

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

O.A. No. 1444 of 2019

with

M.A. No. 2347 of 2019

In the matter of :

Ex AC (U/T) Sandeep Kumar Pandey ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Shri Manoj Kumar Gupta, Advocate

For Respondents : Shri Avdhesh Kumar Singh, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN P.M. HARIZ, MEMBER (A)

ORDER

M.A. No. 2347 of 2019 :

Vide this application, the applicant seeks condonation of 40 days' delay in filing the OA. In view of the law laid down by the Hon'ble Supreme Court in the case of **Deokinandan Prasad Vs. State of Bihar [AIR 1971 SC 1409]** and in **Union of India & Ors. Vs. Tarsem Singh [2009 (1) AISLJ 371]**, delay in filing the OA is condoned.

MA stands disposed of.

O.A. No. 1444 of 2019 :

The applicant, having been found medically and physically fit, was enrolled in the Indian Air Force on 27.12.1994. He was discharged on 22.11.1996 on the recommendations of the Invaliding Medical Board on having been found medically unfit for further service in the IAF after rendering one year and 332 days of service due to the disease 'Intramedullary Astrocytoma Cervical Spinal Cord (Optd)' in the lower medical category 'EEE/its equivalent in IAF'. The Invaliding Medical Board (IMB) held in September, 1996 assessed the applicant's disability 'INTRAMEDULARY ASTROCYTOMA CERVICAL SPINAL CORD' @ 100% for one year and held the same as 'neither attributable to nor aggravated by military service' (NANA).

2. The initial disability pension claim of the applicant was taken up with the pension sanctioning authority i.e. PCDA (P) Allahabad, which, upholding the findings of the IMB, rejected the claim. Against this, the applicant preferred the first appeal dated 30.09.2002, which was rejected by the First Appellate Authority vide letter dated 29.07.2004. Thereafter, the applicant preferred the second appeal dated 04.03.2017 against

the rejection of the first appeal before the Defence Minister's Appellate Committee. The prayer made in the second appeal was also rejected vide letter dated 27.03.2017 and 02.05.2017. Hence, the present OA.

3. Learned counsel for the applicant submitted that the applicant, at the time of joining the service, was declared fully fit medically and physically, and no note was made in his medical record to the effect that the applicant was suffering from any disease at that time. Learned counsel submits that after completion of basic training and trade, the applicant was admitted to the Command Hospital, Bangalore with complaints of weakness in his right hand, where it was detected that the applicant was suffering from 'Intra Medullary Astrocytoma Cervical Spinal Cord Tumor' and was subsequently transferred to CH(SC) Pune for Neuro Surgical treatment. At CH (SC), Pune, he underwent Laprinectomy C2-3-4 on 21.03.1996 (Grade II Astrocytoma); the applicant remained under treatment from 25.01.1996 to 12.08.1996 and thus the applicant was brought before the IMB. In view of right hemiparesis which was found unlikely to improve any further,

the applicant was recommended to be boarded out of military service in category EEE/its equivalent in IAF due to the ID-Intramedullary Astrocytoma Cervical Spinal Cord (Optd.).

4. Learned counsel for the applicant further submitted that the instant matter is squarely covered by a catena of judgments of the Hon'ble Supreme Court including **Dharamvir Singh Vs. Union of India & Ors. [2013 (7) SCC 316]**, wherein it was held that if a disease had led to discharge of the individual in low medical category, it shall ordinarily be deemed to have arisen in service if no note of it was made at the time of joining the military service and as such the respondents' action in denying the disability pension is unjustified and unlawful when the disability recorded by the IMB occurred during the military service and were caused due to stress and strain of service.

5. Learned counsel referred to Rules 4, 5(a), 8 and 9 of the Entitlement Rules for Casualty Pensionary Awards, 1982 to submit that the invaliding from service is a necessary condition for grant of a disability pension and if the individual is at the time of his release from service in lower medical category than that in which he was recruited will be treated as invalidated

from service; deterioration of health is to be presumed to be due to service conditions and that if the worsening of a condition persists till the time of discharge, aggravation is to be accepted and that onus of proof lies on the part of the respondent and benefit of reasonable doubt will be given to the claimant. Therefore, learned counsel prayed that the disability in question may be held as attributable to and aggravated by military service and that the disability pension be granted to the applicant.

6. *Per contra*, learned counsel for the respondents controverted the arguments put forth on behalf of the applicant and contended that the applicant is not entitled to the relief claimed since the IMB, being an expert body, found the disability of the applicant as 'neither attributable to nor aggravated by service' being constitutional in nature and not connected with service and that the disablement was assessed as 100% for one year only. Learned counsel further submits that mere occurrence of the disease in service does not mean that it was due to service as there are certain other factors also which can initiate occurrence of disease. He also emphasized

that the medical examination at the time of recruitment cannot detect all medical issues. Hence, learned counsel prayed that the OA may be dismissed.

7. We have heard respective submissions made by the learned counsel for the parties and have carefully perused the records.

8. It is not in dispute that the applicant was enrolled on 27.12.1994 after having been found medically and physically fully fit. However, the applicant, on 25.01.1996, i.e. after one year and one month, was admitted to the SSQ AFS Jalahalli with complaints of weakness of right upper limb and later he was transferred to CHAF Bangalore on 01.02.1996 where he was diagnosed as ID Intramedullary Astrocytoma Cervical Spinal Cord. He was then transferred to CH (SC) Pune where he underwent surgery and it was revealed that the applicant was suffering from Grade II Astrocytoma. Accordingly, the applicant was brought before the IMB and was invalided out of service in the low medical category EEE/its equivalent in IAF.

9. In the present case, the applicant was suffering from the disease which is a type of cancer. We may refer to Para 9 of the Chapter VI of the Guide to Medical Officers (Military Pension), 2002 (hereinafter referred to as 'GMO (MP) 2002'. The same is reproduced as hereunder :

"Cancer

9. Cancer is one of the diseases regarded as usually unaffected by ordinary conditions of service. While its precise cause is still unknown and entitlement is not normally conceded, there is adequate material both of scientific and statistical nature which brings into light the causative factors and the connection between service related factors and carcinogenesis. Post World War II research highlighted the interaction of nuclear explosion and occurrence of cancers. American Armed Forces committed to enemy action in Vietnam also studied the occurrence of cancers in troops in action.

The recognized causative agents for carcinogenesis are :

- (a) Viral infection*
- (b) Radiation from nuclear sources*
- (c) Ultra violet rays*
- (d) Chemicals*
- (e) Acquired chromosomal abnormalities*
- (f) Congenital Chromosomal abnormalities*
- (g) Diet, exercise, life styles*

The service related conditions in relation to carcinogenesis are as under :-

(a) Terrain: Exposure to UV rays in high altitude areas, high background irradiation and pollution are etiological factors now recognised in initiating carcinogenesis. Service personnel are forced to stay long in certain terrains, can get exposed to noxious factors.

(b) Occupational hazards: All ranks working in nuclear powered submarines, doctors and paramedics working with electro-magnetic equipment, personnel working with radars, communication equipment, microwave and also those handling mineral oils such as petrol and diesel are exposed despite stringent safety measures.

(c) Infection : as a cause of cancer has been documented in certain malignancies. Though identification of an organism may not be possible due to lack of facility but there is gross evidence clinically to suspect infection.

(d) Diet : The ration issued in services may not contain adequate amount of fibre, fresh vegetables and fruits which are cancer preventing agents. The personnel may not be able to procure and supplement the diet due to remote location, non availability of the material.

(e) Exercise : Physical exercise is known to protect against cancer like that of colon. Postings at high altitude, uncongenial weather conditions, insurgency affected areas, interfere with exercise programmes.

(f) Stress and strain : Stress and strain of services is something unique and has now been

documented in initiating certain cancers in human beings. The question of relationship between a malignant condition and an accepted injury is difficult to establish. The vast majority of traumatic lesions however severe, show no tendency to be followed by cancer either immediately or remotely.”

From the above, it is seen that there are causative factors like radiation and nuclear sources, chemicals and viral infections, trauma and certain service related conditions are also explained in the above provision as occupational hazards. Furthermore, for determining the attributability of the disease (cancer) to service, Para 10 of the GMO (MP) 2002 may also be referred to which is reproduced hereinbelow :

“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

(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 (human papilloma virus)*
- (vii) Any cancer due to HIV infection (contracted out of blood transfusion in service)*
- (c) Any cancer which is detected from 30 days to five years after combat induced stress.*

11. Malignancies Aggravated by Service :

- (a) Passive smoking (Ca lung)*
- (b) Diet (Ca pancreas, colo rectal Ca)*
- (c) Stress - Any cancer detected in an individual who has taken part in an operation of any nature.*

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.

Lead Time

For consideration of aggravation/attribution a lead time of at least 5 years of service must be reckoned except where there has been exposures to combat/active operation."

10. From the perusal of the above, we find that the Astrocytoma can be held attributable only if the personnel were working or had been exposed to radiation source in any form. There are other factors also which can cause cancer like being exposed to chemical, especially petroleum products, coal dust, silica, iron etc. and also certain viral infections. In the present case, there is no material available on record which can be said

to have triggered the disease, that too within a year of enrolment.

11. Furthermore, it would be helpful to refer to the scientific material available on the internet about what causes Astrocytoma, which reads as under :

“What causes Astrocytoma ?

“Researchers don’t know the exact cause of most astrocytomas. The majority of these tumors are sporadic, meaning that they happen randomly. So far, researchers have only identified two known risk factors for astrocytomas: radiation exposure and genetic.

However, recent studies have revealed that a mutation (change) in the IDH1 gene contributes significantly to the development of low-grade astrocytomas. This gene helps provide energy to your cells. Its mutation results in the production of a chemical called 2-HG, which over time, builds up inside healthy astrocytes. The buildup causes the cells to become abnormal, causing astrocytomas.”

12. The applicant, who is a young 20-year old boy, was diagnosed with the disease in question after just about one year and one month of being in the Air Force. Therefore, in this matter, we do not find any causal connection between the disease suffered by the applicant and the service. Hence, in

our view, there is no infirmity in the opinion of the IMB and, therefore, the applicant is not entitled to any disability pension.

CONCLUSION

13. In view of the above, OA fails and according stands dismissed.

14. There is no order as to costs.

Pronounced in the open Court on this 19 day of July, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT GEN P.M. HARIZ]
MEMBER (A)

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