

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT
NEW DELHI

T.A. No. 653/2009

[W.P. (C) No. 1486/2008 of Delhi High Court]

Anil Kumar

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

With

T.A. No. 665/2009

[W.P. (C) No. 5323/2008 of Delhi High Court]

Ex Rect Ashok Ahlawat

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

In TA No.653/2009

For petitioner: Sh.S.M. Dalal, Advocate

For respondents: Sh.Ankur Chibber, Advocate

In TA No.665/2009

For petitioner: Col.S.R. Kalkal(Retd.), Advocate

For respondents: Sh.Ankur Chibber, Advocate

CORAM:

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

ORDER
09.03.2010

1. The both petitions have been transferred from Hon'ble Delhi High Court to this Tribunal on its formation.
2. Both these two petitions involve identical question of law, therefore, both are disposed of by the common order.
3. For convenient disposal of both petitions facts given in T.A. No. 653/2009 titled '*Anil Kumar v. Union of India & Ors.*' are taken into consideration.
4. Brief facts which are necessary for disposal of this petition are that petitioner was enrolled in Army as a Sepoy on 22.08.1966 and while in service, contracted the disease known as Tuberculosis. He was invalided out of service on 18.05.1997 in medical category EEE. His disability was assessed as 100% and held attributable to military service. Thereafter, he started receiving disability pension and he thus acquired the status of 'pensioner' and 'ex-servicemen'. The Government of India vide its notification dated 30.12.2002 sanctioned a scheme known as

Ex-servicemen Contributory Health Scheme (in short ECHS) to cater to the health care of the pensioners. The main objective of this scheme is *'to provide succour to pensioners, their wives, widows and authorized dependents and bring ECHS in line with medical schemes applicable to Central Government employees of other categories'*. Petitioner after release from Army got married in the year 1998 and he applied to become the member of this scheme and he was enrolled as member of this scheme including his dependents i.e. wife, son, daughter and mother with effect from 21.09.2003. Thereafter, on 21.07.2006, he took his minor son at ECHS Poly Clinic Jhajjar for treatment but he was refused medical treatment on the plea that his dependents were no longer entitled to receive treatment under the scheme. Therefore, he filed a representation to the Managing Director, ECHS on 27.07.2006 against the refusal of benefit of this scheme to the dependants but the same was rejected on 04.08.2006 on the ground that as per policy dependents of ex-recruits who are earning disability pension are not permitted to be included in the ECHS benefits. Therefore, he sent a legal notice through his counsel to respondent no.2 on 31.07.2007. The respondent no.2 replied the said legal notice on 28.08.2007 denying him the

benefit of the scheme. Hence, he filed the present writ petition before the Hon'ble Delhi High Court which has been transferred to this Tribunal on its formation challenging the denial of benefit of the scheme to him.

5. A written was filed by the respondents wherein they took the position that petitioner is not entitled to the benefit of the scheme as he has been wrongly given the smart card.

6. Learned counsel for petitioner has invited our attention to the scheme which was introduced by the Government of India vide notification dated 31.12.2002. The highlights of this scheme are as under:-

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 of all Ex-Servicemen in receipt of pension including disability pension and family pensioners, as also dependants to include wife/husband, legitimate children and wholly dependent parents. The Scheme will compromise 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 condition. The contribution will be according to the rates prescribed for CGHS pensioners as per Appendix-A attached.

- (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.

7. The scheme lays down details that is who shall be eligible and how benefit will be given to the dependents i.e wife, children and parents to a particular financial limit. The chapter-I deals with 'eligibility condition' as detailed in clause 1 which says that *in order to become the member of this scheme one should have the status of ex-servicemen and he should be drawing normal service/disability/family pension.* The clause 6 defines 'Ex-servicemen' which says that *an 'ex-servicemen' means a person, who has served in any rank whether as a combatant or non combatant in the Regular Army, Navy and Air Force and who retired from such service after earning his pension or who has been released from service on medical grounds attributable to military service or circumstances beyond his control and awarded medical or other disability pension or who has been released, otherwise than on his own request from such service as a result of*

reduction in establishment or who has been released from services after completing the specific period of engagement. It also included the personnel from Territorial Army. The expression 'Pension' is also defined in clause 12 which says that the word "pension" implies any type of pension received from Controller of Defence Accounts (Pensions) or its subordinate offices. The clause 14 deals with 'Eligibility Status for Dependents' says that Father and Mother of the pensioner shall be deemed to be dependent if they normally reside with the ESM pensioner, and their combined income from all sources is less than Rs.2550/- per month and 'Spouse' means legally wedded wife but her name should be included in the record of service. The sub clause 6 of clause 14 says that in case the ESM pensioner marries after retirement he will be required to furnish the marriage certificate and the application form for enrolling spouse as a dependent and Part II Orders/Gen Form/Personal Occurrence published. Unmarried daughters are also made entitled and for children, he will be required to furnish the birth certificate and on fulfilling all these conditions, a smart card will be issued to them. After completing all necessary formalities as indicated above, petitioner was granted this benefit by issuing smart card on 21.09.2003 but

it was sought to be revoked by the order dated 28.08.2007 when petitioner sent a legal notice to the respondent that *as per the policy a recruit who is in receipt of medical/disability pension is alone eligible to join ECHS. However, the recruit who was married prior to his discharge is permitted to have his wife and children as his dependent. The case of recruits who had joined ECHS prior to the issue of policy, were reviewed accordingly.* That means as per second thought given by the respondents, they came to the conclusion that recruit alone is entitled to the benefit of the scheme and not his dependents including children, father and mother.

8. We have heard learned counsels for the parties at length and found that this change of opinion by the respondents by an administrative action cannot change the scheme which has been framed by the Government of India. A Scheme was framed by the Government of India vide Notification dated 30th December, 2002 and in the Scheme there is no prohibition that a person who is already holding the disability pension marries subsequently then his dependents cannot be made eligible for the benefit of scheme. This change of opinion appears to be at the administrative level

and not at the level of Government of India. Once the decision has already been taken and in pursuance to that a formal scheme has already been formulated in detail and it does not prohibit in any manner a person who is an Ex-Serviceman marrying subsequently and out of that wedlock if certain children are born and the parents are there, he will not be entitled to the benefits of the scheme. There is no such prohibition in the scheme.

9. Our attention is invited to the letter dated 01.02.2006 issued by the Ministry of Defence for grant of Ex-servicemen status to the boarded out on medical ground with disability pension and in that it is clearly mentioned that it has been decided that such recruits who were boarded out/released on medical grounds and granted medical/disability pension will also be covered under the category of ex-serviceman for all practical purposes. The Office Memorandum dated 01st February, 2006 reads as under :-

No. 12/I/2005/D (Respondent)
Government of India
Ministry of Defence
(Deptt. Of Ex-servicemen Welfare)

New Delhi, dated the 01st February, 2006

OFFICE MEMORANDUM

Subject:- Grant of Ex-servicemen status to recruits boarded out on Medical grounds with disability pension.

The undersigned is directed to say that requests are being received from various sources to issue a clarification as to whether the recruits who are boarded out during the course of the training on medical grounds and granted medical/disability pension should be given the status of an ex-serviceman.

2. The matter has been carefully examined while keeping in view the following facts :-

- (i) a recruit is an enrolled person under Section 11 of the Army Act,
- (ii) his training period is treated as physical service and counted for pensionary purposes,
- (iii) he can be deployed in aid to civil authorities during the course of his training,
- (iv) after completion of the training he gets the pay of a soldier with arrears for the entire training period; and
- (v) recruits getting injured and released/boarded out from service are granted medical/disability pension.

3. It has accordingly been decided with the approval of Raksha mantra that such recruits who were boarded out/released on medical grounds and granted medical/disability pension will also be covered under the category of ex-serviceman for all practical purposes.

(A.K. Upadhyay)

Joint Secretary to the Government of India

Tele : 23011804

To

- 1. All Ministries/Departments of the Govt. of India
- 2. All Joint Secretaries in the Ministry of Defence
- 3. DGR/Secretary, KSB.

10. In view of the categorical decision of the Government of India and especially Ministry of Defence letter with regard to this scheme, we fail to understand how a small employee of the Government of India can over ride the authority of the

Government and issue his own clarification and impose certain prohibitions which are not contemplated. This action of the respondents is absolutely illegal and against the scheme as well as the decision of the Government of India as quoted above. We allow the petition and set aside the order dated 28.08.2007 depriving the benefit of scheme to the petitioner and his family including his son, daughter and aged parents. Petitioner will be entitled to all benefits of the scheme as per the Smart Card already issued to him.

11. On similar reasoning we allow the petition Ex Rect Ashok Ahlawat v/s. Union of India & Ors. (TA No.665/2009) and quash the impugned order. Both petitions are allowed with no order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
February 09, 2010.