

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 500 of 2021**

Wednesday, this the 23<sup>rd</sup> day of March, 2022

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

No. 6928540 Hav Bhola Prasad Yadav (Retd), S/o Late Chandrabali Yadav, R/oHouse No. 5 Sector-6, Gopesh Kunj, Raibareli Road, VrindavanYojana-1,Lucknow(U.P)-226029.

..... Applicant

Ld. Counsel for the Applicant: **Shri Ravi kumar Yadav**, Advocate

Versus

1. Union of India, through, the Secretary, Ministry of Defence, New Delhi-110011.
2. The Chief of the Army Staff, Integrated HQ of Ministry of Defence (Army), South Block, New Delhi – 110011.
3. Director, Central Organisation ECHS, Adjutant General's Branch, Integrated HQ of MOD (Army), ECHS Bhawan, Thimya Marg, Near Gopinath Circle, New Delhi-110010.
4. The Commandant, Command Hospital, Centra Command, Lucknow Cantt. Lucknow (U.P)-226002.
5. Director, Regional Centre ECHS, 3-Rani Laxmi Bai Marg, Lucknow (U.P)-226002.

..... Respondents

Ld. Counsel for the Respondents: **Shri Kaushik Chatterjee**,  
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 process the applicant’s Supplementary Claim for unapproved / balance amount i.e. Rs. 1,95,516.00 (one Lac ninety Five thousand Five hundred Sixteen Only) in order to reimburse total expenditure incurred by the applicant on his treatment in non empanelled hospital within stipulated period as deemed fit and proper by this Hon’ble Tribunal.*

*(ii) To pay the interest on balance amount of Rs. 1,95,516.00 (One lac ninety Five Thousands Five hundred Sixteen Only) at the rate as deemed fit and proper by this Hon’ble Tribunal for non action of Respondents in accordance to existing rules and procedure.*

*(iii) To pass any order as deemed fit and proper by this Hon’ble Tribunal in the circumstances of the case.*

*(iv) To impose an exemplary cost on Respondent No. 5 for his whimsical approach while dealing/ processing the said claim under ECHS Scheme despite knowing well that emergency and life threatening conditions forced the applicant’s admission in non empanelled hospital.*

2. The facts of the case, in brief, are that the applicant was retired from Army service on 31.07.2011 and became a member of Ex Servicemen Contributory Health Scheme (ECHS) w.e.f. 01.08.2011. On 12.09.2019 the applicant reported to ECHS Centre Lucknow in the state of high fever. He was referred to Central Command Hospital, Lucknow for investigation and management. He was provided treatment and discharged on the same day. On 13.09.2019 when applicant’s condition deteriorated at around 0830 hrs he was brought to emergency room of Command Hospital, Lucknow where it was

detected to be a case of dengue but since CBC report was not available, only primary treatment was provided to the applicant. At around 2100 hrs the Command Hospital, Lucknow referred the applicant in a state of unconsciousness and bleeding from mouth to an empanelled hospital (Ajanta Hospital, Lucknow) where he was diagnosed to be suffering from Dengue Shock Syndrome, Seizure Disorder and Respiratory Failure. On 14.09.2019 in a very critical and life threatening condition, the applicant was referred to Command Hospital/KGMU/SGPGIMS/RMLIMS but since ventilator facility was not available in the aforesaid hospitals, his family members got him admitted in Sahara Hospital, Lucknow (a non empanelled hospital) at around 1900 hrs on 14.09.2019 to save his life where on investigation the applicant was found to be suffering from Dengue Hemorrhage Fever, Sepsis Shock and Pneumonia. He was treated in Sahara Hospital, Lucknow where he was provided treatment and discharged on 24.09.2019. The applicant has incurred expenses amounting to Rs 4,53,650/- and bill for the same was submitted to respondent No 5 for re-imburement. Respondent No 5 has sanctioned an amount of Rs, 2,58,134/-. Being aggrieved by non grant of actual expenditure in connection with his treatment the applicant submitted supplementary claim on 17.02.2020 for balance amount of Rs 1,95,516/- but it was turned down vide letter dated 24.08.2021 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 1,95,516/-.

3. Submission of learned counsel for the applicant is that the applicant was in critical state when he was admitted to Sahara Hospital, Lucknow. It was further stated that knowing fully well that Sahara Hospital, Lucknow is a non empanelled hospital, the applicant was admitted in that hospital in emergency only to save his life as he was in unconscious state and bleeding from mouth. Learned counsel for the applicant further stated that the applicant is entitled to full reimbursement 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 learned counsel for the applicant has submitted that balance amount of Rs 1,95,516/- is reimbursable. Learned counsel for the 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 respondent No 5 has admitted the bill according to ECHS rates as per ECHS SOP on Treatment and Management in ECHS dated 28.09.2018. His further submission is that applicant's claim for Rs 2,56,134/- was settled on 18.03.2020 and the applicant should have challenged for balance of amount at that time only and not at this belated stage. His other contention is that the empanelled Ajanta Hospital, Lucknow has got ventilator facility and the applicant should have got treatment in ECHS empanelled hospital whereas he has got

treatment in Sahara Hospital, Lucknow which is a non-empanelled hospital. His other submission is that the case relied upon by learned counsel for the applicant is not applicable in the instant case as the matters relate to 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 been paid to the applicant.

5. We have heard Shri RSavi Kumar Yadav, learned counsel for the applicant and Shri Kaushik Chatteree, learned counsel for the respondents and perused the material placed on record.

6. With a view to provide the medical facility to the retired ECHS beneficiaries, the Government has empanelled a large number of hospitals on ECHS panel, however, the rates charged for such facility shall be only at CGHS rates and, hence, the same are paid as per the procedure. Though the respondent has pleaded that ECHS has to deal with large number of such retired beneficiaries and if the

applicant is compensated beyond the policy, it would have large-scale ramification as none would follow the procedure to approach the empanelled hospitals and would rather choose private hospital as per their own free will. It cannot be ignored that such private hospitals raise exorbitant bills subjecting the patient to various tests, procedures and treatment which may not be necessary at all times.

7. It is not disputed that on 12.09.2019 the applicant Bhola Prasad Yadav being in critical position was brought to Command Hospital, Lucknow but after providing some treatment he was discharged on the same day. On 13.09.2019 he was again brought to Command Hospital, Lucknow in unconsciousness state where he was provided primary treatment and referred to empanelled hospital i.e. Ajanta Hospital, Lucknow at 10.16 pm. He was diagnosed to be suffering from Dengue Shock Syndrome, Seizure Disorder and Respiratory Failure. On 14.09.2019 at about 1315 hrs in a very critical condition he was referred to Command Hospital/KGMU/SGPGI/RMLIMS. Applicant's family members approached the aforesaid hospitals but it was found that ventilator facilities were not available in these hospitals at that time. Therefore, in emergency and to save life of the applicant the family members decided to admit the applicant in Sahara Hospital, Lucknow which is a non-empanelled hospital where on admission he was diagnosed to be suffering from Dengue Hemorrhage Fever, Sepsis Shock and Pneumonia. He was treated there and discharged on 24.09.2019. It is noticeable that the applicant was referred by ECHS in emergency (Annexure A-6).

8. Sahara Hospital, Lucknow issued bill for Rs 4,53,650/- which the applicant submitted for payment but ECHS has paid Rs 2,58,134/- 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-imbusement of the amount that has been shown as expended.

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 acceptable to 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 to decide as to the manner in which 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. 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. The ECHS has been propounded with a purpose of providing health facility scheme to the 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. In the facts of the present case, it cannot be denied that the applicant was admitted in the Sahara Hospital, Lucknow on 14.09.2019 in vegetative state. The law does not require that prior permission has to be taken in such situation where the survival of the person is the prime consideration but in the instant case the applicant's family members had taken post permission of ECHS on 18.09.2019 (Annexure A-6).

11. Additionally, we observe that the respondents have conceded in para 3 of their counter affidavit that the referred hospitals were not having ventilator facility to save applicant's life and to save his life he was admitted in Sahara Hospital (a non empanelled hospital) on 14.09.2019 in emergency. For convenience sake, para 3 of the counter affidavit is reproduced as under:-

*“That again, on 13 Sep 2019 at 2100 hrs, the applicant transferred to empanelled hospital and evacuated to Ajanta Hospital by an ambulance provided Command Hospital, Central Command, Lucknow. The applicant was admitted in ICU and placed on ventilator of Ajanta Hospital. On 14 Sep 2019 at about 1315 hrs, the applicant was discharged from Ajanta Hospital and was referred to any of the command hospital/King George Medical College/SGPGI/RML hospital where ventilator facilities are available. **No ventilator facility was found at any of these hospitals.** At about 1900 hrs on 14 Sep 2019, the applicant was admitted to Sahara Hospital and placed on ventilator. The applicant was treated at Sahara Hospital till 24 Sep 2019.”*

*(bold and underlined by me)*

12. Thus, from the aforesaid it may be inferred that the respondents have admitted the fact that the referred hospitals were not having facility of ventilator and to save applicant's life there was no option but to admit him in a non-empanelled hospital where ventilator facilities were available. It also cannot be denied that the applicant was taken to Sahara Hospital under emergency conditions for saving of his life which requirement was above the sanctions and treatment in empanelled hospitals.

13. 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 opinion that the treatment of the applicant in non-empanelled hospital was genuine because there was no option left with him at the relevant time. We, therefore, direct the respondents to process supplementary claim forward by the applicant on 17.02.2020 and pay the balance amount of Rs.1,95,516/- to the applicant. We also make it clear that the aforesaid decision is confined to this case only.

14. For the reasons stated above, the O.A. is allowed. The respondents are directed to pay Rs 1,95,516/- to the applicant within a period of six weeks from the date of receipt of copy of this order, failing which the applicant shall be entitled to interest @ 8% p.a.

15. No order as to costs.

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

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

Dated: 23 March, 2022

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