

**COURT NO. 1, ARMED FORCES TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**  
(Through Video-Conferencing)

13.

RA 25/2021 with MA 2906/2021 in OA 493/2014

**In the matter of:**

**Union of India & Ors. ... Applicants/Respondents**

## Versus

**Ex Sub Ishwar Singh Malik ... Respondent/Applicant**

**For Applicants/Respondents:** Shri Prabodh Kumar, Advocate

**For Respondent/Applicant** : Shri A.K. Trivedi, Advocate

**CORAM :**

**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON  
HON'BLE LT GEN P.M. HARIZ, MEMBER (A)**

**ORDER**  
**08.12.2021**

This RA, under Rule 18 of Armed Forces Tribunal (Procedures) Rules, 2008, has been filed by the applicants, who were the Respondents in the OA 493/2014. The applicants here are aggrieved by the Order dated 08.07.2021 passed by this Tribunal in OA 493/2014 and have prayed to recall the order and:-

- (a) Review/ recall the order dated 08.07.2021 passed by this Hon'ble Tribunal in OA 493/2014.
- (b) Waive off 9% interest granted by the judgement dated 08.07.2021 And/or
- (c) Pass any other further order (s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

2. In OA 493/2014, the original applicant a retired Subedar from the Indian Army has filed an application under Section 14 of the Armed Forces Tribunal Act, 2007 aggrieved by the fact that whilst being a member of the Ex Servicemen Contributory Health Scheme (ECHS), in 2014, he had to meet an expenditure of Rs. 2,69,145.62 for an emergency treatment in Medanta Medicity Hospital for which, ECHS reimbursed only Rs. 82,826. The applicant had, therefore, prayed that directions be issued to the respondents to release balance of amount of Rs. 1,86,325 (Rupees One lakh eighty six thousand three hundred and twenty five only) along with 12% interest thereupon.

3. The case was examined and given the peculiar circumstances of the case, vide this Tribunal Order dated 08.07.2021, the petition was allowed and Respondent Nos.1 and 2 were directed to effect the payment of Rs. 1,86,320 (Rupees one lakh eighty six thousand three hundred and twenty only) in terms of balance entitlement of the applicant in meeting the expenditure incurred during a medical emergency treatment whilst being an ECHS beneficiary, together with interest at 9% per annum from the date of filing the application for reimbursement i.e., 26.09.2014 till the date of payment. The respondents were to ensure that the payment was made within a period of six weeks from the date of receipt of copy of the order and that there was no objection to the Respondents realising a part/ full payment of the said amount from the hospital concerned; Medanta Medicity Hospital.

4. The Applicant in this RA (Respondents in OA 493/2014) have canvassed for the recall/ review of the Order and to waive off the 9% interest levied, on the following grounds :-

(a) Because the entitled stent cost of Rs. 23,625/- has already been reimbursed to the beneficiary in line with

the existing policy of CGHS. The additional cost of Rs.1,25,000/- has been paid by the beneficiary on his own to get a different stent which is not allowed as per Govt sanction. The policy of paying cost difference by the beneficiary already exists. Thus, the direction to pay further an amount of Rs. 1,86,320/- is in contravention to the Govt policy dated 29.04.2014.

- (b) Because at the time when the treatment of the beneficiary was done i.e. on 16<sup>th</sup> May 2014 the Medanta Hospital was technically not providing cashless services as MoA was not valid, the hospital being not empanelled the issue of cash payment occurred.
- (c) Because, as per the claim ID 1711030 amount of Rs.83,125/- was approved as per the package rate and paid to the beneficiary against the claimed amount Rs.2,69,146/- Sub claim was settled on 24<sup>th</sup> July 2014. However, beneficiary never represented with CO, ECHS/ authority to look into the issue of incorrect reimbursement and approached the Tribunal, thereby delaying the settlement of the issue, and hence 9% interest granted is liable to be waived off in the interest of justice.
- (d) Because, the policy of the government states that any implant which cost more than the CGHS prescribed rates the difference is required to be paid by the beneficiary, in the instant case, the stent was placed for Rs. 1,01,375/- by the hospital, however the CGHS rate for the stent is 23,625/- which has already been reimbursed to the beneficiary, thereby reimbursement of Rs. 1,01,375/ by the government for the implant over and above cost is not in order.

- (f) Because, Medanta Hospital, Gurgaon has agreed to pay Rs.53,740/- as charged over and above CGHS rates.
- (g) Because, CO ECHS also agrees for submission of supplementary claim by beneficiary to reassess the case based on CGHS rates.
- (h) Because, notification of Emergency Admission which has been notified by Central Organisation, ECHS dated 20<sup>th</sup> April 2007 is very clear and same has been upheld by AFT, Lucknow Bench in OA No 85 of 2010 filed by Lt Col KB Singh (Retd) passed order dated 20<sup>th</sup> April 2012 wherein the Tribunal uphold the views of respondents saying that beneficiary is entitled only for CGHS rate. The Court dismissed the case stating that 'laid down policies do not permit payment of full amount to non-empanelled hospital as claimed by the appellant'.
- (i) Because, in the Writ petition (c) No 14898/2004 filled before the High Court of Kerala which was transferred to the Central Administrative Tribunal and was registered and renumbered as T.A. 19/2008. The Tribunal in their order dated 21<sup>st</sup> July 2010 has held that fixation of rate and scale is justified and cannot be held to be violative of Article 21 or Article 47 of the Constitution of India.
- (j) Because, even Hon'ble Supreme Court quoted the Supreme Court judgment dated 26<sup>th</sup> February 1998 in **State of Punjab and others Vs. Ram Lubhaya Bagga and others (1998) 4 SCC 117**, wherein the Hon'ble Apex Court held as under:

***"No state of any country can have unlimited resources to spend on any of its project. That is why it only approves its projects to the extent it is feasible. The same holds good for providing medical facilities to its citizen including its***

*employees. Provisions of facilities cannot be unlimited. It has to be to the extent finance permit. If no scale or rate is fixed then in case private clinics or hospital increases their rate to exorbitant scales, the state would be bound to reimburse the same. Hence, we come to the conclusion that principle of fixation of rate and scale under this new policy is justified and cannot be held to be violative of Article 21 or Article 47 of the Constitution of India."*

(j) Because, this Tribunal vide order dated 10 May 2019 in **OA No 225/2019** filled by **Nk Swaraj Singh (Retd) Vs UOI & Others** in para 16 of its judgment has held as under:

***"16. One more factual objection has been raised by the respondents that as per their policy, the medical reimbursement may be made at admissible rates or as per ECHS rates, whichever is applicable and not full reimbursement. We do not intend to comment anything in this regard. It is for the applicant to submit the bills of the medical expenses incurred by him for scrutiny by the respondents and they shall be free to make payment as per their policy taking into account the cost of surgery, donor medical expenses, hospitalization, lab tests and high cost of medicines etc. In the present case we were called upon to decide the entitlement of the applicant to claim reimbursement of the medical treatment to which we find that he is entitled."***

(k) Because, the Respondent ECHS vide letter No B/49714-Ishwar Singh Malik/AG/FCHS (78) dated 29<sup>th</sup> July 2021 has already approached petitioner for his bank details for refund of amount charged as over and above CGHS rates by the hospital.

(l) Because, there is an error apparent on the face of record as it has been submitted that the stent which has been prescribed by the government was not used by the petitioner and different stent was used which was very much costlier than prescribed one.

5. OA 493/2014 was adjudicated and Order dated 08.07.2021 issued after due consideration of the peculiar circumstances the case. Since these issues have already been examined while disposing of the OA, these grounds canvassed are merely a repetition of the issues raised earlier. Para 9 of the Order dated 08.07.2021 is reproduced below :-

***“9. Having carefully considered the rival arguments on the case, we find that the primary issue before us is whether ECHS was justified in restricting the reimbursement to the prevailing CGHS rate or should have reimbursed the whole amount. Having examined the files/ documents pertaining to the case submitted by the Respondents, the following issues have been examined and facts established as given subsequently***

- (a) Policy on treatment.***
- (b) Policy on Empanelment and Signing of MoA.***
- (c) Applicability of Rates.***
- (d) Status of Medanta Hospital in the Relevant Period.”***

6. The only reason advanced by the applicants in the RA (Respondents in OA) for not reimbursing the complete expenditure for this emergency treatment was that during the relevant period of May 2014, when the patient underwent the emergency treatment, Medanta Hospital was not empanelled under ECHS and, therefore, the bills were reimbursed at the prescribed CGHS rates only. However, it was clearly established that it was the inaction of the part of the Applicants here, in the timely renewal of the MoA with Medanta Hospital. This resulted in a piquant situation where in the hospital,

though empaneled, and would normally provide cashless treatment, now was treating ECHS patients for which the patients had to first pay the bill and then seek reimbursement. As a result of this the Applicants here audited the expenditure as treatment in a non-empaneled hospital and refunded only the admissible expenditure as per CGHS rates to the patient. This Tribunal having examined all the relevant policies and Govt instructions on the subject, finally concluded that the patient was denied a critical facility required in a life-threatening emergency due to the inactions of the applicants here and therefore the patient cannot be made to bear the burden of excess expenditure due to the failure of the organisation.

7. In view of the above, this RA is dismissed, being bereft of any merit. MA 2906/2021 also stands dismissed.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

[LT GEN P.M. HARIZ]  
MEMBER (A)

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