FORM NO. 21
(SEE RULE 102(1))

ARMED FORCES TRIBUNAL , KOLKATA BENCH

APPLICATION NO : O. A NO. 69 OF 2011

ON THIS 26TH DAY OF SEPTEMBER, 2013

CORAM :HON'BLE JUSTICE RAGHUNATH RAY , MEMBER (JUDICIAL)

HON'BLE LT GEN KPD SAMANTA, MEMBER (ADMINISTRATIVE)

Ex Hav. Ghanashyam Das Thakur,
Son of Jagadish Prasad Thakur,
C/o Plastic Pen Factory
Singhapara, Makhla Uttarpara, District Hooghly,
West Bengal

……Applicant

-VS-

1. Union of India through
   Secretary, Minisry of Defence,
   South Block, New Delhi-110 001.

2. The Under Secretary to the Government of India, Ministry of Defence, New Delhi

3. Additional Directorate General Personnel Services (HQ) 4(d)
   Adjutant General's Branch, Army Headquarters, DHQ PO
   New Delhi – 110 011

4. The Officer-in-Charge, Signal Abhilekh Karyalaya,
   Signal Records, Post Bag 5, Jabalpur (MP)

…. …. Respondents.

For the Petitioner: Mr. Parimal Kumar Dwari, Advocate

For the Respondents: Mr. B.K.Das, Advocate.

O R D E R

PER HON'BLE LT GEN KPD SAMANTA, MEMBER (ADMINISTRATIVE)

1. In this original application filed u/s 14 of the AFT Act, 2007, the applicant, who was discharged from service on medical ground in the rank of Havildar in the year 2001 after putting in nearly 21 years of service, has felt aggrieved for not being granted any disability pension. Through this OA, he has prayed for grant of disability pension with effect from 01.08. 2001, the date when he was discharged from service.

2. The facts of the case, stated very briefly, are that the applicant was enrolled in the Army on 1.5.1980 and was released on 1.8.2001 while he was holding the rank of Havildar, after rendering a total period of 21 years and 92 days of service. According to the applicant, during his long service he served at various places and remained physically fit within the acceptable medical category. However, during the period from January 1994 to October 1997, when posted in J&K, he was under tremendous strain due to harsh climatic conditions and other service related hazards. After completion of his tenure in J&K, he was transferred to Nasirabad (Rajasthan). There he reported sick and was admitted in the military hospital where it was detected that he was suffering from 'Solitary Seizure' and was placed in medical category "CEE" temporarily. Subsequently, his medical category was upgraded to BEE. He was ultimately discharged from service on medical ground w.e.f. 1.8.01. Before his discharge, he was placed before a Release Medical Board which held that the disability suffered by the applicant was neither attributable to nor aggravated by military service and percentage of his disability was assessed as 15-19%. The claim of the applicant for grant of disability pension was

rejected by the PCDA (P) in January 2012. Being aggrieved, the applicant preferred an appeal which was rejected by the appellate authority which was communicated to the applicant on 23.7.2004. Being dissatisfied, the applicant preferred a second appeal which was considered by the Defence Minister's Appellate Committee on Pension and was rejected as communicated to the applicant vide letter dt. 16.3.2006. Hence this OA for the relief stated above.

3. The respondents have contested the application by filing a reply affidavit in which they have stated that the applicant was enrolled in the Corps of Signals on 1st May 1980 and was discharged from service on 31 Jul 2001 under the provisions of Army Rules 13(3)(III)(iv) read in conjunction with Sub-Rule 2A being placed in medical category lower than AYE and not up to prescribed military standard. He had rendered 21 years and 84 days of service for which he was granted his due service pension.

4. It is further stated that while the applicant was serving with 340(I) Inf Bde Sig company, he was downgraded to low medical category CEE (T) w.e.f. 10 Jun 1998 for six months since he was suffering from "Solitary Seizure". On review on 10th Dec 1998 he was upgraded in category BEE (P) w.e.f. 10 June 2000 to 10 June 2002. Under the provisions of AO 46/80 the applicant had rendered his unwillingness for further service and according he was discharged from service w.e.f. 21st July 2001 (AN).

5. It is further stated that the applicant was placed before a Release Medical Board which was held on 1st May 2001 at Military Hospital Shillong that examined the applicant and opined that his disability was neither attributable to nor aggravated by military service as the disabling disease was idiopathic and not related to service. The percentage of disability was assessed at 15-19% for two years. The claim for disability

pension of the applicant was considered by the PCDA (P), who rejected the same by order dt. 12 Jan 2002 that was communicated to the applicant on 13.2.2002. The applicant preferred an appeal against such rejection order which was considered by the 1st Appellate committee and rejected the same vide order dt. 5th May 2004. Being not satisfied, the applicant preferred a second appeal which was also rejected by the 2nd Appellate committee in March 2006. The respondents have contended that the applicant, having not fulfilled the conditions laid down in Reg. 173 of Pension Regulations for the Army 1961 (as amended), was not entitled to any disability pension. They have prayed for rejection of the application.

6. The applicant has filed a rejoinder to the counter affidavit filed by the respondents. It is stated therein that when he joined the Indian Army, he was medically fit in all respect and was found to be in sound mind, alert and physically fit. However, when he was posted in Srinagar during the period from December 1994 to January 1998, he suffered from neurosis (burning over the whole body, fatigue, mild pain in the whole body etc). Soon after his transfer from Srinagar to Nasirabad (Rajasthan) in July 1998, he for the first time had an attack of seizure which remained a solitary attack. He was admitted to the military hospital for the ibid disorder. It is alleged that his problems were not properly attended to, and appropriate treatment was not administered at the said military hospital. It is also alleged by him that when he was released from the Army for such disability, the percentage of his disability was never made known to him. He considered it to be well above 20%, since the severity of the disability debarred him from continuance in service. If it was as low as below 20%, he could have well been allowed to serve till his full entitled tenure. It is his further contention that the disability of solitary

seizure and neurosis disease cannot be said to be constitutional and congenital disease and it must be held to be attributable to service.

7. In an additional rejoinder, the applicant has stated that he served at Srilanka in operation and field area. Subsequently, he was posted at 1 Rashtrya Rifles to perform duties in Khanabal which is 25 Km away from Srinagar and is a counter insurgency area. It also stated that he has performed his duties at Anantnag, Bizbehara, Kupwara and Kazikund, all of which were notified counter insurgency area as well as field area. It is claimed that while the applicant was posted in Nasirabad (Rajasthan) soon after serving in the above field and insurgency areas, he developed the ibid disability. Therefore it has to be held that it was attributable to service conditions as he had no problem earlier and was fit in all respects. These facts relating to his service details have not been denied by the respondents as they are well supported by the service records perused by us.

8. We have heard the ld. advocates for both parties and have perused the records placed on record. Ld. adv. for the respondents have also produced the original medical board proceedings which have been perused by us.

9. Ld. adv. for the applicant has emphasized that when the applicant joined service he was absolutely fit and even thereafter there was no problem. It was only after he served in field areas in J & K that he developed such disability due to stress and strain of service. Therefore, it should be held that his disability was attributable to and aggravated by service. That apart, the percentage of disability cannot be lower than 20% and that the decisions of the RMB is absolutely arbitrary and without any reason.

10. Ld. adv. for the respondents has reiterated the contentions raised in the counter affidavit and submitted that the applicant was not willing to serve further and therefore he

was discharged from service in low medical category. He was also placed before a Release Medical Board as he fulfilled the conditions of service and the said RMB held that the disability was neither attributable nor aggravated by service and further that the percentage of disability is below 20%. Therefore, he did not fulfill the dual conditions of Reg. 173 of Pension Regulations for the Army- 1961 (Revised); and as such, his claim for disability pension was rightly rejected. He has also submitted that the opinion of the medical board is to be given primacy and cannot be interfered with.

11. We have carefully considered the rival contentions and have perused the records. Three main issues are to be considered by us in this case.

i) Whether the applicant has fulfilled his term of service and was discharged on medical ground after completion of his term; or it was a case where the applicant was invalidated out of service thereby curtailing his service tenure?

ii) Whether the disability that was suffered by the applicant was attributable to or aggravated by service?

iii) Whether the applicant is entitled to disability pension as claimed?

12. On the first issue, it is the admitted position that the applicant at the time of his discharge was holding the rank of Havildar. It is also the admitted position that the term of service of a Havildar is 22 years which is extendable to another two years after screening. In this case, as admitted by the respondents total service rendered by the applicant is 21 years and 84 days i.e. from 1st May 1980 to 31st July 2001 vide para 1 at page 2 of the counter affidavit. Therefore, the applicant could not even fulfill his admissible tenure of 22 years of service let alone the extended service up to 24 years.

Therefore, it is a clear case of curtailment of service due to medical reason. The applicant was discharged from service under rule 13(3) (III) (v) of Army Rules which relates to "all other cases of discharge" except those mentioned in clause 13(3) (III) (i) to (iv). Item III (iii) of Rule 13(3) clearly mentions that when an individual is found to be medically unfit for further service, he has to be placed before an Invalidating Medical Board (IMB). Even though the service of the applicant was terminated prematurely before completion of the fixed term of 22 years, he was not placed before an IMB; rather, he was placed before a Release Medical Board (RMB). This action of the respondents is against the rule and contrary to the decision of the Hon'ble Supreme Court in the case of **Union of India –vs- Rajpal Singh, (2009) 1 SCC 216** where it was held that if a person is to be discharged on the ground of medical unfitness before completion of service tenure or extended service he has to be discharged through an IMB and not through a RMB. Sub-rule 2A of Rule 13 on which the respondents have placed reliance was also discussed in that decision and it was held that said sub-rule is only an enabling provision which is not in any way in conflict with the scope of the remaining part of rule 13 so as to give it an overriding effect, being a non obstante provision.

13. That apart, here we may also usefully refer to a recent decision rendered by this Bench in TA 41 of 2011 (**Atul Chandra Karmakar –vs- UOI & Ors**) decided on 17th May 2013. In that case, the applicant, a Havildar was denied two years extension because of low medical category which was attributable to military service. He claimed rounding off benefit because of curtailment of his tenure by two years. However, the contention of the respondents was that he retired after fulfilling his terms of service and therefore, he

was not entitled to rounding off benefit. This Tribunal after analyzing the rule position and Govt. orders on the subject had observed as under:-

> "16. After analyzing the ibid government policy letter of 3.9.1998, as reproduced above, we are of the view to interpret the object and language of the relevant policy letter as that the service limit for a Havildar is 26 years, subject to two years extension granted after 24 years or on attaining 49 years of age whichever is earlier. Only by interpreting in this manner, the object and spirit of two years age extension granted from 1.1.96 to all central government employees including the armed forces is met with due consideration to the peculiar service condition of the armed forces and the need to keep the soldiers young and fit. By interpreting in the manner that the respondents have done, 'service limit for Havildar remains 24 years which can be extended by two years' indicates that these two years are a bonus or a privilege that are granted subject to certain conditions. In effect that was never the object of the government when they issued the ibid policy subsequent to Vth CPC. Moreover, a military career of a soldier is always subject to remaining fit and disciplined. Whenever he fails to remain within the acceptable limits of such criteria his continuance in service is always curtailed under provisions of rules. A soldier faces such uncertainties from the time he is recruited. That does not mean the laid down term and conditions of service are tampered with. Therefore it reasonable to interpret the rules as done by us that is to say, a Havildar, post 1.1.96, can serve up to 26 years of service subject to grant of extension after 24 years of service or on attaining 49 years of age which ever is earlier.
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> 17. Under such circumstances as discussed above, we are of the view that the applicant's service was curtailed by two years due to a medical disability that was attributable to military service; thus putting him in low medical category 'CEE' , which was not the 'acceptable medical category' to grant him extension of two years after completion of 24 years of service. Therefore, the RMB held for him at the time of discharge should be considered as IMB and consequential benefits like 'rounding off' of disability pension as per rules need to be made applicable to him.
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> 18. In consideration of our analysis of ibid policy letters as made above, we are of the view that the applicant will be eligible for "rounding off" of his disability pension which as per extant rule is 50% since he was in receipt of 30% disability pension. "

14. It has not been brought to our judicial notice that the ibid decision of this Bench in the above TA 41 of 2011 has yet been reversed by any higher court and, therefore, we are bound to follow our own decisions. Accordingly, we hold that the applicant ought to

have been invalidated out of service before completion of his terms of service and he ought to have been placed before an Invalidating Medical Board in terms of Rule 13(3)(III) (iii) instead of placing him before a Release Medical Board and discharged under 13(3)(III)(v). We are thus inclined to consider the RMB in this case as illegal and the same medical board should be treated as an IMB after considering him to be one who was invalidated out of service on medical ground under Army Rule (AR) 13 (3) (III) (iii).

15. Now, coming to the second issue; whether the disability was attributable to military service, we find that the main contention raised by the applicant during oral submission as also in the application and rejoinders that the disability for which he was discharged from service was directly attributable to stress and strain of service that he had to face during his posting in field/counter insurgency area in J&K. However, the respondents have countered this by contending that it is the medical board whose opinion has to be accepted as has been held by the Hon'ble apex Court in various judicial pronouncements.

16. Against this rival contention, we may observe that there is no doubt that the opinion of medical experts is to be given primacy, but that does not mean that court or tribunal cannot interfere with the same while adjudicating the claim for disability pension. We lend support for our this view from a recent decision of the Hon'ble Supreme Court in the case of **Veer Pal Singh –vs- Secretary, Ministry of Defence,** (Civil Appeal No. 5922 of 2012) decided on 2nd July 2013 (2013(8) SCALE 58), where it was held 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."**

17. Thus, it appears that there is no bar in scrutinizing the medical board opinion in order to adjudicate upon the dispute regarding grant of disability pension.

18. Accordingly, we have scrutinized the original medical board proceedings that were produced by the respondents.

19. From the RMB proceedings, which was held on 1st May 2001 at Shillong, we find that it was recorded in column 1 of Part III that the disability of 'solitary seizure' did not exist before entering service. However, it is held as not attributable to nor aggravated by military service. In column 3(d) it is stated that the disability is idiopathic origin. The percentage was assessed at 15-19% (less than 20%) for two years. From the records we find that the applicant had served in field area on several occasions since 16.11.81 and he last served from June 1994 to 19.10.97 in a part of J&K that was notified as field/counter insurgency area. In Part B, column 13, we find that the commanding officer has stated that the disability of the applicant was "due to service". The medical board has given no reasons to overlook the CO's recommendations nor has it made any observation on the applicant's service in field/counter insurgency areas.

20. Now, grant of disability pension is governed by reg. 173 of Pension Regulations for Army 1961, Part I. the said regulation is quoted below:-

"173. – Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalidated out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed 20 per cent or over.

The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II.

Appendix II is the Entitlement Rules for casualty Pensionary Awards, 1982.

Rule 5 of the said Rules states as follows:-

"Rule 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) Member is presumed to have been in sound physical and mental condition upon entering 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."

21. In the instant case, we find that the medical board has recorded that no note was made of the ibid disability at the time of entry into service. There is also nothing noted by the RMB as to why such disability could not be detected at the time of enrolment. The applicant has rendered long 22 years and therefore, as per rule 5 quoted above it must be presumed that the disability has occurred during the course of service

"Rule 9. ONUS OF PROOF – The claimant shall not be called upon the 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."

22. It is categorically stated in the Entitlement Rules that claimant shall not be called upon to prove the conditions of entitlement and benefit of doubt is to be given liberally in field/afloat service.

23. In a recent decision in the case of **Dharamvir Singh –vs- UOI & Ors,** (Civil Appeal No. 4949 of 2013) decided on 2nd July 2013, 2013 (8) SCALE 58, the Hon'ble Apex Court has dealt with similar case in which the appellant was suffering from Generalized Seizure (Epilepsy), who was also denied disability pension on the ground that the ibid disability was not attributable to service. Hon'ble Apex Court had occasion to deal with the role of medical board as stipulated in the Guide to Medical Officers (Military Pension), 2002

24. After explaining Rule 423 of Guide to Medical Officers (Military Pensions) 2002, which deals with attributability aspect, it has been observed by the Apex Court in para 25 of the ibid judgement:-

> ***"25. Therefore, as per rule 423 following procedures to be followed by the Medical Board :***
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> ***(i) Evidence both direct and circumstantial to be taken into account by the Board and benefit of reasonable doubt, if any would go to the individual;***

(ii) a disease which has led to an individual's discharge or death will ordinarily be treated to have arisen in service, if no note of it was made at the time of individual's acceptance for service in Armed Forces.

(iii) If the medical opinion holds that the disease could not have been detected on medical examination prior to acceptance for service and the disease will not be deemed to have been arisen during military service, the Board is required to state the reason for the same.

25. In the case before us the applicant was diagnosed to have been suffering from 'solitary seizure' which is also a kind of epilepsy. The disease of epilepsy has been explained in Sl. No. 33 of said Guide. It is stated therein that –

" the factors which may trigger the seizures are sleep deprivation, emotional stress, physical and mental exhaustion, infection and pyrexia and loud noise"

It is also provided therein as under:-

" Where evidence exists that a person while on active service such as participation in battles, *warlike front line operation*, bombing, siege, jungle warfare training or intensive military training with troops, service in HAA, *strenuous operation duties in aid of civil power*, LRP on mountains, high altitude flying, prolonged afloat service and deep sea diving, service in submarine, *entitlement of attributability will be appropriate if the attack takes place within 6 months. Where the genetic factor is predominant and attack occurs after 6 months, possibility of aggravation may be considered."*

26. In the instance, we have already noted above that the applicant was posted in field area of J & K sector and served in areas like Anantnag, Bizbhhara, Koopwara and Kazikundu which are insurgency area. He served there from 1994 to January 1998;

thereafter he was posted in Rajasthan (Nasirabad) where in July 1998 i.e. within six months of his transfer from field area, he was attacked with the ibid disability. His commanding officer has categorically opined that the disability of the applicant was attributable to service. However, it appears that the medical board failed to consider all these details and held that the disability was idiopathic in nature despite clear guidelines that the medical board has to be consider both direct and circumstantial evidence as also other cogent materials like recommendation of the commanding officer, who knows better about the individual so far as his service conditions are concerned.

27. In view of the above and particularly when, the applicant while entering into service was quite fit and in sound health; the disease having developed after more than 20 years of harsh conditions of service including in field, and counter insurgency areas, there appears to be enough evidence to suggest that such disease could have manifested due to such service conditions. Therefore, benefit of doubt should be given to him liberally as provided in rule 5 of Entitlement Rules quoted above and it should be held that the ibid disability was attributable to military service.

28. The third issue; whether the applicant would be eligible to disability pension, was deliberated by us. The respondents relied on provisions of regulation 173 of Pension Regulations for the Army 1961 (Revised), which stipulates that, even if it held that the disability was attributable to military service, then also the applicant does not become entitled to get disability pension because his percentage of disability was assessed as 15-19% by the medical board. As per the ibid regulation, the disablement percentage has to

be 20% or more for him to be eligible to receive disability pension. The percentage can only be assessed by the medical board after physically examining the patient (applicant).

29. The instant case is peculiar as regards applicability of percentage of disablement at the time of invaliding him from service. Firstly, the applicant was discharged on 01 Aug 2001, under Army Rule 13 (3) III (v) and not under AR 13 (3) (III) (iii), which has been held improper as discussed above. The authorities, before discharging him, had put him through an RMB (Release Medical Board) and not through an IMB (Invaliding Medical Board). As discussed earlier this RMB should now be treated as an IMB and the applicant is to be treated as one who was invalidated out service with his service being curtailed on account of a medical disability that has now been held as attributable to service.

30. Now, coming to the percentage of disability as assessed by the medical board, it is already pointed out that it was opined that percentage o disability of the applicant was 15-19% for two years. In this connection, our attention is drawn to Regulation 178A of Pension Regulations for the Army 1961 (Revised) with regards to '**Reassessment of the disability which is permanently below 20% at the time of invaliding**'. The ibid Regulation is as under:-

> ***'178-A. In case where an individual's disability or its aggravation at the time of invaliding is permanently below pensionable degree, he may claim to be brought before a medical board within a period of ten years from the date of his discharge. If the disability is assessed as permanent below the pensionable degree no claim for re-assessment shall be considered."***
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> .

31. Therefore, there is provision for re-assessment of disability though a re-survey medical board to determine whether the disability is of permanent nature or not; or whether it has been increased or decreased.

32. However, it has been brought to our notice that contents of Ministry of Defence policy letter No. 1(2)/97/1/D(Pen-C) dated 31st January 2001 which has come into effect from 1.1.96 whereby the criterion of minimum 20% disability on invalidment for earning disability pension stands dispensed with. Even 1% disability is sufficient to earn disability pension on invalidment. Hence the provisions of regulation 178-A have no relevance for post 1996 cases and the case of the applicant is post 1996. It will be relevant to quote para 7.2 of the ibid policy letter dt. 31.1.2001 as below:-

> " 7.2 – Where an Armed Force personnel is invalidated out under circumstances mentioned in para 4.1. above, the extent of disability or functional incapacity shall be determined in the following manner for the purpose of computing the disability element.

Percentage of disability as assessed by Invalidating medical board	**Percentage to be reckoned for Computing of disability element**
Less than 50	50
Between 50 and 75	75
Between 76 and 100	100

33. Therefore, it appears that on and from 1.1.96, the conditionality of disability of 20 per cent or above as provided in Reg. 173 in order to be eligible for disability pension apart from the disability being attributable or aggravated has been dispensed with and if the percentage of disability is found to be less than 50 i.e. ranging from 1 to 49 per cent, the amount of disability element admissible will be 50%. In that view of the matter, even

if the disability of the applicant was assessed at 15-19% at the time of his discharge on invalidment, he is also entitled to disability pension at the rate of 50%.

34. However, the applicant was awarded a disablement percentage of 15-19% for two years; he was discharged on 1.8.2001. No resurvey medical board has been carried out since his discharge. Therefore we are inclined to consider that the applicant be subjected to a resurvey medical board to reassess his percentage of disablement permanently. For the intervening period, i.e. from the date of discharge till the date of award of disablement percentage by the resurvey medical board, the initial award of 15-19% should continue.

35. The applicant, having been now considered as one who was invalidated out of service under AR 13 (3) (III) (iii) with a disability that is considered to be attributable to military service with a disablement percentage of 15-19%, which will now be computed as 50% in terms of latest Govt. order as quoted above, would become eligible to receive disability pension with rounding of provisions in accordance with extant rules. We are thus inclined to believe that the applicant is now entitled to disability pension with all consequential benefits, until altered by a resurvey medical board with regard to percentage of disablement.

36. The respondents have also taken a point that the applicant voluntarily sought discharge from service and therefore, he is not entitled to the benefit. However, reg. 173a of Pension Regulations does not debar in such circumstances to be entitled to disability pension. The said regulation is quoted below:-

> 173a. – Individuals who are placed in a lower medical category (other than 'E') permanently and who are discharged because of no alternative employment in their own trade/category suitable to their low medical category could be provided or who are unwilling to accept the alternative employment and who having retained in alternative appointment are discharged before completion of

their engagement, shall be deemed to have been invalidated from service for the purpose of the entitlement rules laid down in Appendix II to these Regulations.

Note : The above provision shall also apply to individuals who are placed in a low medical category while on extended service and are discharged on that account before the completion of the period of their extension.

37. In view of the foregoing discussions, we dispose of the application by issuing the following directions:-

a) The applicant shall be deemed to be invalidated out of service under Army Rule 13 (3) (III) (iii) on medical grounds before completion of his terms and conditions of service by way of curtailment of service tenure.

b) The RMB which was held in respect of the applicant before his discharge be treated as an IMB as required under the rule i.e. Rule 13(3) (III) (iii) of Army Rules and not under rule 13 (3) (III) (v).

c) The disability suffered by the applicant be treated as attributable to and aggravated by military service after giving him benefit of doubt as explained above. Consequently, the opinion of RMB (consequently IMB as per ibid Orders) in this regard be modified to that extent and the appellate orders in that regard stand quashed.

d) The applicant shall be brought before a re-survey medical board within 90 days from the date of communication of this order in order to assess the percentage of disability permanently.

e) For the intervening period (1.8.2001 till the date when the re-survey medical board is finalized) the applicant shall receive disability pension as applicable within rules as discussed in paragraphs 32-35 above, keeping in

view the first award of disablement percentage (15-19%) which should be rounded off in terms of extant policy as applicable to post 1.1.1996 case who was invalidated out of service on medical grounds.

f) The payments in terms of the above order towards disability pension shall be commenced within 60 days from the date of communication of this order.

g) There will be no order as to cost,

38. Let the original records be returned to the respondents on proper receipt.

39. Let a plain copy of the order duly countersigned by the Tribunal Officer be furnished to both parties on observance of due formalities.

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

(JUSTICE RAGHUNATH RAY)
MEMBER (JUDICIAL)