

**COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

OA 1843/2019

Col Anil Kak(Retd)

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : Mr. S.S. Pandey, Advocate
For Respondents : Mr. Nisarg Choudhary, Advocate
Maj Satvik Grover, OIC, Legal Cell

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER

The applicant vide the present OA makes the following prayers:-

“(a) Call for the records based on which the Respondents have declined to grant waiver to the Applicant and his wife for Emergency Information Report (EIR) in terms of their letters dated 01.05.2019, 21.07.2016 and 22.07.2016 respectively and consequently denying him the medical reimbursement to the tune of Rs. 11,69,449/- in respect of the Applicant and Rs. 9,29,169/- in respect of his wife and thereafter quash all such orders including the orders dated 01.05.2019, 21.07.2016 and 22.07.2016 to the extent the relief was denied to the

Applicant without affecting the relief already granted to him.

(b) Direct the Respondents to reimburse the Applicant for a sum of Rs.11,69,449/-towards the medical reimbursement and a sum of Rs. 9,29,169/- towards the medical reimbursement of his wife by granting the necessary waiver with further directions to pay the interest at the rate of 12% per annum.

(c) Issue any other order which the Hon'ble Tribunal deems fit as deem appropriate in the facts and circumstances."

2. The applicant was commissioned as a regular officer in the Indian Army in the year 1966 and sought premature retirement from the services in the month of March 1988.

3. The averments made through the OA and the counter affidavit bring forth that the applicant is an ex serviceman and entitled to the benefits of the ex serviceman contributory health scheme as per letter no. 22(i)/01/US(WE)/D(Res) dated 30.12.2002, and thus so are his beneficiaries.

4. The unrefuted facts on the record indicate that the applicant IC-17211Y Col Anil Kumar Sharma who retired in 1988 is a resident of Indore as indicated by the Memo of

Parties. The applicant and his wife are registered as ECHS Members at the Station HQRS(Mhow), MP.

5. The applicant is, however/aggrieved by the non reimbursement of a sum of Rs 11,69,449/- to him for an MRI and for an operation carried out on 29.02.2016 at the Breach Candy Hospital, Mumbai after a diagnosis made on 28.02.2016 that he was suffering from L2-L5 lumbar canal stenosis and L2-L3 prolapsed intervertebral disk.

6. The applicant is also aggrieved by the non reimbursement of a sum of Rs. 9,29,169/- for the operation of his wife conducted on 05.04.2016 which he submits was done on an emergency basis for breast cancer at the Breach Candy Hospital, Mumbai.

7. Both these reimbursements i.e. for the operation conducted on the applicant and the operation conducted on the applicant's wife have been declined by the respondents.

8. The respondents have stated that the applicant has not produced any prescription of the consultation given by medical

experts at Indore, that he required an immediate surgery of his spine and that the diagnosis of the applicant's disease was done at Mumbai at the Breach Candy Hospital. Inter alia, the respondents have submitted that the applicant was admitted to a non empanelled hospital for medical treatment and the applicant had not adhered to the General SOP/ Co ECHS Compendium II for the same. **The respondents have also submitted that the emergency certificate produced by the applicant was dated 11.06.2016, whereas the applicant was admitted in the hospital on 28.02.2016.**

9. Likewise, in relation to the treatment and operation conducted for breast cancer for the wife of the applicant, the respondents have submitted to the effect that the wife of the applicant was admitted to the Breach Candy Hospital, Mumbai on 04.04.2016 and was discharged on 16.04.2016 with diagnosis of right breast carcinoma and that there was no emergency certificate that was produced by the applicant of the treating doctor, and that the applicant had also not taken any prior sanction as per existing rules for planned treatment in a

non empanelled hospital. The respondents further submit that the applicant's wife had gone through a planned surgery for a non-emergency condition of right breast carcinoma, a chronic ailment and as per medical protocol, this is a planned surgery advised only after thorough investigation and tests, and that the applicant had been granted permission for radiotherapy treatment of his wife from 14.09.2016 for five weeks and thus the reason for not availing facilities for the treatment from the empanelled hospital was not justified.

10. The applicant had previously instituted OA 1564 of 2018 and vide order dated 03.10.2018 the said OA was disposed of with directions to the respondents to accord consideration to the two representations of the applicants, one filed by his wife dated 15.02.2017 and one by the applicant dated 17.05.2017 and other representations, if any, filed within a period of two months from the date of the said order. As the same and a representation dated 25.10.2018 resubmitted by the applicant for reimbursement of the medical expenses with 12% interest, on his and his wife's treatment were not disposed of within two

months of the order dated 03.10.2018, MA 943/2019 was filed by the applicant as a execution application seeking execution of the order dated 03.10.2018.

11. Vide the order impugned herein, Case File: B/49714-Col Anil Kak/AG/ECHS(309) dated 01.05.2019, the said representations were declined.

CONTENTIONS OF THE APPLICANT

12. It is the submission of the applicant that:

- the applicant had been issued with a temporary ECHS membership card,
- that the applicant and his wife had applied in the month of June, 2015 for the ECHS Membership card and had been issued a temporary card,
- and had been informed on his request for the permanent ECHS Card vide letter dated 10.05.2016 from the Director of the Regional Centre(ECHS), Jabalpur, that efforts were on for restarting the making of the ECHS card soon and that in the meanwhile the ECHS

temporary cards issued to the applicant may be used in lieu.

13. Vide the said letter dated 10.05.2016, the applicant was also informed to the effect:-

“3. We are enclosing a soft copy of ECHS policy letters compendium, which will apprise you of the ECHS rules in vogue. Further, you may refer to the ECHS website (echs.gov.in), which will address to your queries of facilities offering cashless facilities (you may refer to page 274-275 of the compendium (also enclosed) for clarification for treatment during emergency).”

14. The applicant submits that in the meantime he experienced an unbearable pain in the lower back and he underwent an MRI whereafter it was opined that he undergoes an immediate surgery of the spine. The applicant submits that he was transferred by air and hurriedly admitted to the Breach Candy Hospital, Mumbai on an emergency basis on 28.02.2016 where he was diagnosed to be suffering from L2-L5 Lumbar Canal Stenosis and L2-L3 Prolapsed Intervertebral Disc and was subsequently operated on 29.02.2016. The applicant submits that owing to his critical condition, it was not possible for him to inquire into the procedure and follow up with any

agency of the ECHS(Polyclinic, Mhow) which was about 30 kms away from his residence within a short span of three days.

15. The applicant has further submitted that whilst he was still to be discharged, his wife on a routine checkup was accidentally diagnosed to be suffering from Malignant Breast Cancer and advised to undergo an urgent surgery for the timely removal of the malignant cells and the spreading thereof, but as neither any bed nor any Oncologist was available at time, the wife of the applicant could not be admitted to the hospital. The applicant submits that in the meantime awaiting completion of formalities with respect to his own documents and the procedure for reimbursement through ECHS, the wife of the applicant was admitted to Breach Candy Hospital, Mumbai on an emergency basis on 04.04.2016 and was operated for Breast cancer on 05.04.2016.

16. The applicant has submitted that he submitted all his surgery expenses and medical bills vide letters dated 13.06.2016 and 17.06.2016 to the Central Organisation of the ECHS at Delhi Cantt(arrayed as respondent no. 4 to the present OA) and also requested for a waiver and condonation of delay for medical bills claimed, in as much as though as per the prevalent rules he was required to inform the ECHS Polyclinic within 48 hours of

admission, since he and his wife had both undergone surgery within a very short duration of time, they could not comply with submission of their medical bills and of the requirement of informing the nearest ECHS polyclinic within 48 hours of admission. The applicant submits that his application for waiver were rejected by the respondents vide letters dated 21.07.2016 and 22.07.2016 without assigning any reason for the same. He further submits that thereafter he submitted a representation dated 17.08.2016 as addressed to all three Chiefs of the Armed Forces but submits that no action was taken thereon.

17. The applicant submits that in the meantime, his wife required 'Radiation Therapy post Cancer Surgery' and the applicant applied to the respondents for reimbursement of the same which was sanctioned later vide Central Organisation ECHS letter dated 14.09.2016, but the respondents arbitrarily refused to reimburse the applicant for the expenses borne by him previously on account of his personal treatment as well as for the Cancer Surgery of his wife vide letter dated 19.09.2016 on the ground that the Emergency Information Report(EIR) waiver is given only in cases of emergency admissions in non-empanelled hospitals. The applicant submits that the waiver of submission of the Emergency Information Report(EIR)

was arbitrarily denied by the respondents, as a consequence of which he had instituted the OA 1564/2018.

18. The applicant has placed reliance on the verdict dated 13.04.2018 of the Hon'ble Supreme Court in **Shiva Kant Jha vs. UOI** in Writ Petition(Civil) no. 694/2015 to submit to the effect that as laid down in Para-13 of the said verdict, it is no more *res integra* that the government employee during his life time or after his retirement is entitled to get the benefit of the medical facilities and no fetters can be placed on his rights and that the right to medical claim cannot be denied merely because the name of the hospital is not included in the Government order. The applicant submits that it has thereby been crystallized that 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 and once it is established, the claim cannot be denied on technical grounds. It has also been submitted by the applicant that it has been laid down thereby by the Hon'ble Supreme Court in Para-14 of the said verdict itself, that the law does not require that prior permission has to be taken in such a situation where the survival of the person is the prime consideration and where the

government servant or retired government servant is taken to a hospital in a emergency condition for survival of his life, and where the treatment given in the non-empanelled hospital was genuine, the payment of the amount of expenditure incurred even in the non-empanelled hospital for the treatment of the applicant and for the treatment of his wife needs to be reimbursed by the respondents.

CONTENTIONS OF THE RESPONDENTS

19. The respondents vide their counter affidavit dated 05.09.2024 have submitted to the effect that the applicant had made claim for large sums of money without providing any evidence in support of a so called "Emergency" situation. The respondents submit that the applicant is admittedly a resident of Indore, which is one of the most developed cities of Central India and also has a number of super specialty hospitals in the city. The respondents contend that the applicant according to him allegedly underwent a MRI from a non-empaneled specialist on 24.02.2016 at Indore due to unbearable pain in the lower back and subsequently the medical experts at Indore opined for an immediate surgery of spine and that though the applicant claims that he was unable to travel 30 Kms to inform regarding the alleged emergent situation that he had, but he was able to travel 600 kms away for an operation and that the travel

occurred four days after the “alleged emergency” was flagged, which it was contended cannot be believed. The respondents further draw the attention of the Tribunal to the fact that the Emergency Certificate produced by the applicant was dated **11.06.2016** whereas the applicant was admitted on **28.02.2016**. The respondents further state that the applicant has not produced a prescription/consultation opinion given by the medical experts at Indore whereby such an opinion has been given.

20. The respondents further state that there are a number of hospitals in Indore and it is not known why the applicant had to travel to Mumbai for the said surgery, particularly, because Lumbar Canal Stenosis causes imbalance in walking posture and an individual might not be able to walk for a long distance which might cause numbness and pain to the legs.

21. The respondents further aver to the effect that the applicant has not produced any record to show that there was any difficulty while flying to Mumbai, to contend that the same itself indicates that the surgery was a planned surgery and no emergency existed. The respondents further submit that the claim of the applicant that whilst he was admitted in hospital at Mumbai, his wife was “allegedly” accidentally diagnosed with Malignant Breast Cancer on

account of a routine check-up and was advised to urgent surgery for the same at the earliest, so that the malignant cells can be timely removed, is also not supported by the record in as much as the wife of the applicant was admitted to Breach Candy Hospital on 04.04.2016 after a month of the diagnosis of the cancer, and the surgery was conducted on 05.04.2016 and it is thus submitted by the respondents that clearly there was no urgency in the same and that it was obvious that the wife of the applicant had also gone through a planned surgery, i.e., a non-emergency condition. The respondents further submit that this condition must have persisted for a long time, it being a chronic ailment and thus the availing of the services from a non-empaneled hospital stating it to be emergency is not justifiable. The respondents have further submitted that the headquarters have not granted the waiver for not taking the "Emergency Information Report" in relation to the case of the applicant and for his wife for the reimbursement of the total expenditure.

22. The respondents further submit that the wife of the applicant was admitted to the Breach Candy Hospital on 04.04.2016 and was discharged on 16.04.2016 with diagnosis Right breast carcinoma and that there is no emergency certificate duly signed by the treating

doctor that has been produced by the applicant. The respondents thus seek that it be inferred that:-

“(a) The applicant did not consult the service hospital and ECHS Polyclinics which were available at the place of treatment at Mhow.

(b) Prior sanction as per existing rules for planned treatment in a non-empanelled hospital was not taken by the Applicant.

(c) The Applicant once had taken prior permission for Radiotherapy treatment for the wife and the same was granted with effect from 14.09.2016 for five weeks.

(d) Mrs Gangesh Kumari wife of the Applicant had gone through a planned surgery for a non-emergency condition of Right Breast Carcinoma, which is a chronic ailment, which must have persisted for a long time. Medical protocol suggests that this type of planned surgery is advised only after thorough investigation and tests. Hence, the reason for not availing facilities / treatment of empanelled hospital is not justified.”

23. The respondents further submit the impugned order dated 01.05.2019 is a speaking order which clearly gives the reasons for not granting the waiver to the applicant and contains the detailed explanation of the fact that the case of the wife of the applicant was not that of an case of emergency and that she had an opportunity to follow the procedure laid down by the respondents and inform the

nearest ECHS polyclinic for the prior sanction for planned treatment in a non-empanelled hospital.

24. Impugned order no. Case File: B/49714-Col Anil Kak/AG/ECHS(309) dated 01.05.2019 issued for the Director (C&L), MD ECHS for the Central Organisation ECHS as scanned reads to the effect:-

Case File : B/49714-Col Anil Kak/AG/ECHS(309)

Dated : 01 May 2019

ORDER

SUBJECT: SPEAKING ORDER IN COMPLIANCE OF THE ORDER DATED 03 OCT 2018 IN OA NO 1564/2018 TITLED AS COL ANIL KAK (RETD) VS UOI & OTHERS IN AFT (PB) NEW DELHI (REGN NO 46/2560/AFT)

1. Whereas, Hon'ble Tribunal in OA No 1564/2018 titled Col Anil Kak (Retd) Vs Union of India & Others in hearing on 03 Oct 2018 has directed the respondent *"to accord consideration to the two representations already moved by the applicant and his wife at two different stages and any other reminder/ representation now to be filed by the applicant Col Anil Kak (Retd) if any"*.
2. Whereas, the petitioner had re-submitted his application dated 25 Oct 2018 for Reimbursement of Medical expenses with 12% interest incurred on his and his wife's treatment for which waiver was not granted by the Central Organisation, ECHS.
3. Whereas, the petition submitted by the petitioner vide letter No Nil dt 25 Oct 2018 for reconsideration on court order after hearing of OA No 1564/2018 dt 03 Oct 2018. The case has been reanalysed in respect of Mrs Gangesh Kumari wife of Col Anil Kak (Retd). For case of Mrs Gangesh Kumari wife of Col Anil Kak (Retd) petitioner has raised following issues:-
 - (a) That the surgery post operative care and treatment incurred and its costs are genuine and valid and the reasons for not giving prior information or taking Emergency Information Report are genuine and acceptable.
 - (b) That the provision(s) for ex-post-facto sanction for not taking Emergency Information Report already exist and arbitrary denial of the same is not just.

(c) That the question of denying reimbursement on the grounds of not taking prior permission or Emergency Information Report to be treated in a non-empanelled private hospital has already been covered in the Supreme Court judgement in WP (C) No 694 of 2015 dated 13 Apr 2018 vide its judgement cited before the Armed Forces Tribunal.

(d) It is illogical and arbitrary to sanction costs for post operative medical treatment but not for the surgery done prior to it.

(e) That the ECHS system has failed to evolve a satisfactory and effective information system to make its new members aware of and be guided in following the prescribed / updated procedures in the ECHS.

(f) That an ex-serviceman and member of the ECHS, his wife being dependent on him is entitled to reimbursement of medical expenses incurred and arbitrary denial of the same is against justice and lawful and equal rights.

4. Whereas, case of Mrs Gangesh Kumari wife of Col Anil Kak (Retd) was reanalysed based on the documents submitted by him at Regional Centre Jabalpur, recommendations of the Joint Director (Health & Services) and Director of Regional Centre at Central Organisation ECHS within the frame work of Central Organisation ECHS letter No B/49774/AG/ECHS/Referral dt 01 Dec 2009 which has explicitly categorised for Emergencies treatment in Empanelled hosp and Non empanelled hospital from Para 12 to 16 and also for planned treatment on reimbursement basis only in Hospitals National Repute at Para 21 reproduced as under:-

"Para 21. Oncology Referrals. In order to rationalize Oncology referrals, the following procedures will be implemented:-

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- (a) All patients reporting initially to ECHS Polyclinic and suspected/ confirmed to be suffering from cancer should first be referred to a Oncology Centre of a service hospital (if available locally) or in the absence of service hospital with Oncology dept, to an empanelled hospital recognized for oncology where registration, work-up and treatment planning can be carried out.
- (b) Patients requiring surgery as part of the Emergency Information Report multi-modality treatment will be treated in the service hospital (subject to availability of spare capacity) or the empanelled hospital (recognized for onco surgery). If facility is not available locally, patient will be referred to the nearest service hospital/ empanelled facility where such a facility is available.
- (c) Patient requiring Chemotherapy/ Radiography (RT) will be issued a referral to local service hospital with Onco Dept (Subject to load) or ECHS empanelled Onco centres once only for the entire duration of treatment.
- (d) The stipulation of one month validity for referral forms will not apply for Oncology Cases prescribed Chemotherapy/ Radiography".

5. Whereas, the policy letter B/49774/AG/ECHS/Referral dt 01 Dec 2009 also clarifies that no ex post facto sanction is permitted and there is no provision for waiver to such a sanction.

6. Whereas, reason for not giving prior information of taking Emergency Information Report is not justifiable in respect of Mrs Gangesh Kumari wife of Col Anil Kak (Retd). Mrs Gangesh Kumari wife of Col Anil Kak (Retd) who was admitted in Breach Candy Hospital, Mumbai on 04 Apr 2016 and discharged on 16 Apr 2016 as diagnosis Right breast carcinoma. There was no emergency certificate duly signed by the treating doctor has been produced by the petitioner. The reanalysis inferred that :-

(a) Whereas, the petitioner did not consult the service hospital and ECHS Polyclinics which were available at the place of treatment at Mhow.

(b) Whereas, prior sanction for planned treatment in a non empanelled hospital has not been taken by the petitioner.

(c) Whereas, the petitioner once had taken prior permission for Radiography treatment for his wife which was granted wef 14 Sep 2016 for five weeks.

(d) Whereas, Mrs Gangesh Kumari wife of Col Anik Kak (Retd) had gone through a planned surgery for a non emergency condition of Right Breast Carcinoma which is a chronic ailment which must have persisted for a long time. Medical protocol suggests that this type of planned surgery is advised only after thorough investigation and tests. Hence, the reason for not availing facilities / treatment of empanelled hospital is not justified.

7. Whereas, all the policies, instructions/ guidelines are always promulgated to all Commands and Regional Centres. They in turn promulgate the policies, instructions and guidelines to all Polyclinics and Stn HQ's, who are the lowest functionary & stakeholders for provision of healthcare to ESM's. Moreover, all important policy guidelines and instructions are also available on public Domain on the website of ECHS.Gov.in. The website is regularly updated. The policy of Emergency Information Report is a policy of year 2009 and well established norm, known to all polyclinics and Regional Centre.

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8. Whereas, in the case of Mrs Gangesh Kumari wife of Col Anil Kak (Retd) had all the options available with him for taking prior referral from Polyclinic, take option for treatment of the service hospital and proceed with the surgery if required from empanelled hospital. There was no justifiable emergency existing for the treatment as brought out by Regional Centre, Jabalpur and moreover, no emergency was reflected by even treating doctors of the petitioner/beneficiary.

9 Thus, based on the afore mentioned facts, the competent authority finds no reason in granting the waiver for not taking prior sanction for planned treatment.

10. The petitioner is informed accordingly.

25. The respondents reiterate that the applicant's wife had gone through a planned surgery for a non emergency condition of right breast carcinoma, which is a chronic ailment, which must have persisted for a long time and *inter alia* submit that the medical protocol suggests that this type of planned surgery is advised only after thorough investigation and tests and thus the reason for not availing of the facilities/ treatment of empanelled hospital is not justified. The respondents further submit that thus there was no justifiable emergency existing for the treatment as brought out by

the Regional Centre, Jabalpur and furthermore no emergency certificate has been produced for the applicant's wife to show that the wife case was a emergency. The respondents have further submitted that the reliance placed by the applicant on the verdict of the Hon'ble Supreme Court in **Shiva Kant Jha**(Supra) is wholly misplaced, as the Hon'ble Supreme Court vide Para-15 has expressly observed that the decision therein was confined to that case alone. The respondents further submit that the applicant has not submitted the relevant papers for the Emergency Information Report as they did not follow the requisite procedure for obtaining the same and thus the respondents submit that the question of reimbursement does not come arise.

26. The respondents further relied on Para-38 of the ECHS: SOP FOR 'ON LINE' BILL PROCESSING which states to the effect:-

**"Admission to a Non-Empanelled Hospital/
Facility**

38. Such admissions will be dealt as under:-

(a) The ECHS beneficiary or his/her representative should inform nearest Polyclinic/ Parent Polyclinic / nearest ECHS Regional Centre / Central Organization (e-mail ID dechs@bol.net.in) within two working days of such admission. OIC of nearest Polyclinic will make arrangements for verification of facts and issue Emergency Information Report (EIR) as per format (attached) on receipt of information from representative of ECHS beneficiary/OIC Parent

Polyclinic / Regional Centre / Central Organization as the case may be.

(b) The responsibility for clearing of the bills in such cases will rest with the ECHS member. He/she may thereafter submit the bills along with summary of the case and other documents to the concerned Polyclinic. The sanction for reimbursement of such bills has been delegated to Competent Financial Authorities (CFA) by the Central Organization ECHS vide their letter No B/49778/AG/ECHS/Policy dt 19 Aug 2008 as amended vide letter No B/49773/AG/ECHS/Policy dt 01 Dec 2008. Such bills will be submitted within a period of one month from the date of discharge from hospital. Bills will be processed as CGHS/ECHS/AIIMS RATES/ACTUAL if unlisted.

(c) In the case of delay in submission of such bills, sanction of Station Commander to waive off the delay may be obtained for delays up to six months. Regional Director may waive off the delay up to one year. Delays beyond one year will be dealt by the Central Organization ECHS suitably as per merit of the case. The decision of MD, Central Organization shall be final in such cases."

27. The respondents submit that the reliance placed by the applicant on Para-38(c) of the said SOP for Online Bill processing of the ECHS is wholly erroneous, in as much as it relates only to the grant of waiver in cases where there is delay in submission of the medical bills and other relevant documents and does not relate to a case as the instant where the Emergency Information Report itself has not been filed and Para-38(c) does not relate to the waiver for grant of delay in filing the EIR.

28. The respondents submit that though prior permission is not required to be taken for being treated in a non-empanelled hospital in an emergency case, the information thereof is to be given to the nearest polyclinic so that necessary arrangements can be made. The respondents thus reiterate that the applicant and his wife through the representations made have asked for the waiver of the delay in registering the Emergency Information Report and had not asked for the condonation of the submission of the medical bills and other documents.

29. *Inter alia*, the respondents submit that even if the said representations had pertained to the grant of waiver of the submissions of bills and documents, such submissions would have been a subsequent action after the registration of the said Emergency Information Report, for which applicant had never followed the requisite procedure.

30. The respondents have also placed reliance on Para-21 of the Central Organisation ECHS letter no. B/49774/AG/ ECHS/Referral dated 01.12.2009 which explicitly categorises for emergency treatment in Empanelled hospital and Non empanelled hospital from Para 12 to 16 thereof and also for planned treatment on

reimbursement basis only in Hospitals of National Repute in relation to Oncology Referrals as per Para 21 thereof which reads as under:-

"PARA 21. Oncology Referrals

In order to rationalize Oncology referrals, the following procedures will be implemented:-

(i) All patients reporting initially to ECHS Polyclinic and suspected/ confirmed to be suffering from cancer should first be referred to an Oncology Centre of a service hospital (if available locally) or in the absence of service hospital with Oncology dept, to an empanelled hospital recognized for oncology where registration, work-up and treatment planning can be carried out.

(ii) Patients requiring surgery as part of the Emergency Information Report multi-modality treatment will be treated in the service hospital (subject to availability of spare capacity) or the empanelled hospital (recognized for onco surgery). If facility is not available locally, patient will be referred to the nearest service hospital/ empanelled facility where such a facility is available.

(iii) Patient requiring Chemotherapy/ Radiography (RT) will be issued a referral to local service hospital with Onco Dept (Subject to load) or ECHS empanelled Onco centres once only for the entire duration of treatment.

(iv) The stipulation of one month validity for referral forms will not apply for Oncology Cases prescribed Chemotherapy/ Radiotherapy."

31. *Inter alia* the respondents submit that the said policy letter ECHS letter no. B/49774/AG/ECHS/Referral dated 01.12.2009 also clarifies that no ex-post facto sanction is permitted and there is no provision for waiver to such a sanction.

32. During the course of hearing in the instant case on 07.04.2025, on behalf of the respondents it was submitted that the applicant is not entitled to any payment whatsoever, in as much as the Emergency certificate and Emergency Information Report had not been submitted by the applicant.

ANALYSIS

33. In terms of Para-38 of the ECHS:SOP for Online Bill processing relied upon on behalf of both the applicant and the respondents, already adverted to hereinabove in Para-26, the ECHS beneficiary or his/her representative is entitled to seek admission to a non-empanelled Hospital/facility but within two working days of such admission, they are required to inform the nearest Polyclinic/Regional Centre/Central Organisation(e-mail ID dechs@bol.net.in) whereafter the OIC of nearest polyclinic is to make arrangements for verification of facts and issue the Emergency Information Report(EIR) as per the format(attached) on receipt of information from the representative of the ECHS beneficiary/OIC

Parent Polyclinic/Regional Centre/ Central Organization as the case may be. This procedure has admittedly not been followed by the applicant neither for himself nor for his wife, though, the applicant submits that it could not be done due to the condition of the applicant who had to be flown to Mumbai after he underwent an MRI on 24.02.2016 and it had been opined that he needs an immediate surgery of the spine whereafter he was admitted to the Breach Candy Hospital, Mumbai on an emergency basis on 28.02.2016 and was diagnosed to be suffering from L2-L5 Lumbar Canal Stenosis and L2-L3 Prolapsed Intervertebral Disc for which he was operated upon on 28.09.2016 and whilst he was so admitted to the said hospital, his wife was accidentally diagnosed to be suffering from Malignant Breast Cancer on account of a routine checkup and was advised to undergo urgent surgery for the same at the earliest, so that the malignant cells can be timely removed thereby preventing them from spreading them any further, but the applicant's wife could not be admitted to the hospital on account of the fact that the applicant was himself on the bed and there was no bed available for the applicant's wife and there was no oncologist in the hospital at that time, as a consequence of which the applicant and his wife returned to his hometown at Indore on 11.03.2016 whereafter he

approached the respondents polyclinic at Mhow to complete the necessary formalities with respect to his document lying there and enquiring about the procedure of reimbursement through the ECHS and in the meantime enquiring on account of the availability of an oncologist in the panel list of the respondents ECHS, the wife of the applicant was admitted to the Breach Candy Hospital on an emergency basis on 04.04.2016 and was operated upon for breast cancer on 05.04.2016. The same is also admitted vide Para 4.5 of the OA wherein the applicant states as under:-

"4.5 That the Respondents vide their letter dated 10.05.2016 and 10.06.2016 issued respectively; intimated the Applicant that in an emergency situation, an ECHS member may not be able to follow the normal referral procedure. Thus, he can report to the nearest/most convenient hospital, preferably a service hospital or an empanelled hospital. In such cases, no payment was required to be made and the bill of the empanelled hospital shall be paid online by ECHS. However, in case an ESM goes to a non empanelled hospital he/she has to pay the bill and submit a claim for re-imbursement to the ECHS Polyclinics subsequently. Thus, going by the above mentioned provisions, the Applicant submitted all his surgery expenses and medical bills to the Respondent No. 4 vide his letters dated 13.06.2016 and 17.06.2016 respectively and had requested for a waiver (condonation of delay) for medical bills claimed because as per the rules prevailing, the Applicant was required to have informed the nearest ECHS Polyclinic

within 48 hours of admission. However, since both the Applicant and his wife had undergone surgery within a very short duration of time, they could not comply with the above-mentioned criterion.”

(emphasis supplied)

• **APPLICANT’S TREATMENT**

34. That the applicant was treated at the Breach Candy Hospital, Mumbai for treatment on 28.02.2016 is not in dispute. The discharge summary issued by the Breach Candy Hospital Trust, Mumbai of the applicant dated 11.03.2016 states to the effect:-

“ **Discharge Summary**

FINAL DIAGNOSIS: L2-L5 LCS+left L2-L3 PID

SURGERY PERFORMED: L2-L5 laminectomy+medical
facetectomy+ left L2-L3 Dx

TREATING SURGEON: Dr. S.Y. Bhojraj

ANAESTHETIST: Dr. S.S. Bhojraj

PRESENTING COMPLAINTS AND MEDICAL HISTORY:

Mr. Anil Kak is 68-year-old male patient came to our hospital with complaints of LBP with left lower limb radiculopathy since around 3 years, increased recently. Tingling, numbness+, claudication+
No bowel or bladder involvement.

No history of lifting heavy weight or trauma to back.

SIGNIFICANT PAST HISTORY: Known case of DM”

and local examination conducted then states to the effect:-

“LOCAL EXAMINATION

Spine

Movements: Painful in all planes

.....”

The surgery was performed on 29.02.2016

35. The certificate of the Spine Clinic of the Consultant Spine Surgeon, Dr. S.Y. Bhojraj is dated 11.06.2016 states to the effect:-

“

11.06.2016

TO WHOMSOEVER IT MAY CONCERN

This is to certify that Mr. Anil Kak was admitted in Breach Candy Hospital **on an emergency basis on 28.02.2016** with the diagnosis of L2-L5 lumbar canal stenosis and L2-L3 prolapsed intervertebral disc and **was operated on 29.02.2016**

Kindly do the needful.

Regards

”

(emphasis supplied)

36. It is thus apparent that the requirement of the Para-38 of the ECHS: SOP for Online Bill processing was clearly not complied with by the applicant.

• TREATMENT OF THE APPLICANT’S WIFE

37. The applicant’s wife was unrefutedly admitted to the Breach Candy Hospital, Mumbai on 04.04.2016 and was discharged on

16.04.2016. The discharge summary qua the applicant's wife issued by the Breach Candy Hospital, Mumbai dated 16.04.2016 *inter alia* states as under:

“

Discharge Summary

FINAL DIAGNOSIS: Right breast carcinoma

SURGERY PERFORMED: Right breast wire localization+ Wide local excision+ Radiological confirmation + Frozen section+ Sentinal and perisentinel lymph node excision on 05.04.2016

PRESENTING COMPLAINTS AND MEDICAL HISTORY:

The patient is a K/c/o DM. Patient noticed lump in right breast since 1 year. Patient had under went right lump excision in March 1999. On investigating further: Mammography: Cluster of coarse calcifications are noticed in right breast. Multiple tiny simple cysts in both breasts. Dilated ducts noted in both subareolar regions BiRADs: '2'. HP report of right breast mass: Invasive Ductal carcinoma- Grade II of Modified Bloom Richardson Classification IHC assessment : ER, PR +ve, Herceptin test: Weak positive and Ki-67 Positive

Now admitted for further management via surgical intervention.

SIGNIFICANT PAST HISTORY: K/c/o DM on insulin and tablets

Past surgical history of Appendicectomy, Tonsillectomy,
Cholecystectomy Laparotomy for ovarian cysts

FAMILY HISTORY: Breast Cancer ”

and details of surgery performed as under:-

“SURGERY PERFORMED: *Right breast wire localization+ Wide local excision+ Radiological confirmation + Frozen section+ Sentinal and perisentinel lymph node excision on 05.04.2016”*

38. The applicant has further placed on record the certificate issued by Dr. Vinay Deshmane, Consultant in Surgical Oncology & Breast diseases, Breach Candy Hospital Trust, Mumbai which states to the effect:-

“ BREACH CANDY HOSPITAL TRUST

/6/16 TO WHOM IT MAY CONCERN

(Gangesh Kak)

1. Mrs. G. Kak is under my care for his breast cancer. It was accidentally detected in March 2016 and underwent immediate surgery following investigation on 05.04.2016

2. She now requires to undergo Adjuvant Radiation therepy to the breast. The approximate cost for the same will be 1.75 lacs onlyh, at the Hinduja Hospital under Dr. Kanan. ”

39. It is apparent that the requirement of Para-38 of the ECHS: SOP for Online Bill processing was clearly not complied with for the surgery of the applicant's wife also.

40. Be that as it may be, the applicant and his beneficiary wife are entitled to medical treatment as per the ECHS rates. Even ordinarily, the treatment and the reimbursement for such treatment is a right of the applicant and his wife, as is well settled in terms of the verdict of the Hon'ble Supreme Court in **Shiva Kant Jha** as laid down vide Paras-13 and 14 thereof which read to the effect:-

"13) It is a settled legal position that the Government employee during his life time 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. Speciality Hospitals are established for treatment of specified ailments and services of Doctors specialized in a discipline are availed by patients only to ensure proper, required and safe treatment. Can it be said that taking treatment in Speciality 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 officials of the CGHS have denied the grant of medical reimbursement in full to the petitioner forcing him to approach this Court.

14) 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 Central Government Health Scheme (CGHS) was propounded with a purpose of providing health facility scheme to the central government employees 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 writ petitioner was admitted in the above said hospitals in emergency conditions. Moreover, 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. The doctors did his operation and had implanted CRT-D device and have done so as one essential and timely. Though it is the claim of the respondent-State that the rates were exorbitant whereas the rates charged for such facility shall be only at the CGHS rates and that too after following a proper procedure given in the Circulars issued on time to time by the concerned Ministry, it also cannot be denied that the petitioner was taken to hospital under emergency conditions for survival of his life which requirement was above the sanctions and treatment in empanelled hospitals.”

41. The contention thus raised by the respondents on 07.04.2025 already adverted to hereinabove, that in as much as the emergency certificate and Emergency Information Report had not been submitted by the applicant, there can be no payment at all to the applicant, can at the most relate only to reimbursement of actual expenses undergone by the applicant and his wife at a non-empanelled hospital without the submission of the Emergency Information Report but the same

cannot take away the right of the applicant and his wife to be reimbursed for the medical treatment undergone by them at ECHS rates.

42. The factum that the respondents have reimbursed the applicant for the Radiotherapy treatment of the applicant's wife as indicated vide letter dated 15.11.2016 indicates clearly that the applicant's wife was suffering from cancer.

43. As per the letter dated 15.11.2016 issued by the respondents bearing no. DO: ECHS/039/Gen dated 15.11.2016, the applicant has been permitted to be reimbursed with the hospital charges as per the CGHS rates qua the radiotherapy treatment of the applicant's wife, as is also so admitted by the respondents vide their counter affidavit vide response to Para-4.8 of the respondents which states to the effect:-

"That the Applicant once had taken prior permission for Radiotherapy Treatment for the wife and the same was granted with effect from 14.09.2016 for five weeks."

44. Significantly though the Prayer-8(b) made by the applicant reads to the effect:-

“(a)

(b) Direct the Respondents to reimburse the Applicant for a sum of Rs.11,69,449/-towards the medical reimbursement and a sum of Rs. 9,29,169/- towards the medical reimbursement of his wife by granting the necessary waiver with further directions to pay the interest at the rate of 12% per annum.

(c) Issue any other order which the Hon'ble Tribunal deems fit as deem appropriate in the facts and circumstances.”,

to state that the applicant be reimbursed by the respondents to the tune of Rs.11,69,449/- towards his medical treatment and the tune of Rs. 9,29,169/- towards the medical treatment of his wife by granting the necessary waiver with further directions to pay the interest at the rate of 12% per annum, vide the averments made in the OA by the applicant, it has been stated by the applicant vide Para-5(n) of the OA to the effect:-

“Thus, the applicant being a Member of ECHS deserves to be accorded the benefits of ECHS at CGHS rates and he must be reimbursed with his rightful dues from ECHS.”

CONCLUSION

45. The applicant as observed hereinabove is entitled to the reimbursement of the medical treatment that he has undergone and that has been undergone by his wife in relation:

- To his hospital stay from 28.02.2016 to 11.03.2016;
- The treatment imparted and the surgery performed of L2-L5 laminectomy + medical facetectomy+ left L2-L3 Dx;
- and is also entitled to the reimbursement of the medical expenses: for the hospitalisation of the applicant's wife for the period from 04.04.2016 to 16.04.2016;and
- for the treatment undergone by her for the surgery performed of Right breast wire localization+ Wide local excision+ Radiological confirmation + Frozen section+ Sentinal and perisentinel lymph node excision on 05.04.2016,

but is so entitled at the ECHS rates only which amount be paid by the respondents to the applicant within a period of two months from the date of this order as per ECHS rates, failing which, the applicant would be entitled to interest @8% per annum on the said amount till the date of payment.

46. The OA 1567/2019 is disposed of accordingly.

Pronounced in the open Court on the 3rd day of September, 2025.

[MS. RASIKA CHAUBE]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/TS/