

COURT No.3
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 2364/2025

NK Ashok Kumar (Retd)

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : Mr. Manoj Kr Gupta, Advocate
For Respondents : Dr. V S Mahndiyan, Advocate with
Ms. Apurva Mahndiyan, Advocate and
Maj Arjun Singh Chauhan, OIC Legal Cell

CORAM

HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER

Invoking the jurisdiction of this Tribunal under Section 14, the applicant has filed this application and the reliefs claimed in Para 8 read as under :

- "A. Direct the Respondents to impart continue treatment to the Applicant's son (including dialysis) for Chronic Kidney Disease, in R&R Hospital, even after completing 25 years, which in discontinued post-retirement of Applicant, as per policy issued by GoI/MoD, Dept. of Ex-servicemen Welfare No.18(77)/2017/WE/D(Res-I) dated 08 July 2020; and/or*
- B. Direct the Respondents to give continuous life-long treatment to the son of the Applicant, under the scheme of ECHS, by declaring him eligible to receive continuous treatment under ECHS even after completion of 25 years of age; and/or*
- C. Direct the respondents to refund the amount spent by the applicant for getting his son treated at his own expenses, consequent upon refusal by the respondents to treat his son after attaining the age of 25 years; and/or Pass such further orders or orders, direction/directions as this Hon'ble Court may deem fit and proper in accordance with law."*

BRIEF FACTS

2. The Applicant is an **Ex-serviceman (ESM)** who served for 18 years in the Indian Army and 17 years in DSC, and also a member of **Ex-Servicemen Contributory Health Scheme (ECHS)**. While in service, his son Dinesh Kumar (DOB: 31.12.1992), was diagnosed with '**Chronic Kidney Disease**' (CKD) in the year 2016 and since then treated in service hospital. His son suffered kidney failure in 2017 and underwent Kidney Transplant on 03.03.2017, wherein his mother donated her kidney. Unfortunately, the kidney transplant failed and later both his kidneys stopped functioning. Due to renal failure applicant's son requires regular dialysis/hospitalization. Burdened with financial crisis and unable to afford the treatment of his son in his meagre pension, the applicant has filed the present Original Application for continuation of treatment of his son in R&R hospital through ECHS.

CONTENTIONS OF THE PARTIES

3. Learned Counsel for the applicant submitted that the Applicant's son completed 25 years of age on 31.12.2017, however the treatment of the applicant's son continued in the service hospital till retirement of the applicant i.e., 28.02.2022, and even beyond that on humanitarian ground. The treatment of applicant's son was thereafter discontinued and the applicant was informed that his son is not entitled for further treatment having completed 25 years of age and as kidney disease is not covered under ECHS Scheme/ **Rights of Persons with Disabilities (PWD Act, 2016)**. As a result of complete renal failure,

applicant's son requires dialysis twice a week along with other medical tests, the costs of which, is beyond applicant's means.

4. Learned counsel has placed reliance on the judgment of the Hon'ble Punjab & Haryana High Court, Chandigarh in *Harteg Singh & Anr v. Union of India & Ors* [Civil Writ Petition No. 12658 of 2017], wherein the respondents were directed to continue treatment of the petitioner lifelong under the ECHS scheme. He further submitted that similar issue has been dealt by AFT (RB) Mumbai in *Siyaram Chaudhary v. UOI & others* [OA No. 76/2021] and AFT(RB) Lucknow in *Gurbaksh Singh Kanwal v. UOI & others* [OA No. 58/2019].

5. *Per contra* stand of learned counsel for the respondents is that *vide* Government of India MoD letter dated 8.07.2020 benefits of ECHS facilities is also extended to unmarried, disabled and financially dependent son(s) of ECHS beneficiary post 25 years of age, suffering 40% or more of one or more disability as specified under PWD Act, 2016, however in the 21 disabilities included in the list (said list) under PWD Act, 2016, kidney disease is not one of them. It is stated that despite applicant's son attaining the age of 25 years in December 2017, his treatment was continued till March 2023, on compassionate and humanitarian ground, though he was not entitled.

ANALYSIS

6. Heard learned counsel for the parties and perused the material available on record.

7. It is settled legal position that a government employee during his life time and after his retirement is entitled to get the medical facilities and no fetters can be placed on his right. ECHS was set up for the purpose of providing medical care to Ex-servicemen and their dependent family so that they are cared for even after retirement. To extend the benefit of ECHS facility to only select few and not to other similarly situated persons who may be suffering from life threatening disease is wholly discriminatory, illegal and violative of Articles 14 & 21 of the Constitution of India.

8. In the present case, the applicant and his family, which includes his wife, a daughter of marriageable age and a son who is permanently disabled are all solely dependent on his service pension which is around Rs.34,300/- per month. In such compelling situation the son of the applicant cannot be left to die due to bar on life-long medical treatment through ECHS for an over 25 years of age son on the ground that the disease is not included in the list of diseases promulgated in the PWD Act, 2016, nor can we let the applicant reduce to a state of penury for the sake of saving his son's life.

9. In *Confederation of Ex-Servicemen Assns. v. Union of India*, (2006) 8 SCC 399, the Hon'ble Supreme Court has held that right to medication is a fundamental right of all citizens including Ex-servicemen and their family guaranteed under Article 21 of the Constitution of India.

10. In the case of *Harteg Singh & Another v. Union of India & Ors* [Civil Writ Petition No. 12658 of 2017], the Hon'ble Punjab & Haryana High court, Chandigarh has held as under:

"9. The ECHS was authorized by the Government of India, Ministry of Defence, letter dated December 30, 2002 (Annexure P-2) and the paragraph of the scheme states that son with lifelong medical disability will be eligible for lifelong medical treatment. The relevant part of the same is reproduced as under:-

"The Scheme would cater for medicare of all Ex servicemen in receipt of pension including disability pension and family pensioners, as also dependents to include wife/husband, legitimate children and wholly dependent parents. The son with permanent disability of any kind (physical or mental) of entitled category of ECHS would be eligible for lifelong facility of medical treatment."

*11. The law cannot be changed retrospectively other than by legislative action and even if the legislature may have the power to legislate retrospective laws, the same cannot be taken away the accrued rights. In the instant case, respondents have attempted to tacitly extinguish the rights of petitioners in a retrospective manner and that too, through an administrative action which is clearly impermissible in law. The Apex Court in *Ex-Major N.C. Singhal vs. Director General, Armed Forces Medical Services, New Delhi & another*, (1972) 4 SCC 765, has held that conditions of services cannot be altered or modified to prejudice an employee/ retiree by a subsequent administrative instruction having retrospective effect.*

12. In the light of what has been discussed above, instant petitions are allowed. Impugned orders/letters dated January 18, 2015 (Annexure P-11) and January 02, 2017 (Annexure P-10) are set aside and the respondents are directed to continue the treatment of petitioners and extend all the benefits to them in the light of Lifelong Medical Facilities as per ECHS dated December 30, 2002 (Annexure P-2) and Clarification dated December 18, 2007 (AnnexureP-3)."

11. Furthermore, in *State of Punjab v. Mohinder Singh Chawla*, (1997) 2 SCC 83, the Hon'ble Supreme Court has held as under:

“It is now settled law that right to health is integral to the right to life. Government has a constitutional obligation to provide health facilities. If the government servant has suffered an ailment which requires treatment at a specialised approved hospital and on reference whereat the government servant had undergone such treatment therein, it is but the duty of the State to bear the expenditure incurred by the government servant. Expenditure, thus, incurred requires to be reimbursed by the State to the employee. The High Court was, therefore, right in giving direction to reimburse the expenses incurred towards room rent by the respondent during his stay in the hospital as an in-patient.”

12. In the present case even if the disease with which applicant's son is suffering is not included in the list of diseases under PWD Act, 2016, but considering that he is suffering from CKD since 2016 and had been provided treatment till March 2023 for the same disease irrespective that he had attained the age of 25 years in 2017, his treatment ought not to have stopped by the respondents in the name of disease not been included in the list of PWD Act, 2016.

13. The AFT(RB) Mumbai in the case of *Siyaram Chaudhary v. UOI & others* [OA No. 76/2021], directed the respondents to continue life-long treatment of the applicant's son even after crossing 25 years of age who is suffering from renal disease, and also directed to refund the amount to applicant incurred for treatment/dialysis of applicant's son in private hospital. Relevant extracts of the order are reproduced as under:

“11. We find that both kidneys of the applicant's son are not functioning and a kidney, donated by the applicant to his son which was transplanted in Naval Hospital, INHS Asvini in the year 2017 has also failed and his son

is continuously on dialysis thrice a week due to 'End Stage Renal Disease'. The son of the applicant who is unmarried and over 25 years of age is totally dependent on his father who is getting a monthly pension of Rs. 21,000/- only and treatment/dialysis expenses of his son is around Rs. 34,000/- per month which is evident from para 4.20 of the Original Application. In such a compelling situation, applicant's son cannot be left to die due to bar on lifelong medical facilities/treatment through ECHS for a over 25 years of age son on the ground that renal disease is not in the list of disabilities promulgated in the PWD Act, 2016 and citing shortage of ECHS funds. When a young life is at stake the organization cannot look the other way and allow the father to be reduced to a state of penury, for the sake of saving his son's life.

12. We also find that son of the applicant has completed 25 years of age as on 25.02.2021 and he is no longer entitled for ECHS facility for his Kidney disease/dialysis in accordance with para 6 & 7 of Govt. of India, Ministry of Defence, Department of Ex-Servicemen Welfare letter dated 05.12.2017 as defined in Section 2(i) of Persons with Disability (Equal Opportunities Protection of Rights and Full Participation) Act, 1995 and Section 2 of National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability Act, 1999, as Renal disorder from which the applicant is suffering is not listed in the disabilities covered under the aforesaid Acts of 1995 and 1999 and GOI, MOD letter dated 18.09.2018 but in view of decision of the Hon'ble High Court of Punjab and Haryana, Chandigarh in Harteg Singh & Another (supra) and taking a lenient view, applicant is held entitled for lifelong treatment of his chronic renal disease even after 25 years of age through ECHS.

13. In view of judgments of the Hon'ble Apex Court in Sqn Ldr (Retd) R.V. Nathan vs. Union of India & Ors in Writ Petition No. 54482/2014 dated 08.07.2019, an amount of Rs.33,919/- incurred on account of dialysis, the medical facility which was not provided by the dependent ECHS Polyclinic to applicant's son, is liable to be refunded to the applicant.

14. In view of above, Original Application is allowed. The respondents are directed to continue lifelong treatment of the applicant even after crossing 25 years of age who is suffering from chronic renal disease. The respondents are also directed to refund Rs.33,919/- to the applicant which was incurred for treatment/dialysis of applicant's son in private hospital due to non availability of facility in dependent ECHS Polyclinic/Military Hospital. The Respondents are directed to comply with the order within a period of four months from the date of receipt of

certified copy of the order. Default will invite interest @ 8% per annum till actual payment.”

Further, in para 15 of the same order, it has been observed:

“15. Keeping in view the necessity and gravity of renal diseases, the respondents are also directed to take up case with competent authority to consider enlistment of more disabilities, for example renal disorder, and other chronic diseases which are not covered within the list of 21 disabilities given in Govt. of India, Ministry of Defence letter dated 18.09.2018 and PWD Act, 2016 so that Ex-servicemen are not compelled to leave their dependents at the mercy of the almighty, due to bar on lifelong medical facilities to unmarried and dependent children over 25 years of age, through ECHS. Further, considering the high cost of such treatment (i.e. renal failure), the respondents are directed to provide additional budget to ECHS for treatment in this case, and on no account shall treatment be discontinued citing budgetary constraints.”

We have been informed that despite such clear direction, no steps have been taken by the respondent to consider including more disabilities which require life-long treatment in the list of 21 disabilities given in Government of India, MoD letter dated 18.09.2018 and PWD Act, 2016.

14. The AFT (RB) Lucknow while dealing with ECHS matter in the case of *Ex Sgt AK Das Vs Union of India* [O.A. No 86 of 2018] decided on 22.12.2021, appreciating the sacrifice of soldiers for the nation, observed as under:-

“26. A soldier renders valuable services to the nation while in service. Soldiers serve the nation during their youth, subjecting their lives to high risk and dangers. As a mark of respect and gratitude, therefore, they must at the very least be assured of reliable medical care after retirement. It is indeed true that men and women in uniform are the pride of the nation and protectors of the country's sovereignty. It is because of their eternal

vigil that ordinary citizens are able to sleep peacefully every night, for it is these men and women guarding the frontiers of our nation that makes our nation safe. It would be appropriate to quote here an epitaph from the Kohima War Cemetery which conveys eloquently that our soldiers, sailors and airmen are cheerfully willing to sacrifice their lives; 'when you go home, Tell them for us, for your tomorrow, we gave our today'. It has been observed that during war and serious situations, defence personnel are remembered but as soon as the grave situation is past, they are forgotten and ignored, We are reminded what Francis Quarrels said; "Our Gods and Soldiers we alike adore, At the time of danger, not before; After deliverance both are alike requited, Our Gods forgotten and our Soldiers slighted."

15. It is essential to observe that *vide* Government of India, MoD letter dated 08.07.2020, an artificial distinction is created between permanent disabled and financial dependent son(s) post 25 years of age of ECHS beneficiary who are included in the said list and those similarly situated dependents of ECHS beneficiary but in requirement of life-long medical treatment. There is no rationale for not including the other chronic disease like renal failure and CKD which require life-long treatment, in the said list.

16. We are of the opinion that medical aid to members of ECHS and their dependent family members cannot be denied on the technical reason that a condition is not included in the said list. A direction, therefore, needs to be issued/given to the Government of India to also include other chronic diseases, such as CKD, which require life-long medical treatment/facilities, in the said list of diseases under the PWD Act, 2016.

17. It is also essential to rely on the observation of the AFT(RB) Lucknow in the case of *Hav Awdhesh Kumar vs. Union of India* [O.A. No 86 of 2018] wherein the OA was allowed with following observations:

“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 hat 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.”

18. While the above orders in *Siyaram Chaudhary v. UOI & others* [OA No. 76/2021] and *Hav Awdhesh Kumar vs. Union of India* [O.A. No 86 of 2018] have been passed with explicit direction not to be quoted as precedent, in the interest of justice we consider it appropriate to pass orders on similar terms as under :-

- (a) The respondents are directed to continue treatment of the son of the applicant for life from the date of pronouncement of this order under the ECHS scheme.
- (b) The respondents are directed to take action as per para 15 of the order in *Siyaram Chaudhary v. UOI & others* [OA No. 76/2021].

19. In view of above, Original Application is partly allowed. The Respondents are directed to comply with the order with immediate effect on receipt of a certified copy of the order.


20. The treatment of chronic renal disease through ECHS is extended to the applicant in the instant Original Application as an exceptional case.

21. Pending Miscellaneous Application(s), if any, shall stand disposed of.

Pronounced in open Court on 16th day of December, 2025.

(JUSTICE NANDITA DUBEY)

MEMBER (J)


(LT GEN C.P. MOHANTY)

MEMBER (A)

/SJ/