

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.161 of 2013

Monday, the 15th day of December 2014THE HONOURABLE JUSTICE V. PERIYA KARUPPIAH
(MEMBER - JUDICIAL)

AND

THE HONOURABLE LT GEN K. SURENDRA NATH
(MEMBER – ADMINISTRATIVE)

1. JC 105957-X Sub Hariharan Nambi
S/o Late G.Hariharan
aged 65 years, R/o 62 NH Colony
Perumalpuram, Tirunelveli
Tamil Nadu 627007.*(Since deceased)*

2. N. Bagirathy,
W/o Late JC 105957-X
Sub Hariharan Nambi
aged 60 years, R/o 62, NH Colony
Perumalpuram, Tirunelveli
Tamil Nadu 627007.

3. Manikantan Nambi,
S/o Late JC 105957-X
Sub Hariharan Nambi
aged 26 years, Permanent R/o 62
NH Colony, Perumalpuram,
Tirunelveli, Tamil Nadu 627 007.

4. N. Parvathi, W/o S. Anandhan
D/o Late JC 105957-X
Sub Hariharan Nambi
aged 35 years, Permanent R/o 62,
NH Colony, Perumalpuram, Tirunelveli
Tamil Nadu 627007.
*(Applicants-2 to 4 were impleaded
as L.Rs. of 1st applicant by order dt.24.2.2014
in M.A.No.42 of 2014).*

... Applicants

By Legal Practitioner: Ms. Tonifia Miranda

vs.

1. Union of India,
Rep. by its Secretary
Ministry of Defence
New Delhi-110 011.

2. Under Secretary
Dept of Ex-Serviceman Welfare
Ministry of Defence
New Delhi-110 011.

3. Central Organization ECHS
Adjutant General's Branch
Integrated HQ of MOD (Army)
Maude Lines
Delhi Cantonment-10.

4. Addl Directorate General of APS
Pin 908700, C/o 56 APO.

5. The APS Records
Pin 900 746,C/o 56 APO
Kamptee.

6. Regional Centre
ECHS, St Fort
Secretariat, Chennai.

... Respondents/Respondents

By Mr. B.Shanthakumar, SPC

ORDER

(Order of the Tribunal made by
Hon'ble Justice V. Periya Karuppiah, Member(Judicial))

1. The first applicant filed this application to direct the respondents to grant him ECHS benefits with immediate effect, to direct the respondents to issue the first applicant and his wife ECHS benefits that flow from the Ex-servicemen status granted to him on 20.02.2012 by

the Department of Ex-servicemen Welfare Office Memorandum No.1(9)/2010/D (Res-1) dated 20th and 21st July 2011 and 10.04.2013 and to reimburse the medical treatment bills amounting to Rs.50,000/-, to award a compensation of Rs.1,00,000/- for illegal rejection of the benefits of Ex-servicemen status in spite of grant of Ex-Servicemen status, mental stress and strain undergone by them and for the loss of Fixed Medical Allowance due to them.

2. The first applicant was from Indian Postal Service and had served in the Army Postal Service on deputation who died during the pendency of this application. The second applicant is the widow and the applicants-3 and 4 are the children of the first applicant. On the death of the first applicant, the applicants-2 to 4 are entitled to proceed with the claim of the first applicant for enrolling as ECHS members as the first applicant was conferred with ex-servicemen status. For the sake of convenience, the reference as to the first applicant *infra* in our order would denote all the applicants.

3. The factual matrix of the case in the application would be as follows:

The first applicant joined the Indian Postal Service in the year 1968 and was deputed to Army Postal Service from Indian Postal Department, Tamilnadu circle for the period from 13.02.1970 to

29.11.2000. After serving in the Army Postal Service for 30 years 09 months and 16 days, he reported to the Parent Postal Service and retired as Senior Superintendent of Post Offices, Kanyakumari on 31.05.2008. The first applicant was in Class I Cadre of Postal Department at the time of retirement. As per order dated 26.3.2010 in **T.A.No.110 of 2009** by AFT Chandigarh Regional Bench and in **T.A.No.52 of 2009** in the case of **Ex Sub Ajit Singh &Ors. vs. UOI**, the Tribunal issued a direction to the respondents to grant status of Ex-Servicemen status to those who were on deputation in Army Postal Service for more than six months prior to 14.04.1987 and entitling them to all consequential benefits in their favour as per Rules and Regulations applicable in that regard. The Department of Ex-Servicemen Welfare, by an Office Memorandum dated 20/21.07.2011 implemented the order of the AFT Chandigarh Regional Bench. In the said Memorandum, the first applicant had been certified and ratified as Ex-Serviceman with all consequential benefits. The third respondent issued a letter dated 20.03.2012 directing to accept applications for ECHS from those individuals who are ex-servicemen and a Government pensioner. The first applicant submitted an application on 10.05.2012 to Officer Commanding, ECHS Poly Clinic, Palayamkottai, Tirunelveli for medical facilities. Since his application for ECHS benefits was not processed, the first applicant made representations dated 09.07.2012, 14.03.2012 and

20.10.2012 elucidating the case of the first applicant wherein he was granted ex-servicemen status. The first applicant states that he is undergoing dialysis treatment since his kidneys have failed. The first applicant is incurring heavy medical bills and thus imposing financial burden on him. His monthly medical expenditure would be about Rs.25000/-. Due to non-sanction of ECHS Smart Card, the first applicant is undergoing medical treatment in private hospital. His wife is also a severe diabetic patient whose monthly medical expenditure would be about Rs.5000/-. The Department of Ex-servicemen Welfare again issued an Official Memorandum dated 10.04.2013 stating that the personnel who were on deputation in Army Postal Service for more than six months prior to 14.04.1987 would also be considered as ex-servicemen with all consequential benefits. The respondents should compensate the first applicant for the mental hardship, agony, anxiety, undergone by him and therefore, the respondents are liable to pay a sum of Rs.1,00,000/- to the first applicant. The first applicant further states that he was placed in LMC BEE (P) category, but he was not granted any disability pension. The first applicant served in Field areas in Jammu and Kashmir, Nagaland and Arunachal Pradesh for about eight years. The first applicant also prays that the respondents should reimburse the medical treatment bills amounting to Rs.50,000/- due to the denial of the benefits under ECHS scheme and also claiming

Rs.1,00,000/- towards compensation. Therefore for the above reasons, this application may be allowed.

4. The respondents filed a reply-affidavit which would be as follows:

The first applicant was enrolled in Army Postal Service Corps as a deputationist from Department of Posts in the rank of Warrant Officer-II on 13.02.1970 and discharged from "Army Service" in the rank of Sub due to "his promotion to higher rank" with effect from 30.09.2000 with leave pending discharge for 60 days Annual Leave and SOS from Army on 30.11.2000. After discharge from Army service, the first applicant had been repatriated to his parent department, i.e., Department of Posts for continuation of his remaining service till attaining the age of superannuation. No service pension was granted to the first applicant for the service rendered in Army Postal Service Corps. Moreover, although the first applicant was discharged from Army with Medical Category BEE (Pmt), his disability claim was adjudicated by PCDA (P), the pension sanctioning authority, in consultation with Medical Advisor (Pensions) and intimated vide their letter No.G-3/2001/7/VII, dated 08.03.2001 that the disabilities "IHD & NIDDM" are neither attributable to nor aggravated by military service and constitutional in nature. Therefore, it is evident that the first applicant was neither drawing service pension nor disability pension from Army side. The respondents though initially were directed to accept ECHS applications in respect of

the applicants as per T.A.No.110 of 2009 and T.A.No.52 of 2009, but it was varied by cancelling the letter dated 20.03.2012 and clarified that, "as per policy of Government Health Scheme, only one Health Scheme can be subscribed to by a person, thus personnel, who have served on deputation with APS and subsequently drawing pension from Civil Estimates are not eligible for ECHS membership, since these personnel are eligible for CGHS membership". The first applicant had an option either to get Fixed Medical Allowance, revised from time to time, along with their service pension or become CGHS beneficiary by forfeiting Fixed Medical Allowance. The first applicant filed O.A.No.3159 of 2013 before AFT Chandigarh Regional Bench, but no information has been received as to whether the same was withdrawn or not and the first applicant has mentioned this case only to mislead this Hon'ble Tribunal, since his application is pending with AFT Chandigarh Regional Bench. Therefore, the respondents request that this application may be dismissed as not maintainable and devoid of any merit.

5. The first applicant filed Rejoinder which would be as follows:

The respondents are relying on an out-dated office letter dated 30.06.2004 which deals with the eligibility of APS personnel for enrolment into ECHS, but it is superseded by the amendment to the Ex-servicemen (Re-employment in Central Civil Services and Posts) Rules 1979 by Ex-servicemen (Re-employment in Central Civil Services and

Posts) Amendment Rules 2012. In the amended Rules, the Ex-servicemen definition for APS has been clearly laid down. Thus the position on this issue as it existed after letter dated 20th March 2012 was that the APS personnel should fulfill the twin conditions of Ex-Servicemen and Government pensioner to be eligible for ECHS membership. Consequential benefits of Ex-Servicemen must include all benefits enjoyed by all Ex-servicemen on par with all other Armed Forces personnel whether directly proceeded on pension from Army Postal Service or proceeded on pension on repatriation to civil postal department. Such distinction in calling them that they are civil pensioner or military pensioner to make them eligible for this ECHS Scheme is a great dishonour to him since he served in Army Postal Service as a combatant on par with any other army service personnel. The first applicant had not availed any medical allowances, but opted for ECHS. There is no such ban imposed by Government of India for changing from CGHS to ECHS scheme. The only condition is that a person should not enjoy both facilities at a time. Since the first applicant opted for ECHS in Ex-servicemen category, the first applicant had foregone Fixed Medical Allowance FMA before submission of ECHS application. As per GOI MOD Memo dated 20/21 July 2011 which was clarified in the same Memo dated 10.04.2013, the Department of Ex-Servicemen Welfare confirmed that APS personnel who have served in

the Army for more than six months prior to 14.04.1987 are deemed to be Ex-Servicemen. The arbitrary action of the respondents in not granting the relief to the first applicant and issuing the letter dated 19.09.2013 clearly shows that the respondents have not followed the Rules which were promulgated for the welfare of the ex-servicemen. The Ex-servicemen status was granted in recognition of the hard work of the first applicant for the nation. The first applicant had been continuously agitating for his right and he had made numerous representations. The second applicant, viz., wife of the first applicant is without any medical coverage and therefore, the first applicant requests that this application may be allowed.

6. On the above pleadings, the following points emerged for consideration:

(1) Whether the first applicant along with his family members is posthumously entitled for the benefits of ECHS as prayed for?

(2) Whether the respondents are liable to re-imburse the medical treatment bills amounting to Rs.50,000/- incurred by the first applicant and his wife after the submission of ECHS application before the respondents?

(3) Whether the first applicant is entitled for a compensation of Rs.1,00,000/- for the reasons mentioned in the application?

(4) To what reliefs the first applicant is entitled for?

7. We heard the arguments advanced by Mrs. Tonifia Miranda, learned counsel for the applicants and Mr. B.Shanthakumar, learned Senior Panel Counsel at the first instance and thereafter, the arguments of Major Suchithra Chellappan, learned JAG Officer and also Lt. Col D.Ajit Kumar, Joint Director, Regional Centre, ECHS, Chennai for respondents. We have also given our due consideration to the documents produced on either side.

8. The case of the first applicant that he joined the Postal service in the year 1968 and was deputed to Army Postal Service from Indian Postal Department, Tamilnadu circle for the period from 13.02.1970 to 29.11.2000, that after serving in the APS, he was discharged from service on 29.11.2000, that he served for 30 years 09 months and 16 days, that subsequently, he reported to the Parent Postal Service and retired as Senior Superintendent of Post Offices, Kanyakumari on 31.05.2008 and that the first applicant was under Class I Cadre of Postal Department at the time of retirement is not disputed. The first applicant had relied upon the order of the Government made in 1(9)/2010/D(Rs-1), GOI MOD dated 14.04.2013 in which the personnel who served in APS for more than six months prior to 14.04.1987 should also be considered as Ex-serviceman with all consequential benefits. Furthermore, reliance was placed by the

first applicant on the amended provisions of ex-servicemen in which the personnel who served in the Army Postal Service for more than six months prior to 14.04.1987 were included by virtue of an amendment in Section 2(c) (iv) as per the Government Notification dated 04.10.2012. According to the pleadings raised by the first applicant and the arguments submitted by the learned counsel for the first applicant, the first applicant who has been an ex-serviceman for having served in Army Postal Service for more than six months prior to 14.04.1987 should have been given the benefit of ex-serviceman which includes ECHS facilities.

9. The learned counsel would submit in her argument that the respondents have considered the claim for ECHS facilities from similarly placed personnel and issued a letter dated 20.03.2012 accepting the applications for ECHS Membership where the twin conditions of being an Ex-serviceman and Government pensioner are fulfilled. She would also submit that the issuance of the said order was also referred in the letter dated 17.04.2012 by the Additional Director General, APS and sought for the grant of ECHS enrolment to the eligible APS personnel who applied for the same. The said request was not considered but the respondents issued a letter on 19.11.2013 cancelling the letter dated 20.03.2012 and 27.09.2013 with the reasons that the personnel who served on deputation with APS and

subsequently drawing pension from civil estimates are not eligible for ECHS membership since these personnel are eligible for CGHS membership. She would submit in her argument that the said letter is against the provisions of ECHS scheme and the intention of Government in granting ex-servicemen status to the first applicant.

10. However, the submissions made by the learned counsel for the first applicant were disputed by the learned Senior Panel Counsel and the officers appearing for the respondents by showing the letter issued by Central Organization ECHS dated 30.06.2004, viz., the Policy for the entitlement of getting ECHS benefits for APS personnel. They would rely upon the said letter and submitted that the retiring APS personnel should possess ex-servicemen status by serving in the armed forces in any rank as combatant or non-combatant; must retire finally from the Armed Forces without reversion to the P&T Department; must be in receipt of pension consequent on retirement or be in receipt of disability pension, if prematurely retired on medical ground; and must not be a member of CGHS or any Government Medical Scheme. It is further contended by the learned Senior Panel Counsel that the first applicant was admittedly a repatriated Postal and Telegraph Department official being his parent department and retired from the said department and not a military pensioner and was also a member in CGHS scheme and on that scores, the first applicant cannot be given

with the benefit of ECHS enrolment. He would further submit that the conferment of ex-servicemen status would not automatically confer any benefit on the first applicant in respect of ECHS membership. He would also submit that the ex-servicemen status is given only for the purpose of getting other benefits for their family members in getting concessions and other reservations in education and in employment. He would further submit that the ECHS is a self-contained scheme constituted by the Government of India in the year 2002 which would enrol the retirees from Armed Forces as per the eligibility mentioned in the said scheme. He would therefore submit that the order passed by the respondents in their letter dated 19.11.2013 cancelling the earlier letters issued on 20.03.2012 and 27.09.2013 are in accordance with the rules and the first applicant cannot claim any benefit out of those letters.

11. We have considered anxiously the arguments advanced on either side.

12. **POINT No.1:** On a careful understanding of the arguments advanced on either side, we would find that the first applicant was originally employed in the Postal Department and he was deputed to serve in Army Postal Department from 13.02.1970 to 29.11.2000. Therefore, there is no dispute that he was a Central Government employee appointed by the Postal Department and retired in his parent

department. However, he had the qualification of serving the APS during the relevant period as defined for ex-serviceman, in Ex-servicemen (Re-employment in Central Civil Services and Posts) Rules 1979. Definition in 2(c) (iv) is relevant on the subject. For better understanding, the same is extracted as under:

*(2)(c)(iv) : " An ex-serviceman means a person—
Personnel who were on deputation in Army Postal Service for more
than six months prior to the 14th April, 1987."*

13. The amendment to the said provision was made with effect from 04.10.2002 on the basis of the Government Notification in the Gazette dated 04.10.2012 (Annexure-11). The said amendment as per the Gazette was necessitated by a judgment of AFT Chandigarh Regional Bench made in T.A.No.110 of 2009 dated 26.03.2010 in which the similarly placed applicants were declared entitled to the status of Ex-servicemen who were on deputation in the Army Postal Service for more than six months prior to 14.04.1987. The Government originally issued official memorandum on 20/21.7.2011 accepting the principles made in the said judgment and directed the respondents to grant the benefit of considering them as "Ex-servicemen" with all consequential benefits. When the said order and the subsequent amendment to the definition of Ex-servicemen are considered, the first applicant herein

has complied with the conditions made therein and he should be considered as an Ex-serviceman as claimed by him.

14. Now the important point for consideration is whether the first applicant as an ex-serviceman can get the benefit of ECHS enrolment. Admittedly, the first applicant was entitled to be a member of CGHS or draw Fixed Medical Allowance in lieu thereof, since he retired from postal service a Central Government Institution. However, he himself voluntarily stopped the receipt of medical allowance and therefore he was neither a member of the said CGHS scheme nor drawing Fixed Medical Allowance, when he made the application for the grant of ECHS membership. The respondents' contention is that the first applicant having retired from his parent department, viz., the Postal Department, and not drawing pension from the Defence Estimates, is not entitled for being enrolled in ECHS scheme as per the letter dated 30.06.2004. The said letter bearing No.3/49708-R/AG/ECHS issued by Central Organization ECHS, Delhi Cantonment to all the 5 Commands (Annexure R.1) would speak about the eligibility of Army Postal Service personnel for enrolment into ECHS. It was issued as a Policy. For better understanding of the tenor of such Policy, the important paragraphs, viz., Paragraphs-1 and 2 are to be extracted as below:

"1. The Additional Directorate General of Army Postal Service, and some Command HQs had written to this HQs for clarification

whether APS personnel, also being in uniform, are permitted to enroll into the ECHS.

2. The case was examined in detail, in consultation with the concerned Directorate and with AG's Branch, and it is clarified that personnel of the APS are permitted to enrol into the ECHS, subject to fulfilling the following conditions:-

(a) The retiring APS personnel must fulfil the primary condition of being an Ex-serviceman, i.e., he/she should have served in the Armed Forces of India, in any rank as a combatant or non-combatant.

(b) Must retire finally from the Armed Forces, without reversion to the P & T Department.

(c) Must be in receipt of pension consequent on retirement, or be in receipt of disability pension, if prematurely retired/released on medical grounds which are attributable to military service.

(d) Must NOT be a member of CGHS or any other Govt Medical Scheme."

According to the said letter, the retiring APS personnel should be an ex-serviceman by serving in Armed Forces in India in any rank as a combatant or non-combatant and he should not be reverted to P & T Department and retired from there. We thus understand that such personnel should retire from Armed Forces and must be in receipt of

pension consequent to such retirement or receipt of disability pension on his premature retirement or release on medical grounds attributable to military service from the Armed Forces and he should not be a member of CGHS or any other Government Medical Scheme. On the basis of this eligibility criteria only, the respondents have cancelled the letters issued in B/49701-PR/AG/ECHS, dated 20.03.2012 and B/49711-SC/AG/ECHS, dated 27.09.2013 in which the APS personnel who have served on deputation in Armed Forces and obtained ex-serviceman status and was receiving Government pension were found eligible for ECHS enrolment. Whether such cancellation could be sustained as per the eligibility criteria in the letter, dated 30.06.2004 is the question. For the purpose of adjudication of the same, we have directed the respondents to produce the ECHS Scheme framed by the Government of India. The said Scheme was produced by the respondents. We find that it was issued by the Government of India, Ministry of Defence in letter No.22(1)/01/US(WE)/D(Res), dated 30.12.2002. The said letter was addressed to the Chiefs of Armed Forces. The relevant passage to be considered in this case would be the Paragraphs-1 and 2(a) of the said letter. The said portion is necessarily to be extracted for better understanding. It reads as under:

" I am directed to convey the sanction of the Government for a health care Scheme for Ex-Servicemen namely "Ex-Servicemen Contributory Health Scheme (ECHS)".

2. 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 life long facility of medical treatment. The Scheme will comprise as follows:-

(*Para 2 (a) amended vide 22 (1)/01/US(WE)D(Res) dated 01 Apr 03)

(a) ECHS would be a contributory scheme. On retirement, every service personnel will compulsorily become a member of ECHS by contributing his/her share and the Scheme would be applicable for life time. Similarly, Ex-servicemen who have already retired as on 1 Jan' 2003 can become members by making a one time contribution or in three consecutive yearly instalments. There would be no restriction on age or medical condition. The contribution will be according to the rates prescribed for CGHS pensioners as per Appendix- A attached.

(*Para 2(a) amended vide 22(1)/01/US(WE)/D(Res) dated 01 Apr 03 and 29 May 03)

(b) Retired personnel joining the scheme will forfeit the medical allowance of Rs.100/- presently admissible to them and those who do not join the Scheme would continue getting Medical Allowance as hitherto. Such persons would not be entitled to any medical facility from Armed Forces Clinics/Hospitals or Polyclinics set up under the Scheme."

In the said letter, we find that the Health Care Scheme sanctioned by the Government of India was for Ex-servicemen. The nomenclature itself would say "Ex-servicemen Contributory Health Scheme (ECHS)". No doubt there is no definition clause for Ex-servicemen in the said scheme. Therefore, the conferment of the said benefit to every ex-serviceman should have been taken into consideration. However in the letter dated 30.06.2004, Ex-serviceman definition has been explained in para-2(a) as that he or she should serve in the Armed Forces of any rank as combatant or non-combatant. This explanation in the letter dated 30.06.2004 is repugnant to the reference and definition of Ex-servicemen as contemplated in the rules governing Ex-servicemen, viz., (Re-employment in Central Civil Services and Posts) Rules 1979. The original scheme has not put forth any qualification to an Ex-serviceman for the enrolment in ECHS scheme as referred in the letter, dated 30.06.2004. Similarly, the qualification of an Ex-serviceman as stated in Para-2 of the ECHS scheme envisages medicare to all Ex-servicemen who are in receipt of pension including disability pension and family pensioners which would also include wife/husband, legitimate children and wholly dependent parents. The said passage does not preclude an ex-serviceman who is drawing the pension from civil service nor to serve as combatant or non-combatant. However, such stipulation are made in para-2(c) of the letter dated 30.06.2004.

It has also been stipulated in para-2(b) of the letter dated 30.06.2004 that the individual should retire finally from Armed Forces without reversion to P & T Department. These conditions as stipulated in letter dated 30.06.2004 are not found in the scheme promulgated by the Government of India on 30.12.2002. We have failed to find any amendment in the scheme to that effect. No doubt the letter dated 30.06.2004 was not issued by the Government of India or Ministry of Defence so as to lay a policy nor the said letter disclosed any authority of Government of India under which the said letter was issued. The letter was written by Adjutant General's HQ Branch, New Delhi. Furthermore, the respondents could not produce any supporting document to show that the Government of India issued such a Policy as contained in the letter dated 30.06.2004. In the light of the scheme promulgated by Government of India, Ministry of Defence on 30.12.2002 when we approach the present case, the Ex-serviceman who are in receipt of pension including disability pension and the family pensioners and also their dependents including husband, wife, legitimate children and wholly dependent parents who are eligible for pension could be enrolled in ECHS, provided the said Ex-serviceman is receiving pension from Central Government. There is no distinction between a pension receiving from civil side or from Armed Forces for an Ex-serviceman. The only stipulation imposed against the Armed

Forces service personnel is that they should compulsorily become member of ECHS by contributing his or her share to the scheme for lifetime. Therefore, it could be presumed that a Government servant who is also an ex-serviceman and who has retired from civil service could either opt for CGHS medical scheme or ECHS medical scheme. The only condition imposed is that the Ex-servicemen who already retired can become a member by making a one time contribution or by instalments similar to personnel who retire from Armed Forces. The authorities should have carefully applied their mind and to pass necessary orders in terms of the original scheme constituted by the Government of India as per the letter dated 30.12.2002.

15. Both the CGHS and ECHS medical schemes are sponsored by Central Government and the expenditure for an individual either in CGHS or ECHS would be the same and it would be borne by the Government of India albeit, under different heads. The first applicant being a Postal Department personnel who is having the status of Ex-servicemen should have been given the benefit of the ECHS membership as there was no exclusion of an Ex-serviceman as defined under 2(a) (iv) of Ex-servicemen (Re-employment in Central Civil Services and Posts) Rules 1979. The grant of ECHS membership to the first applicant will not in any way affect the exchequer of Government of India since he was entitled to medicare either from ECHS or from

CGHS. When there is no bar in the original ECHS scheme and the first applicant an Ex-Serviceman had opted for enrolment in the said scheme, the authorities must see that he is eligible to enrol in ECHS/Fixed Medical Allowance provided he relinquished the membership of CGHS/Fixed Medical Allowance. In the said circumstances, the letters issued by the respondents on 20.03.2012 and 27.09.2013 are in consonance with the original ECHS scheme framed by the Government of India. The said recommendation to grant ECHS membership to those fulfilling the twin conditions of being an Ex-serviceman and a Government pensioner, should not have been cancelled by virtue of the letter dated 19.11.2013. In the case of the first applicant, the claim for membership in ECHS was objected by respondents on the same lines. The reasons stated by the respondents in the reply-statement are not sustained and therefore, we find that the objection of respondents for conferring ECHS coverage to the applicants is liable to be set aside and the applicants are found eligible for being enrolled in the ECHS scheme, provided they are members in CGHS on the date of application of the 1st applicant and are ready to pay one time contribution or in instalments to the said scheme. Accordingly, we find this point in favour of the applicants.

16. **POINT No.2:** The first applicant has sought for re-imbursement of Rs.50,000/- he had spent towards the medical expenditure for taking

treatment outside from the date of his application. The reason for taking treatment from outside was that he has relinquished the CGHS by stopping the medical allowance granted to him under CGHS scheme. No doubt, one of the conditions for seeking ECHS is that he should not be a member in CGHS. The said relinquishment for conferring enrolment in ECHS would not be an immediate relinquishment from CGHS. The first applicant could have given an undertaking that he would stop receiving the benefit of medical allowance from CGHS scheme on his enrolment in ECHS, would be sufficient. The act of relinquishment of CGHS scheme by the first applicant in stopping the receipt of medical allowance was only unilateral and it will not in any way make the respondents to pay for the consequences. Even otherwise, the first applicant would be entitled to the payment of medical allowance from CGHS medical scheme till the date of his enrolment in ECHS. Therefore, no re-imbursment can be ordered to the tune of Rs.50,000/- from the respondents. Furthermore, the first applicant has not produced any document to support his claim to the tune of Rs.50,000/ for the said medical expenditure. The said expenditure claim is even otherwise an approximate one and therefore, it cannot be sustained in Court of Law. Accordingly, this point is decided against the first applicant.

17. **POINT No.3:** The first applicant applied for the membership in ECHS on the ground that he was an ex-serviceman as per the definition of ex-serviceman given under Section 2(a) (iv) of Ex-Servicemen (Re-employment in Central Civil Services and Posts) Rules 1979. The Government of India has formulated the ECHS scheme in the year 2002 and the said scheme was formulated only after the retirement of the first applicant from the civil service. Being a new scheme, the entitlement of ECHS enrolment to the Ex-servicemen who retired from civil service was not settled all these days and therefore, the decision regarding entitlement was under consideration of Government of India and in the meantime, we have passed this adjudication that the first applicant has become entitled to the benefit of entitlement of ECHS as indicated above. Therefore, the sufferings as enumerated in the reliefs for the payment of compensation are not sufficient to grant a compensation to the tune of Rs.1,00,000/- payable by the respondents. Moreover, the learned counsel for the applicants has not argued much in respect of compensation. No instances have been put forth to quantify the compensation on the said four reasons. Therefore, we are not inclined to grant compensation as asked for by the first applicant.

18. **POINT No.4:** In view of our discussions above, we find that the claim of the first applicant for the grant of enrolment in ECHS scheme is grantable, provided the first applicant is not a member in CGHS

scheme and is ready to pay one time contribution or through instalments as mentioned in para-2 of ECHS scheme constituted on 30.12.2002. The application is therefore ordered to that extent only.

19. In fine, the impugned order is set aside and the first applicant is declared eligible for being enrolled in the ECHS scheme, provided he is not a member in CGHS on the date of his application and is ready to pay one time contribution to the said scheme. The first applicant died *pendente lite* and therefore, the applicants-2 to 4 as L.Rs. of the first applicant are entitled to continue the right of the first applicant in this regard and they are also found eligible for enrolment in ECHS scheme by subrogation. Time for payment of one time contribution to the said scheme is one month for the applicants-2 to 4 from the date of receipt of copy of this order. The respondents shall act upon the same and to enrol the first applicant and other family members in ECHS scheme within a period of one month thereafter. No order as to costs. In the remaining aspects, the application is dismissed without costs.

Sd/
LT GEN K. SURENDRA NATH
MEMBER (ADMINISTRATIVE)

Sd/
JUSTICE V.PERIYA KARUPPIAH
MEMBER (JUDICIAL)

15.12.2014
(True copy)

Member (J) – Index : Yes/No

Internet : Yes/No

Member (A) – Index : Yes/No

Internet : Yes/No

VS

To:

1. The Secretary
Ministry of Defence
New Delhi-110 011.

2. Under Secretary
Dept of Ex-Serviceman Welfare
Ministry of Defence
New Delhi-110 011.

3. Central Organization ECHS
Adjutant General's Branch
Integrated HQ of MOD (Army)
Maude Lines
Delhi Cantonment-10.

4. Addl Directorate General of APS
Pin 908700
C/o 56 APO.

5. The APS Records
Pin 900 746
C/o 56 APO
Kamptee.

6. Regional Centre
ECHS, ST Fort
Secretariat, Chennai.

7. Ms. Tonifia Miranda
Counsel for applicants.

9. Mr. B. Shanthakumar, SPC
For respondents.

10. OIC, Legal Cell,
ATNK & K Area, Chennai.

11. Library, AFT, Chennai.

HON'BLE MR.JUSTICE V. PERIYA KARUPPIAH
MEMBER (JUDICIAL)
AND
HON'BLE LT GEN K. SURENDRA NATH
MEMBER (ADMINISTRATIVE)

O.A.No.161 of 2013

Dt:15.12.2014