

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.255 of 2017 (O&M)
Date of Decision: 12.1.2017

Mukesh Devi

... Petitioner

Versus

Union of India and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Tara Chand Dhanwal, Advocate for the petitioner

RAJIV NARAIN RAINA, J. (Oral)

1. The petitioner approached this Court in CWP No.17105 of 2007 in which directions were issued to the Army authorities to consider and decide the representation of the petitioner for disability pension arising out of the death of her late husband in October, 2006. The Division Bench passed the order on 6th November, 2007. The Army authorities implemented the order of this Court by passing the impugned order dated 12th September, 2008 declining the request. In appeal, the Appellate Committee found from the decision of the Medical Board that the husband of the petitioner had suffered from a medical condition called “RT Fronto Parietal Astrocytoma Grade-III”. The Appellate Committee on a consideration of the case arrived at the conclusion that this disease is neither attributable to nor aggravated by military service even though the degree of disablement was assessed at 40% for life which was the minimum bench mark to be considered a disabled person. Previously, the claim for disability pension raised by the widow was examined by PCDA (Pensions), Allahabad in consultation with MA (P) and after careful consideration and review of the service/medical

documents, rejected the same on the aforesaid ground. The case of the widow did not fall within the ambit of Rule 173 of the Pension Regulations of the Army, 1961 (Part-I). As a result, invalidating disablement of the kind suffered by the husband of the petitioner was not constitutional. The claim for disability pension was rejected and the claimant was advised to approach the Defence Minister's Appellate Committee on Pensions (DMACP). The petitioner took the advice forward and made an appeal dated 10th February, 2009 to the Defence Minister's Appellate Committee which Mr.Dhanwal, learned counsel says, has not been decided so far. The appeal is dated 10th February, 2009 (Annex. P-14).

2. I have heard learned counsel for the petitioner.

3. It is well settled in law that the decision on disability when taken by expert medical boards constituted in the Army for the purpose of evaluation of invalidating disablement entitling person to disability pension is not to be reviewed judicially on the writ side of this Court without the decision being on the face of it palpably wrong in the assessment or suffering from an error apparent on the face of record. When these type of legal infirmities are not forthcoming from the order then it would not be fair to criticize the opinion of the Medical Board formed after thorough evaluation of the medical condition in rejecting the case of the petitioner, then interference would not be warranted under Article 226 of the Constitution of India. The Court does not sit in appeal over the assessments made by the medical experts in the Army by doctors who are the best judges for certifying disablement for the purpose of their rules and service demands. It may be mentioned that "Astrocytoma" is a brain cancer/tumor which also *ex facie* appears not to have been attributable to nor aggravated

served for about 11 years when he died succumbing to the disease. This is one chapter of the case closed.

4. The other side of the case is evident delay and laches in approaching court for legal redress of the grievance. The petitioner has impugned an order passed on 12th September, 2008 in this petition filed in 2017. Even if the petitioner is given due allowance in the appeal filed before DMACP, even then there is a long stretch of time between 2009 and 2017 of inactivity. It is not enough to argue that the widow was waiting for a decision on the appeal, and therefore, she still has a subsisting cause of action to approach this Court. Moreover, the duration of time between the year 2009 and 2017 remaining blank with no explanation offered whatsoever for the delay, then the question of laches comes into play resulting in negligence on the part of the petitioner in diligently pursuing a legal remedy. In this case, delay could have been condoned if there was good reason on merits to interfere, but still the vice of laches would shun court from interfering in a stale and dead claim where even a civil suit seeking the same relief on the same cause of action if brought would have been barred by limitation.

5. Therefore, I find no justifiable reason to an interference in this matter, both on the merits of the case and doubly compounded by delay and laches. This petition is accordingly dismissed.

(RAJIV NARAIN RAINA)
JUDGE

12.1.2017
MFK

Whether speaking/reasoned

Yes

Whether Reportable

No