IN THE ARMED FORCES TRIBUNAL
(REGIONAL BENCH) KOLKATA

APPLICATION NO. T.A. 74/2010

THIS 19TH DAY OF AUGUST, 2013

CORAM : Hon'ble Mr. Justice Raghunath Ray, Member (Judicial)
Hon'ble Lt. Gen. K.P.D. Samanta, Member (Administrative)

Sakti Bhusan Bhattacherjee, Ex. No.13613475 P.T.R. Jagadish Bhawan
K.G. Sanyal Road, Post & Dist Nadia

……Applicant

-Vs-

1. Union of India, Service through the Secretary, Defence, South Block New Delhi

2. Director General of INF/INF 6 (Pers), General Staff Branch, Army Headquarter, (SENA BHABAN), DHQ, P.O. New Delhi – 110 001

3. The Record Officer, Abhilekh Parachute Regiment, Records of Parachute Regiment, Bangalore – 560 006

……..Respondents

For the petitioner : Mr. Subhash Ch. Basu, Advocate

For the respondents : Mr. Mintu Kumar Goswami, Advocate

O R D E R

Per Justice Raghunath Ray, Member (Judicial):

Preliminaries

A Writ Petition No.17826(W) of 2006 claiming payment of disability pension and other consequential reliefs was filed by the applicant in Constitutional Writ jurisdiction of the Hon'ble Calcutta High Court on 27-7-2006. The said application under Section 226 of the Constitution of India was subsequently transferred to this Regional Bench of Armed Forces Tribunal, Kolkata on 18-5-2010 by the Single Bench of the Hon'ble High Court, Calcutta in view of provisions of Section 14 read with Section 34 of the Armed Forces Tribunal Act, 2007 on its formation. The afore-mentioned Writ Petition was subsequently renumbered as TA 74 of 2010 on 2-8-2010.

Facts :

2. The petitioner Shri Sakti Bhusan Bhattacharjee was enrolled in the Army on 10th March, 1980 and on successful completion of his basic military training as also specialized military training he was posted in the rank of Paratrooper to the 4th Bn of Paratroop Regiment on 2-9-1981. While serving with the Unit, this young man of about 22 years had an attack of Schizophrenia (295) as diagnosed in Military Hospital, Agra in the month of September, 1982. He was brought before the Release Medical Board and subsequently invalidated out with effect from 31-1-1983 under Army Rule 13(3) III (iii) being placed in

Medical Category EEE after having served two years ten months due to his disability arising out of Schizophrenia (295). Since he was not found suitable for retention in service by the Medical Authority due to Psychiatric nature of illness, the Release Medical Board found that such disablement due to Schizophrenia (295) was neither attributable to nor aggravated by Military Service. Rather it was constitutional in nature and thus not connected with service. The disability of the petitioner was assessed at 70% for two years by the said Release Medical Board.

3. The Commanding Officer of Parachute Regiment, however, recommended for the grant of disability pension in favour of the petitioner considering the nature of parachute duties performed by the applicant. Despite such projection for grant of disability pension to the petitioner the Principal Controller of Defence Accounts (Pension), the Pension Sanctioning Authority rejected the prayer for grant of disability pension in view of negative opinion recorded by the Medical Board. The petitioner also preferred an appeal to the Government of India, Ministry of Defence against such irrational rejection of disability pension by the PCDA(P), Allahabad. Appeal dated 11-01-1986 was also rejected by the Government of India, Ministry of Defence vide their letter dated 03-09-1986. Being aggrieved, the petitioner sought to invoke the writ jurisdiction of the Hon'ble High Court mainly for release of disability pension.

Pleadings

4. It is contended inter alia in the Writ Petition that prior to his joining Army Services, he was subjected to rigorous medical tests by the Army Authorities and he was found both physically and mentally fit for military service. After being satisfied with his physical and mental capabilities finally, the Military authorities selected him for the military service. Accordingly, he was appointed and was posted in the rank of Paratrooper in the Armed Wing in Agra Cantt. He was subsequently declared disabled by the Release Medical Board and consequent upon such declaration he was not allowed to resume his normal duties. It is further averred that, even though the Medical Board declared him unfit and thereby he was boarded out of service, the reason of his disablement was never communicated to him despite his specific and repeated requests to the authorities concerned to furnish him with a copy of the medical report. He was simply informed that he was not entitled to the disability pension without however, assigning any reason for such purported disablement. On 12-10-1998 the petitioner through his Lawyer applied for grant of disability pension and after a reminder Notice on 8-12-2003, the respondents vide their letter dated 23-12-2003 intimated him that his disability was found neither attributable nor aggravated by the military service since it was constitutional in nature. He was, therefore, not found eligible for disability pension. Again the petitioner through his Lawyer issued another demand notice with a request to furnish a copy of the Medical Report for

ascertaining the reasons assigned by the Medical Board for his disability. His request was not acceded to. Rather, he was again informed by the respondent NO.3 vide his letter dated 24-11-2004 that the petitioner was not entitled to any pensionary benefits from the Army. Further, documents as asked for vide his petition dated 08 December, 2003 cannot be supplied to him being an official record and confidential in nature. It was also made clear therein that repeated correspondence will not serve any fruitful purpose. In view of all such correspondences as also due to financial stringency, delay has been caused in preferring this Writ Application. In such circumstances, he prays for necessary direction upon the Respondents for release of disability pension.

5. By filing the affidavit-in-opposition the respondents have sought to resist the claim of disability pension on the ground that despite adequate medical treatment rendered to the petitioner in the Military Hospital, no improvement in his condition was noticed and he was accordingly placed in the Medical Category EEE. He was thus found not suitable for retention in service by the Release Medical Board due to Phychiatric nature of ailment. Further, when he was brought to the Release Medical Board he was subsequently invalidated out of service with effect from 31-1-1983 under Army Rule 13(3)III(iii) in Medical Category EEE after having served 2 years and 10 months of service, due to his disability - (SCHIZOPHRENIA295). It was opined by the Medical Board that the disease was neither attributable nor aggravated by the Army Service. The percentage of disability was, however, assessed at 70%

for two years by the Medical Board. The Pension sanctioning authority PCDA (Pension) also rejected his claim of disability pension on similar ground. He, thereafter, preferred an appeal against such rejection of disability pension vide his appeal No. Nil dated 11-01-1986 and such appeal was also rejected by the Government of India, Ministry of Defence vide their Order dated 03-09-1986. The petitioner was, however, paid his terminal benefits amounting to Rs.22,677/- in total.

6. It is further submitted on behalf of the respondents that after a lapse of 20 years he has filed this Writ Petition claiming disability pension and as such the same is barred by limitation. It is also forcefully contended by the respondents that the petitioner is not eligible for any kind of disability pension for the simple reason that the disease for which he was invalidated out of service is neither attributable nor aggravated by the military service and as per medical opinion the said disease 'SCHIZOPHRENIA' was constitutional in nature. In such a situation, as per paragraph 173 of Pension Regulation 1961(Part I) the petitioner is not entitled to disability pension.

7. The petitioner also filed a supplementary affidavit by reiterating that at the time of recruitment he had to undergo a thorough medical check-up and, thereafter, on successful completion of his training he was inducted to Parachute Regiment as a Paratrooper. Since the date of his such induction, he had been performing his duties and responsibilities smoothly. It is further emphatically averred therein that while in service there was also routine

medical check up and no medical problem whatsoever was ever detected during the said period. It is only on 25-02-1983 the Release Medical Board all on a sudden declared him disabled without taking into consideration his service record and family background etc. He has also not been supplied with any document pertaining to the Medical Board proceeding and as such it is not known to him on what basis the Medical Board came to such conclusion of invalidating him out of service. He has, therefore, seriously challenged the opinion of the Medical Board that the disease was constitutional in nature and not connected with service. Thereafter he preferred an appeal against the said decision of the Medical Board. The Appellate Authority also upheld the decision of the Release Medical Board in a mechanical fashion and as a routine the claim of disability pension was rejected. In fact, the Appellate Authority did not apply its mind to the available materials and circumstances on record. According to him, his discharge on purported medical ground of psychological disorder was palpably wrong. Such medical opinion is not founded on any reasoning and is absolutely baseless. The Court is, therefore, quite justified in interfering with the Medical opinion. He is even ready to face a joint Medical Board of Civil and Military Doctors to resolve the issue of non-attributability to military service etc.

The respondents also filed a supplementary affidavit annexing Appellate Medical Board's papers, Xerox copies of Section IV of Disability Pension Awards of Pension Regulations together with its amendment as also Appendix

II (Referred to in regulations 48, 173 and 185) Entitlement Rules (Annexure X collectively) in terms of the Tribunal's order dated 25-8-2011.

Argument

8. Mr. S.C. Basu, learned counsel appearing on behalf of the petitioner argues that no deformity was found by the Medical Board at the time of Recruitment of the petitioner in the Army. It has, therefore, to be inferred that the disease Schizophrenia/Psychological disorder suffered by the petitioner is attributable to Army Service. It is further argued by him that the delay of 11 years in filing the petition claiming disability pension can easily be condoned since it has uniformly been held in different judicial pronouncements of the Hon'ble Apex Court and different High Courts that the benefit of disability pension is a civil right of a person and such right cannot be curtailed in any manner whatsoever. In fact, it furnishes successive cause of action to the petitioner. In support of his contention he relies upon a decision of the Single Bench of Punjab and Haryana High Court reported in **SLR 2001(3) 44 (Vir Yagya Dutt Vs Union of India).** In this context he refers to Paragraph 13 of the said judgement and submits that even though the cause of action initially arose to the petitioner in the year 1988, the writ petition was filed in the year 1999 end there was thus a delay of 11 years. Such delay was however, condoned by the Punjab & Haryana High Court. The petitioner of this case being similarly situated is entitled to take the benefit of disability pension. Further relying upon the presumptive inference as drawn in para 10 of the said judgement it

is argued by him that in the absence of any adverse entry in respect of the disease suffered by the petitioner, it is inferred that the petitioner suffered from the disease in question during service. It is further submitted by him that since no deformity was detected at the time of recruitment of the petitioner in the Army by the Medical Board which took his medical examination, there was no adverse entry by the Medical Board in the applicant's service record. The necessary inference is therefore, bound to follow in the present case that the disease of mental illness suffered by the petitioner is attributable to Army Service since there was on set of mental illness because of acute stress and strain suffered by the applicant as a Paratrooper. He has, thereafter, cited another decision of the Punjab & Haryana High Court reported in **SLR 2002(5) 746 (Ex Hav. Kanwar Singh vs. Union of India)** as also a ruling of the Rajasthan High Court reported in **SLR 2003(5) 500 (Hari Singh vs. Union of India and others)**in order to strengthen his argument that since no note was ever made at the time of entry into service that he was suffering from any kind of disability, it can be legally presumed that the disability leading to his discharge had arisen during his service. He has also referred to Rule 14(b) of Entitlement Rules appended to Appendix II of the Army Service Pension Regulations which makes it clear in unequivocal language that 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….."**(Annexure X).

9. It is further forcefully argued by him that since at the time of entry into service no note was ever made in the Service Record by the Recruitment Medical Board that the petitioner was suffering from any disability, sudden attack of Schizophrenia during his service tenure must be legallypresumed to have arisen during his service and as such the said disease should be attributed to military service and such being the rule position, denial of disability pension is not in keeping with rule 173 & 173Aof Pension Regulations for the Army which refers to Entitlement Rules for Casualty Pensionary Awards 1982 appended in Appendix-II.

10. In this context he has further referred to a decision of the Single Bench of the Madhya Pradesh High Court reported in **2003 (4) SLR 183 (Sub Lieutenant Chaman Azhar vs. Union of India & others)**. It is pointed out by him that in an identical case the petitioner was invalidated out from Indian Navy Service on account of Psychiatric disorder, on completion of two years of naval service but the Hon'ble Madhya Pradesh High Court was pleased to hold that since no such disorder was detected at the time of his entry into naval service when medically examined and since such disability was detected for the first time when the petitioner completed 2 years of service, it is to be presumed due to military services as per Rule 5(b) of Entitlement Rules. Accordingly, Sub Lieutenant Chaman Azhar was granted disability pension. Similar is the case of the petitioner since onset and aggravation of Schizophrenia was presumed to have taken place while he was in Indian Army

on completion of 2 years and 8 months service. Therefore, the petitioner cannot be legally denied disability pension.

11. PER CONTRAit is argued by Mr Goswami, the learned counsel for the respondents that it is not open to the Tribunal to disturb the medical opinion of the Expert Body since it carries much importance and utmost reliability. In this context he has referred to the oft-quoted ruling of the Hon'ble Apex Court reported in **2009 (9) SCC 140** (Secretary, Ministry of Defence and others vs. A.V. Damodaran (dead) through LRs. and others). He has invited our attention to para 7 of the said ruling wherein it is ruled that the Medical board being an expert body its opinion is entitled to be given due weight, value and credence. It is, therefore, vehemently argued by him that inasmuch as the Medical Board is of the opinion that disability suffered by the applicant due to the disease Schizophrenia (295) is not attributable to military service as was the case of Damodaran also, the petitioner's claim for disability pension cannot be accepted. The petitioner is thus entitled to no relief what-so-ever in the instant case.

12. In support of his contention Mr. Goswami has also cited a recent ruling of the Hon'ble Apex Court reported in **(2012) 5 SCC 480** (Union of India and another vs. Talwinder Singh), wherein it is ruled that a person claiming disability pension must establish that the disease suffered by him bears a casual connection with the military service. It is further ruled therein that findings of fact by the expert body, i.e. Army Medical Board cannot be

interfered by the Court. Relying upon such proposition of law enunciated by the Hon'ble Apex Court it is forcefully argued by him that the Court should leave the decision to experts who are familiar with problems they face. Therefore, according to him, this Court should not ignore the specific finding of the Medical Board for the simple reason that the Medical Board is a specialized authority composed of expert medical doctors and it is a final authority to give opinion on issues involving medical science in terms of Section 45 of Evidence Act. In such view of the matter, Mr Goswami submits that the claim of disability pension of the petitioner is liable to be dismissed in the face of the specific medical opinion by the Medical Board that onset of disease Schizophrenia is neither attributable to nor aggravated by the military service.

13. In the final leg of his argument it is submitted that the petitioner's claim is also hopelessly barred by limitation since he has come up with such a prayer of disability pension after a lapse of about 20 years. He has not even cared to pray for condonation of delay by filing a separate petition. In that view of the matter it is to be presumed that he is unable to furnish any day to day explanation for such inordinate delay in preferring the application before the Hon'ble High Court. According to Mr. Goswami, the instant petition is liable to be dismissed being hopelessly barred by limitation.

Limitation

14. At the outset, adverting to the issue of limitation, we find that there was a delay of about 20 years in preferring the writ petition before the Hon'ble

High Court at Calcutta from the date of rejection of his appeal by the Government of India, Ministry of Defence vide their communication dated 3-9-1986. It, however, appears that the applicant served a legal notice dated 12-10-98 upon the respondents demanding release of disability pension in his favour in view of financial hardship faced by him to maintain his family with five members. ARO Parachute Regiment Record, Agra Cantt. was requested to re-examine the case compassionately and communicate their considered views explaining the rule position. It, however, appears from the letter dated 22nd December 2003 (page 15 of the Writ Petition) addressed to the applicant's lawyer by the Record Officer, Parachute Regiment, Bangalore that the first legal notice of the applicant was replied to vide Record Office letter No.13613475/33/NER(Lib) dated 14 Jan, 1999. However, neither the legal notice nor its reply as referred to herein above has been annexed to the Writ Petition for the reasons best known to the applicant. At any rate, in response to his second representation dated 8-12-2003, his lawyer was informed by the Record Office vide afore-mentioned letter dated 22-12-2003 that on examination of the applicant's case it was found that his disability was viewed neither attributable nor aggravated by military service as per opinion of the Medical Board and his client was thus not eligible for disability-pension.

15. His third representation dated 2-3-2004 submitted through his lawyer was replied to vide letter No.13613475/73/NER(Lib) dated 20th March , 2004 whereby the applicant was informed that since he was "invalidated out of

service Medical Category EEE w.e.f 31-1-1983 under Army Rule (13) (3)III(iii) being the case of (PSYCHIATRIC and SCHIZOPHRENIA) and "the disease was constitutional in nature and not connected with service", his client was not entitled to any pensionery benefits from the Army. Further, documents asked for vide para 8 of the representation dated 08 December 2003 cannot be supplied to him being an official record and confidential in nature. His lawyer, however, again addressed another representation dated 10-11-04 (Annexure P3) to the Respondent No.3 assailing the correctness of the medical opinion on the ground that nobody in family including his parents ever suffered from psychiatric disorder. Moreover all his brothers are engaged either in Military service or in the State Government Service. It was further asserted therein that the petitioner had also been serving in Defence Civil under Ministry of Defence with great satisfaction at the relevant point of time. The said representation was also responded vide Record Officer's communication dated 24-11-2004 reiterating their earlier stance that the petitioner was not entitled to any pensionery benefits from the Army.16. It is, therefore, abundantly clear that the petitioner never sat idle since rejection of his appeal by the Government of India, Ministry of Defence. Rather he doggedly pursued his claim on submission of series of representations through his counsel. In fact, he had thus been regularly representing the authorities while his claim for disability pension was repeatedly rejected on the ground that the disability was not attributable to or aggravated by Military Service. He also endeavoured to challenge the medical opinion in some of his representations. At any rate,

the fact remains that it has uniformly been held by the Hon'ble Apex Court in different judicial pronouncements that delay in approaching the court cannot defeat the claim of disability pension. Further, such claim is entertainable in view of the fact that it furnishes a successive cause of action to the petitioner. Relying upon a decision of the Hon'ble Division Bench of Punjab & Haryana High Court reported in **1992(6)SLR 683** (Sardara Singh Vs Union of India) it has rightly been pointed out by the Learned Counsel for the petitioner that in the afore- mentioned case the Hon'ble Punjab and Haryana High Court allowed the claim of disability pension which was filed after a lapse of 40 years. It has accordingly been held therein that delay in seeking appropriate reliefs from the Court cannot be the sole ground for declining the claim of disability pension. In the present case, however, delay was of about 20 years and furthermore the petitioner had also represented to the authorities and such representation was also rejected at least on four occasions by the Army Authorities. In this context we may refer to a ruling of the Hon'ble Apex Court reported in (2008) 8 S.C.C. 648 (Union of India and Ors Vs Tarsem Singh) wherein it is ruled as under :

> **"7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury".**

In para 4 of the said ruling the concept of continuing injury has been elucidated as follows :

> **"4. The principles underlying continuing wrongs and recurring/successive wrongs have been applied to service law disputes. A "continuing wrong" refers to a single wrongful act which causes a continuing injury. "Recurring/successive wrongs" are those which occur periodically, each wrong giving rise to a distinct and separate cause of action".**

17. In para 10 of another decision of the Hon'ble Apex Court reported in **(2007) 9 SCC 274** (Shiv Das Vs Union of India) it is held that ' in the case of pension the cause of action actually continues from month to month'. It is, however, further held therein that in case of delayed filing of petition, the Court should restrict the relief which could be granted to a reasonable period of three years. Since there was considerable delay on his part in approaching the High Court it is observed interalia in the case of Tarsem Singh (supra) that the High Court was not justified in directing payment of arrears for sixteen years and that too with interest. In such context of the matter it was held by the Hon'ble Apex Court that in such cases relief relating to arrears should be restricted to only three years before the date of filing the writ petition and in such circumstances the court should not grant interest on arrears.

18. Applying the ratio of decision enunciated in the afore-cited rulings of the Hon'ble Apex and other High Courts to the facts and circumstances of the present case, we cannot but hold that the petitioner's delayed claim for disability pension cannot be treated as time barred since such refusal of

disability pension was the assertion of continuing wrong against him which gave rise to recurring cause of action each time when he is denied disability pension month by month, if his claim for disability pension is found correct on merits entitling him to such disability pension p.m. In that view of the matter it is held that the instant petition is not barred by limitation and the same is thus quite maintainable.

Claim of Disability Pension

19. We have bestowed anxious consideration to rival submissions advanced by both sides in the light of materials and circumstances on record coupled with relevant provisions of the Pension Regulations for the Army and Entitlement Rules for Casualty Pensionery Awards 1982 as also Guide to Medical Officers (Military Pensions) 1980 as amended in 2002 published by Ministry of Defence, Government of India, New Delhi and Regulation for the Medical Services of the Armed Forces, 1962 (as amended) as minutely dissected and relied upon in plethora of judicial pronouncements of the Hon'ble Apex Court and different High Courts.

20. A moot point for consideration to adjudge the relevant issues pertaining to disability claim is whether the onset of phychic disorder in the form of Schizophrenia during the applicant's service period is attributable to or aggravated by military service.

Mode of determination of attributability to Military Service

21. A plain reading of Para 173 of Pension Regulations for the Army (in short said Regulations) reveals that the question whether a disability is attributable to or aggravated by the Military Service is to be determined by the set of Rules in Appendix II. The Rules in Appendix II relates Entitlement Rules for casualty Pensionary Awards 1982 (hereinafter as Entitlement Rules). A close analytical look to Rule 5(a) of the Entitlement Rules reveals that 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'. Apart from this presumption, it is clearly laid down in Rule 5(b) that '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'. Rule 9 of the Entitlement Rules provides that 'the claimant shall not be called upon to prove the conditions of entitlements and he is entitled to the benefit of any reasonable doubt'. In that view of the matter it can safely be said that onus of proof lies upon the military authorities and not upon the claimant of the disability Pension.

Procedure to be followed by the Medical Board

22. However, there may be circumstances wherein the disease could not have been detected on medical examination prior to his acceptance of the service. In such a situation, a combined reading of Rule 14(a) & (b) of

Entitlement Rules tends to indicate that certain conditions are stipulated therein to meet exigencies of circumstances as under :

"14(a) For acceptance of a disease as attributable to military service, the following two conditions must be satisfied simultaneously :-

(i) That the disease has arisen during the period of military service; and

(ii) That the disease has been caused by the conditions of employment in military service.

(b) If **medical authority** holds for **reasons to be stated** that the disease although present at the time of enrolment could not have been detected on medical examination prior to acceptance for service, the disease, will not be deemed to have arisen during service. In case where **it is established that the conditions of military service did not contribute to the onset or adversely affect the course of disease,entitlement for casualty pensionary award will not be conceded even if the disease has arisen during service".**

(Emphasis supplied)

23. Therefore a solemn duty is cast upon the Medical Board to specify the reasons for which the disease could not have been detected at the stage of

initial medical examination when the applicant made an entry to military service. Further, the Medical Board is also to identify the relevant factors wherefrom they could have arrived at a conclusion that the conditions of military service did not contribute to the onset or adversely affect the course of disease, even though the disease arose during service.

24. That apart, Rule 15 of Entitlement Rules further provides that "the onset and progress of some diseases are affected by environmental factors related to service conditions like exposure to noise, physical and mental stress and strain etc. will "merit entitlement of attributability". The said Rule further stipulates that **'attention must be given to the possibility of pre-service history of such conditions which, if proved, could rule out entitlement of attributability, but would require consideration regarding aggravation'.** In other words, the medical opinion of the board must be based upon solid and cogent reasons on proper consideration of available documentary evidence, pertaining to connected materials and circumstances on record in respect of both physical and mental condition at the time of entry into military service, during service and other relevant factors which are likely to contribute to the onset of disease. The Board is to weigh direct or indirect evidence in support or against the claim and must be satisfied that the question of attributability or otherwise has been dealt with in such a way as to leave no reasonable doubt. The Medical Board proceedings must reflect the analytical mind and scientific study

of the disease in question in terms of relevant provisions of Entitlement Rules and other appropriate guidelines meant for medical officers.

25. In this context it is highly relevant to refer to the relevant provisions of Guide to Medical Officers (Military Pensions), 1980 as amended in 2002 (for short guide to Medical Officers), which is intended as a general guide for assessment of individual disabilities and their casual relationship to military service. In this manual as per its **'foreward'** certain variations have been made from the previous edition in 1980, in the light of recent medical knowledge. The second para of the said foreward reads as under :

> **"In the current edition, the fresh classification of disabilities has been included which incorporates the newer health hazards introduced in the Armed Forces as a result of modernization. The casual relationship of other relevant factors have been brought up to date in accordance with the latest scientific opinions. It has also been further decided that in accordance with natural justice and rapid advances in medical sciences, such medical guides should be reviewed periodically".**
>
> The penultimate paragraph of the foreward is concluded as under :

“This manual should be carefully studied by the members of the Medical Board and all others concerned so as to apply the guidelines in an unbiased manner”.

(Emphasis supplied)

26. It has also been unequivocally made clear in the foreward itself that guidelines have been formulated “and forwarded to all concerned so as to widen the already broad framework of the existing entitlement rules”. It can, therefore, be safely concluded that in this ‘Guide to medical officers’ the relevant guidelines have been formulated to supplement the existing entitlement rules. In that context of the matter the Medical Board is to strictly follow the existing entitlement rules as also guidelines laid down in the said Manual both in letter and spirit conjointly while the Medical Board would discharge its duties and responsibilities regarding attributability of individual disabilities and their casual relationship to military service. It should invariably be reflected in the face of the Medical Board proceedings itself that they have considered individual’s disabilities and their casual relationship to military service in the light of the relevant provisions of Entitlement Rules and Guide to medical officers.

27. The objectives of formulation of the guidelines have been spelt out in clear and distinctive terms in Rule I of Chapter I under the heading ‘General’ of the Guide to Medical Officer which is quoted below :

"1. The instructions in this guide are intended **to be a guide to medical officers and medical boards to enable them to approach the question of entitlement to disability and special family pensions in the proper perspective under the rules in force, and, aim at facilitating the efficient discharge of their responsibilities".**

(Emphasis supplied)

28. Rule 8 of the said Manual enumerates the functions of the medical board. It stipulates that the function of the medical board is to inform and advise the pension sanctioning authority on the basis of all available records and their own clinical examination. As per 8(b) of the said Rule the **Medical Board is to specify the particular evidence on which the boards base their opinion on the relation or otherwise of a disability to service. Rule 9 provides that before an award can be made for a disability or death claim to be related to service a casual connection between disability or death and military service has to be established by evidence.** The standard of acceptable evidence required would naturally be stricter for serviceman under normal peace time conditions than for those servicing under field service conditions**. It is also made clear in the said Rule 9 that where the available evidence is not conclusive the pros and cons shall be carefully weighed with a view to decide whether on the whole the preponderance of probability as opposite to balance of probabilities against the claimant is such as to exclude all reasonable doubt.**(Emphasis is ours)

29. In rule 1 of Chapter II under the heading ' Entitlement : General Principles' of the Guide to Medical Officers it is laid down that the medical authorities "may require also the consideration of other circumstances e.g. service conditions, pre and post service history, verification of wound or injury, corroboration of statements, collecting and weighing the value of evidence, and in some instances, matters of military law and discipline. Accordingly, Medical Boards should examine cases in the light of the etiology of the particular disease and after considering all the relevant particulars of a case, record their conclusions with reasons in support, in clear terms and in a language which the Pension Sanctioning Authority, a lay body, would be able to appreciate fully in determining the question of entitlement according to the rules. **In expressing their opinion medical offices should comment on the evidence both for and against the concession of entitlement. In this connection, it is as well to remember that a bare medical opinion without reasons in support will be of no value to the Pension Sanctioning Authority".**

(Emphasis supplied)

30. It is also importantly important to quote Rules 4, 5,6 & 7 of Chapter II of the Entitlement : General Principles which read as under :

"4. Opinion on entitlement must be impartially given in accordance with the evidence, the benefit of any reasonable doubt being given to the claimant.

5. Evidence to be accepted 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 is as well to remember that proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. If the evidence is so strong against a member as to leave only a remote possibility in his 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 hand the evidence be so evenly balanced asto render impracticable a determinate conclusion one way or the other then the case would be one in which the benefit of doubt could be given to the claimant.

6. **If there is no note, or adequate note, in the service documents of material facts on which the claim is based, it would be for the service authorities to make all practicable investigations to establish the fact calling upon the claimant if necessary to assist. For instance, it may be possible to obtain reliable corroborative evidence of the fact,**

(Emphasis is ours)

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……"**

(Emphasis supplied)

31. Rule 8 of Chapter II of the said Manual specifies modus operandi for judging invalidation or death of a member in the light of the record of member's condition on enrolment. Rule 8 and the relevant portion of Rule 9 are reproduced as under :

"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 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.

(Emphasis supplied)

9. …….To sum up, in each case the question whether any persisting deterioration is or is not due to service will have to be determined 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".

Discussion and views

32. Against such rule position we are now to turn to the factual scenario of the present case. A close look to the Background facts leading to filing of this petition project the following undisputed facts.

(i) Admittedly at the time of entering into service no note was made in his service book in the month of March, 1980 to the effect that the petitioner was sufferingfrom any disabilitynot to speak of Schizophrenia.

(ii) It is, however, available from materials on record that while serving with the unit he was admitted to military hospital on and from 9th September

1982 to 23rd September 1982 being a case of Phychiatric (INV) and Schizophrenia.

(iii) He was later transferred to Command Hospital (Central Command) Lucknow on 24th September, 1982.

33. It was, however, opined by the attending doctors that, even though adequate medical treatment was rendered to him, no improvement was noticed in his condition due to psychiatric nature of illness and he was placed in Med Category EEE due to Schizophrenia. Pausing for a moment it is to be pointed out here that such tentative opinion of the medical officer did not find any support from the Classified Specialist Psychiatrist, who categorically opined that there was a partial improvement in the condition of the applicant and such opinion also stands approved by the Medical Board. Be that as it may, the fact remains that the applicant, was thereafter, brought to the Release Medical Board and he was subsequently invalidated out from service with effect from 31-1-1983 since it was opined by the Medical Board that the disease of the petitioner was neither attributable to nor aggravated by military service and was constitutional in nature. The Release Medical Board's proceedings which was placed before us in original do not indicate that the family history, member's service history and other relevant circumstances which led to the onset of his disease have been sought to be elucidated from the incumbent by the President or any other member of the medical board. In this context it would be pertinent to refer to Clause (c) of para 423 of the

Regulations for the Medical Services of Armed Forces Act – 2010 (Revised) which provides as under :

ATTRIBUTABILITY TO SERVICE

"423 (a) **********

(b) **********

(c) The cause of disability or death resulting from a disease as attributable to service when it is established that the disease arose during service on the conditions and circumstances of the disease, cases in which it is established that the 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 of 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.**

(underlining is ours)

34. The principles laid down in the aforequoted rules and regulations indicate that 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 member's condition on enrolment as noted in service document and also on all other available evidence both direct and indirect. To unravel incumbent's condition at the time of entering the military service and during service, he is to be carefully and closely questioned on the circumstances of the advent to the disease. The duration of pre-service history etc. is also to be noted so that all evidence in support of the cause is elucidated. The President of the Medical Board should make this their personal responsibility and ensure that opinions on attributability, aggravation or otherwise are supported by cogent reason.

35. On a close scrutiny of the relevant records of Medical Board Proceedings pertaining to the formation of Medical opinion by the Medical Board it is found that the medical board has sought to discharge its duties and responsibilities in a very perfunctory manner and its approach to the core issue of determination of attributability to military service in respect of the petitioner's disease detected during service appears to be casual. Even though it is mandatory for the Medical Board to take into consideration all the available records in the light of relevant rules and regulations so referred to hereinabove, they have even failed to take into consideration the Commanding Officer's recommendation for disability pension in its proper perspective. Such recommendation is of supreme importance since the Commanding Officer being the applicant's Controlling Officer, is quite

conversant with the special nature of assignment which the applicant had to undertake as a Paratrooper.

36. In this connection it is pertinent to refer to letter No.B/10085/MP-3 dated 7th March 2013 issued by Addl Dte Gen of Manpowr/MP-3, Adjutant General's Branch Integrated HQ of MoD (Army), DHQ PO, New Delhi – 110011 to have an idea about the uniqueness of operational efficiency of a Paratrooper as also hazardous nature of his assignment. The Personnel Policy of a Parachute Regiment as elaborated therein is as under :

"GENERAL

1. The Parachute Regiment consisting of PARA and PARA (SF) battalions is the elite volunteer force of the Indian Army. Because of its specified role, the regiment needs to be kept at optimum level of operational efficiency and physical fitness. Towards this end, this specially selected manpower should be comparatively young, physically fit and mentally robust, intelligent, innovative and highly motivated team so as to successfully accomplish the assigned Surgical & Sensitive operational tasks.

(Emphasis supplied)

2. Infantry Directorate will perform the functions of 'Line Directorate' for Parachute Regiment including Parachute (Special Forces) battalions.

Probation

12. All ranks (Officers and JCOs/OR) volunteering for the Parachute Regiment will undergo probation in respective units for a period of 90 days.

13. All ranks who do not qualify in pro battalion will be reverted to their parent regiment.

Parachute Jump Training

14. On successful completion of probation, all ranks will undergo Para Basic course at AATs, Agra, on successful completion of which they will be permanently absorbed in the Parachute Regiment. All ranks who do not volunteer to jump will be reverted to their parent Regiments.

Permanent Absorption. On successful completion of probation and Parachute jump training, the PARA / PARA (SF) battalions will take action for permanent absorption of the individual through Record Office. The Parachute Regiment. All individual documents will accordingly be forwarded by Unit / Record Office concerned to the Parachute Regiment Record Office".

37. It is, therefore, an admitted position that as a Paratrooper attached to Parachute Regiment, apart from basic Military Training, he had to undergo specialized Military Training to make him fit to undertake hazardous air journey as a disciplined Paratrooper. It is also not in dispute that Paratroopers

have to undergo highly specialized Training of para-jumping etc. periodically. Sometimes, they are to jump from the height of even more than 10 thousand feet. They are to undergo such rigorous training at least for one month in a year. Paratroopers are normally dropped behind the enemy line and they try to destroy the enemy at his back. In fact, no other wing of the army can perform such hazardous task. The duties and responsibilities of a Paratrooper is fraught with risk and highly technical in nature for which mental and physical toughness is required. There is no iota of evidence to indicate that in any stage of its proceedings the Medical Board has taken into consideration the strenuous nature of job performed by the applicant as a Paratrooper. Perhaps that is why Commanding Officer's recommendation that the Petitioner is entitled to disability pension was ignored without even assigning any reason for such non-consideration of the Commanding Officer's recommendation which took into account the arduous nature of job of a Paratrooper which might lead to psychic disorder arising out of stress and strain of his job profile, especially when, admittedly there is no note of disease suffered by the applicant at the time of his entry to the Military Service. Such medical opinion is neither backed by any cogent reason nor substantiated by sufficient evidence and materials on record. Therefore, the Medical opinion in question that the disability of the petitioner due to schizophrenia is neither attributable to nor aggravated by the military service thus appears to be quite arbitrary. Further, the opinion of the Medical Board also appears to be lackadaisical for the simple reason that no plausible explanation conforming to the scientific

study of medical science has been offered to indicate as to how the disease is constitutional in nature in the case of the petitioner and is thus not connected with service. In such circumstances it is apt to contextually refer to para 28 of a very recent decision of Hon'ble Apex Court reported in **2013 (8) SCALE 58 (Dharamvir Singh, Appellant vs UOI & Others respondent)**, wherein it is held as under :

"28…….

(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-bottle 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 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 acceptance 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 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".

38. We feel constrained to opine that none of the afore-quoted mandatory guidelines formulated by the Hon'ble Apex Court on the basis of relevant paras

of Entitlement Rules, Pension regulations for the Army as also Guide to Medical Officers has been taken into consideration or followed in the process of formation of the Medical Opinion by the Board as already discussed and analysed in preceding paragraphs. There is however no doubt that the Medical Board has formed its medical opinion without looking into the relevant provisions of Pension Regulations and Entitlement Rules. It is mandated in regulations for Medical Services for Armed Forces 1983 and Medical Officers Guide to Military Pension that the opinion of the Medical Experts in the Medical Board proceedings shall be supported by proper reasoning so that a layman will be able to know why the illness is not attributable or aggravated by Military Service. It is also unequivocally laid down therein that if the opinion of the Medical Board is not supported by any reason, the case shall be decided according to the evidence on record.

39. That apart, it is further held in paragraph 30 of the case of Dharamvir Singh (supra) as follows :

> **"…….In absence of any note in the service record at the time of acceptance of joining of appellant it was incumbent on the part of the Medical Board to call for records and look into the same before coming to an opinion that the disease could not have been detected on medical examination prior to the acceptance for military service, but nothing is on the record to suggest that any such record was called for by the Medical Board or looked into it and no reasons have been**

recorded in writing to come to the conclusion that the disability is not due to military service. In fact, non application of mind of Medical Board is apparent from Clause (d) of paragraph 2 of the opinion of the Medical Board……..”

40. Judging by the yardstick laid down by the Hon’ble Apex Court, in Dharamvir’s case (supra), we are to opine that Mr. Basu has rightly assailed the medical opinion. In our considered view, the applicant’s case is also similarly situated. There is nothing on record to establish that there was a note of any disease at the time of applicant’s enrolment to Military Service. The respondents have also failed to bring any material or document on record to establish that the disease of Schizophrenia suffered by the applicant during service was hereditary. It is also not disputed that the relevant records were ever called for and looked into by the Medical Board for the purpose of forming an opinion to the extent that the disease could not have been detected on medical examination prior to the acceptance of military service. In fact, no cogent reasons have been recorded by the Medical Board in writing to indicate the process of formation of the medical opinion to the effect that the disability is not due to military service. This is, undoubtedly, a case of sheer no-application of mind by the Medical Board.

41. Now the question naturally crops up as to whether such perfunctory medical opinion should be excluded from the ambit of judicial review on the plea of non-interference with the expert’s opinion by the Courts. Fortified with

another important and recent ruling of the Hon'ble Apex Court reported in 2013(8) SCALE 686 (Veer Pal Singh – Applicant vs Secretary, Ministry of Defence – Respondents) we are emboldened to opine that in a case where no sufficient evidence is available to support the opinion of the medical board that the disease has no casual connection with the military service and constitutional in nature, it is within the competence of the court to disturb such capricious finding of the medical board. In this context it is relevant to quote paragraph 11 of the case of Veer Pal Singh (supra) which reads as under:

> **"11. Although, the Courts are extremely loath to interfere with the opinion of the experts, there is nothing like exclusion of judicial review of the decision taken on the basis of such opinion. What needs to be emphasized is that the opinion of the experts deserves respect and not worship and the Courts and other judicial/quasi-judicial forums entrusted with the task of deciding the disputes relating to premature release/discharge from the Army cannot, in each and every case, refuse to examine the record of the Medical Board for determining whether or not the conclusion reached by it is legally sustainable".**

42. The Hon'ble Apex Court had also an occasion to take into consideration both Balachandran Nair's case and A.V. Damodaran's case inVeerpal's case (supra) very recently and is of the opinion that in neither ofthose two cases the Hon'ble Apex Court was called upon'to consider asituation

where the medical board had entirely relied upon an inchoate opinion expressed by the Phychiatrist and no effort was made to consider the improvement made in the degree of illness after treatment'.

43. In the case in hand on a meticulous scrutiny of the Medical Board proceedings which was produced in original before us, it appears that Medical Board, in fact, entirely relied upon incipient opinion recorded by the Phychiatrist and the Medical Board actually did not make any endeavor to consider the improvement made in the degree of illness of the applicant after its treatment. Major P.S. Vaidya, Phychiatrist on medical examination of the applicant found "he has no interest in work, looked depressed and was found indulging in irratic activities ……He was unkempt, restless and apathetic. He had poverty of ideas along with persecutory delusions and ideas of reference. He looked insight and judgement was impaired. With the diagnosis of Schizophrenia he was to be on neuroleptics and **there has been improvement in his condition**. Active symptoms disappeared, but residual symptom still present. He remains apathetic and thought processes are vague. **In view of partial improvement in his condition and phychotic nature of illness having less than 3 years of service he is not suitable for further service".**

(Emphasis is ours)

44. Such opinion of the Psychiatrist has been vetted by the Medical Board mechanically, even though in relevant columns of Part III of the prescribed printed form it has been noted clearly that the Board should state full reason in regard to each disability on which its opinion is based. In this connection it

would be relevant to reproduce the Part III of the format used by the Medical Board as under:

"-3-

CONFIDENTIAL

PART-III

OPINION OF THE MEDICAL BOARD

(Not to be communicated to the individual)

Note – Clear and decisive answers should be filled by the Board, Expressions Such as 'might', 'may', 'probably', should be avoided

1. Did the disability/ies exist before entering service : No

2. (a) In respect of each disability the Medical Board on the evidence before it will express the views as to whether –
   (i) It is attributable to service during peace or under field service conditions or
   (ii) It has been aggravated thereby and remains so; or
   (iii) It is not connected with service.

   (The board should state fully reasons in regard to each disability on which its opinion is based)

Disability	A	B	C
Schizophrenia 295			
	No	No	Not connected

(b) In respect of each disability shown as attributable under 'A', the Board should state fully, : the specific condition and period in service which caused the disability :

NA

(c) In respect of each disability shown as aggravated under B, the Board should state fully :-

(i) The specific condition and period in service which aggravated the disability :

NA

ii) Whether the effects of such aggravation still persist :

NA

iii) If the answer to (ii) is in the affirmative, whether effect of aggravation will persist for a material period.

NA

(d) In the case of a disability under C, the Board should state what exactly in their opinion is the cause thereof.

Diseases are constitutional in nature. Hence not connected with service"

-4-

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4.What is present degree of disablement as compared with a healthy person of the same age and sex percentage will be expressed as Nil or as follows :-

1.5%, 6.10%, 11.4%, 15.19% and thereafter in multiple of ten from 20% to 100%

Disability (as numbered in Question 1, Part II)	Percentage of disablement	Probable duration of this degree of disablement	Connect to Assessment (all disability
SCHIZOPHRENIA 295	70% (seventy percent)	Two years	70% (seventy percen

5. Is the individual in need of further treatment and if so, to what extent and for how long is it likely to be required?

Inj Anatensol decconate l ml every fortnight for six month

6. Does the individual require an attendance? If so, whole or part time; (ii) Permanently or temporarily; (iii) If temporarily, for how long?

No

Sd/-

CH (OC) Lucknow
31 Jan 83

Signature : President : Lt Col T.K. Roychoudhury
President Medical Board

Sd/-
Capt K.K. Soni

Sd/-
Capt Mrs A. Sen

ILLEGIBLE

Sd/-

BAREILLY
24 Feb 83

Col Jaswant Singh
Offg. ADMS"

It is most disturbing that the Board has simply specified disability as "Schizophrenia 295" and thereafter "not connected" without indicating the nature of evidence which was considered by the Board as also without assigning any reason whatsoever not to speak of stating everything in writing. Despite improvement in the condition of the applicant as opined by the Psychiatrist, the Medical Board has not cared to undertake an in-depth study in respect of etiology of the disease suffered by the petitioner.

45. In Dorland's Illustrated Medical Dictionary 'Schizophrenia' has been described as under :

> **Schizo-phre-nia [DSM –IV]** a mental disorder of heterogeneous group of disorders comprising most major psychotic disorders and characterized by disturbances in form and content of thought (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 behavior(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 thought (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.

46. In Para 54 of Guide to Medical Officers (Military Pensions)- 1980 as amended it is said under the heading **Mental (psychiatric) Disorders** that psychiatric illness results from a complex interplay of endogenosus (genetic/biological) and exogenous (environmental, psychosocial as well as physical) factors. This is true for the entire spectrum of psychiatric disorders and the earlier dichotomy between "neurosis" and "psychosis" is no longer valid. The relative contribution of each, of course, varies from one diagnostic category to an other and from case to case. It is further stated therein that the concept of aggravation due to the stress and strain of military service can be, therefore, evaluated independent of the diagnosis and will be determined by the specific circumstances of each case".

47. Further, Rule 54 of Guide to Medical Officers as amended subsequently makes it clear that attributability may be granted to any phychiatric disorder when the individual serves in such service environment which caused onset of disease because of the stress and strain involved, like service in combat area including counter insurgency operational areas, HAA etc. The Medical Board proceedings however, does not indicate that stress and strain of military service suffered by the petitioner as a Paratrooper has ever been considered by the Medical Board. Medical Board has however, failed to set out in writing the reasons for opining his disability due to Schizophrenia not connected with service. It is also disturbing to note that even though there are various types of Schizophrenia categorized in Donald's Medical Dictionary as per symptoms, as for example catatonic, disorganized, latent (prepsychotic), residual, simple, Schizo-tax-ia –(a genetic predisposition to Schizophrenia) and a good number of other types, the Medical Board, however, did not even bother to identify the exact type of schizophrenia from which the victim was suffering. Instead of delving deep into the matter and offering a medical opinion based upon cogent reasons, they have mechanically opined in a perfunctory manner that such diseases are constitutional and not connected with service. Such observation appears to be incompatible with the Medical literature on the subject. as also the specific recommendation of the commanding officer in this regard In such a situation we have reasonable grounds to believe that having regard to the stress and strain suffered by the applicant as a paratrooper duringservice the commanding officer was, perhaps,

of the opinion that the disease was connected with service and accordingly he recommended for disability pension.It is most shocking to note that the Medical Board refused to attach due importance to such recommendation of the controlling officer who was well conversant with the ground realities in respect of rigorous nature of job of a paratrooper, which is likely to cause serious stress and strain in an individual . Considering all these we have no hesitation in holding that the Medical opinion recorded by the Release Medical Board that it was a case of schizophrenia and not connected with service was not well founded and does not reflect the true state of affairs. It is reiterated that the Medical Board has not cared to follow the relevant provisions of the Entitlement Rules as also Guidelines for Medical Officers and also the relevant provisions of regulations for the medical service of the Armed Forces – 2010 (Revised Edition). There is no iota of evidence to indicate that Medical Board has taken into consideration the relevant records of the medical examination of the petitioner at the time of his entry, his family history, the arduous nature of a Paratrooper's job in a Parachute Regiment as also the rigour of specialized training under which Paratroopers are to undergo.

Findings:

48 As a corollary to our foregoing discussion it can safely be held that the Medical Board has not strictly adhered to the relevant provisions of Entitlement Rules and Guidelines to Medical Officers and as such the Medical Board has not cared to rebut presumption which can be legally inferred under

Rule 5 read with Rule 14(b) of Entitlement Rules and has also not proceeded to call for relevant documents and materials to establish that the condition 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 as required under Rule 14(c). Since there was no note of any disability or disease in the relevant record at the time of individual's acceptance of military service, the medical board was required to state reasons for non-detection of such disease on medical examination prior to the acceptance of military service. Further the Medical Board has also not taken into consideration Rule 9 of Entitlement Rules which stipulates that the onus of proof is not on the claimant employee, for non-entitlement it lies with the employer and in case of any reasonable doubt the benefit will go more liberally in favour of the claimant employee as has been laid down in para 28 of Dharamvir singh'case(supra) . In such view of the matter applying the legal principles as enunciated in afore-cited two recent rulings of the Hon'ble Apex Court (Veerpal singh & Dharmvir singh) (supra) we are of the considered view that in afore-narrated situations the cryptic opinion of the medical board recorded in slipshod manner by using vague expression 'No', 'NA', 'Not connected' is not legally sustainable. It can also be contextually made clear that Damodaran's case is easily distinguishable from the facts and circumstances of the present case on several grounds. Para 44 of the Judgement of the Hon'ble Apex Court reported in (2009) 9 SCC 140 (Secretary, Ministry of Defence and others –vs- A.V. Damodaran) reads as under :

> "44. Another relevant factor which is required to be noted is that the report of the Medical Board is not under challenge. As has been held by this Court, such opinion of the Medical Board would have the primacy and therefore, it must be held that the learned Single Judge and the Division Bench of the High Court were not justified in allowing the claim of the respondent".

49. In the instant case the petitioner has assailed the medical opinion of the Release Medical Board on several counts. It further appears that the Medical Board in Damodaran's case considered personal history of Late Damodaran. Medical Board also considered all related documents and relevant circumstances together with its service record etc. and, thereafter, the disability of Late A.V. Damodaran was diagnosed as Schizophrenia-295 in July 1984. Clearly therefore the opinion of the Medical Board is founded on a close analysis of materials and circumstances which were made available to it, but in the present case there is no iota of evidence to indicate that the Medical Board had taken into consideration relevant circumstances prevailing at that point of time, pre and post service circumstances. That apart, the duties of an expert is to furnish the judge with the necessary scientific criteria for testing the accuracy of his conclusion so as to enable the judge to form his own independent judgement by the application of those criteria to the facts proved in evidence. Therefore, the approach of the Court while dealing with the opinion of the expert should be to proceed to consider all other relevant

evidence and decide finally to accept or reject it. [vide **1980 (1) SCC 704** Murari Lal –vs- State of Madhya Pradesh].

50. In view of the foregoing discussions in preceding paragraphs we are of the considered opinion that in the absence of any note indicating any sort of psychological problem at the time of his entry into military service, it was incumbent on the Medical Board to explain the circumstances which led to such serious omission since they had opined that the disease is constitutional in nature. There is no doubt that as per Rule 5 (a) & (b) as also Rule 6 (a) & (b) of the Entitlement Rules a man is presumed to be of sound health and condition upon entering into service and if subsequently he is discharged from service on medical ground, any deterioration in health will be presumed to be connected with service in case the disability arose during service. However, the presumption of disability being connected with service can only be rebutted by the Medical Board by giving detailed reason at the time of medical examination. It can, therefore, safely be held that in absence of detailed reason or explanation, the presumption in favour of the applicant cannot be said to be rebutted. On their failure to offer any cogent explanation in this regard it is to be presumed that there is non-compliance of the important and relevant provisions of Entitlement Rules. We feel constrained to opine that the Medical Board has not cared to assess disability and its casual connection with service as per parameter evolved in the afore-mentioned judgements of the Hon'ble Apex Court. We are of the considered view that the primacy of the

medical opinion should be maintained only in those cases where the Medical Board took the pains of strictly following the guidelines enshrined in Guide to Medical Officers and also adhering to the relevant provisions of Entitlement Rules. In that view of the matter it can safely be inferred that the disability due to disease Schizophrenia 295 which arose to the applicant during service is connected with the military service and in such circumstances, presumption, that the disability suffered by the applicant during military service has been caused by condition of employment in service, can be drawn legally. It is, therefore, held that the instant case is squarely covered by the ratio of the afore-cited two judgements of the Hon'ble Apex Court in Dharamvir Singh and Veerpal Singh (supra).

51. Another glaring procedural lapse in constituting the Release Medical Board instead of Invalidment Board has also rendered its medical opinion legally unacceptable in the facts and circumstances of the present case. In this context the reference can be made to Rajpal Singh's case reported in **2009(1) SCC 216** (Union of India and Ors -Vs- Rajpal Singh)wherein it is held that the main ground for discharge being medical unfitness for further service is mandatory to follow the prescribed Rule 13(3)III(iii)which stipulates that only on the recommendation of the Invalidment Medical Board discharge can be carried out. But, in the instant case even though he has been invalided out of service he was produced before the Release Medical Board. Since the applicant was not examined by the Invalidment Medical Board, he cannot be

invalidated out on the basis of opinion of Release Medical Board which was not duly constituted in terms of Rule 13(3)III(iii) read in conjunction with sub rule 2A of Rule 13 of Army Rule. We are, therefore, of the view that the medical opinion of the Release Medical Board in the instant case suffers from serious legal infirmity since it was not a legally constituted Medical Board.

Decision

52. Since about three decades have silently passed in the meantime, and the fact remains that the petitioner was invalidated out of service based upon 'inchoate medical opinion', we are of the considered view that no fruitful purpose would be achieved if the petitioner is subjected to another legally constituted Invalidment Medical Board for the simple reason that It would not be feasible for the Board to form an appropriate medical opinion on consideration of relevant materials on record, if at all available, after the lapse of almost thirty years. Further, the percentage of disability to the extent of 70% for two years as assessed by the medial board does not call for any interference in the present factual scenario and, in our considered view, the retention of such percentage for life would adequately serve the ends of justice for a wretched soldier of the Indian Army who was so long denied his legitimate claim of disability pension.

53. We are, therefore, of the view that the petitioner's disability arising out of Schizophrenia when he was in service , has casual connection with Military Service and as such he is entitled to disability pension. In such view of the

matter the medical opinion of the Board to the effect that "the disease is constitutional in nature and not connected with service" is hereby set aside in part. Further, orders impugned refusing grant of pension by PCDA (P) Allahabad vide letter No.G3/84/121/III dated 28/7/1984 and also Government of India Ministry of Defence letter No.7(829)/86/D(Pen-A) dated 27-11-1986 rejecting the connected appeal are hereby set aside.

Directions

54. Respondent No.3 is directed to cause transfer of all the relevant records and documents etc. to PCDA(P) Allahabad for sanctioning of disability pension in favour of the petitioner within thirty days from the date of receipt of this order. On receipt of the relevant documents, the Pension sanctioning authority, i.e. PCDA(P) Allahabad shall proceed to sanction disability pension at the rate recommended by the RMB(7O%) for life with the benefit of rounding off, if admissible under rules as per the applicant's entitlement within 30 days thereafter and such monthly disability pension shall be paid to the applicant for the current month of August 2013 and onwards within 60 days from the date of communication of this order. However, the petitioner's entitlement to arrears of pension shall be restricted to only three years before the time when he approached the Hon'ble High Court Calcutta, by filing W.P.No17826(W) i.e. with effect from 1-8-2003. The arrears of disability pension, must be calculated in the manner indicated hereinbefore and paid within ninety days from the date of communication of this order in default

whereof the respondents shall be liable to pay interest @9% per annum on the entire amount of arrears. In the result, TA No.74 of 2010 stands allowed in part on contest with above directions but in the facts and circumstances of the case without costs.

55. In the result, TA No.74 of 2010 stands allowed in part on contest with directions as above but in the facts and circumstances of the case without costs.

56. Let the original records pertaining to medical proceedings be returned to the Respondents on proper receipt.

57. Let a plain copy of the Judgement and order duly countersigned by the Tribunal Officer be furnished to the parties on observation of usual formalities.

(LT. GEN. K.P.D. SAMANTA)
ADMINISTRATIVE MEMBER

(JUSTICE RAGHUNATH RAY)
JUDICIAL MEMBER