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

+ **W.P.(C) 546/2019 & CM No. 2492/2019**

BRIG SKS RANA, VSM (RETD.) Petitioner

Through: Dr Harshvir Pratap and Mr Paras
Joshi, Advocates.

versus

UNION OF INDIA AND ORS. Respondents

Through: Ms Maninder Acharya, ASG with Mr
Rakesh Kumar, CGSC for R-1/UOI.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **21.01.2019**

1. The petitioner has filed the present petition, *inter alia*, praying as under:-

- a) Issue a writ/writs/order/orders/direction/directions in the nature of writ of mandamus thereby directing the Respondents not to discontinue the existing 16 KB cards ensuring the uninterrupted medical services/facilities to the Petitioner.
- b) Issue a writ/writs/ order/orders/direction/directions in the nature of writ of Certiorari to quash the notification dated 17.07.2017 whereby the Scheme of 64 KB card has been initiated thereby discontinuing the existing card of the Petitioner.”

2. The petitioner is essentially, aggrieved by the direction of respondent nos.1 and 2 for replacing the earlier cards issued to the petitioner and other beneficiaries of the Ex-Servicemen Contributory Health Scheme (ECHS) at

the cost of ₹ 177/-. The petitioner states that, first of all, there is no reason for the respondents to insist on issuing a card for availing the benefit of the Ex-Servicemen Contributory Health Scheme (ECHS). It is the petitioner's case that required personal data of ex-servicemen is available with the respondents as each serviceman is issued an identity card. Next, he submits that the ECHS scheme is required to be in conformity with the CGHS scheme, which entails only a one time charge. He referred to the decision of the Supreme Court in ***Confederation of Ex-Servicemen Associations and Others vs Union of India and Others: (2006) 8 SCC 399*** in support of his contention that respondents could only demand a one time charge and it was not permissible to insist on repeated payments for issuance of a card. He contended that the insistence on the part of respondent no.2 to repeatedly replace the cards at the cost of the beneficiaries, is wholly arbitrary and unreasonable. He also referred to the report of the Comptroller and Auditor General of India (CAG) which has raised issues with regard to the tendering process for procurement/issuance of the cards in question. The learned counsel for the petitioner also submits that the CAG has objected to the directions for replacement of the cards as the same is not supported by the sanction of the Competent Authority.

3. Insofar as the petitioner's contention that the replacement of the cards is in violation of the orders passed by the Supreme Court in ***Confederation of Ex-Servicemen Associations and Others vs Union of India and Others (supra)*** is misplaced. In that case, the Supreme Court had considered the challenge of the petitioner to the ECHS Scheme. The petitioners therein had claimed that ex-servicemen were entitled to free medical aid and the requirement to make a contribution to the ECHS Scheme was violative of

Articles 14 and 21 of the Constitution of India. The Supreme Court had repelled the said challenge and *inter alia* observed as under:

“In our opinion, such a contributory scheme cannot be held illegal, unlawful or unconstitutional. Ultimately, the State has to cater to the needs of its employees - past and present. It has also to undertake several other activities as a “welfare” State. In the light of financial constraints and limited means available, if a policy decision is taken to extend medical facilities to ex-defence personnel by allowing them to become members of contributory scheme and by requiring them to make “one-time payment” which is a “reasonable amount”, it cannot be said that such action would violate the fundamental rights guaranteed by Part III of the Constitution.”

4. The contention that the Court had proscribed the respondents from demanding the costs for issuance of the ECHS card is, plainly, erroneous. The contention that the demand for cost of the Smart Card violates the principles of payment of one time charge is unmerited. The respondents have not called upon the petitioner to make further contribution towards the scheme but merely to bear the cost of issuance of the Smart Card. The petitioner is undoubtedly put to certain inconvenience and he is now required to get a fresh card issued. However, it is seen that there is a qualitative difference in the card now required to be issued. Whereas, the earlier card had a storage capacity of 16 KB, the card now required to be issued has a data storage capacity of 64 KB. Thus, the storage capacity of the Smart Card now being issued is much higher.

5. This Court does not consider it apposite to enter into the controversy whether a Smart Card of enhanced storage capacity is necessary. This is a question that is required to be decided by the concerned authorities. In the

present case, the concerned authorities have taken a decision to issue a card with an enhanced capacity and have, therefore called upon all ECHS beneficiaries to replace their cards and apply for issuance of fresh cards. This Court finds no infirmity with the said decision that would warrant interference under Article 226 of the Constitution of India.

6. Insofar as the observations made by the CAG are concerned, this court has no reason to believe that the same would not be considered by the appropriate authority. At this stage, this court is not required to examine the observations made by the CAG as the same are required to be considered by the Public Accounts Committee.

7. The petition is, accordingly, dismissed with the aforesaid observations. The pending application is also disposed of.

8. Order *dasti* under signatures of the Court Master.

VIBHU BAKHRU, J

JANUARY 21, 2019
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