

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 11th December, 2015

+ **W.P.(C) 5522/2015**

ANTI DISCRIMINATION CORE (ADC)Petitioner
Through: Mr. Vijendra Mahndiyan and Ms.
Pallavi Awasthi, Advs.

Versus

CENTRAL ORGANIZATION ECHS & ORSRespondents
Through: None.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This petition under Article 226 of the Constitution of India, filed as a Public Interest Litigation (PIL) seeks redressal of discrimination on the basis of rank / cadre meted out in dispensation of medical services to the ex-servicemen of the Armed Forces at the Ex-servicemen Contributory Health Scheme (ECHS), Polyclinics in India.

2. It is the case of the petitioner:

(i) that it is a Society registered under the Societies Registration Act, 1860 with the objective *inter alia* of elimination of discrimination amongst ex-servicemen (of the Armed Forces)

fraternity through the spirit of camaraderie and fraternity;

(ii) that as per policy in vogue, persons who are in possession of White Card (War Disabled / Battle Casualty Disabled Veteran / Disabled Beneficiary, as per eligibility) and Senior Citizens (male 75 years and above, female 70 years and above) are entitled for treatment in ECHS Polyclinics on priority;

(iii) however priority in ECHS Polyclinics, instead of being given to the aforesaid persons, is being given to officers;

(iv) that ex-servicemen of the officer cadre are not only attended to first but also out of turn, in the said clinics and also issued medicines of different specifications;

(v) that as a result thereof, ex-servicemen of other ranks, even if suffering from serious ailments, are made to wait endlessly;

(vi) that not only so, owing to the ex-servicemen of the other ranks being attended to late, the appointments given to them for consulting the specialists or at empanelled hospitals are also delayed;

(vii) that some of the Polyclinics even have display boards for separating the officer ex-servicemen from other rank ex-servicemen and there are separate counters provided for them;

(viii) that the said display boards are found to be objectionable by ex-servicemen of other ranks, when there is no provision therefor in ECHS, under which both categories are at par.

3. We heard the counsel for the petitioner and though none appeared for the respondents (Central Organization ECHS, Director General Integrated HQ (Army) and Department of Ex-Servicemen Welfare) but considering the nature of the controversy, we did not feel the need to hear them and reserved judgment.

4. The petitioner, along with the petition had not filed any copy of the ECHS and on our asking has placed a copy thereof on record. On a reading thereof we find:

(a) that the said scheme has been launched to provide comprehensive medicare to all ex-servicemen in receipt of pension or disability pension, as also to his / her dependents and the scheme is functioning under the integral staff;

(b) that it is a contributory scheme of which every ex-service personnel retired / retiring after 1st April, 2003 compulsorily becomes a member by contributing his / her share; the Scheme is voluntary for those who retired prior to 1st April, 2003 and they can become

member by paying contribution and completing the formalities;

(c) that the scheme covers all diseases and there is no restriction on age or medical condition at the time of seeking membership of the scheme;

(d) the scheme is not found to be containing any different provisions for it's members, depending upon their rank or position prior to retirement from the armed forces; only Clauses 60 and 61 under the heading "Special Provisions" and sub-heading "Treatment for Senior Citizens" in Chapter 6 titled "Treatment" provides as under:

"60. All members of ECHS are retd members and very soon will become senior citizens. However at the same time, some old and sick people need to be given priority at ECHS Polyclinics. The senior citizens will be attended out of turn at reception, examination by doctors and issue of medicines.

61. The following will be treated as Senior Citizens (Authy: ECHS Ltr B/49701-PR/AG/ECHS dated 19 Nov 07).:-

- (a) Males -75 Yrs & above
- (b) Females -70 Yrs & above"

5. It is thus obvious that the Scheme does not sanction preferential treatment to or priority to be given to officers, over other cadres or amongst officers as per their rank, though the contribution to the Scheme is based on un-commuted basic monthly pension plus dearness pension and from which

it can be deduced that the contribution of the officers, to the Scheme, would be more than the contribution of the members of the Scheme belonging to the other cadres and the contribution amongst officers would be higher of those retiring from a higher rank.

6. We can however well imagine the scenario prevalent in the ECHS Polyclinics, Military Hospitals / Empanelled Hospitals. The same is not typical of ECHS Polyclinics / Military Hospitals / Empanelled Hospitals only but of all institutions. We, as a country, ruled first by the kings and chieftains and later by the British, have it ingrained in us, to respect and give priority in all walks of life to rank, office and wealth. Rank, office and wealth opens doors to holders thereof without even there being any provision therefor in law, Rules and Regulations. Though our Constitution set the course right by ingraining therein the equality clause (Article 14) and by abolishing titles (Article 18) but the same has not been achieved in practice in the last more than 65 years.

7. We are in this matter, faced with a practise which is as ancient as mountains in this country. The said situation in our view cannot be changed merely with directions of the Court. Such practices, highlighting which and seeking redressal whereagainst this petition is filed, are found not only in

ECHS Polyclinics but at nearly all places providing services / amenities of public utility. In our view, the cure thereof is not in Courts. We have for this reason only not deemed it appropriate to issue notice of this petition and to give an opportunity to the respondents to show, whether despite being not in the scheme, elsewhere in the rules and regulations governing Armed Forces, there is such a distinction as maintained amongst officers and personnel of other ranks, because even if that be so, in our view, the same cannot continue post retirement, when both fall in the same category i.e. of ex-servicemen and when the Scheme does not provide therefor. Once the Scheme does not classify its members according to their rank and does not provide for priority, in the matter of benefits under the Scheme or in the working of the Scheme, to be given as per rank, there can be no basis for such sub-classification or micro-classification or further classification among the class of ex-servicemen in treatment under the Scheme. The guarantee contained in Article 14 of equal protection extends, besides to substantive law, to procedure as well. There does not appear to be any basis for such sub-classification amongst ex-servicemen in relation to the object of the Scheme. We may however mention that “Regulation for Medical Services of Armed Forces-1983” also not providing for any such

classification on the basis of rank and to be rather under the heading “Medical Ethics” providing that while dealing with a patient, the medical officers primary duty is always the patients welfare.

8. We are also of the view that even if we were to issue a direction for all members of the ECHS to be treated equally and even if the offending display boards were to be removed, the same may not eliminate the problem inasmuch as, the Doctors / Physicians and other Paramedics are likely to continue to give priority to the officer ex-servicemen. It cannot be lost sight of that the Defence Forces, more than any other, are steeped in hierarchy and the Doctors, Physician or Paramedics of a lower rank are likely to, out of habit and deference, give priority to those superior in rank, even if ex-serviceman.

9. We have wondered the solution for the problem.

10. The only solution according to us can be by building consensus and awareness not only amongst those who are imparting / rendering services at such Polyclinics / Military Hospitals / Service Hospitals / Empanelled Hospitals but also amongst the members of the Scheme. Not only have the doctors, paramedics and other staff of such Polyclinics / Military Hospitals / Service Hospitals / Empanelled Hospitals have to be taught to see patients

strictly as per appointment if permissible or on first come first served basis but the members of the Scheme also have to be taught to respect the Scheme and to not seek any priority / favour in the matter of being attended to at the said Polyclinics / Hospitals. It is only when the ex-servicemen, of whatsoever rank, if not entitled under the Scheme to preferential treatment, starts respecting the que and not expect to be attended to first that the requisite correction in the society can take shape. The same in our opinion can be achieved by sending circulars, putting up boards / placards at the Hospitals / Polyclinics and by organizing group discussions, talks etc. on the subject, to build consensus amongst the providers and beneficiaries of the Scheme.

11. Yet another thought which comes to our mind is of equitably dividing the time and / or by introducing a system of consulting by appointment for certain hours of the day so that at that particular time only those with appointment are attended to and at other times the beneficiaries of the Scheme are attended to strictly on first come first served basis.

12. The above, but are our meandering of a solution to the issue and is by no means exhaustive. We are sure that the providers under the Scheme, being specialist, are better equipped and would be able to come up with a

suitable solution to the problem so as to avoid heartburn amongst a certain category of ex-servicemen, of being denied equality under the Scheme and which is the cause of action for this petition.

13. We have faith in the good sense and well meaning intention of the ECHS organization which as per Chapter-5 of the Scheme is headed by a Managing Director (Major General) of the Indian Army.

14. We therefore dispose of this petition by directing the Managing Director of the ECHS to look into the issue raised in this petition and to address the same in the best possible manner, after considering the suggestions made by us hereinabove.

No costs.

RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE

DECEMBER 11, 2015

Bs/gsr..