

issue

COURT NO. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

102. Part Heard

OA 544/2024

Smt Man Birti Devi Wd/o Applicant
Nb Sub Hari Dayal Singh
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Manoj Kumar Gupta, Advocate
For Respondents : Ms. Jyotsna Kaushik, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER
19.03.2025

The applicant – widow of Nb Sub Hari Dayal Singh invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2008, has prayed for the following reliefs:-

- "A. *Issue an order or direction of appropriate nature to the respondent to process and pay the medical claim reimbursement to the tune of Rs.12 lacs (approx.) or any lesser amount as admissible w.e.f. 01 Jan 2023 till death of beneficiary on 11 Jan 2023 in terms of bills submitted vide application dated 30 Jan 2023 (Annex A2/Colly) and/or*
- B. *Appropriate direction to the respondents to disclose the reason why applicant's spouse made to run from pillar to post to get her entitled medical expenditure which is pending since Jan 2023 and requisite*

compensation with cost of litigation to paid accordingly; and/or

C. To pass such further orders or directions as this Hon'ble AFT may deem fit and proper in accordance with law and in the interest of justice."

2. Late Nb Sub Hari Dayal Singh was enrolled in the Indian Army on 20th July, 1971 and after serving for about 24 years retired from service on 31st July, 1995.

3. It is the case of the applicant that her husband was drawing Fixed Medical Allowance (FMA) to meet the medical needs of the family. ECHS Scheme was introduced on 30th December, 2002 and had to be opted for. The applicant has averred that due to sudden chest pain on 27th December, 2022, her late husband was admitted as a emergency case in Paras Hospital, Patna and when she sought ECHS referral for cashless treatment, she came to know that it could not be granted as her late husband was drawing FMA and had not opted for ECHS. As contended, on coming to know the fact that unless the FMA is stopped, she would not get the ECHS card, on a request made the FMA was got stopped from 1st January, 2023. Thereafter, as stated, her late husband applied for issue of ECHS card on 1st January, 2023; a referral slip was, however, generated on 11th January, 2023 and by this time a sum of Rs.12 lacs (Approx) was spent on the treatment of her late husband. It is submitted that unfortunately

on the same day i.e. 11th January, 2023 her husband passed away. Thereafter she submitted the medical bills for reimbursement to the ECHS which were not cleared on the ground that on the day of admission into the Hospital, i.e., 27th December, 2022, her late husband was not a member of ECHS and was drawing FMA.

4. Respondents in their counter affidavit have contended that prior to availing/applying for ECHS card to take benefit of cashless medical facilities, the ex-serviceman had to forego his claim of FMA and the same was required to be stopped. The respondents do not disprove that FMA in respect of late Nb Sub Hari Dayal Singh was stopped from 1st January, 2023.

5. We have heard learned counsel for the parties and have perused the documents available on record.

6. The FMA was designed to help pensioners to access necessary OPD facilities to meet their basic day to day medical expenses that don't require hospitalization and overnight stay. A pensioner getting FMA, when needed intensive medical attention, surgery or continuous monitoring that cannot be managed through OPD visits could take treatment in a service hospital as an IPD patient for any medical emergency.

7. With an aim to provide quality medical care to ex-servicemen and their dependents the Government of India, Ministry of Defence vide their letter No.22(1)/01/US/D(Res) dated 30th December, 2002 introduced Ex-servicemen

Contributory Health Scheme (ECHS) through a network of ECHS Polyclinics, service medical facilities, Government Hospitals and empanelled private hospitals, however, before the introduction of this scheme the ex-servicemen were entitled for treatment from service hospitals.

8. The subscription for ECHS, which is a onetime contribution, varies as per rank of the ex-serviceman based on monthly pension excluding DA with concession to pre 31st March, 2003 retirees to pay in three consecutive equal yearly installments whereas all pre 1996 retirees had been exempted from any contribution.

9. There is no denial of the fact that Late Nb Sub Hari Dayal Singh was in receipt of FMA every month. The scheme of FMA is available to such government employees who live in far off places where the facility of ECHS dispensary is hardly available. Though, with the introduction of ECHS scheme in April 2003, an option was available to the applicant's husband to opt under the scheme, however, may be due to lack of knowledge, location disadvantage or ignorance of the existence of such a scheme he may not have opted for the same.

10. To deny the claim of the applicant, the respondents in their counter affidavit have submitted that no claim prior to 11th January, 2023, the date of generation of referral slip, can be entertained. We may, however, note that the respondents have

admitted in the counter affidavit that the FMA being received by the applicant's husband was stopped from 1st January, 2023 and immediately thereafter on the same day the applicant's husband submitted the application for issue of ECHS card. The delay in issue or processing of ECHS card was on the part of the respondents for which the applicant or her husband cannot be held responsible. Had this procedural delay been avoided and had the respondents issued the ECHS card on the day application was submitted, i.e, 1st January, 2023, the situation would have been all different. It is a well settled legal position that the government employee during his lifetime or after his superannuation is entitled to medical treatment/facilities and there can be no fetters on his rights. Even if the applicant's husband was being paid FMA, which, as is evident from the record, is a very meager amount only to be used for day to day OPD facilities; he is eligible for IPD treatment at Government cost.

12. The applicant has already lost her husband and she cannot be left to suffer on financial count as well by denying her the reimbursement of the amount spent on the treatment of her late husband. ECHS in their letter No. B/49701-PR/Gen/AG/ECHS dated 4th September, 2023 have admitted that the applicant's husband became a member of ECHS from 11th January, 2023. However, in our view, since he forfeited FMA entitlement and applied for ECHS on 1st January, 2023, he should be deemed

transferred to ECHS immediately on 1st January, 2023 since it is the Government's intent to ensure that a Government employee is covered for medical treatment at any given point of time. The respondents in the present case have taken a very insensitive approach by denying medical reimbursement to the applicant. The respondents cannot in a mechanical manner deprive an employee of his/her legitimate reimbursement of medical bills.

13. We, therefore, are of the considered opinion that from the day FMA was stopped and the applicant, through her husband, applied for issue of ECHS card on 1st January, 2023, she is entitled to reimbursement of all money spent on her husband's treatment at Paras Hospital, Patna.

14. So far as reimbursement of money spent from 27th December, 2022 to 31st December, 2022 is concerned, since the applicant remained admitted in the hospital for the treatment continuously from 27th December, 2022 till 11th January, 2023, the day applicant's husband died and a single bill has been generated, we hold that the applicant is entitled to reimbursement of all hospital expenses spent between the period 27th December, 2022 to 31st December, 2022.

15. In view of the facts and circumstances of the present case, we hold that the applicant is entitled to reimbursement of the admissible amount incurred on the treatment of her late husband between the period 27th December, 2022 to 11th January, 2023,

within three months from the date of receipt of a copy of this order.

16. The OA is allowed in above terms. We may, however, state that this order is being passed in view of the peculiar facts of this case and, therefore shall not be taken as a precedent.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[RASIKA CHAUBE]
MEMBER (A)

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