

ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI

ORIGINAL APPLICATION No. 83 of 2015

Service No. 261423 Ex JWO Shri Rajnish Kumar Maria, Occ.- Ex-Serviceman (Air Force), B-201, Landmark Garden Society, Near Bishop School, Kalyaninagar, Pune, Pin- 411006 (Maharashtra).

.. Applicant

Versus

1. Union of India, Ministry of Defence, South Block, P.O. DHQ, New Delhi-110011.
2. Central Organization ECHS (MD ECHS), Adjutant General's Branch, Integrated HQ of MoD (Army), Maude Lines, Delhi Cantt-110010.
3. Regional Centre ECHS, Pune, Pin-900449, C/o. 56 APO, Pune-01.

.. Respondents

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 Ld. Counsel for the : **Shri M. V. Chavan**, Advocate
 Applicant

Ld. Counsel for the : **Shri A. J. Mishra**, Advocate
 Respondents. Central Govt. Counsel

**CORAM : SHAILENDRA SHUKLA, MEMBER (J) AND
VICE ADMIRAL ABHAY RAGHUNATH KARVE,
MEMBER (A)**

Judgment reserved on : 04.01.2023

Judgment pronounced on : 31.01.2023

JUDGMENT (Per Shailendra Shukla, J.)

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the following reliefs have been sought:-

- “a. The impugned order passed by ECHS office is to be set aside.*
- b. Medical claim of Rs.45,25,432.00 (In words – Rs. Forty Five Lakh Twenty Five Thousand Four Hundred Thirty Two Only) to applicant please be granted.*
- c. The Applicant be compensated for the wrongs & sufferings committed upon him.*
- d. Interest @18% be granted to Applicant over and above dues from the Respondent/s.*
- e. The applicant may pleas be allowed to add, amend or alter the application, if and when required.*
- f. Any other just and equitable relief please be passed in favour of applicant.”*

2. Facts of the case in narrow compass are that the applicant was enrolled in Indian Air Force on 16.12.1963 and completed his tenure of service on 31.12.1984. After retirement, the applicant was enrolled as life member of ECHS Scheme to avail of reimbursement of medical expenses. The ECHS number of the applicant is PN0019020. On 30.10.2013, the applicant along with his wife visited Hongkong to meet his daughter and her family. During the course of stay at Hongkong, the

wife of the applicant suffered from heart attack on the night of 19.12.2013. She was immediately admitted in hospital, namely, Adventist Health-Hongkong Adventist Hospital. She was diagnosed with triple heart blockages and required multiple angioplasties. This procedure was conducted twice i.e. on 19.12.2013 and 23.12.2013. The applicant and his family incurred expenses to the tune of Rs.45,25,432/- (Forty Five Lakh Twenty Five Thousand Four Hundreds Thirty Two only). The applicant communicated the same to Group Captain Visvanath of ECHS, Lohegaon, Pune on 20.12.2013 telephonically. On returning from Hongkong, the applicant approached ECHS office and submitted proposal for reimbursement of medical claim where he was allotted claim ID No. 1318768. The claim was subsequently rejected vide order dated 05.02.2015 stating that “instant facility of emergency treatment outside India is not available/applicable in ECHS”.

3. The applicant submits that it was inappropriate on the part of ECHS to deny the claim of applicant as the treatment in Hongkong had become imminent because of emergency and life saving procedure was required to be performed immediately. However, the impugned order shows lack of prudence and apathy towards the applicant. The principle of natural justice and fair play was not considered by the ECHS office in

rejecting the claim. In such circumstances, the claimant has sought relief(s) mentioned earlier.

4. In reply, the respondents have stated that the ECHS Scheme is applicable within the geographical limits of the country and cost of the treatment even though obtained under emergency shall not be reimbursable. On these grounds the claim application has been sought to be rejected.

5. The question for consideration is whether the applicant is entitled to reimbursement of the expenses incurred by the applicant from ECHS when treatment of wife in an emergency was obtained outside geographical limits of India.

6. The Ld. Counsel for the applicant has submitted that medical condition of his wife arose suddenly when the applicant and his family had gone to Hongkong. It was not as if the applicant had already planned for such medical treatment in Hongkong only. The wife of the applicant suffered from heart attack in Hongkong and therefore there was no other alternative but to undergo medical procedure in a hospital in Hongkong only and in such emergency situation, the applicant was entitled for reimbursement irrespective of the fact that treatment was obtained abroad.

7. Ld. Counsel for the applicant has relied upon the order in the case of **Brig (Retd) TS Sekhon Vs. Union of India & Ors** dated 28.02.2011 passed in O. A. No. 744 of 2010 by Armed Forces Tribunal, Chandigarh and the judgment of Apex Court in the case of **Surjit Singh Vs. State of Punjab and Ors**, AIR 1996 SC 1388.

8. On the other hand, Ld Counsel for the respondents has submitted that the only facility for member of ECHS Scheme is that in case of non-military station, the ex-serviceman and his dependent will be referred to the nearest service hospital, or empanelled hospital, by Medical Officer of ECHS Polyclinic and in case the admission has been made in non-empanelled hospital, the ex-serviceman shall inform nearest polyclinic within 48 hours of such admission and thereafter an Emergency Information Report (EIR) shall be initiated. The Ld Counsel submits that as per ECHS Scheme, sick dependents of a member can be admitted to empanelled/non empanelled hospitals situated within India only and not abroad.

9. Heard.

10. As per the facts of **Surjit Singh** (supra), the claimant being Government Officer, Dy. Superintendent of Police (DSP), fell sick due to heart problem when he went to England. He was operated upon in a

hospital in London and he made a claim for reimbursement. The State showed inclination to reimburse an amount payable by AIIMS, New Delhi which was barely Rs.40,000/-. High Court accepted the same, allowed reimbursement to the tune of Rs.40,000/-. The claimant unsatisfied, challenged the order of High Court, seeking the payment as per empanelled specialty hospital of Escorts. The Hon'ble Supreme Court considered policy regarding medical reimbursement prevalent in State of Punjab which provided for reimbursement of medical expenses incurred on treatment taken abroad and as per this policy if a person obtains treatment abroad, then medical expenses shall be incurred to the extent as would be incurred in empanelled private hospital provided such medical procedure is not possible in any State Government Hospital. It was concluded that Escorts Hospital was empanelled hospital and there was no Government hospital in the State of Punjab where specialized treatment of heart ailment was available and therefore, claimant was entitled to such reimbursement which would have been incurred if claimant was admitted in Escorts Hospital.

11. A perusal of the aforesaid judgment shows that the medical reimbursement policy of the State Government of Punjab did provide for treatment from empanelled private hospital and also provided for reimbursement in case of medical expenses incurred abroad, whereas in

ECHS Scheme, there is no provision for reimbursement if treatment has been obtained in a foreign country.

12. Treatment abroad is possible only under Central Services (Medical Attendance) Rules 1944 as per which an approval of Standing Committee headed by the Director General of Medical Health Services certifies that such a treatment is not available in India. This is the distinguishing feature between CGHS scheme and medical reimbursement policy of Punjab State Government (reflected in case of Surjit Singh).

13. In case of **Brig. (Retd), T.S. Sekhon** (supra), petitioner was retired Brigadier who had already undergone heart procedure in India, which involved implanted device in his heart, to regulate his heart rate. When the petitioner visited his daughter in Germany that device malfunctioned and being an old heart patient electric wires of the device could only be removed by laser procedure and this treatment was not available in India and therefore, the petitioner was entitled for reimbursement for a treatment incurred in Germany.

14. This citation is also of no help to petitioner. The treatment which he received was not available in India, whereas in the case in hand, the treatment of angioplasty was available in India and therefore, provisions of ECHS scheme would not entitle the claimant for reimbursement.

15. Thus, on the face of it, no impropriety seems to have been committed by the respondent(s). However, there appears to be substance in the argument of petitioner that such treatment which became necessary under emergency situation ought to have been considered by the respondent.

16. It would be appropriate to reproduce excerpts from the judgment of **Surjit Singh** (supra) which emphasize that preservation of one's life is the necessary concomitant of the right to life. The excerpts is as under :-

"It is otherwise important to bear in mind that self preservation of one's life is the necessary concomitant of the right to life enshrined in [Article 21](#) of the constitution of India, fundamental in nature, sacred, precious and inviolable. The importance and validity of the duty and right to self-preservation has a species in the right of self defence in criminal law. Centuries ago thinkers of this Great Land conceived of such right and recognised it. Attention can usefully be drawn to verses 17, 18, 20, and 22 in Chapter 16 of the Garuda Purana (A Dialogue suggested between the Divine and Garuda, the bird) in the words of the Divine:

Vinaa dehena kasyaapi Without the body how can one can purushaartho na obtain the objects of human vidyate Tasmaaddeham life? Therefore protecting the dhanam rakshet punyakar- body which is the wealth, one maani saadhayet should perform the deeds of merit.

Rakshayetsarvadaatmaanamaatmaa One should protect his body sarvasya bhaajanam Rakshane which is responsible for yatnamaatishthejje everything. He who protects vanbhaadraani pashyati himself by all efforts, will see many auspicious occasions in life.

Sharirarakshanopaayaah The wise always undertake Kriyante sarvadaa the protective measures budhaih

Necchanti cha for the body. Even the punastyaagamapi persons suffering from kushthaadiroginah leprosy and other diseases do not wish to get rid of the body

Aatmaiva yadi naatmaanama If one does not prevent what hitebhyo nivaarayet is unpleasent to himself, Konsyo hitakarastasmaa- who else will do it? daatmaanam taarayishyati Therefore one should do what is good to himself.

The appellant therefore had the right to take steps in self preservation”.

17. There is nothing on record to show that the petitioner had planned his operation abroad. It has not been denied by respondents that an emergency did arise and medical procedure of angioplasty had become immediately necessary.

18. Although such an eventuality has not been considered in the scheme of ECHS, yet the applicant should not be made to suffer because of absence of such consideration in the ECHS policy. Hence, we are of the opinion that ends of justice would be met if guidelines are incorporated in the ECHS scheme providing for reimbursement in case of emergency situation when treatment becomes inescapable in a foreign country. We would appreciate if the benefit of such guidelines are given to the applicant in this case and the quantum of reimbursement may be capped taking guidance of the case of **Surjit Singh** (supra). A copy of this order be provided to the respondents for consideration accordingly and for decision expeditiously.

19. Application stands disposed of in aforesaid terms.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Shailendra Shukla)
Member (J)

Amk/Vks