SEE RULE 102 (1)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

ORIGINAL APPLICATION : O.A. NO. – 100/2016

DATED : THE Sixth DAY OF AUGUST, 2018

CORAM

HON'BLE DR. (MRS.) JUSTICE INDIRA SHAH, MEMBER (JUDICIAL)
HON'BLE LT GEN GAUTAM MOORTHY, MEMBER (ADMINISTRATIVE)

APPLICANT (S) : Ex-647554 JWO Mriganka Sekhar Chattopadhyay
Katwa, Kachari Para
(Muchi Pukur Par), Katwa
Dist- Burdwan (WB) – 713 130

Versus

RESPONDENT (S) :

(1) The Union of India, service through
The Defence Secretary, Ministry of Defence
South Block, New Delhi – 110 011

(2) The Secretary
Department of Ex-Servicemen & Pension
Ministry of Defence, South Block,
New Delhi – 110 011

(3) The Chief of Air Staff
Indian Air Force
Air Headquarters, Vayu Bhavan
New Delhi – 110 106

(4) The DG AFMS,
Ministry of Defence, New Delhi – 110 011

(5) The Principal Controller of Defence Accounts
(Pension), Air Force Cell,
Drapaudi Ghat, Allahabad (UP) – 211 014

(7) The Director (DP),
Directorate of Air Veterans, Air Force Station
Subroto Park, New Delhi – 110 010

Counsel for the applicant (s) : Mr. A. K. Dasgupta

Counsel for the Respondent (s) : Mrs. Hema Mukherjee

ORDER

PER LT GEN GAUTAM MOORTHY, MEMBER (ADMINISTRATIVE)

1. This is an application filed under Section 14 of the AFT Act, 2007 praying to set aside the findings of the Release Medical Board Proceeding dt. 29.08.1997 and impugned order dt. 08.07.2013 of the Director (DP), Directorate of Air Veterans and to disburse Disability Pension in favour of the applicant @ 20% which is to be rounded off to 50 % w.e.f. 01.03.1998.

2. The applicant was enrolled in the Indian Air Force on 26.02.1977 in the Indian Air Force as Air Craftsman and later promoted to the rank of JWO on 01.10.1993 and was discharged from the services on 28.02.1988 on completion of 21 years and 3 days of active service.

3. The applicant was diagnosed as a patient of "Neurosis" during January 1996.

MA 153/2016

4. MA (MA-153/2016) was also filed by the applicant for condonation of delay. Since, the pension is a recurring cause of action, condonation of delay was allowed vide order serial number 06 dt. 29.03.2017.

Facts of the Case

5. The applicant was suffering from insomnia from 1995 and was admitted in psychiatric ward at Army Hospital, New Delhi and was diagnosed "Neurosis" during January 1996. He was discharged from Army Hospital and his Release Medical Board (RMB) was held on 29.08.1997. He was diagnosed with disability ID "Schizophrenia 295 (Old) V-67" by a Medical Board on 29.08.1997 which assessed his disability @ 20% for two years and his disability was categorised 'Neither Attributable to nor Aggravated by Air Force Service'. His medical category was assessed "CEE (P). This category was upheld by the PCDA (P), Allahabad and they have rejected the disability claim of the applicant.

6. Accordingly, the applicant submitted his first appeal against the rejection of Disability Pension which was replied by the Respondents vide their letter No. Air HQ/99798/5/61/13/JWO/DP/DAV dt. 03.06.2014 (Annx-A 3) on the grounds –

> *"ID is a psychiatric disease caused by a complex interplay of genetic vulnerabilities and exogenous stress factors. There is no close time association of ID with service in active combat area/HAA/CI Ops area/isolated area. There is no history of any other service related stress factor. Hence, the ID is conceded as neither attributable to nor aggravated by service in terms of Para 54, Chap VI, GMO 2002 amendment 2008".*

7. After the above rejection, the applicant preferred a second appeal, which too was rejected by the Respondents vide their letter No Air HQ/99798/5/2nd Appeal/160/64754/DP/AV-III (Appeals) dt. 23 October, 2015 (Annx A-4) on the grounds –

> *"Onset of ID was in Kanpur (Peace) in Aug 1994 during Annual Medical Examination. He was managed with anti-hypertensives to which he responded well. At the time of discharge, the individual was a asymptomatic with good BP control and no target organ damage. Primary Hypertension is an idiopathic disorder with a strong genetic correlation and is per se not attributable to service. Aggravation is conceded when onset occurs while serving in or in close time association with service in HAA/Field/CI Ops, or if the individual is posted to such areas following onset. In the instant case, the individual was never exposed to service in HAA/Field/CI Ops after onset of ID. Hence, the ID merits being conceded as neither attributable to nor aggravated by military service (Para 43, Chap VI, GMO 2002 amendment 2008."*

8. The applicant further states that his disease was caused by very stressful work with humiliation and harassment from the colleagues and therefore, his medical category should be attributable to Air Force Service and also the assessed medical category i.e., @ 20% is to be rounded off to 50% w.e.f. 01.03.1998. In his support, he stated : -

> *"The findings of the Release Medical Board held on 29.08.1997 is illegal and Arbitrary since the RMP lost their sight to the provisions contained in Rule 5, 9 and 14 (a) & (b) of the Entitlement Rules for casualty Pensionary Awards, 1982, Regulation – 423 (c) and (d) of the Regulations for the Medical Officers for the Armed Forces, 1983 and Para 1 and 3 of Chapter II of Guide to Medical Officers (Military Pension), 2002. Therefore, the applicant need to be granted Disability Pension @ 20% rounded off to 50% with effect from 01.03.1998 with accrued interest @ 12 % p.a. in terms of Regulation 153 of the Pension Regulations for the Air Force, 1961 (Part-I).*

9. The respondents, on the other hand, have stated that the applicant's disease was noticed in 1995 and that he was treated for the same till he was discharged from the Air Force on completion of his terms of engagement and the disease he was suffering from was classified as neither attributable nor aggravated by military service and disability was noted at 20% for two years.

10. In order to determine the present disability/disease if it still exists as well as the percentage of disablement which needed to be ascertained, the applicant was directed to Command Hospital (Eastern Command), Kolkata, between 11th and 14th June, 2018 vide our order of 17.05.2018. The applicant accordingly reported to the Command Hospital for Re-Survey Medical Board. The Re-survey Medical Board was conducted in pursuance of the order of 18.06.2018 and subsequent dates where his disability had been assessed at 40%. However, in paragraph 4(a) of the Board the Classified Specialist had noted in the opinion as below : -

> ***"OPINION***
>
> *The veteran JWO of IAF had a psychotic breakdown in 1996 necessitating hospital admission and treatment with antipsychotics. He has had no documented relapses thereafter while on maintenance antipsychotics medications. He appears to be in stable remission of illness."*

11. Since, when the applicant was discharged from service in 1998 his disability was assessed at 20%, when his condition appeared to be much worse than what he has been assessed at present and that also for two years, the respondents were asked to seek clarification from the same Board of Officers at Command Hospital (Eastern Command) and submit a report to this effect in terms of our order dated 22.06.2018. Accordingly, the Command Hospital (Eastern Command) clarified the position vide their letter dated 18.07.2018 as below:-

> *"(a)The applicant was discharged from service in 1998 with a disability of 20% which might have been assessed as per existing Guidelines then (details not available). Though the veteran JWO of IAF is in stable remission of the illness, the disability has now been assessed as 40%. This assessment has been done vide para 29(a) of Amendment of chapter VII of Guide to Medical Officers book (Military Pension) 2008 of MoD, Govt of India (photocopy of extract of relevant para attached) and 40% is the minimum disability to be awarded to a person able to look after himself and interact with his family and gainfully employed.*

(b) Further it is clarified that the disability percentage assessed for the indl is for life time."

11. In T.A. No. 8 of 2014, this Bench in the case of ***Ex-628286 CPL RC Pradhan Vs. Union of India & Others*** decided on 10.07.2015 ruled as follows:

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

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

> *"5. The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions:*

Prior to and during service

(a) A member is presumed to have been 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 principles", 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 Veerpal 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. Forconvenience 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."

12. In another important judgment in Civil Appeal No. 11208 of 2011 **Union of India vs. Angad Singh Titaria** decided on 24.02.2015 the respondent had superannuated from service after completion of 30 years 11 months of service with a composite disability i.e. first disability of Coronary Heart Disease and second disability of Diabetes Mellitus Type-2 which was found to be constitutional in nature and not attributable or not aggravated by service in Indian Air Force. Accordingly, the disability pension claim preferred by the respondent had been rejected. However, the Armed Forces Tribunal, Chandigarh Bench in OA 837 of 2010 had allowed the grant of disability pension, the appeal of which was dismissed by the Hon'ble Supreme Court on the same principle rendered by the Hon'ble Apex Court in the case of **Union of India vs. Rajbir Singh and others** in Civil Appeal No. 2904 of 2011 decided on 13.02.2015 and the Hon'ble Court had ruled *"We are of the considered opinion that the Tribunal had not committed any error in awarding disability pension to the respondent for 60% disability from the date of his discharge along 10% per annum interest on the arrears. For all the reasons stated above, we do not find any merit in this appeal and the same stands dismissed without any order as to costs."*

13. What is also germane in this instant case is the opinion of the Re-survey Medical Board of Command Hospital, Eastern Command, Kolkata of 18.07.2018 reproduced at Para 11 above wherein it has been clearly stated that, "the disability has now been assessed at 40%" and further, "40% is the minimum disability to be awarded to a person to be able to look after himself and interact with his family and (be) gainfully employed."

14. Having regard to the aforesaid facts, we find that the applicant is entitled to receive 40% disability pension rounded off to 50% with effect from three years prior to filing of the appeal i.e. from 26.07.2013 for life. Arrears will be

paid within a period of three months from the date of receipt of this order, failing which a simple interest of 8% will be levied on the arrears. No order as to costs.

15. The OA stands disposed off.

16 . Let a plain copy of this order, duly countersigned by the Tribunal Officer, be supplied to the parties upon observance of requisite formalities.

(LT GEN GAUTAM MOORTHY)
MEMBER (ADMINISTRATIVE)

(JUSTICE INDIRA SHAH)
MEMBER (JUDICIAL)

SS