
(2006) 08 DEL CK 0153

In the Delhi High Court

Case No : Writ Petition (C) No. 3712 of 2003

Sgt. Chamanlal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 31-08-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 08 DEL CK 0153

Hon'ble Judges : Swatanter Kumar, J;G.S. Sistani, J

Bench : Division Bench

Advocate : K. Ramesh, for the Appellant; Sanjay Katyal, for the Respondent

Final Decision : Disposed Off

Judgement

Swatanter Kumar, J.—The petitioner joined as an Airman in Clerk G.D. Trade in Army on 12.10.1987 where after he was promoted to the rank of Cpl in 1992 and Sgt. In 1998. According to the petitioner, he has unblemished service record of 15 years as of now and there has been no sign of medical abnormality of any kind. In March, 2001 he experienced some pain in the upper part of Tibia Rt. (knee) off and on. He reported sick for the same several times at AF Station, New Delhi. The petitioner was given painkillers and from them got temporary relief. Later on he started getting even fever sometimes. On 26.08.01, the petitioner got an MRI scan done at Max Health Care which showed some sign of malignancy in the right knee. The petitioner was thereafter admitted in the Army Hospital Research and Referral Delhi Cantt. and was subjected to certain investigations. The disease of the petitioner was diagnosed as under:

A truecut Biopsy was taken from the upper part of Tibia under local anaesthesia by Surg Cdr B. Fanthome. HPE B/2691/01 revealed Fibro muscular Tissue only. CECT chest revealed 3 x 3x 20 mm opacity in RLL.

2. Thereafter an open Biopsy was taken and that revealed Round Cell Tumor suspect Ewings. The petitioner planned to undergo Chemotherapy upon which his

chest became normal and the petitioner was granted four weeks' sick leave. Investigations were done on the petitioner by specialists, general surgeon and department of Oncology. The petitioner was advised surgery. On 3.6.02 the petitioner underwent the surgery. Post operative Oncology Histo Path report dated 11.6.02 revealed no evidence of Non-Hodgkin's Lymphoma in the whole respected bone and specimens as reported by Lt. Col. R. Lakhtakia Oncopathologist. After surgery the petitioner did not recover fully and again fell in the Verandah of AFCC (AF Comm. Centre) office resulting in contusion to Rt. Leg. In March, 2003 the petitioner reported for review/recategorisation and the petitioner was placed in medical category CEE (Permanent) contrary to the opinion of the Oncologist which according to the petitioner was illegal. The petitioner was not given the papers of the Medical Board and thus he could not file an appeal before the competent authority. According to him, his leg could not be operated due to negligence of the medical Department of the respondents and he has suffered at the hands of the respondents. While relying upon Para 423 of the Medical Regulations for the Armed Forces, 1983, according to the petitioner, his disability is attributable to army service. On these facts, the petitioner filed a writ petition before this Court praying for the following reliefs:

(a) Issue a writ, order of direction in the nature of Mandamus commanding the Respondents 1 and 2 to appoint an Enquiry Committee to find out the negligence caused by the Medical Authorities of the Respondents resulting into the permanent disability of the petitioner, and initiate necessary disciplinary action under the provisions of Air Force Act or Army Act for causing disability by negligence,

(b) issue an appropriate writ, order or direction in the nature of Mandamus commanding the Respondents not to discharge him from service and deprive him of his promotion subject to normal other conditions as per rules as he is able to discharge his chartered with duties though with pain, but perfectly as he is discharging since last 1 and " years, for which respondents have never complained so far, or alternately

Issue an appropriate writ, order or direction to the Respondents in the nature of Mandamus, if the Respondents decide to discharge the Petitioner on medical ground at his prime age of 33 years, to compensate the Petitioner adequately for his remaining life with permanent disability caused to the petitioner and his family due to the negligence of the Medical Authorities of the Respondents,

(d) issue an appropriate writ, order or direction in the nature of Certiorari calling for the medical record of the Petitioner for examination of the expert and then for consideration by this Hon"ble Court.

3. As far as reliefs (b) and " 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. We may notice that during the pendency of this petition which was filed by the petitioner in the year 2003, orders were passed by different Benches of this Court in relation to the sickness of the petitioner and the treatment which he should get. Vide order dated 27.6.05 some directions were passed in relation to treatment of the petitioner in All India Institute of Medical Science and thereafter the petitioner wanted to be treated at Apollo Hospital as the facility of Hyperbaric Oxygen Therapy as a follow up procedure post surgery was not available in AIIMS. The respondents had given certain financial assistance to the petitioner as a loan not to be cited as a precedent and peculiar to the facts and circumstances of the present case. This was recorded in the order dated 2.6.06 which reads as under:

We have heard learned Counsel for the parties. It cannot be ignored that the request of the petitioner for getting treatment at Apollo Hospital, at the cost of the Union of India, has been declined by the Bench already. In the present application the same request has been made, however, on the basis that the applicant is getting a kind of free treatment at Apollo and would be raising the claim for payment of drugs. It is also the case of the applicant that some part of the post operational treatment or follow-up treatment, including hyperbaric oxygen therapy is not available at AIIMS. According to the applicant, if this treatment is not given there is every likelihood that his leg may be amputated. learned Counsel appearing for the respondent has not been able to deny the fact that the said treatment is not available at AIIMS, but according to him the same is available at Air force Hospital, Hindan, Ghaziabad. It is also stated that the rules do not permit the authorities concerned to make the payment of the bills for treatment taken in a private hospital.

Be that as it may, petitioner, according to him is getting major part of his treatment free of costs at Apollo, and he wishes to raise the claim with regard to the medicines etc. upon the respondents. Respondents obviously have no objection, if the petitioner gets himself treated at Apollo Hospital, at his own risk and costs.

In the circumstances aforesaid, the petitioner is at liberty to get himself treated at Apollo hospital and raise such bills as may be according to him are payable by the respondents. But the question of actual reimbursement of the said bills would be considered by the Court on the next date of hearing. List on 5.9.2006, the date already fixed.

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5. In view of the above orders in which we made it clear that the loan given to

the petitioner is not to be cited as a precedent or as a direction of the Court as this was a concession given by way of loan by the respondents peculiar to the facts of the case and in order to avoid any unnecessary controversy at a subsequent stage.

6. We were told later that the petitioner has already been got admitted in the Apollo Hospital. Whether he is or not entitled to any reimbursement of the said amount which he will spent there, is beyond the purview and scope of the present writ petition. The petitioner, of course, would be at liberty to take such steps as are permissible to him in accordance with law even at a subsequent stage and after being discharged from Apollo Hospital.

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 cost.