

Unreportable
* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ WP (C) No. 1191 of 2008

Reserved on : March 25, 2008
Pronounced on : May 02, 2008

Sgt. Chaman Lal

. . . Petitioner

through :

Petitioner in-person.

VERSUS

Union of India & Ors.

. . . Respondents

through :

Ms. Jyoti Singh with
Mr. Ankur Chhibber, Advocates

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI

THE HON'BLE MR. JUSTICE J.M. MALIK

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

1. This is the third petition preferred by the petitioner with the prayer for following reliefs :-

“(a) Issue a writ, order or direction in the nature of mandamus to Respondents to conduct an Independent Enquiry Committee comprising of Civil Doctors (Medical Oncologists & Radiation Oncologists) from Various Reputed Hospitals/Medical Council of India to find out the negligence of the Medical Authorities including re-examination of Slides/Forensic test which has resulted him in causing a permanent disability and to fix the responsibility there-of. Thereafter for the kind consideration of this Hon'ble Court.

(b) Issue an appropriate writ, order or direction to Respondents to retain and grant promotion with retrospective effect to the petitioner to the next higher rank of JWO wef. 01 Jul 07 as he has competed his counter-parts in the existing medical category by

quashing/setting-aside Air HQs Ltr AIR HQ/C 40651/3/PA (CPC) dated 15 May 07 and 11 Sep 07 being an exceptional, Extra-Ordinary, rare-to-rarest case as petitioner is discharging/performing his assigned trade duties efficiently and promptly.

- (c) Issue appropriate writ, order or direction to Respondents to Re-imburse petitioner's previous Medical Treatment Bills (Rs.8700/- approx) for the treatment taken at Indraprastha Apollo Hospital at par with the expenses so occurred (Only for investigations and Medicines etc) in the form of entitled person.
- (d) Issue appropriate writ, order or direction to Respondents to regard the disability Attributable/Aggravated at par with battle casualty OR to compensate the petitioner adequately for the loss by way of Public Law Remedy for violation of Article 21 and 14 of Constitution of India for causing permanent disability/Exemplary continuous damages/loss of permanent earning capacity by existing Provisions & Jurisdiction of this Hon'ble Court under Article 226 of Constitution of India in the larger interest of justice, Equity and fair-play.
- (e) Issue appropriate writ, direction or order to Police Administration to register an FIR for voluntarily causing grievous hurt under various sections of Indian Penal Code (IPC 325 and 337/338) if found guilty in good conscience, equity and fair-play.
- (f) Issue appropriate writ, direction or order to Certiorari Calling of the Medical Treatment Record of the petitioner for the Opinion of the experts and thereby for kind consideration by this Hon'ble Court.
- (g) To pass any Order/Orders as deemed fit as per the facts and circumstances of the case."

2. Most of these reliefs claimed by the petitioner were the subject matter of earlier writ petitions as well and, therefore, the petition seeking those reliefs is barred by the principles of *res judicata*. In this behalf, we may note that the petitioner had, in the first instance, filed WP (C) No. 3712/2003. In this writ petition, the petitioner prayed for the appointment of an Inquiry Committee to find out the purported negligence caused by the medical authorities of the

respondents resulting into the alleged permanent disability of the petitioner. He had also sought direction for initiating necessary disciplinary action under the provisions of the Air Force Act or Army Act for causing disability by negligence. Another prayer made was to the effect that he be not discharged from service and the respondents be restrained from depriving him of his promotion subject to normal other conditions. In the alternative, it was prayed that in case the respondents decide to discharge him from service on medical grounds at his prime age of 33 years, he be compensated adequately for his remaining life with permanent disability caused to him due to the negligence of the medical authorities of the respondents. Another prayer was to call for medical record of the petitioner for examination of the expert.

3. In WP (C) No. 3712/2003, orders were passed from time to time ensuring proper medical treatment of the petitioner's injury and the grievance of the petitioner was substantially redressed. The petition was ultimately heard and detailed judgment was delivered on 31.8.2006. The Court specifically rejected the prayers to the effect that the respondent be restrained from discharging the petitioner or, in the alternative, to compensate the petitioner adequately in the following terms :-

“3. As far as reliefs (b) and (c) are concerned, they in law cannot be granted to the petitioner. No direction can be issued to the respondents in accordance with law not to discharge the petitioner even if the respondents have the authority and power to do so. It is not even disputed that a person in permanent low medical category cannot be discharged from army service. The petitioner admittedly had

suffered a disability. According to the respondents, they have a right to discharge the petitioner in accordance with law after holding proper Invaliding Board. In view of the stand taken by the respondents, no directions need be passed in this regard.”

4. Insofar as medical treatment of the petitioner is concerned, the Court noticed that orders were passed by different Benches in relation to his sickness and treatment which he should get. It was noted that the petitioner wanted to be treated at Apollo Hospital, which request of the petitioner was acceded to and in the order dated 2.6.2006 it was noted that he was getting major part of treatment free of cost at Apollo. The Court also passed order to the effect that the respondent had given certain financial assistance to the petitioner as a loan, which was not to be cited as precedent as this was compensation given by way of loan by the respondent and peculiar to the facts of the case. The petitioner had demanded reimbursement of medical expenditure on his treatment, which issue was left open as it was beyond the purview and scope of the said writ petition. Prayer of the petitioner for directing inquiry into the alleged negligence of the medical officer was specifically turned down in the following words :-

“7. As far as the prayers of the petitioner contained in Clause (a) with regard to issuance of a direction for holding an enquiry into the alleged negligence of the respondents’ medical officers and whether petitioner is entitled to any compensation or not, are not the reliefs which are entirely covered under the present writ petition. Furthermore, this disputed question of medical negligence and the counter statements made by the respondents that petitioner was given all proper and due care and treated properly, cannot be gone into and decided by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The petitioner is also at liberty to make proper representation to the authorities praying for such an enquiry and if such a representation is made, we do hope that the authorities concerned would deal with the matter

sympathetically and in accordance with law. Liberty is granted to the petitioner to take any other steps as are permissible to him in accordance with law even in this regard. This writ petition is disposed of with the above observations, while leaving the parties to bear their own costs.”

5. Thereafter, the petitioner filed WP (C) No. 6399/2007. In this petition the relief claimed by the petitioner is that the respondent be directed to admit the petitioner in the Army Hospital Research and Referral Centre to forthwith operate and treat him for his medical condition. On 10.9.2007, following order was passed :-

“Col. G.R. Joshi, Senior Adviser (Surg & Ortho), has furnished a written opinion to the effect that the Petitioner has shown improvement in his clinical status and that he has minimal symptoms related to knee and no evidence to the local recurrence of NHL Proximal Tibia Rt (opt'd). The Petitioner submits that he has received treatment in the past from Indraprastha Apollo Hospitals, Delhi which had noted that there was a loose prosthesis active infection.

To set all doubts hopefully at rest, we would request the Medical Superintendent, Indraprastha Apollo Hospitals, to examine the petitioner once again and furnish a report which may be handed over to the Petitioner so as to reach us before the next date of hearing.

Renotify on 13th September, 2007.

Let a copy of this Order be given dasti under the signature of the Court Master.”

6. Pursuant to the aforesaid directions, the petitioner was examined at Indraprastha Apollo Hospital. When the case came up again on 13.9.2007, the writ petition was disposed of taking note of the statement of the respondents that whatever medical treatment was necessary for the petitioner, according to his condition, the same shall be given. For our benefit, we reproduce order dated 13.9.2007:-

“We have taken on record Medical Certificate issued by Dr.Yatinder Kharbanda of the Indraprastha Apollo Hospitals. He inter alia certified that there is a possibility of loosing of

prosthesis for which he advised him regular review by Joint Replacement Surgeon at least every six months. Col. G.R. Joshi, who is present in the Court today, also states that whatever medical treatment is necessary for the Petitioner, according to the condition of the Petitioner, shall be given.

In view of above, no further orders are called for. Writ Petition stands disposed of.”

7. In view of the aforesaid orders passed in these two petitions, the grievances raised by the petitioner were the following: (a) reimbursement of medical expenses; (b) the injury suffered by the petitioner be treated as attributable to service; and (c) as the petitioner was getting treatment at Delhi, his posting to Pune, orders to which effect were passed in the meantime, be deferred and even if he was to go to Pune, he be allowed to retain the family quarter.
8. Insofar as reimbursement of medical expenses is concerned, the petitioner, who argued his case in-person, submitted that a sum of Rs.7,800/- was payable on this account. On the suggestion given by the Court that since the amount was trivial and the same be reimbursed, learned counsel for the respondent, on instructions, fairly conceded and made a statement that this amount shall be paid to the petitioner. Learned counsel for the respondent also made a statement, on instructions, to the effect that decision had been taken by the respondents not to discharge the petitioner from service on medical ground and he would be allowed to complete his normal tenure. Learned counsel has also stated that the respondents had already taken a decision that the disease of *Tuberculosis*, with which the petitioner was suffering, would be treated as attributable to

service and in respect of other diseases, decision would be taken. We direct that such a decision be taken within three months from today.

9. Case of the petitioner for grant of compensation had already been rejected earlier. We were also informed that the petitioner had filed an application/complaint before the National Commission under the Consumer Protection Act wherein he has claimed compensation of Rs.1 crore. In that view of the matter, we cannot grant any such relief to the petitioner. We further find that posting of the petitioner to Pune is at his own request. Learned counsel for the respondent also informed that the medical facilities available at Pune were of highest standards and the petitioner would continue to get adequate medical treatment. Since the petitioner stands transferred to Pune, his request for retention of family quarter at Delhi cannot be entertained and granted. We, accordingly, reject this prayer.

10. This writ petition, thus, stands disposed of in the aforesaid terms.

(A.K. SIKRI)
JUDGE

(J.M. MALIK)
JUDGE

May 02, 2008
nsk