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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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RAJINDER MANI

W.P.(C) 2906/2017

Through: Dr S.S. Hooda, Mr Rochak
Kharbanda and Ms Adity Hooda,
Advocates.

..... Petitioner

versus

UNION OF INDIA AND ORS.

Through: Mr Sanjib Kumar Mohanty and Mr
Amit Acharya, Advocates for UOI.

..... Respondents

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S.MEHTA

ORDER

12.03.2019

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Dr. S. Muralidhar, J.:

1. The Petitioner, who joined the Border Security Force ('BSF') as Assistant Commandant ('AC') (Direct Entry) on 29th October, 1971, is before this Court seeking a direction to the Respondents to grant him extraordinary pension under Rule 3-A of the CCS (Extraordinary Pension) Rules [CCS (EOP) Rules].

2. The background facts are that the Petitioner had an outstanding record of service in the BSF having been awarded 14 Director General Commendation Rolls, Police Medal for Meritorious Services and President Police Medal for Distinguished Services.

3. The Petitioner was promoted to the rank of DIG on 1st March, 2003. He

was posted as DIG Sector Headquarter, Rajouri (J&K) with responsibility of commanding 8th Battalion, including 05 Battalion on Line of Control ('LoC') and 03 on counter insurgency roles.

4. It is stated that while posted as DIG, SHQ, Rajouri, the Petitioner visited most of the Forward Defended Localities (FDLs) in LoC in hilly and far-flung areas. He was thereafter posted as DIG Sector Headquarters, Counter Insurgency Operations at Ramban in J&K. He joined there on 11th June, 2004, with SHAPE 1 Medical Category and excellent health.

5. Between June, 2004 and January, 2005, the Petitioner performed his duties without any hindrance. It is stated that while working in hilly terrain, during this time, the Petitioner suffered internal bone injuries resulting into pain in his right leg during first week of February 2005. When the pain did not subside during March/ April, 2005, the Petitioner undertook treatment at Jammu. The Petitioner suffered throughout severe pain despite taking painkillers, but continued performing his duties.

6. The Petitioner states that he was detailed for SOMC Level-III to be held at BSF Academy Tekanpur in the first week of July 2005. He left Ramban on 25th June, 2005 for that purpose. While in Delhi on 25th June, 2005 he consulted a neurologist, who advised an MRI. The MRI led the neurologist to suspect cancer in his spinal region. On 4th July, 2005, the doctor who saw the MRI reports, diagnosed it as 'bone TB' and advised medicines and CT guided biopsy of the spine.

7. When despite the treatment, the Petitioner's condition deteriorated, he

was admitted in the Neurosurgery Ward at AIIMS, New Delhi on 4th August, 2005. He was shifted to the radiotherapy ward on 18th August, 2005 and diagnosed as a patient of Non Hodgkins Lymphoma (NHL) (bone cancer). He was given treatment by way of radiotherapy and chemotherapy in successive cycles

8. The Petitioner improved with treatment and on 4th November, 2007, he appeared before the Medical Board which confirmed that his was a case of NHL with THR (left) operated due to pathological fracture of Neck of Femur. He was recommended for Medical Category SI HI A2 (Permanent) P3 (Temporary-48) E1. He again appeared before the Medical Board on 20th November, 2008 which found no change in the diagnosis. He was considered unfit to remain in medical category S1H1. In answer to the question “was the disability contracted in service?” the Medical Board answered in the affirmative.

9. The Petitioner again appeared before the Medical Board on 22nd August, 2009, and a similar report was given. In both the reports, the Medical Board did not give any finding whether the disease was ‘aggravated by service conditions’ or not. They entered the remark N/A i.e. not applicable. However, the Medical Board which examined him on 20th August, 2011, answered this question in the negative.

10. By an order dated 27th May, 2009, the IG Frontier HQ BSF Jammu ordered a Court of Inquiry (COI) to enquire into the circumstances under which the Petitioner while posted as DIG, Sector Head Quarter, Counter

Insurgency Operations, Ramban contracted NHL (Bone Cancer).

11. The COI was conducted between 18th June and 9th September, 2009. The COI opined that the aggravation of the NHL (bone cancer) was attributable to the BSF government service because of deployment of BSF personnel in most difficult mountainous, rugged and far flung insurgency prone areas of Udhampur and Doda Districts of J&K.

12. On 11th October, 2010, the Petitioner made an application to the Director General, BSF (Respondent No.2) for grant of extraordinary pension (EOP) on the ground that he had contracted NHL while in service and which got aggravated due to service conditions.

13. On 7th January, 2011, the Board of Doctors of the Safdarjung Hospital, New Delhi examined the Petitioner and confirmed that it was a case of NHL with mild Paraparesis with left THR with left Brachial Plexopathy. The medical Board further assessed the Petitioner to be physically handicapped with 64% permanent physical impairment in both lower limbs and left upper limb.

14. The Petitioner's application for grant of EOP was rejected by the Respondent No.2 by letter dated 14th February, 2011 on the ground that the Medical Board had opined that the disease was not directly attributable to conditions of service and that it had neither been aggravated nor was attributable to government service. It was accordingly concluded that his request did not fall under the provisions of the CCS (EOP) Rules.

15. The Petitioner then filed a writ petition being SWP 755/2011 in the High Court Jammu & Kashmir at Jammu to challenge the above order dated 14th February, 2011. By an order dated 26th February, 2014, the learned Single Judge came to the following conclusions:

“The Competent Authority has not assigned reasons for brushing aside the findings of Court of Enquiry. The impugned order has been passed overlooking the findings of Court of Enquiry. My attention is drawn to Chapter VI and VII of guide to Medical Officers (Military Pensions) published by Ministry of Defence which lists occupational hazards, viral infection,, radiation from nuclear sources, ultra violet rays, acquired chromozonal abnormalities and trauma e.g. kangri cancer as causative factors of cancer. Malignacies considered attributable to service include NHL (viruses) due to viral infection. It is, therefore, futile to contend that NHL acquired by petitioner during his stint as DIG at Ramban could not be attributed to service conditions or that the same did not get aggravated due to service conditions, more particularly when the Court of Enquiry is of opinion that the posting in highly mountainous and tough terrain (which was militancy infested) and the, operational commitments prevented the petitioner from seeking/obtaining proper diagnoses and treatment of cancer in early stages.”

16. Accordingly, the learned Single Judge issued the following directions:

“In view of the aforesaid discussion, the impugned order cannot be supported. The same is accordingly quashed. The petition is disposed of by directing Respondents to consider the case of Petitioner for grant of extra ordinary pension in the light of finding of Court of Enquiry. The Respondents would do well by taking a decision in this regard within a period of three months from the date of copy of this order is served upon the Respondent.”

17. Thereafter, Respondent No.2 again passed an order dated 18th January,

2016, rejecting the case of the Petitioner by citing the very same grounds on which his request had earlier been rejected. It was observed that the COI report is only a fact finding whereas the report of the Medical Board was authenticated for the purpose of grant of disability pension under the CCS (EOP) Rules. It was observed that all the three Medical Boards held that the disease was not attributable to the conditions of service. The percentage of disability assessed by the Safdarjung Hospital, New Delhi was assessed only after the date of superannuation. Therefore, the case was not covered under provisions of CCS (EOP) Rules, 1939 for grant of disability pension.

18. The Petitioner then filed a contempt petition in the High Court of J&K alleging non-compliance of the directions issued in the judgment dated 26th February, 2014. The learned Chief Justice of the J&K High Court by an order dated 17th February, 2017 observed that the ‘consideration order’ has been passed and therefore closed the contempt petition. However, the liberty was granted to the Petitioner to challenge the said order “in separate proceedings”.

19. Consequent thereto, this writ petition was filed by the Petitioner on 24th March, 2017 in which notice was issued on 31st March, 2017.

20. In the counter affidavit filed on behalf of the Respondents on 29th August, 2017, all the above facts have been admitted. The stand taken by the Respondents is no different from what is stated in the earlier order dated 14th February, 2011 rejecting his application dated 11th October, 2010 as well as the subsequent order dated 18th January, 2016.

21. This Court has heard the submissions of Dr. S.S. Hooda, learned counsel appearing for the Petitioner and Mr Sanjib Kumar Mohanty, learned Senior Central Government Counsel appearing for the Respondents.

22. First, it requires to be noticed that the Petitioner's claim is under Rule 3-A of the CCS (EOP) Rules, 1939 which reads as under:

“3-A. Eligibility

(1) (a) Disablement shall be accepted as due to Government service, provided that it is certified that it is due to wound, injury or disease which -

(i) is attributable to Government service, or

(ii) existed before or arose during Government service and has been and remains aggravated thereby.

(b) Death shall be accepted as due to Government service provided it is certified that it was due to or hastened by -

(i) a wound, injury or disease which was attributable to Government service or

(ii) the aggravation by Government service of a wound, injury or disease which existed before or arose during Government service.

(2) There shall be a causal connection between -

(a) disablement and Government service; and

(b) death and Government service, for attributability or aggravation to be conceded. Guidelines in this regard are given in the Appendix, which shall be treated as part and parcel of these Rules.

[Clarification. - It will be seen from the new (revised) Forms 'C', 'D' and 'E' that these forms of medical certificates have been so designed that they would indicate whether the entitlement criteria laid down in new Rule 3-A have been satisfied or not, and therefore, normally, no other separate certificates in that behalf may be necessary. It is essential for the Administrative Officer as well as the Audit Office (PAO) concerned to satisfy themselves that the death/disability is, in fact, attributable to or aggravated by the Government service which alone makes an EOP Award admissible and for that purpose, it is essential for both of these authorities to satisfy themselves in that behalf and certify the nexus and causal connection between disablement and Government service or between death and Government service (as the case may be), in any particular case, as laid down in the new Rule 3-A on the basis of the medical and other documents regarding the case. If a Government servant had died in such circumstances and that a medical report could not be secured, even then, the nexus and the casual connection between death and Government service has to be established before conceding acceptance of death due to Government service.

G.L, M.H.A. (Dept. of Per. 85 A.R.), O.M. No. F. 23 (9)-E. V (A)/79, dated the 28th November, 1980.]

(3) Notwithstanding anything contained in these rules, the degree of default or contributory negligence on the part of a Government servant may be taken into consideration in making an award under these rules in favour of such Government servant, but, shall not be taken into account where such award is made in favour of the family of such Government servant.”

23. For the purposes of Rule 3-A, it is sufficient to establish that the disability suffered is directly attributable to or is aggravated by the government service. There has to be a ‘causal connection’ between the government service and the disability or aggravation thereof. This can only

be on the basis of expert medical opinion.

24. The consistent medical opinion of the two Medical Boards established that the disability was contracted while in service. There is no denial by the Respondents on this fact. By virtue of an amendment in Chapters 6 and 7 of the Guide to Medical Officers (Military Pensions) issued by the Government of India in 2008, NHL has been identified as ‘malignancy considered attributable to service’. This again is not disputed by the Respondents. The question really is whether the disability got ‘aggravated’ due to government service. In this context, the definitive finding of the Jammu and Kashmir High Court in its judgment dated 26th February, 2014, negates the case of the Respondents. In the first place, as noticed by the High Court of Jammu and Kashmir, the COI was of the opinion that the aggravation of NHL was attributable to the government service because of deployment of BSF personnel in far flung insurgency prone areas and “his dedication to duty and operational commitments of BSF which prevented him from seeking proper treatment at the earlier stage of the disease”.

25. The second finding of the J&K High Court is that it was futile on the part of the Respondents to contend that the NHL acquired by the Petitioner during the duty as DIG at Ramban could not be attributable to service conditions or that the same did not get aggravated to service conditions. These findings of the High Court of J&K have become final. They have not been challenged by the Respondents.

26. Despite the High Court asking the Respondents to reconsider the

application of the Petitioner for EOP on the basis of the above findings, the Respondents have mechanically and without application of mind, repeated the very same grounds on which they had earlier rejected his application for EOP. In other words, there is no difference whatsoever between the first order of rejection and the second. The Respondents appear to have ignored the findings of the High Court given in favour of the Petitioner in coming to such conclusion.

27. To summarize the position:

- (i) The opinion of the two Medical Boards which examined the Petitioner in 2008 and 2009 clearly indicate that NHL was contracted by the Petitioner while in service.
- (ii) The COI has established that the aggravation of the NHL was on account of the service.
- (iii) Both conditions of Rule 3-A of the CCS (EOP) Rules stand, therefore, satisfied.
- (iv) The finding of the High Court of J&K in the order dated 28th February, 2014, in favour of the Petitioner, that the NHL was contracted during service and got aggravated on account of the service, has attained finality.

28. Interestingly, this very plea taken by the Respondents in their counter affidavit in the writ petition filed by the Petitioner in the High Court of J&K was negated by that High Court. Having taken a stand which was rejected by the High Court of J&K, and which judgment has become final, it is not open to the Respondents to offer the very same explanation for denying the

Petitioner relief.

29. For all of the aforementioned reasons, this Court this Court sets aside the impugned order dated 18th January, 2016 passed by the Respondent No. 2, rejecting the Petitioner's claim for EOP. The Respondents are now directed to issue the orders granting the Petitioner the EOP from the date of his superannuation. The arrears of the EOP will be paid by the Respondents to the Petitioner within a period of 12 weeks from today, failing which they will be liable to pay him in addition simple interest @ 6% per annum on the said amount till the date of payment. The current EOP will be paid as and when it is due.

30. The petition is allowed in the above terms with costs of Rs.20,000/- which will be paid by the Respondents to the Petitioner within four weeks from today.

S. MURALIDHAR, J.

I.S. MEHTA, J.

MARCH 12, 2019
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