A F R

(SEE RULE 102 (1))
ARMED FORCES TRIBUNAL, KOLKATA BENCH

T.A NO. 8/2014

THIS 10TH DAY OF JULY, 2015

CORUM
HON'BLE JUSTICE DEVI PRASAD SINGH, MEMBER (JUDICIAL)
HON'BLE LT GEN GAUTAM MOORTHY, MEMBER (ADMINISTRATIVE)

APPLICANT(S) Ex-628286 CPL R.C. Pradhan
S/o Padmanav Pradhan,
At/P.O.: Dimiria
Via : Pallahara,
Dist. Angul,
Odisha - 7591

-versus-

RESPONDENT(S)

1. The Union of India through Defence Secretary
Min of Defence, Government of India,
DSSC AIR Wing, Wellington,
Vayu Bhawan,
New Delhi

2. Chief Controller of Defence Accounts (Pension)
Allahabad ,
(U.P.)

3. Junior Warrant Officer
Air Force Record Office
Subrata Park,
New Delhi – 110 010.

For the petitioner (s) **Mr. S.K. Choudhury, Advocate**

For the respondents **Mr. Sauvik Nandi, Advocate**

ORDER

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

1. The applicant a former member of Air Force preferred Writ Petition WPC No. 145/2008 in the High Court of Orissa, Cuttack for payment of invalid/disability pension and quashing of the impugned order dated 11.05.2007 and 29.05.2007 to the Writ Petition as contained in Annexure No. 14. After establishment of Armed Forces Tribunal in pursuance to the Act of Parliament, the case was transferred to this Tribunal for adjudication of the dispute.

2. The admitted fact on record seems to be that the applicant Ex-628286 CPL R.C. Pradhan was enrolled in the Indian Air Force on 03.03.1983 under medical category AYE through recruiting medical examination. He was invalidated out of service on 23.05.1997 in pursuance to Air Force Rules, 1969, Chapter III, Rule 15 Clause-2(C). The Invalidating Medical Board (IMB) held on 26.03.1997 at Command Hospital, AF Bangalore, found him medically unfit for further service in Air Force. The applicant was granted Invalid Pension, Gratuity and commutation of pension vide PPO No. 08/14/B/1260/99 issued by Dy. CDA (AF) on 22.12.1999. It appears that things began from March 1996 when he reported sick with complaints of backache . On diagnosis **it was found to be a case of Spondylosis LV-5** and was treated conservatively. He was placed in Low Medical Category (LMC) CEE (T-24), ADMSF-15 dated 24.03.1996.

3. Periodically physical health was reviewed by Medical Board and placed the applicant in the following categories :-

(a)	CEE (T-14)	w.e.f.	22.09.1986
(b)	CEE (P)	w.e.f.	09.03.1987
(c)	CEE (P)	w.e.f.	30.03.1988
(d)	CEE (P)	w.e.f.	11.03.1989
(e)	CEE (P)	w.e.f.	27.05.1990
(f)	CEE (P)	w.e.f.	15.01.1991
(g)	CEE (P)	w.e.f.	11.06.1992
(h)	CEE (T-24)	w.e.f.	12.07.1993.

During his next review vide order dated 30.12.1993 he was upgraded to medical category "AYE". However, after lapse of almost 3 years, he was admitted at Military Hospital, Wellington with certain complaints and he was transferred to Command Hospital, AF Bangalore where he was diagnosed as a case of Neurosis and placed in low medical category of CEE (T-24) vide order dated 27.04.1996.

5. Again on 19.10.1996, he presented with complaints of feeling of emptiness in head, decrease of appetite etc. Hence he was admitted to MH, Wellington where Psychiatrist opined that it was a case of **Unspecified Psychosis**. However, treatment found to be not effective with poor recovery.

6. On the opinion of Specialist dated 21.03.1997, the applicant was invalidated out of service by order dated 26.03.1997 which was approved by ADGMS (MB) on 24.04.1997. The IMD had assessed his disability as UNSPECIFIED PSYCHOSIS at 50% for 2 years and vide his opinion dated 09.04.2000 it was held that disability is neither attributable to nor aggravated by service. The decision of PCDA (P) was confirmed by Dy CDA (AF), New Delhi vide letter No. DCA/Pen/II/DP/40/2000 dated 02.05.2000 communicated to the applicant vide order dated 08.05.2000 with an opinion to prefer an appeal within 6 months.

7. According to Dorland's Illustrated Medical Dictionary, Para 7, Page 1550, Psychosis means, to quote :-

> *"**Psy-cho-sis** (si-ko'sis) pl. psycho'ses [psych- + asis] 1. A mental disorder characterized by gross impairment in reality testing as evidenced by delusions, hallucinations, markedly incoherent speech, or disorganized and agitated behavior, usually without apparent awareness on the part of the patient of the incomprehensibility of this behavior; called psychotic disorder in DSM-IV.2, the term is also used in a more general sense to refer to mental disorders in which mental functioning is so impaired that it interferes grossly with the patient's capacity to meet the ordinary demands of life. Historically, the term has been applied to many conditions, e.g., manic-depressive psychosis, that were first described in psychotic patients, although many patients with the disorder are not judged psychotic.*
>
> ***Acute delusional p**. bouffee delirante.*
>
> ***Affective P**. a psychosis in which a disturbance in mood is the prominent characteristic; see mood disorders, under disorder.*
>
> ***Alcoholic p's** psychoses associated with alcohol use and involving organic brain damage; the category includes alcohol withdrawal delirium, Korsakoff syndrome, and hollucinosis and paranoia accompanying alcoholism.*
>
> ***Bipolar p.** see under disorder.*
>
> ***Brief reactive p**. a brief psychotic disorder (q.v) occurring in response to a stressful life event.*
>
> ***Depressive p**. a psychosis characterized by severe depression; now more commonly described as a form of major depressive disorder (q.v.) with psychotic features.*

Drug p. *any psychosis associated with drug use.*

Functional p. *a psychosis for which organic disease or dysfunction cannot be found to play a causative role.*

Korsakoff p*. see under syndrome.*

Interictal p*. psychotic symptoms occurring between attacks of epilepsy, especially temporal lobe epilepsy.*

Manic p. *the manic phase of bipolar disorder.*

Manic-depressive p. former name for bipolar disorder; see bipolar disorders (def. 2), under disorder.

organic p*. psychosis that has a known or presumed organic etiology.*

postictal p*. psychotic symptoms occurring after a seizure, most often when there is a cluster of seizures that may have been followed by a lucid period of one to three days. Some patients have hallucinations or delusions, with danger of suicide or other violence in response to an imaginary command; others have anxiety or panic disorders.*

postpartum p*. Psychosis in a woman who has recently given birth.*

prison p*. any psychosis for which a prison environment has been a precipitating factor.*

reactive p*. brief reactive p.*

schizoaffective p. *see under disorder.*

senile p. *depressive or paranoid delusions or hallucinations or other mental disorders due primarily to degeneration of the brain in old age, as in senile dementia.*

Toxic p*. a psychosis due to the ingestion of toxic agents (e.g., alcohol, opium) or to the presence of toxins within the body."*

8. From the dictionary meaning it appears that the cause of psychosis may be for different reasons and form different types of psychosis. The Medical Board could not specify the reason and also fail to specify the nature of psychosis. The over all reading of the dictionary meaning did not rule out the strong possibility that it may be caused due to Air Force service. One of the reasons given in the dictionary is that **it occurs due to a stressful life events, organic disease etc.**

9. The applicant preferred an application dated 19.04.2002 which was forwarded to First Appellate Committee at Air HQ/MoD which rejected the appeal and held that the disability from which he suffered was neither attributable to nor aggravated to service and rejected vide letter No. AIR HQ/41002/218/CPL/PA-III dated 29.09.2004 (Annexure C/4).

10. Feeling aggrieved the applicant filed a writ petition No. 9013/2004 in the High Court of Orissa at Cuttack for grant of disability pension. On 12.04.2005, the Hon'ble High Court had disposed of the writ petition in favour of the UOI with a direction to the petitioner to prefer a first appeal before the MoD Appellate Committee within 2 months which was required to be decided within 3 months. The MoD in consultation with DGAFMS decided that the applicant be brought before the Appeal Medical Board and it was arranged at Base Hospital, Delhi Cantt. Appeal Medical Board (AMB) was held on 02.01.2006. The AMB had assessed the disability of the applicant i.e. Unspecified Psychosis (Old) at 50% for life and held that it is neither attributable nor aggravated to service. The AMB proceedings along with service and medical documents were forwarded to Air HQ on 20.02.2006 for onward submission to DMAC at MoD. The applicant's second appeal was considered afresh by DMAC. The DMAC did not find any ground to interfere the decision of the FAC and communicated to the applicant vide impugned order dated 11.05.2007. The DMAC held that the applicant is ineligible for disability pension. The decision was forwarded to the applicant by impugned letter dated 29.05.2007.

11. Feeling aggrieved the applicant approached Orissa High Court, Cuttack and preferred a writ petition which has been transferred to this Tribunal. Ld Counsel for the applicant, Mr. S.K. Choudhury, relying upon High Court judgement submits that at the time of entry into service he was physically and mentally fit and even after treatment for the period of 3 years i.e. from Dec 1993 to March 1996 he was placed in "AYE" category. Accordingly, his submission is that the disease of the applicant is attributable and aggravated to service rendered in the Air Force. Disability is to the extent of 50% and the applicant is entitled to payment of pension. On the other hand, Mr. Sauvik Nandy, ld counsel for the respondents, submits that in view of the Para 153 of Pension Regulations, IAF, 1961, Part I, the applicant is not entitled to disability pension since the disease cannot be attributable service to or aggravated by service. We have considered the arguments of both the counsel and perused the records.

12. The law with regard to entitlement of payment of disability pension to Armed Forces Personnel is no more res-integra. The Service Pension Regulations for the Air Force 1961 (in short Regulations) deal with the pension of Air Force personnel. Disability pension may be paid under Regulations 153. For convenience the same is reproduced as under :-

Primary conditions for the grant of disability pension

> **153.** 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 air force service and is assessed at 20 per cent or over.
>
> The question whether a disability is attributable to or aggravated by air force service shall be determined under the regulation in Appendix II.

13. In view of the above, disability pension may be paid in case a person belonging to air force, in case of disease of the person belonging to air force may be attributable or aggravated by the service and as assessed at 20% or more.

14. Hon'ble Supreme Court in a case reported in Dharambir Singh vs UOI decided on 02.07.2013 considered the different provisions of Army Rules with regard to disability pension and Army Regulations which are at par with the Air Force Regulations and held that under general rules of guide to medical officers, military pension 2002, the cause of disability or death resulting from disease will be regarded as attributable to service when it is established, arose during service and the conditions and circumstances of duty in the armed forces determined and contributed to the on set of disease. To quote relevant portion of the judgement of Dharamvir Singh vs UOI :-

> 24. The Rules to be followed by Medical Board in disposal of special cases have been shown under Chapter VIII of "General Rules of Guide to Medical Officers (Military Pensions) 2002. Rule 423 deals with "Attributability to service" relevant of which reads as follows:
>
> "423(a) For the purpose of determining whether the cause of disability or death resulting from disease is or is not attributable to service, it is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a Field Service/Active Service area or under normal peace conditions. It is however, essential to establish whether the disability or death bore a casual connection with the service conditions. All evidence both direct and circumstantial will be taken into account and benefit of reasonable doubt, if any, will be given to the individual. The evidence to be accepted as reasonable doubt for the purpose of these instructions should be of a degree of cogency, which though not reaching certainty, nevertheless carries a high degree of probability. In this connection, it will be remembered that proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. If the evidence is so strong against an individual as to leave only a remote possibility in his/her favour, which can be dismissed with the sentence "of course it is possible but not in the least probable" the case is proved beyond reasonable doubt. If on the other hnad, the evidence be so evenly balanced as to render impracticable a determinate conclusion one way or the other, then the case would be one in which the benefit of the doubt could be given more liberally to the individual, in cases occurring in Field Service/Active Service areas.
> (c) The cause of a disability or death resulting from a disease will be regarded as attributable to Service when it is established that the disease arose during service and the conditions and circumstances of duty in the Armed Forces determined and contributed to the onset of the disease. Cases, in which it is established that Service conditions did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease, will be regarded as aggravated by the service. 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 Service in the Armed Forces. 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.
> (d) The question, whether a disability or death resulting from disease is attribuitable to or aggravated by service or not, will be decided as regards its medical aspects by a Medical Board or by the medical officer who signs the Death Certificate. The Medical Board/Medical Officer will specify reasons for their/his opinion. The opinion of the Medical Board/Medical Officers, in so far as it relates to the actual cause of the disability or death and the circumstances in which it originated will be regarded as final. The question whether the cause and the attendant circumstances can be accepted as attributable to/aggravated by service for the purpose of pensionary benefits will, however, be decided by the pension sanctioning authority."

15. Hon'ble Supreme Court held that Evidentiary value as attached to the record of a member's condition post commencement of service and said record is therefore, to be accepted unless any different conclusion has been reached due to the inaccuracy of the record in a particular case or otherwise. If it was read to member's invalidation out of service or death while in service, was not noted in a medical report at the commencement of service. The disease arose during the member's military service unless limited otherwise. In Dharamvir Singh vs UOI (supra). After considering the different provisions of the law in Para 28, summarized, which is reproduced as under :-

> 28. A conjoint reading of various provisions, reproduced above, makes it clear that:
> 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 non-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 (Regulation 173).
>
> 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 be 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 more liberally. (Rule 9).
>
> iv. 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)].
>
> v. If no note of any disability or disease was made at the time of 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 acceptance 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.

16. Supreme Court held (supra) that if the sanctioning authority failed to note that the medical board had not given any reasons in support of its decisions particularly when there is no note of such disease or disability as available in record at the time of acceptance of military service, orders seems to be mechanically passed.

17. Judgement of Dharamvir Singh's has been reiterated and followed by Supreme Court in a later Judgement reported in UOI vs Rajvir Singh reported in Civil Appeal No. 2904 of 2011, Civil Appellate Jurisdiction, in the Supreme Court of India.

18. In the case of UOI Vs Rajvir Singh (supra), Supreme Court after considering Army Regulations 173 (Parameteria) also considered the Appendix 2 of the entitlements Rules of casualty pensioner award 1982 held within terms of rules 5 and 9 shall be on the establishment that claimant shall be entitled for disability pension. The relevant portion of Rajvir Singh Vs UOI is quoted as under :-

> 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 pension to persons who are invalided out of service on account of a disability which is attributable to or aggravated by military service in nonbattle casualty and is assessed at 20% or above. The regulation reads:
>
> > *"**173. Primary conditions for the grant ofdisability 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 in 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 taken place, is due to service."*
>
> **9**. Equally important is Rule 9 of the Entitlement Rules (supra) which places 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 acceptance for military service**,** subject to the condition that 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 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 acceptance 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 Rules 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 rinciples", and the approach to be adopted in such cases. Paras 7, 8 and 9 of the said guidelines reads as under:

*"**7.*** Evidentiary 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 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 conditions 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 Atherosclerosis, Rheumatic Fever.
(d) Diseases which may be undetectable by physical examination on enrolment, 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 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 authority should also be satisfied that this 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 service 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 realised on enrolment in the army. To sum up, in 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 held that Union of India had failed to bring on record any document to suggest that Dharamvir 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 Authority failed to notice that the Medical Board had not given any reason in support of its opinion, particularly when 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 "generalised 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*** case (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 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 unrelated 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 soldier cannot be asked to prove that the disease was contracted by him on account of military service or was aggravated by the same. The very 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.

19. As per the arguments of counsel for respondents opinion given by Medical Board should be final being technical in nature and court lacks jurisdiction to interfere with such opinion. This aspect was considered by the Hon'ble Supreme Court in a case reported in 2013, Vol 10 SCR 579 Birpal Singh Vs Secretary MoD. Supreme Court held that the courts are extremely loath to interfere with the opinion of the experts but there is nothing like exclusion of judicial review of the decision taken on the basis of such opinion. The opinion of the experts deserves respect and not worship and other judicial forums entrusted with the task of deciding the dispute of premature release/discharge from Army cannot, in

each and every case, refuse to examine the record of Medical Board for determining whether or not the conclusion reached by it is legally sustainable. [Para 11] [597-G-H; 598-A-B].

20. Disability pension may be paid under Regulation 158 of the Pension Regulations for the Air Force (in short Regulations). Regulation 159 deals with the rank of assessment of disability pension. For convenience both Regulations are reproduced as under :-

Manifestation of disability after an individual is discharged from service

158. An individual who is discharged from service, otherwise than at his own request, with a pension or gratuity, but who, within a period of seven years from the date of discharge, is found to be suffering from a disease which is accepted as attributable to his air force service, may, at the discretion of the competent authority, be granted in addition, to his pension/gratuity, a disability element at the rate appropriate to the accepted degree of disablement and the substantive rank last held, with effect from such date as may be decided upon in the circumstances of the case.

Rank for assessment of disability pension

159. The rank for the purpose of assessment of the service and disability elements of disability pension shall be the substantive rank held by an individual on the date of invalidating from service.

For so long as promotions are made on paid acting basis, the service and disability elements shall be reckoned on the paid acting rank held by the individual on any of the following dates, whichever is the most favourable:-

(a) The date of invaliding from service; or

(b) The date on which he sustained the wound or injury or was first removed from duty on account of a disease causing his disablement; or

(c) If he rendered further service and during and as a result of such service suffered aggravation of disability, the date of the later removed from duty on account of the disability.

Note I :- In the cases of an individual who on account of misconduct or inefficiency is reverted to a lower rank subsequent to the date on which the wound or injury was sustained, or disability contracted, the rank for assessment of service and disability elements of disability pension shall be the paid acting rank held on the date of invaliding from service.

2:- Paid acting rank will not be taken into account for assessment of disability pension if the crucial date mentioned above falls after the 31st May 1963.

21. In view of the above, disability suffered by the air force personnel may be considered even after discharge within the period of 7 years. Explanatory Note of Regulations 159 further clarifies that a person who is discharged from air force shall be considered for entitlement for disability pension of the rank for assessment of service of rank of which he or she has been held on the date of invaliding from service.

22. Regulation 161 of the Air Force Regulations deals with the amount which may be payable in terms of disability pension. Even an apprentice shall seem to be entitled for disability pension under the

Regulation 161. The period for which disability may be granted, has been provided under Regulation 162. It may be assessed under certain conditions as contained in Regulation 163.

23. One important feature of the Air Force Regulations is that in the event of increase of degree of disablement it may be re-assessed in pursuance to power conferred by Regulation 164. For convenience it is reproduced as under :-

Grant or re-assessment of disability pension when the degree of disablement increases

> **164.** (a) If, at any time an increase, which is properly referable to service factors, occurs in the degree of disablement a disability pension may be granted, or the pension already granted may be increased to the appropriate higher rate, with effect from the date of the medical board on the basis of whose findings the competent authority accepts the higher degree of disablement.
>
> (b) When a disability pension is granted in accordance with clause (a) above, any service gratuity or special gratuity paid shall be adjusted against the service element of disability pension which shall be held in abeyance till the entire gratuity has been recovered.

24. The combined reading of the aforesaid Regulations meant for air force indicates that every member during course of employment but even after discharge or superannuation, air force personnel may claim disability pension subject to rider of 7 years from the date of discharge. Further in the event of increase of degree of disablement, the disability pension even may be increased. The different provisions and circumstances which are reflected from Air Force Regulations shows that there are variety of facts and circumstances and situations which may be held responsible to establish disability which may be attributable to or aggravated by air force service dependent upon facts of each case.

Interpretation :-

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

26. It is well settled proposition that in case a provision or a construction gives rise to anomalies or leads to a manifest construction 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 236 – Modern School Vs. Union of India and 1979 SCC Vol 2 Page 34 – Chief Justice of Andhra Pradesh and Others Vs. I.V. Dixitulu and Others.**

27. Nothing has been brought on record to indicate that the applicant was suffering from disease in question at the time of entry into the service which cannot be detected. In such a situation there appears no doubt that the applicant is entitled to disability pension and it may be held that condition was aggravated because of air force service. It should always be kept in mind that benefit available from beneficial legislation should not be withheld or rejected on hyper technical ground. In the event of conflict or two possible views, the view which favour to extend the benefit of such legislation should be accepted.

28. It may be noted that originally the applicant was suffering from only Spondylosis but later on he suffered from Unspecified Psychosis. The consequence of this indicates that the applicant suffered during the course of service in the Air Force and hence the disability is attributable to and aggravated by service.

29. Keeping in view all the aforesaid proposition of law, it appears that right from 1983 to 2003 the applicant was in 'AYE' category, thereafter on account of Unspecified psychosis, he was under medical treatment for almost 2 years. Then again placed under 'AYE' category on 30.12.1993 but later on Invalidating Medical Board held on 26.03.1997 he was declared unfit for further service in Air Force. The factual matrix on record shows that the disease caused to the applicant seems to be generated while in service as well as it should be attributed to air force service and aggravated also because of service. Hence applicant seems to be entitled for disability pension. In view of the above the TA deserves to be allowed and accordingly allowed.

30. The impugned order dated 11.05.2007 and 29.05.2007 as collectively contained in Annexure 14 are set aside with consequential benefit. The respondents are directed to reconsider the petitioner's case for the payment of disability pension keeping in view the observations made in the body of present order within a period of 3 months. The decision shall be taken with regard to admission of disability pension from the date of discharge from the Air Force and communicate the decision to the applicant immediately after the aforesaid period of three months.

31. Let a compliance report be submitted to this AFT immediately after 3 months.

32. Registry shall list the OA for the perusal of compliance report. OA is allowed accordingly. No order as to cost.

(LT GEN GAUTAM MOORTHY)
Member (Administrative)

(JUSTICE DEVI PRASAD SINGH)
Member (Judicial)

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