

**ARMED FORCES TRIBUNAL, CHANDIGARH REGIONAL
BENCH AT CHANDIMANDIR**

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TA 258 of 2011 (arising out of CWP 952 of 1994)

Darshan Singh	Petitioner(s)
Vs		
Union of India and another	Respondent(s)

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For the Petitioner (s) : Mr. Navdeep Singh, Advocate

For the Respondent(s) : Mr. SK Sharma, Sr. PC.

Coram: Justice Vinod Kumar Ahuja, Judicial Member.
Air Marshal (Retd) Naresh Verma, Administrative Member.

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**ORDER
20.12.2013**

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1. The Civil Writ Petition No. 952 of 1994 was filed in the High Court of Punjab and Haryana at Chandigarh and registered as TA No. 258 of 2011 is taken up on transfer to this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007.

2. Briefly stated the facts of the case are that the petitioner filed Civil Writ Petition in the Hon'ble High Court of Punjab and Haryana under Articles 226/227 of the Constitution of India praying that a writ in the nature of certiorari be allowed quashing the order dated 19.8.1992 rejecting the claim for disability pension by the CDA(P) Allahabad, intimated vide Annexure P-2, the order rejecting the appeal filed by the petitioner intimated vide Annexure P-7 and for issuance of a writ of mandamus directing the respondents to pay the disability pension to the petitioner in accordance with rules and regulations.

3. It is alleged by the petitioner that he served in the army w.e.f. 23.1.1985 to 29.2.1992 and was invalided out of service by the medical board after lowering down his medical category from 'AYE' to category 'EEE' for the disease '**Giant Cell Tumour Right Femur (OPTD)**' after completion of 7 years, 1 month 6 days of service. The petitioner claimed disability pension but his case was rejected by the CDA(P) Allahabad vide order dated 19.8.1992 on the ground that the

disability which resulted invalidment/discharge was not attributable to military service (ii) does not fulfil the following conditions, namely it existed before or arose during military service and has remained aggravated thereby and iii) is accepted as attributable to/ aggravated by service but assessed at less than 20% , hence rejected.

4. It is further alleged that grounds for rejecting the disability pension are not tenable in law and are totally against rule 7(b) of the Defence Instructions governing the disability pension contained in letter dated 18.4.1950 and amended by letter dated 1.10.1951. The petitioner joined service after thorough medical checkup. The injury is not a result of any voluntary act of the petitioner. The petitioner felt pain in his right leg when he was struggling hard to win the prestigious volleyball matches for his Brigade team. So the question of occurring the injury during army service or not attributable to the army service is not tenable.

5. The petitioner preferred an appeal against rejection of his claim for disability pension, which was rejected vide Annexure P-7. Being aggrieved of the aforesaid orders passed by the respondents, the petitioner filed the writ petition in the High Court which was later on transferred to this Court on creation of the Tribunal and was registered as TA.

6. Notice of the petition was issued to the respondents. They filed reply. They took up the plea that the disability of the petitioner was considered neither attributable to nor aggravated by military service. Therefore, the grant of disability pension was denied vide letter dated 8th September, 1992 (Annexure P-2). The petitioner was given an opportunity to file an appeal which was considered and was rejected vide Annexure P-7 dated 21.7.1993.

7. It was further pleaded that the petitioner was enrolled in the Army on 23rd January, 1985 and was invalided out of service in medical category 'EEE' w.e.f. 29th February, 1992 having 7 years 37 days service including 101 days non-qualifying service. The reason given was due to invaliding disability '**Giant Cell Tumour Right Femur (OPTD)**' by a duly constituted invaliding medical board.

8. We have heard the learned counsel for the parties and have gone through the record of the case.

9. The facts as emerge from the documents placed on record namely, Medical Board Proceedings, opinion of the Medical Board and Medical Case Sheet shows that according to the history given, the soldier sustained injury of right knee in December 1990 while playing volley-ball for Brigade. According to history given, he developed pain and swelling above right knee and he was treated, admitted in the hospital. Biopsy of right knee was done and advised for above knee amputation for which he was not willing, hence recommended for release in low medical category 'EEE' and sent to military hospital for medical board. It was also observed in the history that he was mentally upset, so he went to his home and after few days reported to PGI Chandigarh. Prior to severe disability, he had participated in operation 'PAWAN' (Sri Lanka) w.e.f. 3.5.1989 to 10.1.1990 and field operation 'Rakshak' w.e.f. 19.3.1990 to date i.e. 28.1.1992, the date of examination. The disability mentioned was '**Giant Cell Tumor Right Femur (OPTD) (170)**' (above knee amputation done) the date of origin as March 1991. The percentage of disablement mentioned was 80% and he was recommended fit to be invalided out in Cat 'EEE' as on 28th January, 1992.

10. According to Entitlement Rules for Casualty Pensionary Awards 1982, there was a list of diseases not normally affected by service and at Serial No.1 it reads as under:

“ **Malignant diseases (Cancer and Carcinoma)** This position has now changed which shall be referred below:

11. According to CHAPTER –II Guide to Medical Officers (Military Pensions), under heading 'Entitlement General Principles' it is provided as under:

“Medical Boards should examine cases in the light of the aetiology of the particular disease and after considering all the relevant particulars of a case, record their conclusions with reasons in support, in clear terms and in a language which the pension sanctioning authority, a lay body, would be able to appreciate fully in determining the question of entitlement according to the rules. In expressing their opinion medical officers should comment on the evidence both for and against the concession of entitlement. In this connection, it is as well to remember that a bare medical

opinion without reasons in support will be of no value to the Pension Sanctioning Authority.

If it is established on evidence that the disease was brought about by service conditions, then attributability is clearly indicted. If on the other hand, a disease not attributable to servicehaving been of pre-enrolment origin or having its origin in other than service conditions, has been influenced in its subsequent course by conditions of service, the claim would stand for acceptance on the basis of aggravation.

Opinion on entitlement must be impartially given in accordance with the evidence, the benefit of any reasonable doubt being given to the claimant.”

Under heading ‘**CANCER**’ on the same CHAPTER-II, it is provided as under:

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 occurrences 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 violets 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 back ground irradiation and pollution are etiological factors now recognized in initiating carcinogenesis. Service personnel are forces 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 raqdars, 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 programmers.

(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 different to establish. The vast majority of traumatic lesions however severe, show no tendency to be followed by cancer either immediately or remotely.

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) Chronoc 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

12. It is clear from the above discussion that the petitioner had taken part in two operations prior to detection of cancer and it was detected after he had taken part in the operations as detailed above. It is also clear from the above that cancer can be due to many reasons detailed above and it can be there due to stress and strain, absence of adequate amount of fibre, fresh vegetables and fruits which are cancer preventive agents. It can be due to terrain, occupational hazards etc. These questions have been considered by the Courts in various judgments relied upon by the learned counsel for the petitioner.

13. The first judgment relied upon is **TA No. 48 of 2009** (arising out of CW (C) No. 6324 of 2007 of Delhi High Court in '**Nakhat Bharti etc etc. v. Union of India and others**, decided on 28th October, 2009 by the Principal Bench of Armed Forces Tribunal, Delhi. The facts of that case are that the petitioner was serving a a gunner (driver) and he was found medically fit in all respect when he was

enrolled in the Army. He was posted in the Unit on Indo-Pak border in Sambha Sector of Jammu and Kashmir which was infested with terrorists and counter insurgency operations were carried out frequently. This operational environment caused tremendous mental stress and strain on petitioner . He exhibited sign of mental disease and the doctor recorded after treatment that no evidence of any organic basis could be detected for his invaliding psychiatric disability clinically. He was brought before the Invaliding Medical Board who found the disability to the extent of 40% for five years but further observed that it was neither attributable to nor aggravated by military service. The claim was sent for disability pension which was rejected by PCDA(P) Allahabad. His statutory appeal was also dismissed observing that the disease schizophrenia is due to constitutional disorder. The second appeal was also rejected and the matter was considered by the Principal Bench and it was observed as under:-

“However, in view of the fact and detailed relevant provisions reproduced above clearly mandates the presumption in favour of the army personnel only. It is rebuttable by a good reason by the medical board. In above three cases vis. Nakhat Bharti v. UOI & Ors, NK Sisram v. UOI & Ors and Manmohan Singh v. UOI & Ors we have found no detailed reasons have been provided that why the disease was not initially detected.”

14. The petition was allowed accordingly and respondents were directed to determine the quantum of disability pension as per rules and regulations.

15. The next decision relied upon is **OA No. 297 of 2011 “Sqn.Ldr SP Malik (Retd) v. Union of India & Ors”** decided on 8.3.2011 by this Tribunal. The facts of the case are that the petitioner was appointed in the Air Force as airman in 1995 and then he was commissioned in 1978. In 1986 while posted at Kaluchak in J&K, he was diagnosed with ISCHEMIC HEARET DISEASE (IHD). He was placed in low medical category, continued in service and retired from service on attaining the age of superannuation. He was brought before the Release Medical Board before discharge and he was found to be suffering from IHD 411 and his disability was assessed as 20% for two years. His claim for disability pension was rejected even upto appellate stage on the ground that the disability suffered by the petitioner was neither

attributable to nor aggravated by military service. In the opinion of the medical board, no reason for non-attributability or aggravation has been given by the medical board. In the above case the petitioner was suffering from heart disease and the petition was allowed directing the respondents to release the disability element of pension in favour of the petitioner.

16. Reliance was placed upon the decision of this Tribunal in **TA No. 68 of 2009** (arising out of CWP No. 3027 of 2008) “**Waryam Chand v. UOI & Ors.**” decided in January 2010. In the present case also the petitioner who was appointed in the Indian Postal Services as Clerk and then joined the army was found to be suffering from IHD (heart disease) and his disability was assessed at 20%. His claim was rejected and he filed a petition. It was held that the Court has no power to differ from the opinion of the release medical board. However, if the opinion of the release medical board is not in conformity with the provisions contained in Army Rules and Regulations then the disease deemed to be attributable to or aggravated and connected with service conditions and it was held that the case of the petitioner squarely falls under para 173 of Pension Regulations 1961 for the Army for grant of disability pension from the date of invalidation. The petitioner was granted disability pension from the date of his invalidation.

17. Reliance was also placed upon the decision of this Tribunal in **Baljinder Kaur v. UOI & Ors** , **TA No. 372 of 2010**, decided on 9th July, 2010 in which case also the deceased employee was found having a large recurrent lesion. He died and the fatal disease Astrocytoma was conveyed to be a constitutional malignant disorder and it was held to be not attributable to military service. The observations made therein are relevant and are being reproduced below-

“However, the learned counsel for the petitioner has invited our attention to extract from Guide to Medical Officers (Military Pensions), 2002, which is intended to provide guidance to the officers, to embark upon the question , as to whether a particular disease or disability, complained is attributable to service conditions or not. It is in Chapter VI that clinical aspects of certain diseases are catalogued, dealing with Cancer. It has been mentioned that Cancer is one of the diseases regarded as usually unconnected with service conditions, while its precise cause is still unknown and

entitlement is not normally conceded, there is adequate material both of scientific and statistical nature which bring into light causative factors and the connection between service related factors and carcinogenesis. It is also mentioned that Post World War-II Research highlighted interaction of nuclear explosion and occurrence of cancers. Then, list of recognized causative agents for carcinogenesis is given, which includes ultra violet rays. Then, diet, exercise and life styles have also been included therein.

It has been specifically catalogued the service related conditions in relation to carcinogenesis and that includes (i) terrain, as it results into exposure to ultra violet rays in high altitude areas and high document irradiation and pollution etiological factors now recognized in initiating carcinogenesis. It was noticed that service personnel asre forced to stay long in certain terrains can get exposed to noxious factors. Apart from this, diet has also been taken to be one of such conditions, by observing that the ration issued in service 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 and non-availability of the material. Then, another service related condition, stress and strain of service has also to be taken to be something unique and has now been documented in imitating certain cancers in the human beings. It has also been observed that the question of relationship between malignant and an accepted injury is difficult to establish, and vast majority of traumatic by lesions, however severe, show no tendency to be followed by cancer either immediately or remotely. Then, in para 10, Astrocytoma precisely has been considered to be the outcome of occupational hazards in cases of persons working or exposed to the radiation source in any forms. Likewise, any cancer detected in any individual, who has taken part in an operation of any nature can also occur on account of stress. It also does not define the nature of malignancies nor attributable and not aggravated by military service, like tobacco related cancer in smokers and tobacco users or cancers due to congenital chromosomal abnormalities, which is not the case here.

18. It was held that the disease was attributable to military service and the petition was allowed.

19. Further reliance was placed upon the judgment of this Tribunal in **O.A No 949 of 2011, titled 'Nirmala Devi vs Union**

of India and others, decided on 13.04.2011, Wherein it was observed as under:-

“Any cancer detected in any person who has taken part in an operation of any kind has been included in the “aggravated” list. Petitioner was deployed on proper Operational deployment from June 1991 to 1992 (which is within the 30 days to 5 years since the cancer was detected in 1994) but was also posted to Operational area and intermittently remained deployed even after the cancer was detected. The Medical Board had not given the detailed reasons while rejecting attributability/ aggravation”. It was further observed as under:-

Merely writing that “it is a neoplastic disability not connected with military service” is not enough to deny the aggravation . It is pertinent to mention that any cancer detected in a person who has taken part in an operation of any kind has been included in the aggravated list. Therefore, taking over-all position of the facts and circumstances of the case as well as the Guide to Medical Officers, we are of the view that the invaliding disease from which the husband of the petitioner was found to suffer is deemed to be attributable to military service. He continued to serve in Field/Modified Field Areas after the detection of his disease. Thus, the disease has also been aggravated by Military Service. The percentage of the disability was assessed as 100% by the Invaliding Medical Board. Hence the case of the petitioner is covered under paragraph 173 of the Pension Regulations of the Army, 1961 and he is entitled to get disability pension regulations for the Army, 1961 and he is entitled to get disability pension for 100% disability from the date of his discharge. The Petition was accordingly allowed and Special Family Pension was granted after the death of the husband of the Petitioner to Petitioner. The disability found was 100% from the date of discharge until his death.

20. Reliance was also placed upon the judgment of Hon’ble Supreme Court in **Dharamvir Singh vs Union of India and Others, Civil Appeal No.4949 of 2013** (arising out of SLP (C) No. 6940 of 2010) Decided No 2-7-2013. The facts of this case are as under:-

“The appellant was enrolled as Sepoy in the Corps of Signals of the Indian Army on 15th June, 1985. Having rendered about 9 years of service in Indian Army he was boarded out of the service with effect from 1st April, 1994 on the ground of 20% permanent disability as he was found suffering from “Generalized seizure (Epilepsy)”. The Medical Board of Army opined that the “disability is not related to military service”. On the basis of disability report, no disability

pension was granted to him and when the appellant preferred representation the respondents rejected such prayer by an order dated 12th December, 1995 on the ground that the disability suffered by the appellant was neither attributable or nor aggravated by the Military service.”

Their Lordships referred to **Regulation 173** and it was observed as under:-

***Regulation 173** of Pension Regulations for the Army, 1961 relates to the primary conditions for the grant of disability pension and reads as follows:*

*“**Regulation 173.** Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalidated out of service on account of a disability which attributable to or aggravated by military service in non-battle casualty and is assessed 20 per cent or over. The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II.”*

21. From a bare perusal of the Regulation aforesaid, it is clear that disability pension in normal course is to be granted to an individual (i) who is invalidated out of service on account of a disability which is attributable to or aggravated by military service and (ii) who is assessed at 20% or over disability unless otherwise it is specifically proved. The petition was allowed by the Learned Single Judge by holding that there is nothing on record to show that the Appellant was suffering from any disease at the time of his initial recruitment in the Indian Army. Thus, the disease would be deemed to be attributable to or aggravated by the Army Service. The respondents were directed to grant disability Pension to the Appellant from the date he was invalidated out of service. The said decision was set-aside by the Division Bench and after referring to the various provisions, their Lordships observed in Para No 32 as under:-

In spite of aforesaid provisions, the Pension Sanctioning Authority failed to notice that the Medical Board had not given any reason in support of its opinion, particularly when there is no note of such disease or disability available in the service record of the appellant at the time of acceptance of for military service. Without going through the aforesaid facts the Pension Sanctioning Authority mechanically passed the impugned order of rejection based on the report of the Medical Board. As per Rules 5 and 9 of ‘Entitlement Rules for Casualty Pensionary Awards, 1982’, the appellant is entitled for

presumption and benefit of presumption in his favour. In absence of any evidence on record it show that the appellant was suffering from "Generalized seizure (Epilepsy)" at the time of acceptance of his service, it will be presumed that the appellant was in sound physical and mental condition at the time of entering the service and deterioration in his health has taken place due to service". In view of the above discussion, the order passed by the Division Bench was set-aside and that of the Learned Single Judge was restored vide which the respondents have been directed to pay the Appellant the benefit in terms of the order passed by the Learned Single Judge.

22. Coming to the facts of the case the petitioner had alleged in the petition that he was hale and hearty till November/December 1990. He felt pain in his left leg when he was struggling hard to win the prestigious volley-ball match for his Brigade. The injury was detected in December 1990 when he reported to Sunderbani Sick Qtrs from where he was admitted in Akhnoor Military Hospital from where he was sent to MH Pune where he remained for two months. Then he was admitted to PGI Hospital Chandigarh. From PGI Hospital Chandigarh he reported to his Unit and from where to Akhnoor MH. He also remained in Command Hospital Udhampur and then at Pune. He was given artificial leg by ALC Pune and was medically boarded out on 29th February, 1992.

23. The above facts have not been disputed by the respondents in their written statement and there is nothing on the record even to suggest, or even a whisper, that the petitioner was having some injury at the time of his enrolment in the army. The claim of the petitioner has been rejected by the respondents on the ground that there is nothing to show that the injury in question was aggravated during service or can be attributed to the service.

24. It is a fact that the petitioner had sustained the injury when he was playing volley-ball match and was on duty at that time. According to the decision in **Dharamvir Singh's case** and other cases, the presumption is that the petitioner had suffered the injury during the course he was in service until and unless it is rebutted by any evidence produced by the respondents. It is not for the petitioner to prove in negative that he had not suffered the injury during the time he was in

service but the presumption has to be drawn until and unless it is rebutted by the respondents by way of any evidence. According to the above decisions, the cancer has been recognized as one occurring due to the posting in hard areas or have been detected during service and, therefore, it is attributable to the service. It is surprising that the respondents firstly considered the disability at less than 20% though it had led to amputation of his leg and was later on opined as 80% and prior to sustaining of the injury, he had participated in two operations as detailed above. Once he had sustained these injuries after he had participated in two operations, it is presumed to have been suffered by him and entitles him to the grant of disability pension to which his claim was wrongly rejected by the authorities.

25. We accordingly hold in view of the above discussion of the law and the facts of the case that the petitioner is entitled to the disability pension which shall be granted in his favour as per the rules and regulations from the date he was invalided out within three months failing which interest shall be payable @ 10% per annum from today till payment. The petition is allowed accordingly.

(Justice Vinod Kumar Ahuja)

(Air Marshal (Retd) Naresh Verma)

20.12.2013

raghav

Whether the judgment for reference is to be put on internet? Yes / No.