

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

09.

O.A. No. 179 of 2011

Hav. Ramesh Kumar Prajapati

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. K. Ramesh, Advocate.

For respondents: Dr. S.P. Sharma, proxy counsel for Dr. Ashwani Bhardwaj, Advocate.

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.

HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

ORDER

17.01.2012

1. Petitioner by this petition has prayed that the Respondents may be directed to quash and set aside EME Records Secunderabad letter dated 12th December 2008 and grant him disability pension @ 50% (revised) from the date of discharge i.e. 30th September 2008 for life.

2. The Petitioner was enrolled in Army on 20th September 1984 and in 1999 he was detected for Leukemia and with the passage of time his condition deteriorated and he was discharged from service on 30th September 2008. Medical report at the time of his release states that he was suffering from Leukemia with 20% disability but Medical Board has categorically stated that it has nothing to do with military service and hence he was not given disability pension. He has also served in Siachin Glacier. He filed a representation but without any result. Ultimately he filed a petition before us.

3. Respondents filed a reply and Respondents have contested the matter and submitted that the disease is not connected with the military service and medical report to this effect is very clear.

4. Regulation 173 of the Pension Regulations lays down that a person can be granted disability pension if disability is attributable to or aggravated by the military service. Therefore the condition of granting disability pension depends on the medical report and the findings whether the disability is attributable to or aggravated by the military service. Needless to say in this connection that the Hon'ble Supreme Court has very categorically held in the case of **Union of India & Ors. v. A.V. Damodaran (2009) 9 SCC 140** (Bhandari & Sharma, JJ) that the grant of disability pension depends on medical report and Courts should normally abide by the recommendations of the Medical Board. In the present case learned counsel for the Petitioner has tried his best to persuade us that the disease of Leukemia is far more serious than any other disease and in that connection learned counsel for the Petitioner has placed before us the literature pertaining to Leukemia and causes of Leukemia and it has been clearly laid down that despite of the research still the cause of Leukemia is not evading the answer. It was observed that cause of Leukemia is not entirely understood and there can be different types of Leukemia including Acute Myelogenous Leukemia and so on and they have also said that whether non-ionizing radiation causes leukemia has been studied for several decades. Leukemia like other cancers, results from mutations in the DNA but still they have not been able to pinpoint the causes for Leukemia. In this also they have analysed the various causes and

still they have not been able to pinpoint what are the causes of Leukemia.

Only certain risk factors have been pointed:-

“Exposure to very high levels of radiation.

Working with certain chemicals.

Receiving chemotherapy.

Having Down Syndrome and other genetic conditions.

Having human T-cell leukemia virus-1 (HTLV-1).

Having myelodysplastic syndrome.”

5. All these are one of the risk factors which can cause Leukemia but in the present case none of these risk factors exist. Therefore question again arise before us is how to connect this disease with the military service. The condition for grant of disability pension is on account of military service and if there is no such cause to which the Petitioner was exposed during the service then correlation between the service and the disease is not established. Learned counsel for the Petitioner has also tried to persuade us with reference to a decision of Division Bench of the Hon'ble Delhi High Court in the case of **Monika Sachdeva v. Union of India & Ors. Mil LJ 2005 Del 38.** (Sharma, J.) In that case their Lordships held that officer fell sick in a difficult forward area and could not have been given the requisite treatment at his posting or with urgency and considering the fact that the Petitioner contracted aforesaid disease while in service and rendering service in Siachin Glacier under difficult situation, the disease suffered by the Petitioner was attributable to the military service rendered by him and/or in any case aggravated by the military service and the Petitioner is entitled to receive the special family pension. With great respect their lordships have not been able to establish the correlation of the disease with the military service. However this is a Division Bench judgment but with respect it is *per incuriam* to the decision

given by the Hon'ble Supreme Court in the case of **Union of India & Ors. v. A.V. Damodaran (2009) 9 SCC 140.**

6. Learned counsel has also invited our attention to a judgment of a learned Singh Judge of Hon'ble Punjab & Haryana High Court in the case of **Roshan Lal v. Union of India & Ors (Civil Writ Petition No. 5448 of 1990 decided on 14th January 1992).** There also the learned Single Judge has taken a view that in view of the above provisions a disease is normally deemed to be attributable to army service if no note of it was made at the time of enrolment in army service. Learned Single Judge has drawn the conclusion that Leukemia will be deemed to be a disease attributable to military service. With great respect this is not the correct proposition of law as Regulation 173 says that correlation has to be established and in this case also the learned Single Judge has only drawn the conclusion at his own without reference to the law. Learned counsel for the Petitioner has also invited our attention to a decision of our coordinating bench in the case of **Brig Stephen Jude Gracias v. Union of India & Ors. (O.A. No. 350 of 2011 decided on 22nd November 2011).** This was a case with regard to sending a person for the NDC and he was suffering from Leukemia and the learned coordinating bench has only said that applicant needs to be given a second look provided he meets the eligibility criteria as illness is beyond his control and attributable to military service. This also does not lay down whether the incumbent is entitled to a disability pension on account of so-called Leukemia.

7. Therefore after considering all the decisions cited by the learned counsel for the Petitioner we still hold the view that in view of the statutory

provisions like Regulation 173 read with medical report, we are satisfied that there is no correlation established between the disease and the disability pension as it is not attributable to or aggravated by the military service. Learned counsel also tried to persuade us with reference to his one time posting at Siachin. That also does not have any correlation with disease. Hence, we do not find any merit in this petition and same is dismissed with no order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
January 17, 2012
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