

**Court No. 1**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW**

**Original Application No. 2 of 2020**

Monday, this the 2<sup>nd</sup> day of November, 2020

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

No. 14250850A, Hav, Awdhesh Kumar, S/o Baij Nath Prasad Awasthi, Resident of Village and Post Office – Semarpaha, Lalganj, Raebareli, Uttar Pradesh-229006.

**.... Applicant**

Ld. Counsel for the: Shri Pankaj Kumar Shukla, Advocate.  
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, 101 South Block, New Delhi-110011.
2. Chief of The Army Staff, Integrated Headquarters of the Ministry of Defence (Army), South Block, New Delhi-110011.
3. Officer-in-Charge Records, Signals PIN-908770 C/o 56 APO.
4. Central Organisation ECHS, AG's Branch, IHQ of MoD (Army), Maude Lines, Delhi Cantt.-110010.
5. Regional Centre ECHS, 3 Rani Laxmi Bai Marg, Lucknow Cantt. C-2.

**... Respondents**

Ld. Counsel for the: Shri Anurag Mishra, Advocate  
Respondents. Assisted by Maj Sini Thomas,  
Departmental Representative

**ORDER**

**“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs :-

- A. *To issue/pass an order or direction to the respondents to continue the applicant’s son’s treatment for his disease CKD (Chronic Kidney Disease) as per policy letter 22D(15)/2017/WE/D (Res-I) dated 05.12.2017 passed by Government of India, MoD (DoESW).*
- B. *To issue/pass an order or directions to the respondents to decide the representation dated 22.07.2019 preferred by applicant.*
- C. *To issue/pass an order or directions to the respondents to reimburse the bill which has been generated and paid by applicant between April 2019 to till date in the treatment of applicant’s son.*
- D. *To issue/pass any other order or direction as this Hon’ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.*
- E. *To allow this original application with costs.*

2. Facts giving rise to Original Application in brief are that applicant was enrolled in the Indian Army and after successful completion of tenure of service he was discharged from service in the rank of Havildar on 31.05.2007. Thereafter, he acquired membership of Ex-Servicemen Contributory Health Scheme (ECHS) which is meant to provide medical facilities to its members and their dependent children on respondents’ costs.

The applicant's son Arvind, whose date of birth is 15.06.1991, was diagnosed with Kidney disease CKD-V, a Chronic Kidney Disease, in 2009 and underwent treatment for the same in the Nephrology Department of Command Hospital, Lucknow. His both Kidneys failed and stopped functioning in 2013 on account abovementioned disease forcing him to undergo with dialysis as his Serum Creatinine level reached to 19. He was undergoing with treatment of dialysis at Ajanta Hospital, Lucknow since 2015 on the recommendations of ECHS Polyclinic, Lucknow. His treatment was stopped by the respondents in April, 2019 on the premise that the disease he was suffering with was not covered in the list of diseases under the Rights of Persons With Disabilities Act, 2016 (PWD Act, 2016) and, as a result of which, his medical Bills were rejected and Ajanta Hospital, Lucknow was directed to stop dialysis and thereby forcing applicant to suffer financial loss and mental agony. Thereafter, applicant is bearing expenses of his son's treatment on his own.

3. Aggrieved by the aforesaid acts of the respondents, applicant has preferred a representation dated 22.07.2019 to respondent No. 5 which is still pending consideration.

4. It is alleged that applicant's son's disability is permanent in nature and has been assessed at 80% as per Annexure Nos. 5 and 6, and his case being covered under the Government of India, Ministry of Defence letter dated 05.12.2017, he is entitled to treatment as ECHS member like earlier.

5. Respondents while admitting applicant's claim to the extent that he is an Ex-Serviceman and Member of ECHS and, as such, his son, who is entitled to medical facilities upto the age of 25 years, as per Rules, was receiving treatment of dialysis at Ajanta Hospital, Lucknow. Their contention is that it is true that applicant's son is suffering with Kidney disease CKD-V which is not covered in the list of diseases under PWD Act, 2016, and, therefore, his treatment at Ajanta Hospital, Lucknow has been stopped since April, 2019. It is also their contention that applicant had made a representation to respondent No. 5 for restoring treatment of his son at Ajanta Hospital, Lucknow, but the same being not permissible under Rules, it was not accepted.

6. We have heard the submissions of Ld. Counsels of both sides and have also perused the record.

7. Before averting to the submissions of Ld. Counsel of both sides we would like to mention certain facts which are admitted to respondents.

8. Admittedly, applicant was enrolled in the Indian Army and after successfully completing his tenure of service he was discharged from service on 31.05.2007 in the rank of Havildar. It is also an admitted fact that applicant became the member of ECHS, a Scheme meant to provide medical facilities to Ex-Servicemen and their dependent children, after being discharged from the service of Army. It is also an admitted fact that applicant's son Arvind, whose date of birth is 15.06.1991, was diagnosed with Kidney disease, CKD-V, a chronic Kidney disease,

in 2009 and underwent treatment for the said disease in the Nephrology Department of Command Hospital, Lucknow. It is also an admitted fact that both Kidneys of the applicant's son have failed and stopped functioning since 2013 and, for this, he was being given treatment of dialysis at Ajanta Hospital, Lucknow, a hospital shortlisted by the respondents under ECHS. It is also an admitted fact that applicant's son who was earlier being treated for the disease CKD-V at Ajanta Hospital, Lucknow, his treatment has been stopped since April, 2019 on the premise that disease he is suffering with is not included in the list of disabilities under PWD Act, 2016.

9. While placing reliance on Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare letter No.22D(15)/2017/WD/D(Res-I) dated 05.12.2017, Ld. Counsel for the applicant has submitted that in para 7 of the said letter it is clearly stated that, as per existing rules, the son of ECHS member suffering any permanent disability of any kind (physical/mental) subject to disability being 40% or more in terms of relevant Acts mentioned above is eligible for ECHS benefits irrespective of age and his marital status.

10. Ld. Counsel for the applicant has further submitted that from para 7 of the letter referred to above it is clear that if son of an ECHS member is suffering with any permanent disability of any kind, physical or mental, subject to disability being 40% or more, he is eligible for the ECHS benefits irrespective of his age and his marital status. He has further submitted that applicant's case is

fully covered under the aforementioned letter as applicant's son, who is suffering with Kidney disease since 2009, and was undergoing treatment for the said disease since 2015 at Ajanta Hospital, Lucknow, his treatment could not be stopped in April, 2019 on the premise that disease he was suffering with was not covered in the list of disabilities under the PWD Act, 2016.

11. Ld. Counsel for the applicant has further submitted that even if the disease applicant's son is suffering with is not covered in the list of disabilities under the PWD Act, 2016, the case of applicant's son being not a new case and he being provided with the treatment of dialysis since 2015 for the same disease, his treatment could not be stopped in the name of diseases being not included in the list of disabilities under the PWD Act, 2016. He has further submitted that even otherwise applicant has preferred a representation to respondent No. 5 for treating his son's case a special case so that his treatment could be continued and life of his son could be saved. His submission is that the said representation is still pending consideration with respondents despite there being threat to his son's life. Thus, he has submitted that considering the nature and kind of disease applicant's son is suffering with and his financial condition being not good, respondents are supposed and need to be directed to restore his son's treatment at Ajanta Hospital, Lucknow with immediate effect with further direction to reimburse the amount incurred by him in treatment of his son after stoppage of the treatment.

12. Per contra, Ld. Counsel for the respondents has submitted that applicant's son's case being not covered under the 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 applicant's son is suffering with being not included in the list of disabilities under the PWD Act, 2016, his treatment has been rightly stopped.

13. Ld. Counsel for the respondents has further submitted that the case of applicant's son 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.

14. Ld. Counsel for the respondents, during the course of hearing, has conceded 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. He further conceded that after PWD Act, 2016 being come into existence the area of list has been extended to 21 disabilities but Kidney disease has still not been included in the list. Respondents have annexed the copy of letter dated 22.05.2019 with their Counter Affidavit at page 19 mentioning therein the 21 disabilities in regard to which the ECHS benefits have been extended to the dependent son of ECHS member. Ld. Counsel for the respondents has also conceded 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 conceded that despite this being the position, applicant's son, who is suffering with permanent disability of kidney and which has been assessed at 80%, benefit of ECHS membership was uninterruptedly extended to him from 2015 to April, 2019. His only submission is that Kidney disease being not included in the list of 21 disabilities under the PWD Act, 2016, the benefit of ECHS extended to applicant's son, since 2015 has been stopped since April, 2019.

15. We are not convinced with the submissions made by Ld. Counsel for the respondents that Kidney disease being not included in the list of 21 disabilities under the PWD Act, 2016, facility of medical treatment extended to applicant's son since 2015 has been rightly stopped since April, 2019. It appears that respondents acted in a very casual manner in stopping the medical facility extended to applicant's son without taking the fact into consideration that he is suffering with serious ailment of kidney having threat to his life and without caring that while discharging the duties they are under obligation to see that no one is harmed. They are supposed to take practical as well as compassionate aspects also while cancelling/withdrawing any policy/letter. They cannot stop providing medical facility to the son of an ECHS member saying disease he is suffering with is not in the list of disabilities in PWD Act, 2016. Taking all these facts into consideration, we are of the view that respondents before



stopping treatment of applicant's son ought to have thought that if they could allow treatment of the applicant's son without disability being included in earlier PWD Act they could continue the same as by that doing that they could save some one's life. We are also of the view that considering applicant's son's disability, immediate restoration of his treatment is expedient in the interest of justice to save his life.

16. In the result, we allow the Original Application and direct respondents to restore/re-start treatment of applicant's son for the disease CKD-V at Ajanta Hospital, Lucknow where he was being treated earlier, with immediate effect. We also direct them to reimburse the expenses incurred by the applicant in treatment of his son from stoppage of the treatment till its actual restoration.

17. We make it clear that order passed above is restricted to the instant case only and shall not be treated as precedent.

18. No order as to costs.

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

Dated: 02 November, 2020

AKD/-