ECHS Smart Card at the time of retirement and he is a lifetime member of ECHS, hence no question arises for further contribution in any manner.

19. 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 smart 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 Cared 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.*

20. 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”.

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. Getting medical aid is fundamental right under Article 21 of Constitution 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 hitherto. 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 is mandatory. Thereafter, no payment is to be made for any medicines or treatment provided under the scheme.

24. Hon'ble Apex Court in case of Akhil Bhartiya Soshit Karmachari Sangh vs Union of India (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.”

25. Earlier there was a policy issued by ECHS that outsider ex-servicemen shall not be given medicine for more than one week. A case was filed in this Tribunal against this policy. This Tribunal in O.A. No 86 of 2018, **Ex Sgt AK Das Vs Union of India**, decided on 21.12.2021 passed judgment and order to the effect that **“ECHS polyclinics shall not deny any “Outsider” ECHS Card holder from availing proper and complete treatment”**.

26. In a similar matter a 32 KB ECHS of dependent of an ex-service man was misplaced. Applicant applied for duplicate ECHS Card.

Duplicate card was prepared by the concerned authority but it was not delivered to the applicant and additional Rs. 27,000/- was demanded by ECHS Cell Allahabad for delivery of duplicate card. Applicant requested ECHS Cell Allahabad that he is already life time member of ECHS by depositing contribution of Rs. 12,000/- as applicable at the time of his retirement, hence enhanced rate of subscription is not applicable to him, but duplicate ECHS Card was not delivered to him. He approached this Tribunal against the anomaly and this Tribunal vide judgment and order dated 31.01.2023 passed in O.A. No 658 of 2022, **Ex Sub Uma Kant Tiwari, Vs Union of India** not only quashed order of ECHS Cell Allahabad dated 22.01.2022 by means of which excess demand of Rs. 27,000/- for issuance of duplicate ECHS card was made from the applicant who was already a member of ECHS from the date of retirement but also imposed cost of Rs. 25,000. Hence, it is clear that enhanced rate of subscription for issuance of new ECHS Card cannot be taken from old ECHS members.

27. 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.

28. 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. ECHS was setup with the purpose of providing medical care to Armed Forces retirees, so that they are cared for even after retirement.

29. In the instant case as per policy in existence, contribution from the applicant was deducted at the time of his retirement on 30.08.2005 and applicant was issued 16 KB ECHS Card for life time. In counter affidavit respondents have not made any specific reason for online applying afresh for grant of new 64 KB ECHS Card whereas complete data of ex-servicemen is available with army authorities. On bare perusal of guidelines and instructions for filling online form for preparing 64 KB ECHS Smart Card, it is apparent that entire exercise

contemplated therein amounts to applying for fresh ECHS Card and applying for becoming the new member is not in consonance with ECHS scheme 2002, therefore, it is unfair trade practice by the Central Organization of ECHS. On the one hand, Central Organization ECHS has charged the money for 16 KB ECHS Card for life time membership and on the other hand, ECHS Cell has sized these Cards with effect from 01.09.2018, it amounts violation of law. It is prima facia a futile exercise and is an harassment, not only to the applicant, but also other members, who are living their end of life in the remote village area and have no access to internet and have no resources to expend the money on affidavit etc as proposed by the Central Organisation of ECHS. Lakhs of ex-servicemen are ECHS member who are holding 16KB and 32 KB ECHS smart card and their smart card is to be upgraded to 64 KB. For upgrading such large number of ECHS smart card of persons who are life time member of ECHS, it is morale responsibility of Central Organisation ECHS to upgrade 16 KB and 32 KB Card centrally. Complete data of ex-servicemen holding 16KB and 32 KB ECHS card is available with army authorities. Technology is already available and such things can be done easily but Central Organisation ECHS is not doing its duty and insisting lakhs of ex-servicemen to apply a fresh. It is a matter of concern that as per news reported in Dainik Jagaran dated 30.12.2019, and Economics Times and PTI annexed along with Rejoinder Affidavit, FIR has been lodged

against a Company named M/s Score Information Technologies Private Limited for not returning Biodata of 45 lakhs ex-servicemen given to them for making ECHS Smart Cards. The applicant did not apply for New 64 KB ECHS Smart Card as he is already a member of ECHS since December 2005 and is in possession of 16 KB Smart Card by paying lifetime contribution prescribed at the time of his retirement. Central Organization ECHS cannot cancel membership of ECHS of a person by issuing policy of his choice. Central Organization ECHS can issue fresh 64KB ECHS card like banks. In bank whenever the bank wants to upgrade the card, it issues the same automatically without asking for any details again. The respondents are therefore, liable to upgrade 16 KB ECHS Card of the applicant and issue new 64 KB ECHS card to enable him to take regular medical facilities from ECHS. Policy letter dated 16.11.2017 and letter dated 22.01.2022 relied upon by the respondents cannot operate retrospectively, being not sustainable in the eyes of law. The policy of fresh applying for issuance of 64 KB ECHS Card to old ECHS members is not sustainable in the eyes of law and is liable to be set aside.

30. For the reasons stated above, the O.A. deserves to be partly allowed. The impugned order passed by the respondents for online applying for new 64 ECHS Card is quashed. Respondents/ competent authority is directed to make the policy of ECHS Card easy so that every ex-servicemen and their dependents can take benefit of this

policy without facing any problem. All the particulars of the applicant are available with the Record Office concerned hence, respondents are directed to issue new upgraded 64 KB ECHS card to the applicant within three months from the date of receipt of certified copy of this order. The Respondents are at liberty to charge amount Rs. 177/- admissible on account of cost of 64 KB ECHS smart card and transaction charge as per prescribed rate.

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

32. No order as to costs.

(Maj Gen Sanjay Singh)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated : 06 July, 2023

Rkm/Ukt/-