FORM NO. – 21

{SEE RULE 102 (1)}

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

ORIGINAL APPLICATION : – O. A. NO. - 67/2013

ON THIS 08th DAY OF JULY, 2015

CORAM : **HON'BLE JUSTICE MR. DEVI PRASAD SINGH, MEMBER (JUDICIAL)**

HON'BLE LT GEN GAUTAM MOORTHY, MEMBER (ADMINISTRATIVE)

IN THE MATTER OF EX. SPR DPMT BRAJLAL PAUL (NO. 1481952 F)
SON OF LATE JOGABANDHU PAUL, RESIDENT OF
VILLAGE – ARABINDA NAGAR, P.O.-THAKURPUKUR,
DISTRICT – 24 PARGANAS (SOUTH),
WEST BENGAL – PIN – 700 063

……….. **PETITIONER/APPLICANT**

V E R S U S

1. UNION OF INDIA, SERVICE THROUGH THE SECRETARY, MINISTRY OF DEFENCE, SENA BHAWAN, NEW DELHI-110 105.

2. THE CHIEF OF THE ARMY STAFF, ARMY HEADQUARTERS, INTETGRATED HEADQUARTERS OF MINISTRY OF DEFENCE (ARMY), DEFENCE HEADQUARTERS, POST OFFICE, NEW DELHI-110 011.

3. THE PRINCIPAL CONTROLLER OF DEFENCE ACCOUNTS (PENSIONS), DRAUPADI GHAT, ALLAHABAD (U.P.) – 211 014.

4. THE OFFICER-IN-CHARGE, ABHILEKH BENGAL ABHIYANTA SAMOOH, BENGAL ENGINEER GROUP RECORDS, ROORKEE (U.P.) – 247 667.

5. THE COMMANDING OFFICER, DEPARTMENT OF PSYCHITARY, COMMAND HOSPITAL (E.C.), ALIPORE, KOLKATA – 700 027.

6. THE SECRETARY, GOVERNMENT OF WEST BENGAL, OFFICE OF ZILA SAINIK BOARD, 24 PARGANAS, 274/1/E/, DIAMOND HARBOUR ROAD, BEHALA, CALCUTTA – 700 034.

……………………**RESPONDENTS**

For the Petitioner : Miss Manika Roy, Ld. Advocate

For the Respondents : Mr. Sauvik Nandy, Ld. Advocate

ORDER

PER HON'BLE MR. JUSTICE DEVI PRASAD SINGH, MEMBER (JUDICIAL)

1. This instant application Under Section 14 of the Armed Forces Tribunal Act, 2007 (in short Act) has been preferred being aggrieved by the impugned order declining to make payment of Dissability Pensions broadly on the ground that while entering in the service there was nothing wrong with the mental conditions of the applicant and after service of almost for the period of 6 (six) years he was placed under the Low Medical Category (L.M.C.) and thereafter discharged from the services.

2. The applicant, Ex. No. 1481952F Spr /DPMT Brajalal Paul was enrolled in the Army Service on 12th April, 1988 and discharged from the Army Service on 22nd February, 1995 under Rule 13 (3), Item-III (iii) and Army Rule 1954 before completion of terms of engagement in Low Medical Category "**EEE" (Psy)"** due to diagnosis "**SCHIZO-AFFECTIVE DISORDER ICD-295.7 V-67**". The total qualifying service rendered by the individual is 06 (six) years, 10 (ten) months and 10 (ten) days.

3. The applicant was enrolled in the Indian Army (Bengal Engineering Group) (B.E.G.) in the trade of D.P.M.T. (Driver Plant Military Transport) and served with the 55 Engineers Regiment. In 1992, because of illness, the applicant was admitted in Military Hospital (M.H.), Bhatinda (Punjab). Further, it appears that he was admitted in the Command Hospital (Eastern Command), Alipore, Kolkata-700 027 on 28.04.1994 at 08.15 hours and was discharged thereafter on 17.05.1994 at 1800 hours from Command Hospital (EC) Calcutta.

4. After the discharge from the Command Hospital and was granted two months Sick Leave.

5. Again he was admitted in the Command Hospital (Eastern Command), Alipore, Kolkata – 700 027 on 28.08.1994 at 1700 hours and was discharged on 24.03.1995 at 1800 hours.

6. The applicant was discharged from the Army Service on 23.02.1995 on medical ground being L.M.C. being diagnosed "**SCHIZO-AFFECTIVE DISORDER ICD-295.7 V-67**"

7. The Officer-in-Charge, Records vide letter dt. 02.06.1995 had informed with regard to the final settlement of accounts. Following the communication letter dt. 16.09.1995 by Major Graded Specialist in Command Hospital, Alipore, Kolkata, the applicant claimed for disability pension, which was rejected by an order dt. 23.04.1994 passed by the Controller of Defence Accounts (Pensions), Draupadi Ghat, Allahabad (U.P.).

8. Feeling aggrieved, the applicant gave an representation to the CDA (Pension) regarding his Disability Pension. The matter was kept pending by the Army Authorities and ultimately on 03.04.1998, the applicant was informed that his Disability Pension was rejected and the same rejection order was communicated on 17.05.2000.

9. A Miscellaneous Application was filed by the applicant for Condonation of Delay, which has been allowed by the Tribunal vide order dt. 19.03.2014 and delay has been condoned. The order seems to has been not impugned by the Respondents Army, hence attain finality. The O.A. is required to be decided on its merit.

10. According to the opinion of the Hospital dt. 24.02.1995, the applicant was diagnosed to be suffering from "**SCHIZO-AFFECTIVE DISORDER ICD-295.7 V-67**"

11. According to the proceedings of the Medical Board dt. 27.01.1995, the applicant has been assessed 50% (FIFTY) of Disability. The relevant portion of the above Medical Board Proceedings (at Page 4, Para 4) is reproduced as under : -

"***What is present degree of disablement as compared with a healthy person for the same age and sex ? (Percentage will be expressed as Nil or as follows)" : -***

1-5%, 6-10%, 11-14%, 15-19% and thereafter in multiples of ten from 20% to 100%.

Disability (as numbered in question 1, part II)	**Percentage of Disablement**	**Probably duration of this degree of disablement**	**Composite assessment (all disabilities)**
SCHIZO-AFFECTIVE DISORDER ICD – 295-7, V-67.	FIFTY 50%	2 Years	FIFTY 50%

12. It is not disputed that at the time of entry in the service there is no adverse report against the applicant and he served the Army for more than 6 (six) years.

13. After service for about 4 years, it appears that he had suffered from "**SCHIZO-AFFECTIVE DISORDER ICD-295.7 V-67**"

"in Dorland's Illustrated Medical Dictionary, 32nd Edition, the disease the defined as under : -

Schizo-phre-nia – a mental disorder or heterogeneous group of disorders (the schizophrenias or schizophrenic disorders) comprising most major psychotic disorders and characterized by disturbances in form and content of though (loosening of associations, delusions, and hallucinations), mood, (blunted, flattened, or inappropriate affect), sense of self and relationship to the external world (loss of ego boundaries, dereistic thinking, and autistic withdrawal), and behaviors (bizarre, apparently purposeless, and stereotyped activity or inactivity). The definition and clinical application of the concept of schizophrenia have varied greatly. The DSM-IV criteria emphasize marked disorder of though (delusions, hallucinations, or other thought disorder accompanied by disordered affect or behavior), deterioration from a previous level of functioning, and chronicity (duration of more than 6 months), thus excluding from this classification conditions referred to by others as acute, borderline, simple, or latent schizophrenia."

"As as the MODI – A Textbook of Medical Jurisprudence and Toxicology, 24th Edition – Edited by Justice K Kannan, Judge, Punjab & Haryana High Court and Dr. K Mathiharan, Head & Associate Professor Foresic Unit, Faculty of Medicine, University of Malaya (Lexis Nexis).

The relevant portion is reproduced below (Page 755 & 766);

(ii) Schizophrenia. – *Kraepelin, in 1896, named this disease, named this disease as 'dementia precox'. In 1911, Eugen Blenler introduced the term 'schizophrenia' which literally means disintegration of mind. The term dementia praecox was changed because it implied that the disease always ended in dementia, which it did not. The term praecox meant that the disease developed at the time of puberty or adolescene, but in cases developed outside that period. Since it was thought that the disease always ended in dementia, it meant a hopeless prognosis, which created a spirit of defeatism in the minds of people.*

The cause of this illness is still not known but there is a general agreement about the multiplicity of factors in its causation. Heredity is shown to play a part in its occurrence.

The modern concepts of the a etiology of schizophrenia are : -

(i) Inborn defeat in the metabolism of adrenalin or related compounds are deficiency of general Adaptation Syndrome of Selye;
(ii) Biochemical 'lesion' in schizophrenia and search for an endotoxins or for multiple endotoxins produced through metabolic error;
(iii) Production of schizophrenia-like symptoms by the administration of certain drugs like mescaline, and d-lysergic acid diethylamide; and
(iv) Finding antidotes for the disappearance of these symptoms.

It is thought that serotonin (5-hydroxytryptamine) in our brains plays an essential part in keeping us sane and that the effect of LSD is due to its inhibitory action on the serotonin in the brain.

The following varieties of schizophrenia have been described :

Simple Schizophrenia. - *The illness begins in early adolescence. There is a gradual loss of interest in the outside world, from which the person withdraws. There is an all round impairment of mental faculties and he emotionally becomes flat and apathetic. He has conflicts about sex, particularly masturbation. He loses all ambition and drifts along in life, swelling the ranks of the chronically unemployed. Complete disintegration of the personality generally does not occur, but when it does, it occurs after a number of years.*

Hebepherenia. *-- Hebephrenia occurs at an earlier age than either the katatonic or the paranoid variety. Disordered thinking is the outstanding characteristic of this type of schizophrenia. There is a grat incoherence of thought, periods of wild excitement occur and there are illusions and hallucinations. Delusions, which are bizarre in nature, are frequently present. Often, there is impulsive and senseless conduct as though in response the their hallucination or delusions. Ultimately, the whole personality may completely disintegrate.*

Katatonia. *---- Katatonia is a condition in which the period of excitement alternates with that of katatonic stupor. The patient is in a state of wild excitement, is destructive, violent and abusive. He may impulsively assault anyone without the slightest provocation. Homicidal or suicidal attempts may be responsible for their violent behavior. Sometimes, they destroy themselves because they hear God's voice commanding them to destroy themselves. This phase may last from a few hours to a few day or weeks, followed by stage of stupor.*

The katatonic stupor begins with a lack of interest, lack of concentration and general apathy. He is negative, refuses to take food or medicines, and to carry out his daily routine activities like brushing his teeth, taking bath or change his clothes. There is retention or urine or faeces. Incontinence of urine or faeces may also occur. The activities are so very limited that he may confine himself in one place and assume on posture, however uncomfortable, for hours together without getting fatigued. His face is expressionless and his gaze vacant. Mannerisms and gestures are common. They will allow their limbs to be placed in any awkward positions, which will be maintained indefinitely (flexibiltas cerea). Sterotype echolalia, ecohopraxia and preservation also occur frequently. They are on around them, and sometimes without warning and without any apparent cause, they suddenly attack any person standing nearby. Suddenly, the whole picture may change and a state of extreme excitement, as described above, may set in.

Paranoid Schizophernia, Paranoia and Paraphrenia. *- Paranoia is now regarded as a mild form of paranoid schizophrenia. It occurs more in males than females. The main characteristic of this illness is a well-elaborated delusional system in a personality that is otherwise well preserved. The delusions are of a persecutory type. The true nature of the illness may go unrecognized for a long time because the personality is well preserved, and some of these paranoiacs may pass off as social reformers or founders of queer pseudo-religious sects. The classical picture is rate and generally takes a chronic course.*

Paranoid schizophrenia, in the vast majority of cases, starts in the fourth decade and develops insidiously. Suspiciousness is the characteristic symptom of the early stage. Ideas of reference occur, which gradually develop into delusions of persecution. Auditory later change into abuses or insults. Delusions are at first indefinite, but gradually they become fixed and definite, to lead the patient to believe that he is persecuted by some unknown person or some superhuman agency. He believes that his food is being poisoned, some noxious gases are blown into his room, and people are plotting against him to ruin him. Disturbances of general sensation give rise to hallucinations, which are attributed to the effects of hypnotism, electricity, wireless telegraphy or atomic agencies. The patient gets very irritated and excited owing to these painful and disagreeable hallucinations and delusions.

Since so many people are against him and are interested in his ruin, he comes to believe that he must be a very important man. The nature of delusions thus, may change from persecutory to the grandiose type. He entertains delusions of grandeur, power and wealth, and generally conducts himself in a haughty and overbearing manner. The patient usually retain his money and orientation and does not show signs of insanity, until the conversation is directed to the particular type of delusions from which he is suffering. When delusions affect his behavior, he is often a source of danger to himself and to others.

The name paraphrenia has been given to those suffering from paranoid psychosis who, in spite of various hallucinations and more or less systematized delusions, retain their personality in a relatively intact – state. Generally, paraphrenia begins later in life than the other paranoid psychosis.

14. Accordingly, it appears that "**SCHIZO-AFFECTIVE DISORDER ICD-295.7 V-67**" may be caused because of the different reasons which may be inborn or heredity or by administering of certain drugs or because of antidote.

14. The multiplicity reasons of the said disease has also been dealt with in a Book by Niraj Ahuja – A Short Textbook of PSYCHIATRY (20th Edition), Pages 55 to 57 (Supra), while dealing with the case of PSYCHIATRY, the Learned Author has observed as under : -

Delusions are false unshakable beliefs which are not in keeping with patient's socio-cultural and educational background. These are of two types : primary and secondary.

1. Primary delusions arise de novo and cannot be explained on the basis of other experiences or perceptions. Also known as autochthonous delusions, these are though to be characteristic of schizophrenia and are usually seen in early stages.

2. Secondary delusions are the commonest type of delusions seen in clinical practice and are not diagnostic of schizophrenia as these can also be seen in clinical practice and are not diagnostic of schizophrenia as these can also be seen in other psychoses. Secondary delusions can be explained as arising from other abnormal experiences.

The commonly seen delusions in schizophrenia include :

1. *Delusions of persecution (being persecuted against, e.g. 'people are against me').*
2. *Delusions of reference (being referred to by others; e.g. 'people are talking about me').*
3. *Delusions of grandeur (exaggerated self-importance; e.g. 'I am God almighty').*

4. *Delusions of control (being controlled by an external force, known or unknown; e.g. 'My neighbor is controlling me").*
5. *Somatic (or hypohondriacal) delusiojns (e.g. 'there are insects crawling in my scalp').*

   The other clinical features of schizophrenic though disorder include : overinclusion (tending to include irrelevant items in speech), impaired abstraction (loss of ability to generalize), concreteness (due to impaired abstraction), perplexity and ambivalence.

   Schneider's first rank symptoms (such as though insertion, thought withdrawal, though broadcasting, 'made' feeling, 'made' impulses and 'made' volitions), which have already been discussed earlier (Table 5.2), may also be present.

Disorders of Perception

Hallucinations (perceptions without stimuli) are common in schizophrenia. Auditory hallucinations are by far the most frequent. These can be :

i. *Elementary auditory hallucinations (i.e. hearing simple sounds rather than voices)*
ii. *"Thought echo' ('audible thoughts')*
iii. *'Third person hallucinations' ('voices heard arguing', discussion the patient in third person*
iv. *'Voices commenting on one's action'.*

   Only the 'third person hallucinations' are believed to be characteristic of schizophrenia. Visual hallucinations can also occur, usually along with auditory hallucinations. The tactile, gustatory and olfactory types are less common.

Disorders of Affect

The disorders of affect include apathy, emotional blunting, emotional shallowness, anhedonia (inability to experience please) and inappropriate emotional response (emotional response inappropriate to thought).

The difficulty of a patient with schizophrenia in establishing emotional contact with other individuals can lead to lack of rapport with the physician.

Disorders of Motor Behavior

There can be either a decrease (decreased spontaneity, inertia, stupor) or an increase in psychomotor activity (excitement, aggressiveness, restlessness, agitation).

Mannerisms, grimacing, stereotypes (repetitive strange behavior), decreased self-care, and poor grooming are common features. Catatonic features are commonly seen in the catatonic subtype of schizophrenia (and are discussed in detail under that heading).

15. The type of schizophrenia disease and reasons analyzed by different authority in the dictionary shows that it caused because of variety of effects which has not been examined by the Release Medical Board (RMB).

16. Miss Monika Roy, Ld. Counsel for the applicant relied upon certain Judgement while arguing for the Dissability Pension. Regulations 173 deals with the Dissability Pension, which provides that Dissability Pension may be paid in case of disability is attributable or aggravated by military service. This Regulation has been considered by the Hon'ble Supreme Court in case of Dharamvir Singh Vs. Union of India and Union of India Vs. Rajbir Singh has been reported. In case of Rajbir Singh, the Hon'ble Supreme Court had considered Rule 559.

"7. The claims of the respondents for payment of pension, it is a common ground, are regulated by Pension Regulations for the Army, 1961. Regulation 173 of the said Regulations provides for grant of disability pensions who are invalided out of service on account of disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or above. The regulation reads :

> *"**173. Primary conditions for the grant of disability pension :** Unless otherwise specifically provided a disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service and is assessed at 20 percent or over. The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II"*

8. The above makes it manifest that only two conditions have been specified for the grant of disability pension viz., ***(i)*** *the disability is above 20%; and* ***(ii)*** *the disability is attributable to or aggravated by military service. Whether or not the disability is attributable to or aggravated by military service, is in turn, to be determined under Entitlement Rules for Casualty Pensionary Awards, 1982 forming Appendix-II to the pension Regulations. Significantly, Rule 5 of the Entitlement Rules for Casualty Pensionary Awards, 1982 also lays down the approach to be adopted while determining the entitlement to disability pension under the said Rules. Rule 5 reads as under : -*

> *"5. The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions :*
>
> ***Prior to and during service***
>
> *(a) A member is presumed to have been sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance.*
>
> *(b) In the event of his subsequently being discharged from service on medical grounds any deterioration in his health, which has been taken place, is due to service."*

9. Equally important is Rule 9 of the Entitlement Rules (supra) which placed the onus of proof upon the establishment. Rule 9 reads :

> *"**9. Onus of proof. -** The claimant shall not be called upon to prove the conditions of entitlements. He/She will receive the benefit of any reasonable doubt. This benefit will be given more liberally to the claimants in field/afloat service cases."*

10. As regards diseases Rule 14 of the Entitlement Rules stipulates that in the case of a disease which has led to an individual's discharge or death, the disease shall be deemed to have arisen in service, if no note of it was made at the time of individual's acceptable for military service, subject to the condition that if medical opinion hold for reasons to be stated that the "disease could not have been detected on medical examination prior to acceptance for service, the same will not be deemed to have so arisen". Rule 14 may also be extracted for facility of reference.

*"**14. Diseases. -** In respect of diseases, the following rule will be observed –*

(a) Cases in which it is established that conditions of military service did not determine or contribute to the onset of the disease but influenced the subsequent courses of the disease will fall for acceptable on the basis of aggravation.

(b) A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service, if no note of it was made at the time of the individual's acceptance for military service. However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.

(c) If a disease is accepted as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service."

(emphasis supplied)

11. From a conjoint and harmonious reading of Rule 5, 9 and 14 of Entitlement Rules (Supra) the following guiding principles emerge :

***i)** a member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance;*

***ii)** in the event of his being discharged from service on medical grounds at any subsequent stage it must be presumed that any such deterioration in his health which has taken place is due to such military service;*

***iii)** the disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service, if no note of it was made at the time of the individual's acceptance for military service; and*

***iv)** if medical opinion holds that the disease, because of which the individual was discharged, could not have been detected on medical examination prior to acceptance of service, reasons for the same shall be stated.*

12. Reference may also be made at this stage to the guidelines set out in Chapter-II of the Guide to Medical Officers (Military Pensions), 2002 which set out the "Entitlement : General Principles", and the approach to be adopted in such cases. Paras 7, 8 and 9 of the said guidelines reads as under :

> *"**7.** Evidently value is attached to the record of a member's condition at the commencement of service, and such record has, therefore, to be accepted unless any different conclusion has been reached due to the inaccuracy of the record in a particular case or otherwise. Accordingly, if the disease leading to member's invalidation out of service or death while in service, was not noted in a medical report at the time of commencement of service, the inference would be that the disease arose during the period of member's military service. It may be that the inaccuracy or incompleteness of service record on entry in service was due to a non-disclosure of the essential facts by the member e.g. pre-enrolment history of an injury or disease like epilepsy, mental disorder, etc. it may also be that owing to latency or obscurity of the symptoms, a disability escaped detection on enrolment. Such lack of recognition may affect the medical categorization of the member on enrolment and/or cause him to perform duties harmful to his condition. Again, there may occasionally be direct evidence of the contraction of a disability, otherwise than by service. In all such cases, though the disease cannot be considered to have been caused by service, the question of aggravation by subsequent service condition will need examination.*
>
> *The following are some of the diseases which ordinarily escape detection on enrolment :*
>
> *(a) Certain congenital abnormalities which are latent and only discoverable on full investigations e.g. Congenital Defect of Spine, Spina bifida, Sacralisation,*
> *(b) Certain familial and hereditary diseases e.g. Haemophilia, Congential Syphilis, Haemoglobinopathy.*
> *(c) Certain diseases of the heart and blood vessels e.g. Coronary Artherosclerosis, Rheumatic Fever.*
> *(d) Diseases which may be undectable by physical examination on enrolement, unless adequate history is given at the time by the member e.g. Gastric and Duodenal Ulcers, Epilepsy, Mental Disorders, HIV Infections.*
> *(e) Relapsing forms of mental disorders which have intervals of normality.*
> *(f) Diseases which have periodic attacks e.g. Bronchial Asthma, Epilepsy, Csom, etc.*

__8.__ The question whether the invalidation or death of a member has resulted from service conditions, has to be judged in the light of the record of the member's conditions, has to be judged in the light of the record of the member's condition on enrolment as noted in service documents and of all other available evidence both direct and indirect.

In addition to any documentary evidence relative to the member's condition to entering the service and during service, the member must be carefully and closely questioned on the circumstances which led to the advent of his disease, the duration, the family history, his pre-service history, etc. so that all evidence in support or against the claim is elucidated. Presidents of Medical boards should make this their personal responsibility and ensure that opinions on attributability, aggravation or otherwise are supported by cogent reasons; the approving a authority should also be satisfied that his question has been dealt with in such a way as to leave no reasonable doubt.

__9.__ On the question whether any persisting deterioration has occurred, it is to be remembered that invalidation from services does not necessarily imply that the member's health has deteriorated during service. The disability may have been discovered soon after joining and the member discharged in his own interest in order to prevent deterioration. In such cases, there may even have been a temporary worsening during service, but if the treatment given before discharge was on grounds of expediency to prevent a recurrence, no lasting damage was inflicted by service and there would be no ground for admitting entitlement. Again a member may have been invalided from service because he is found so weak mentally that it is impossible to make him an efficient soldier. This would not mean that his condition has worsened during service, but only that it is worse than was realized on enrolment in the army. To sum up, the each case the question whether any persisting deterioration on the available evidence which will vary according to the type of the disability, the consensus of medical opinion relating to the particular condition and the clinical history."

__13.__ In __Dharamvir Singh's__ case (supra) this Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same in the following words :

*"**29.1.** Disability pension to be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).*

***29.2.** A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service {Rule 5 read with Rule 14 (b)}.*

***29.3.** The onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally (Rule 9).*

***29.4.** If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service {Rule 14 (c)}.*

***29.5.** If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service {Rule 14 (b)}.*

***29.6.** If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical board is required to state the reasons {Rule 14 (b)}; and*

***29.7.** It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military pensions), 2002 – "Entitlement : General Principles", including Paras 7, 8 and 9 as referred to above (Para 27)."*

14. *Applying the above principles this Court in **Dharamvir Singh's** case (supra) found that no note of any disease had been recorded at the time of his acceptance into military service. This Court also help that Union of India had failed to being on record any document to suggest that Dharambir was under treatment for the disease at the time of his recruitment or that the disease was hereditary in nature. This Court, on that basis, declared Dharamvir to be entitled to claim disability pension in the absence of any note in his service record at the time of his acceptance into military service. This Court observed :*

> *33. In spite of the aforesaid provisions, the Pension Sanctioning failed to notice that the Medical Board had not given any reason in support of its opinion, particularly where there is no note of such disease or disability available in the service record of the appellant at the time of acceptance for military service. Without going through the aforesaid facts the Pension Sanctioning Authority mechanically passed the impugned order of rejection based on the report of the Medical Board. As per Rules 5 and 9 of the Entitlement Rules for casualty Pensionary Awards, 1982, the appellant is entitled for presumption and benefit of presumption in his favour. In the absence of any evidence on record to show that the appellant was suffering from "generalized seizure (epilepsy)' at the time of acceptance of his service, it will be presumed that the appellant was in sound physical and mental condition at the time of entering the service and deterioration in his health has taken place due to service."*

15. *The legal position as stated in **Dharamvir Singh's** (supra) is, in our opinion, in tune with the Pension Regulations, the Entitlement Rules and the Guidelines issued to the Medical Officers. The essence of the rules, as seen earlier, is that a member of the armed forces is presumed to be in sound physical and mental condition at the time of his entry into service if there is no note or record to the contrary made at the time of such entry. More importantly, in the event of his subsequent discharge from service on medical ground, any deterioration in his health is presumed to be due to military service. This necessarily implies that no sooner a member of the force is discharged on medical ground his entitlement to claim disability pension will arise unless of course the employer is in a position to rebut the presumption that the disability which he suffered was neither attributable to nor aggravated by military service. From Rule 14 (b) of the Entitlement Rules it is further clear that if the medical opinion were to hold that the disease suffered by the member of the armed forces could not have been detected prior to acceptance for service, the Medical Board must state the reasons for*

> *saying so. Last but not the least it is the fact that the provision for payment of disability pension is a beneficial provision which ought to be interpreted liberally so as to benefit those who have been sent home with a disability at times even before they completed their tenure in the armed forces. There may indeed be cases, where the disease was wholly unrelented to military service, but, in order that denial of disability pension can be justified on that ground, it must be affirmatively proved that the disease had nothing to do with such service. The burden to establish such a disconnect would lie heavily upon the employer for otherwise the rules raise a presumption that the deterioration in the health of the member of the service is on account of military service or aggravated by it. A solider cannot be asked to prove that the disease was contracted by him on account of military service or was aggravated by the same. They fact that he was upon proper physical and other tests found fit to serve in the army should rise as indeed the rules do provide for a presumption that he was disease-free at the time of his entry into service. That presumption continues till it is proved by the employer that the disease was neither attributable to nor aggravated by military service. For the employer to say so, the least that is required is a statement of reasons supporting that view. That we feel is the true essence of the rules which ought to be kept in view all the time while dealing with cases of disability pension.*

17. The Release Medical Board (RMB) did not express their opinion and have not tried to point out reasons of the disease in the applicant. It has been pointed out that at the time of joining the Indian Army, the applicant was medically fit. A Judgement / Order delivered by this Bench of Armed Forces Tribunal in O.A. No. 111/2013 dt. 22.06.2015 of Ex-Nk Netai Sikder (Army No.4564538K) son of Paresh Chandra Sikder, village-Bhutanir Ghat, P.O.-Bhutanir Ghat, P.S.-Falakata, District-Jalpaiguri, West Bengal (Pin-735211) – Vs – Union of India and 04 others has considered this issue. For convenience, the relevant portion of the said Order is reproduced below : -

Interpretation *: -*

25. Where a disease passed on to aggravated condition on different stage of life or in different situation because of service condition while denying service benefit in the form of disability pension or otherwise it shall be obligatory for the Army to establish that the person concerned was suffering with the aggravated disease before entering into Army.

26. It is well settled proposition that in case a provision or a construction gives rise to anomalies or leads to a manifest contradiction of the apparent purpose of the enactment or provision then such meaning should be given which serve the purpose or beneficial to the society vide, ***AIR 1959 SC 422 – Viluswami Thevar Vs. G. raja Nainar; AIR 1955 SC 830 – Tirath Singh Vs. Bachittar Singh; AIR 2002 SC 1334 – Padmasundara Rao Vs. State of T.N.; AIR 2004 SC 2236 – Modern School Vs. Union of India and 1979 SCC Vol. 2 Page 34 – Chief Justice of Andhra Pradesh and Others Vs. L. V. Dixituly and Others.***

27. In views of the above proposition while interpreting the disease and treatment of Hydronephrois in terms of Dictionary meaning (supra) and the classification of disease as contained in Annexure II to Appendix II they must be considered with positiveness keeping in view the aims and objects and the element of welfareness.

28. Classification of disease is not the final. With the pace of time multiple researches are going on with new dimension for the treatment of diseases and their effect. Classification is not mandatory but only directory. Accordingly in case there are other diseases which have been aggravated or attributable to Army service then person concerned may claim disability pension. Burden shall be on the Army to establish that the applicant joined the Army in aggravated condition of disease and was not fit at entry level. In absence of such evidence disability pension may not be denied.

29. …………………………………………….

30. After considering different provisions, rules and regulations, observation made by Hon'ble Supreme Court under Para. 28 of the Judgement in the case of ***Dharamvir Singh Vs. Union of India*** *is reproduced as under : -*

(i) Disability pension to be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by military service in on-battle casualty and is assessed at 20% or over. The question whether a disability is attributable or aggravated by military service to be determined under "Entitlement Rules for Casualty Pensionary Awards, 1982" of Appendix-II (Regulation173).

(ii) A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to presumed due to service (Rule 5 r/w Rule 14 (b)).

(iii) Onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit or any reasonable doubt and is entitled for pensionary benefit more liberally (Rule 9).

(iv) If a disease is accepted to have been having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military servi8ce. (Rule 14(c)).

(v) If no note of any disability or disease was made at the time of individual's acceptable for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service. {14 (b)}.

(vi) If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptable for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons. {14 (b)} and;

(vii) It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the "Guide to Medical (Military Pension), 2002 – "Entitlement : General Principles", including paragraph 7, 8 and 9 as referred to above".

In the present case nothing has been brought on record to indicate that according to the report of the Medical Board the petitioner was suffering from acute Hydronephrosis at the time of entry into the service but it could not be detected. In such situation, there appears no room of doubt that merely because of non-fatal congenital disease at the time of entry into service the applicant may be deprived of disability pension.

32. Under such circumstances, it may be safely held the petitioner's condition was aggravated because of Army service and in consequence thereof he was suffering from acute Hydronephrosis resulting in surgical treatment and retired from Army service with fragile health. Different provisions and proposition of law and discussions made in the body of the present order establish that the applicant is entitled for disability pension.

Neither the medical report nor any opinion on the same indicates that how and since when the applicant is suffering from "**SCHIZO-AFFECTIVE DISORDER ICD-295.7 V-67**" disease.

In the Merriam-Webster Dictionary "Schizophrenia" has been described as psychotic disorder characterized by loss of contact with the environment, by noticeable deterioration in the level of functioning in everyday life, and by disintegration of personality expressed as disorder of feeling, though (as in delusions), perception (as in hallucinations), and behavior – called also dementia praecox; Schizopherenia is a chronic, severe, and disabling brain disorder that has affected people thought history.

National Institute of Mental Health, USA has described "Schizophrenia" in the following words :

"Schizophrenia is a chronic, severe, and disabling brain disorder that has affected people though out history. They may believe other people are reading their minds, controlling their thoughts, or plotting to harm them. This can terrify people with the illness and make them withdrawn or extremely agitated. People with schizophrenia may not make sense when they talk. They may sit for hours without moving or talking. Families and society are affected by schizophrenia, but most people who have the disorder cope with symptoms throughout their lives. However, many people with schizophrenia can lead rewarding and meaningful lives in their communities."

18. Counsel for the applicant has cited some more cases which does not seem to be relevant and necessary to be considered in a law settled by The Hon'ble Supreme Court (Supra). Applicant seems to be entitled for disability pension.

In view of the above, the instant Original Application (O.A.) - 67/2013 is liable to be allowed, hence, allowed.

19. The respondents are directed to reconsider the Disability Pension with effect from the date of discharge from the Army and pass appropriate speaking and reasoned order, keeping in view the observations made in the body of the present order, expeditiously, say within a period of 3 (three) months from the date of communication of this order and also communicate the order to the Office of the Armed Forces Tribunal, Regional Bench, Kolkata immediate after three months.

20. Original Documents, if any, filed by the respondents be returned to them under proper receipt / acknowledgement.

21. The Registry shall list the petition on receipt of the compliance report from the Respondents immediately after three months.

22. Let a plain copy of the order, duly countersigned by the Tribunal officer, be furnished to both the parties after observance of all usual formalities.

Cost made easy.

(LT GEN GAUTAM MOORTHY)
MEMBER (ADMINISTRATIVE)

(JUSTICE DEVI PRASAD SINGH)
MEMBER (JUDICIAL)

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