

COURT NO. 1, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA No. 999/2019 with MA 1667/2019

Ex LNK Mohd Jabbar

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Virender Singh Kadian, Advocate

For Respondents : Mr. Neeraj, Sr. CGSC

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

M.A 1667/2019

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 700 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of **UoI & Ors. Vs Tarsem Singh** 2009(1) AISLJ 371 and in **Ex Sep Chain Singh Vs Union of India & Ors** (Civil Appeal No. 30073/2017) and the reasons mentioned, the MA 1667/2019 is allowed and the delay of 700 days in

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filing the OA 999/2019 is thus condoned. The MA is disposed of accordingly.

O.A. 999/2019

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this O.A and the reliefs claimed in Para 8 - read as under:

“

- a) Direct the respondents to treat the disability as attributable to/aggravated by military service and grant disability element of pension to the applicant with benefits of rounding off/broad banding of the disability element.***
- b) Direct the respondents to pay the due arrears of disability element of pension with interest @12% p.a. from the date of retirement with all the consequential benefits.***
- c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case along with cost of the application in favour of the applicant and against the respondents. ”***

BRIEF FACTS

2. The applicant was enrolled in the Indian Army on 07.07.2000 and was discharged from service on 31.07.2017 in low medical category P-2 (Permanent) under Army Rule 13 (3) item III (i). The applicant suffered from the disability namely "Chronic Myeloid Leukemia", which was assessed, by the Release Medical Board dated 01.06.2017 @30 % for life and considered it neither attributable to or nor aggravated by service.

3. The claim for the grant of the disability pension was considered and the competent authority upheld the decision of the medical board and denied the disability pension in terms of Grenadiers Records vide letter No 2696524A/D-Pen dated 18.09.2017 and apprised the applicant that he may prefer an appeal in case he is not satisfied with the decision of the competent authority. However, the applicant did not prefer any appeal within the stipulated time but submitted an appeal cum legal notice dated 13.12.2018 for the grant of disability pension but the same was not replied to by the respondents, aggrieved of which, the applicant has filed the instant O.A. and thus, in the interest of justice, we take up the same for consideration.

CONTENTIONS OF THE PARTIES

4. The learned counsel for the applicant submitted that the applicant was allotted trade AF Fit and worked under stress and strain. The learned counsel for the applicant further submitted that the applicant joined the Indian Army in fit medical conditions and no note of any disability was recorded at the time of enrolment.

5. The learned counsel for the applicant submitted that the applicant suffered from the disability namely "Chronic Myeloid Leukemia" while performing military duty, which was assessed, by the medical board @30 % for life and considered it neither attributable to or aggravated by service.

6. The learned counsel for the applicant placed reliance on the verdict of the Hon'ble Supreme Court in **Rajbir Singh Vs. Union of India & Ors. (2015 (2) SCALE 371)**. Reliance is also placed on the verdict of the Hon'ble Supreme Court in **Dharamvir Singh Vs. Union of India & Ors. (Civil Appeal No. 4949 of 2013)** wherein it was observed in para 28, which reads as under :-

"28. A conjoint reading of various provisions, reproduced above, makes it clear that:

(i) Disability pension to be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by military service in nonbattle casualty and is assessed at 20% or over. The question whether a disability is attributable or aggravated by military service to be determined under "Entitlement Rules for Casualty Pensionary Awards, 1982" of Appendix II (Regulation 173).

(ii) A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service. [Rule 5 r/w Rule 14(b)].

(iii) Onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally. (Rule 9).

(iv) If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service. [Rule 14(c)].

(v) If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service. [14(b)].

(vi) If medical opinion holds that the disease could not have been detected on

medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons. [14(b)]; and

(vii) It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the "Guide to Medical (Military Pension), 2002 - "Entitlement : General Principles", including paragraph 7,8 and 9 as referred to above."

to contend to the effect, that if there is no note or record at the time of entrance, in the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service.

7. Per Contra, the learned counsel for the respondents submitted that the applicant suffered with the said disability which was assessed by the medical board @30% for life and considered it as neither attributable to nor aggravated by service.

8. The learned counsel for the respondents submitted that there was no causal connection between the disability of the applicant and the military duty since the disability of the applicant was congenital in nature.

9. The learned counsel for the respondents further relied upon Rule 173 of the Pension Regulation for Army, 1961 (Part-I) which stipulates that, the primary condition for the grant of disability pension is that when the personnel is invalided out from service on account of the disability being attributable to or aggravated by military service and is assessed at 20% or more. The learned counsel submitted that since the applicant does not fulfil the conditions stipulated in the rules, hence the disability 'Chronic myeloid leukemia' was rightly assessed as NANA.

10. The learned counsel for the respondents placed reliance on the verdict of the Hon'ble Supreme Court in **UOI Vs. Damodaran AV**, SLP(C) No. 23727/2008 wherein it was held that the opinion given by the medical authorities is entitled to be given due weight and credence.

ANALYSIS

11. On the careful perusal of the material available on record and also the submissions made on behalf of the parties, we are of the view that it is not in dispute that the extent of disability assessed by the Release Medical Board dated

01.06.2017, @30% for life and considered it to be neither attributable to nor aggravated by service.

12. The minimum qualifying criteria for the grant of disability pension is 20% in terms of Para 173 of the Pension Regulation for the Army, 1961. In the instant case, it is not in dispute that the RMB has assessed the disability at 30% for life but considered it to be neither attributable to not aggravated by military service.

The only question remains to be answered is whether the said disability is attributable to or aggravated by military service?

13. In so far as the attributability or aggravation is concerned which was considered to be NANA by the medical board, it is pertinent to mention that in the instant case the applicant suffered from the said disability of 'Chronic Myeloid Leukemia' in May, 2015 when he was posted at Bhuj. It is pertinent to mention that the Guide to Medical Officer (Military Pension), 2008 have no provision for the said disability. Para 10 of the GMO (Military pension), 2008 is reproduced below:

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10. Malignancies Considered Attributable to Service

(a) Due to Occupational Hazards:

(i) Any cancer in those personnel working or exposed to radiation source in any forms:

- (aa) Acute leukaemia
- (ab) Chronic lymphatic leukaemia
- (ac) Astrocytoma
- (ad) Skin cancers

(ii) Any cancer in those exposed to chemical especially Petroleum products or other chemicals:-

- (aa) Carcinoma bladder
- (ab) Renal cell carcinoma
- (ac) Carcinoma of Renal Pelvis

(iii) Any cancer in those exposed to coal dust, asbestos, silica & iron

- (aa) Bronchogenic Carcinoma
- (ab) Pleural Mesothelioma

(b) Due to Viral Infection:

- (i) Hepato-cellular carcinoma (HV B&C)
- (ii) Ca nasopharynx (EB virus)
- (iii) Hodgkin's disease (EB virus)
- (iv) Non-Hodgkin's Lymphoma (Viruses)
- (v) Acute Leukaemia (HTLV1)
- (vi) Ca anal canal (HTLV 1)
- (vii) Any cancer due to HIV infection (contracted out of blood transfusion/needle stick injury in service)
- (viii) Ca Cervix (HPV)

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12. Malignancies Not Attributable and Not Aggravated

Tobacco related cancers in smokers and tobacco users e.g. carcinoma lung, carcinoma oral cavity, carcinoma bladder. Cancers due to congenital chromosomal abnormalities e.g. CML where Ph chromosome identified.

The aforesaid provision for the disability of cancer relates to various occupational hazards / ~~§~~ due to viral infections wherein in the given case the applicant suffered from the disability of



Chronic Myeloid Leukemia which is not covered by the provisions. Moreover, as per the available scientific literature published by American Cancer Society vide “<https://www.cancer.org> having subject namely what causes Chronic Myeloid Leukemia” which was accessed on 22.04.2024 states that the cause of chronic myeloid cancer is due to chromosomal abnormality, which develops during cell division and when the DNA swaps between two types of chromosomes, which in our considered view supports the reasoning provided in Part-V of the Release Medical Board dated 01.06.2017 and hence, it is safe to say that there is absence of any causal connection between the disability and the military service. The applicant has, thus, failed to bring on record that the disability caused to the applicant was due to performance of military duty. Hence, we do not find any error in the medical board proceedings which considered the said disability as neither attributable to nor aggravated by service.

CONCLUSION

14. We, thus, hold that the disability ‘Chronic Myeloid Cancer’ has no causal connection with military duty and

therefore, there is no merit in the case, the OA 999/2019 is thus dismissed.

Pronounced in the open Court on this day of ^H29 April, 2024.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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