

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ WP(C) No.265/2004

Date of Decision: 02.05.2008

#Jarnail Singh Randhawa

!

.....Petitioner

Through: Mr. Rajesh Singhal
Advocate.

Versus

\$Union of India and Others

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.....Respondent

Through Mr. Manoj Ohri
Advocate

CORAM :-

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

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

1. Whether Reporters of Local papers 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. The petitioner, whose date of birth is 1.4.1926, joined the Indian Air Force on 14.7.1943. He was granted Regular Commissioner Officer rank as Pilot Officer with effect from 27.6.1964. At that time he was medically examined and was placed in medical category 'AYE'. By the

year 1971 he had put in 28 years of service in the Indian Air Force. He was 45 years of age when he got an attack of Ischaemic Heart Disease (IHD) on 19.2.1971. At that time he was posted in ATW Air Force, Jam Nagar. He was medically downgraded to the lower medical category and was recommended to perform sedentary duties. In October 1971, he was posted to Pathankot when he was in lower medical category. However, the war broke out between India and Pakistan on 3.12.1971 and the petitioner who was at that time in low medical category for IHD was declared unfit for strenuous duty by the Medical Officer. The petitioner thus made application dated 9.12.1971 to the Commanding Officer for posting in peace area. However, his request was not acceded to and therefore, he continued to work for 17 days during Indo-Pak War at Pathankot. It is stated that the disease of the petitioner, however, aggravated due to stress and strain of service during the period he remained at Pathankot. Thereafter, he was transferred to 230 Signal Unit Amritsar Cantt. Where he worked as a Senior Administrative Officer.

2. While the petitioner was posted at Air Force CME in No.230SU Air Force he was brought before the Medical Board on 30.3.1977 and again on 28.7.1977. On the recommendation of the Medical Board, Air Force Headquarters, New Delhi vide its letter dated 23.4.1977 issued the Retirement Order of the petitioner. The petitioner was thereafter brought before the Medical Board to assess the extent of disability. The said Medical Board held that the disease with which the petitioner was suffering was attributable to or aggravated by the Air Force Service and prescribed the percentage to be 40%, which was declared as due to stress and strain. The petitioner was, thus, retired from service with effect from 1.4.1978 but the claim of the petitioner for disability pension was rejected vide orders dated 20.3.1979. The appeal preferred by the petitioner was also dismissed on 3.12.1980. His second appeal as well as notice of demand dated 9.6.1980 and 20.10.1980 respectively were also rejected by the Defence Minister's Appellate Committee on Pension vide orders dated 5.11.1981. The petitioner did not pursue his case thereafter and did not challenge the action of the respondents.
3. On 14.1.2000, i.e., almost 22 years after his discharge the petitioner suffered heart attack. On his treatment he had to spend a sum of Rs.1,87,000/-. Out of this, a sum of Rs.93,750/- was reimbursed from

the fund of Kendriya Sainik Board. The petitioner was admitted for treatment, thereafter, in Leelawati Hospital, Mumbai where a pace-maker was grafted at a total cost of Rs.1,77,000/-. The petitioner gave notice of demand dated 29.5.2003 demanding disability element of pension as well as reimbursement of the balance amount spent on his medical treatment. No reply was given to him till 7.1.2004 when he filed the instant petition claiming disability element of pension as well as reimbursement of medical expenses of Rs.1,87,000 – Rs.93,750/- plus Rs.1,77,000/-.

4. In the counter affidavit filed on behalf of the respondents, it is stated that the petition is barred by delays and laches inasmuch as after the rejection of the claim of the petitioner as well as first and second appeal, the petitioner did not challenge those decisions. It is submitted that he became wiser when he suffered heart attack and had to spend money on his treatment. It is also stated that the claim of the petitioner that as per the Medical Board the disease was attributable to or aggravated by the service, namely, due to stress and strain of service is not correct. The medical documents in respect of officers retiring from service on superannuation are preserved for 15 years as per AFO 52/98 and the medical documents in respect of the petitioner, who retired

from service with effect from 31.3.1978, were weeded out. It is also mentioned that the petitioner was not prematurely retired from service but was allowed to complete his tenure and was retired from service on attaining the age of superannuation on 31.3.1978. It is further stated that because of non-availability of the medical record the respondents are not in a position to ascertain the veracity of the submission made by the petitioner that the disease was attributable to or aggravated by the Air Force Service and that the percentage of disability was prescribed at 40%.

5. In the present case one has to bear in mind that even though the petitioner was put in lower medical category due to IHD suffered by him, as mentioned above, he was continued to be retained in service till his normal age of superannuation and was not prematurely retired from service. It was because of the reason that as per the Medical Board, he was found to be fit for duties not involving sustained severe physical exertions, though categorized as A4G3 (Permanent). However, though the petitioner has contended that when he was brought before the Medical Board at the time of his discharge, the Medical Board opined that it was attributable/aggravated by service and was assessed at 40%, there is no record to substantiate this claim. On the contrary, as per the

documents produced by the petitioner, his claim for disability pension was rejected on the specific ground that the disability, namely, IHD from which the petitioner was found to be suffering at the time of release from service “should be regarded as neither attributable to nor aggravated by his Air Force service.” His first appeal as well as the second appeal were also rejected on the same ground. In the absence of record on the basis of which the petitioner could substantiate his claim, and having regard to the aforesaid legal position, we are of the opinion that the doctrine of delay and laches would be attracted in the present case. No reason at all has been given by the petitioner as to why he kept quiet for all these years and did not approach the Court earlier. Had he approached even within 15 years, we could have entertained the claim of the petitioner on merit with reference to the medical record and the deprivation could have been of the past arrears. Since present state of affairs is the creation of the petitioner due to his laxity, it is the petitioner who has to suffer because of the same.

6. In so far as the medical expense is concerned, in the counter affidavit it is stated that the amount is reimbursed as per the rules. We may note that at the time of arguments this relief was not even pressed and no arguments were advanced on this aspect. We, therefore, dismiss this

petition on the aforesaid ground leaving the parties to bear their own costs.

(A.K. SIKRI)
JUDGE

May 02, 2008
HP.

(J.M. MALIK)
JUDGE