

RESERVED
Court No. 2

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No 02 of 2023

Friday, this the 10th day of November, 2023

“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Maj Gen Sanjay Singh, Member (A)”

No. 05702-H Cdr Onkar Parsad Pattnaik (Retd), son of Shri Prasanna Kumar Pattnaik, Resident of C/o Col Arun Kumar (Retd), House No H-106, South City, Raebareli Road, District-Lucknow (UP), PIN-226025.

..... Applicant

Ld. Counsel for the : **Shri R Chandra**, Advocate
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi-11.
2. Chief of the Naval Staff, Integrated Headquarters of Ministry of Defence (Navy), ‘C’ Wing, Sena Bhawan, New Delhi-110011.
3. Director General of Medical Services (Navy) (for Capt (MS)-Health, IHQ of MoD (Navy), ‘A’ Wing, Sena Bhawan, New Delhi-110011.

..... Respondents

Ld. Counsel for the Respondents : **Shri Amit Jaiswal**, Advocate
Central Govt. Counsel

ORDER

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs :-

“(a) Hon’ble Tribunal may be pleased to set aside the impugned order dated 11.06.2021 (Annexure No A-1).

“(b) Hon’ble Tribunal may be pleased to direct the respondents to conduct post discharge release medical board.

“(c) Any other appropriate order or direction which the Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case.

2. Brief facts of the case are that the applicant was commissioned in Indian Navy on 10.01.2005. During the course of his service in the year 2011, he was diagnosed to be suffering from ‘Cholelithiasis’ and was operated on 05.11.2011. While posted with Bhawanipatra from September 2016 to January 2019, he was found to be suffering from ‘Appendicitis’ which was removed surgically. He was released from service w.e.f. 09.01.2019 after rendering 14 years service. In August, 2019, he was found to be suffering from ‘Stage 4 Non-Hodgkin Lymphoma (DLBCL)’ and in May, 2021 he was found to be suffering from ‘Polycythemia’ for which he underwent Chemotherapy from September 2020 to December 2020. On 08.12.2020, he submitted appeal for allowing him to undergo medical treatment and conduct his Re-survey Medical Board which was turned down vide order dated 11.06.2021, hence this O.A. has been filed.

3. Submission of learned counsel for the applicant is that applicant was commissioned in the Indian Navy on 10.01.2005 in SHAPE-I

medical category and discharged from service w.e.f. 09.01.2019 in medical category SHAPE-I. Learned counsel for the applicant further submitted that while in service, he suffered with disabilities gall bladder stone and cholelithiasis which were rectified/treated through operation in the years 2011 and 2017. It was further submitted that during the course of his service, due to service conditions, he was exposed to direct radar radiation which resulted in development of disabilities 'Non-Hodgkin Lymphoma (DLBCL)' and 'Polycythemia' which being manifested after discharge from service, he was detected to be suffering from Stage 4 Non-Hodgkin Lymphoma (DLBCL) and Polycythemia.

4. Further submission of learned counsel for the applicant is that these disabilities had developed while he was in service but since during the course of Release Medical Board (RMB) these could not be detected, he was discharged from service in medical category SHAPE-I. He submitted that the diseases with which the applicant is suffering after discharge from service are attributable to military service as there is a causal connection of diseases with military service as he was in direct exposure of radiation while on warship.

5. Learned counsel for the applicant further submitted that prior to discharge from service he was suffering from Non-Hodgkin Lymphoma but during the course of RMB, basic tests are conducted which cannot detect Non-Hodgkin Lymphoma. He pleaded for conduct of RSMB and issue directions to the respondents to allow him medical treatment in Military/Command Hospital.

6. On the other hand, learned counsel for the respondents submitted that applicant was released from Naval service on 09.01.2019 in SHAPE-I medical category. It was further submitted that vide his representation dated 08.12.2020, applicant intimated that in August 2020 he was diagnosed with high grade non Hodgekinlymphoma (DLBCL) for which he is undergoing medical treatment in Apollo Hospital, New Delhi.

7. Learned counsel for the respondents further submitted that his representation dated 08.12.2020 was rejected vide order dated 11.06.2021 as per provisions of Para 8 of Entitlement Rules-2008. He pleaded for dismissal of O.A.

8. Applicant being commissioned on 10.01.2005 in Indian Naval Service was discharged from service on 09.01.2019 in medical category SHAPE-I after completion of 14 years service. While in service due to exposure towards high dose of radiations onboard warships he may have developed Hodgekinlymphoma (DLBCL) which probably could not be detected in RMB at the time of discharge. We find that exposure to direct radiation could be one of the potent reasons for development of such diseases.

9. Rule 8 (a) of Entitlement Rules-2008 says that cases in which a disease was not present at the time of individual's discharge from service but arose within seven years thereafter, may be recognized as attributable to military service if it can be established by the medical authority that disability was existing prior to discharge and it

manifested post discharge. For convenience sake, aforesaid rule is reproduced as under:-

“8. (a) Cases in which a disease was not present at the time of member’s retirement/discharge from service but arose within seven years thereafter, may be recognized as attributable to service if it can be established by the competent medical authority that the disability is a delayed manifestation of a pathological process set in motion by service conditions obtaining prior to discharge.”

10. On perusal of report of Apollo Hospital, we find that applicant is suffering from stage 4 Non-Hodgkin Lymphoma (DLBCL) and is undergoing treatment continuously for long term survival. As per Govt of India, MoD letter dated 12.06.2014, service personnel, who had retired/discharged within 07 years from the date of retirement, are eligible for grant of disability element of pension even after retirement/discharge, if the disability is found to be attributable to military service.

11. In view of report of Apollo Hospital and the fact that applicant underwent chemotherapy, we find justifiable medical evidence to establish that the disease is a delayed manifestation of a condition that existed prior to his discharge.

12. In view of the aforesaid, the following is ordered:-

- (a) The applicant is to submit a request for Re-Survey Medical Board with supporting medical documents, within a period of one month from the date of receipt of a copy of this order.
- (b) The respondents to take up the case with competent authority, who shall facilitate Re-Survey Medical Board of the

applicant within a period of two months from receipt of the request from the applicant.

13. The O.A is **allowed** to the above extent.

14. No order as to costs.

15. Pending Misc. Application (s), if any, shall be treated to have been disposed off.

(Maj Gen Sanjay Singh)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 10.11.2023
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RESERVEDCourt No 2

Form No. 4

{See rule 11(1)}
ORDER SHEET

ARMED FORCES TRIBUNAL, REGIONAL BENCH,

LUCKNOW

O.A. No. 02 of 2023

Cdr Onkar Prasad Pattnaik (Retd)

Applicant

By Legal Practitioner for the Applicant

Versus

Union of India & Ors

Respondents

By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>10.11.2023</u> <u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u> <u>Hon'ble Maj Gen Sanjay Singh, Member (A)</u></p> <p>Judgment pronounced. O. A. No. 02 of 2023 is allowed. For orders, see our judgment and order passed on separate sheets.</p> <p>(Maj Gen Sanjay Singh) Member (A) <i>rathore</i></p> <p>(Justice Anil Kumar) Member (J)</p>