

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
AT NEW DELHI**

TA No.188/2009

[WP (Civil) No. 8762/2009 of Delhi High Court]

Sh. G. Veerabahu

.....Petitioner

Versus

Chief of the Air Staff & Others

.....Respondents

For petitioner: Sh. Binay Kumar, Advocate.

For respondents: Sh. Rajat Gaur, Advocate with Flt. Lt. Vishal Chopra.

CORAM:

**HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.
HON'BLE LT. GEN. M.L. NAIDU, MEMBER.**

ORDER

09.03.2010

1. The petitioner vide his petition seeks from Respondent No.1 and 3 to make good the balance payment along with 12% interest for treatment in an Ex-Servicemen Contributory Health Scheme (ECHS).

2. The petitioner filed this petition before Hon'ble High Court of Delhi as W.P. (C) No. 8762/2009 on 15th May, 2009 and was transferred to the Tribunal on 03rd November, 2009.

3. The petitioner served in the Indian Air Force for 17 years, 11 months and 18 days, and was released on 09th January, 2006. At the time of retirement, he completed all formalities pertaining to documentation including subscribing to the Ex-Servicemen Contributory Health Scheme (ECHS).

4. The petitioner contends that with retirement he automatically became a member of the ECHS vide the Second Edition of the Handbook for ECHS released on 03rd March, 2005. Para 2 of the 'Introduction' Chapter states :-

*"2. The Scheme will be fully implemented by **31 Mar 08**, with a total of 227 Polyclinics in the country. Out of these, 123 Polyclinics will be at non-military stations and balance 104 Aug Augmented Armed Forces Clinics will be at military stations. ECHS is a contributory scheme. Every service person retired/retiring after 01 Apr 03 will compulsorily become member of ECHS by contributing his/her share. Similarly, all those who retired prior to 01 Apr 03 can become member by paying the contribution in lump sum or in three equal annual instalments. There is no restriction on age or medical condition."*

5. On 23rd June, 2006, the petitioner's dependent father met with a road traffic accident, in his home town at Madurai (Tamil Nadu). His father was admitted in an ECHS empanelled hospital. He informed all concerned of the admission and treatment.

6. On 04th July, 2006, the Director, Regional Centre ECHS, New Delhi issued a temporary certificate for ECHS membership with effect from 04th July, 2006.

7. The father of the petitioner was discharged from the hospital after making a payment of Rs.66,000/- since the OIC Poly-Clinic of ECHS did not accept the temporary membership certificate because the date of accident was 23rd June, 2006 i.e. before the issuance of the temporary certificate.

8. In an appeal to the Chief of Air Staff, reimbursement of the cost of treatment to the tune of Rs.24,726/- was made. This amount was as per the 'Contracted Rate' for treatment between the ECHS and empanelled Hospital. Appeals to reimburse the entire amount paid by the individual was turned down as the ECHS could only reimburse the 'Contract Rate' as approved.

9. The learned counsels of the respondents argued that prior to his retirement the petitioner was obliged to complete certain formalities which included details of his dependents. Further, he was required to submit an affidavit stating the known source of income of his parents in order to qualify them to be declared as dependent. In

this case, the formality was completed only in July, 2006. It, therefore, implies that neither he nor his dependents were members till 04th July, 2006. The amount of Rs.24726/- reimbursed to him has been granted, keeping in view the circumstances of the case.

10. We sought several details pertaining to the case from both the petitioner and the respondents. All documents were furnished except for the original form which was claimed to have been submitted by the petitioner to the ECHS for grant of membership to him and his dependents on the eve of proceeding on retirement.

11. From the documents so submitted, we observe that the amount to be paid by the petitioner in order to become a member of the ECHS, was deducted by the Dy. CDA (AF), New Delhi vide PPO No. 08/14/B/13545/2006 issued on 25th July, 2006. Defacto the amount of Rs.1800.00 was deducted towards ECHS with effect from the date of retirement i.e. 10th January, 2006.

12. Parents of the petitioner were declared as dependants in his Discharge Certificate issued on 06th January, 2006. Besides, the petitioner produced the copy of his Service Records which designated his parents as 'Dependants' since 1990. It is therefore quite possible

that the petitioner took it for granted that the affidavit regarding income of parents in order to declare them as dependants is not essential, since the service record already has designated them as dependents since 1990.

13. However, the fact remains that contribution of Rs.1800/- as was due from the petitioner was automatically made by the Dy. CDA (AF) on the date of retirement of the petitioner entitles the petitioner to be a legitimate member of the Scheme from that day and this includes his parents. It is a settled law that once the amount due has been paid and accepted as the 'Premium' for the Scheme, the membership is accepted as 'granted', notwithstanding the accompanied formalities that may be required to be completed by either of the parties.

14. We are of this considered view that the petitioner was a legitimate member of ECHS from the day of his retirement and from the day his contribution of Rs.1800/- was deducted by the Dy. CDA (AF), New Delhi. That by virtue of becoming a member of the ECHS, his legitimate dependents were entitled to the facilities of free hospitalisation in the empanelled hospital. Thus, the father of the petitioner was entitled for treatment as per accepted norms of the ECHS in the empanelled hospital.

15. Therefore, the amount paid by the petitioner to the empanelled hospital i.e. Rs.66,000/- should be fully reimbursed after deducting the amount of Rs.24,726/- already reimbursed. The difference of amount may be recovered by the ECHS from the empanelled hospital since the 'Contract Rate' agreement is between the ECHS and the empanelled hospital. The individual has no role to play in it.

16. We allow the petition and direct that Rs.41,274/- as the balance along with the interest @ 12% be paid to the petitioner. The exercise may be completed within 90 days of this order. No order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
March 09, 2010.