

A.F.R

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

Reserved Judgment

Court No. 2

**Transferred Application No. 307 of 2010
(Writ Petition No. 13345 of 2006 (S) High Court of M.P. at
Jabalpur)**

Wednesday the 17th day of April, 2013

“Hon’ble Mr. Justice S.C. Chaurasia, Member (J)
Hon’ble Lt. Gen. R.K. Chhabra, Member (A)”

No. 15675281 M Ex. Recruit Shinde Ajay Vasant, S/o Shri
Vasantji Gangaram Shinde, R/o Village Post – Zombadi, Tehsil
Guhagar, District Ratnagiri (Maharashtra).

Applicant

By Legal Practitioner Shri D.K. Pandey, Advocate.

Versus

1. Union of India through Secretary, Ministry of Defence,
Government of India, New Delhi.

2. Director General Signals, New Delhi.
3. Officer in Charge, Record, Corps of Signals, Jabalpur (M.P.).

Respondents

By Legal Practitioner Col. R.N. Singh (Retd.), Advocate,
Senior Central Government Counsel.

ORDER

Hon'ble Lt. Gen. R.K. Chhabra

1. The Writ Petition under Articles 226-227 of the Constitution of India was filed on behalf of the applicant in the Hon'ble High Court of Madhya Pradesh at Jabalpur and he has claimed the reliefs as under:

“(i) That the Hon'ble Court may kindly be pleased to call for the entire records so far as it relates to the petitioner.

(ii) That the Hon'ble Court may kindly be pleased to declare the petitioner entitled for disability pension and further to direct the respondents to pay

disability pension of the including arrears to the petitioner.

(ii-a) This Hon'ble Tribunal may graciously be pleased to quash/set aside the medical board proceedings which were earlier held and further direct the opposite parties to review/re-held the medical of the applicant by an independent/competent medical board and direct the opposite parties to reinstate the applicant.

(iii) That any other relief's which the Hon'ble Court deemed fit in the facts and circumstances of the case may also be awarded in favour of the petitioner including cost.

2. Hon'ble High Court transferred the Writ Petition to this Tribunal under Section 34 of the Armed Forces Tribunal Act, 2007 and it has been registered as Transferred Application No. 307 of 2010.

3. We have heard Shri D.K. Pandey, learned Counsel for the applicant, Col. R.N. Singh (Retd.), Senior Central Government Counsel for the respondents and perused the record.

4. The factual matrix of the case is that the applicant was enrolled in the Corps of Signals on 19.04.2002. While undergoing basic military training at 1 Military Training Regiment (subsequently in 4 Technical Training Regiment), 1 Signal Training Centre, Jabalpur, he was admitted in Military Hospital, Jabalpur on 10.01.2003. He was invalided out of service in medical category “S5 H1 A1 P1 E1” under Rule 13(3)(III)(iv) of the Army Rules, 1954 with effect from 25.03.2003 for the disease “DISSOCIATION DISORDER – F44” by a duly constituted Invaliding Medical Board held at Military Hospital, Jabalpur; copy of the Invaliding Medical Board (AFMS-16) dated 10.03.2003 is at Annexure R-1. His disability was assessed at 11-14% (less than 20%) for life which was considered neither attributable to nor aggravated by military service as also not connected with the Army service.

5. The claim for the disability pension was forwarded to PCDA (P), Allahabad by respondent No. 3, however, the same

was rejected by them vide their letter dated 18.03.2004 on the ground that the disability was neither attributable to nor aggravated by military service. It seems that although so advised by respondent No. 3, the applicant did not prefer any appeal against the decision of the PCDA (P), Allahabad.

6. Learned Counsel for the applicant submitted at the outset that he does not wish to press prayer (ii-a). He drew our attention to the Summary and Opinion of the Classified Specialist (Psychiatry), Military Hospital, Jabalpur dated 03.03.2003, annexed as Annexure R-1 with the counter affidavit. He submitted that it is evident from the said Summary and Opinion of the Classified Specialist (Psychiatry) that there was no past history of the disease and that it was due to stress and strain of military service that he suffered from this disease. Therefore, the disease ought to have been attributed to stress and strain of military service.

7. Learned Counsel further submitted that the applicant was neither found to be suffering from any disease at the time of enrolment into military service nor any endorsement has been made in the Invaliding Medical Board proceedings (Annexure R-1) that the disease in question could not have been detected at the time of enrolment. Therefore, under the provisions of Rules 5 (a) and (b) of Appendix II, Referred to in Regulation 48,173 & 185 (Entitlement Rules for Casualty Pensionary Awards, 1982), a member of the Armed Forces is presumed to be in sound physical and mental condition upon entering the service except as to physical disabilities noted or recorded at the time of entrance. 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. Therefore, not considering the disability of the applicant attributable to military service is grossly unjustified and arbitrary.

8. Learned Counsel for the applicant next drew our attention to paragraph 28 of Chapter VII of the Guide to Medical Officers (Military Pensions), 2002 wherein it has been stated that there was a tendency to under-assess the disability of psychoneurosis cases on part of some the Medical Boards. It has further been stated in the said Guide that assessment should be based on the criteria of individual's capability to look after himself and his family and the lowest category of disability has been given as 20% - 30% for a period of five years for a person who is able to look after himself and interact with the family and can be gainfully employed. Thus, the respondents have made a manifest error of judgment by assessing the disability of the applicant at 11-14% for life.

9. Learned Counsel for the applicant relying on Judgment and Order dated 28.10.2009 passed by the Armed Forces Tribunal, Principal Bench, New Delhi in T.A. No. 48 of 2009, Nakhat Bharti etc. etc. vs. Union of India & Others submitted

that in similarly placed cases, Hon'ble Principal Bench allowed the Transferred Applications and directed the respondents to pay disability pension as per the rules and regulations.

10. Learned Central Government Counsel, in opposition, submitted that under the provisions of Regulation 173 of the Pension Regulations for the Army, 1961 (Part I) unless otherwise specifically provided, the disability pension consisting of service and disability element may be granted to an individual who is invalided out of service on account of disability which is attributed to or aggravated by military service and where the disability is assessed at 20% or more. Since in the instant case, the disability of the applicant has been assessed at 11-14% for life and is not considered attributable to or aggravated by military service, therefore, no disability pension is admissible to the applicant. Relying on Mil LJ 2009 SC 107, Secretary, Ministry of Defence & Others vs. AV Damodaran, he submitted that Hon'ble Apex Court has held that the Medical

Board is an expert body and its opinion is entitled to be given due weightage and primacy. In so far as provisions of paragraph 28 of the Guide to Medical Officers (Military Pensions), 2002 are concerned there is not a whisper of this plea in the Writ Petition, hence it is not admissible.

11. Learned Counsel on the contrary drew our attention to paragraph 54 of Chapter VI of the Guide to Medical Officers (Military Pension) 2008 and submitted that as per the said Guide in Mental (Psychiatric) Disorder cases, attributability will be conceded where the psychiatric disorder occurs when the individual is serving in or is involved in service in combat area, high altitude area, deployment at extremely isolated posts, etc. Since the applicant was undergoing basic military training in a peace area, therefore, the question of attributability of the said disease to military service does not arise. In this connection, he also drew our attention to Rules 7 and 8 of Appendix II, Referred to in Regulation 48,173 & 185 (Entitlement Rules for

Casualty Pensionary Awards, 1982), wherein it has been laid down that where there is no note in the contemporary official records of a material fact on which the claim for attributability or aggravation is based, other reliable corroborative evidence of facts may be accepted. Furthermore, for attributability or aggravation to be conceded, there must be a causal connection between the disablement and military service.

12. With regard to the Summary and Opinion of the Classified Specialist (Psychiatry), Military Hospital, Jabalpur (Annexure R-1), he submitted that learned Counsel for the applicant has incorrectly projected that there was no past family history of the disease. The Classified Specialist (Psychiatry) has recorded in paragraph 2 (*not actually so numbered*) that there was extensive history of psychoneurosis cases in the family.

Therefore, it would be incorrect to infer that the disease was due to stress and strain of military service.

13. There is no dispute with regard to the fact that the applicant was enrolled in the Corps of Signals on 19.04.2002 and was undergoing training at 1 Signal Training Centre, Jabalpur when the disability occurred within less than one year of his enrolment in the Army, in a peace area. Thus, it was in the very nascent stage of his entry in the Army that he was afflicted by the disease “DISSOCIATION DISORDER – F44”.

14. To appreciate the controversy in correct perspective, it is important to reproduce entries made in the relevant columns of the Invaliding Board Proceedings (Annexure R-1); in Part V, serial 1, page 4 of the of the said proceedings, “Causal Relationship of the Disability with Service conditions or

otherwise”, following entries have been made:

“PART V
OPINION OF THE MEDICAL BOARD

(Not to be communicated to the Individual)

1. Causal Relationship of the Disability with Service conditions or otherwise.				
Disability	Attributable to service (Y/N)	Aggravated by service (Y/N)	Not Connected with Service (Y/N)	Reason/Cause/Specific condition and period in service
(a) DISSOCIATION DISORDER F44	NO	NO	YES	Constitutional Disorder
<i>Note. A disability "Not connected with service" would be neither attributable nor aggravated by service</i>				

15. In column at Part V, serial Nos. 2 to 6, page 5 of the said proceedings, following entries have been made:

2. Did the disability exist before entering service? (Y/N/Could be)			
Could be			
3. In case the disability existed at the time of entry, is it possible that it could not be detected during the routine medical examination carried out at the time of the entry?			
NO			
4. & 5. xxxxxxxxxxxx.			
6. What is present degree of disablement as compared with a healthy person of the same age and sex?			
<i>(Percentage will be expressed as Nil or as follows) : 1-5%, 6-10%, 11-14%, 15-19% and thereafter multiples of ten from 20% to 100%.</i>			
Disability (As numbered in question I Part	Percentage of disablement	Probable duration of this degree of	Composite assessment for all disabilities with

<i>IV)</i>		<i>disablement</i>	<i>duration (Max 100%)</i>
DISSOCIATION DISORDER F44	11-14%	For life	11-14% Less than Twenty Percent, for life

16. The Summary and Opinion of the Classified Specialist (Psychiatry), Military Hospital, Jabalpur dated 03.03.2003 is reproduced herein under:

“SUMMARY AND OPINION OF LT COL SK MAYANIL
CLASSIFIED SPECIALIST (PSYCHIATRY), MH
JABALPUR, DT : 03 MAR 2003

This 23 years old Rect (Operator trade), enrolled in April 2002 and presently undergoing training since 12 Oct 2002 at 4 TTR, 1 STC was admitted on 10 Jan 2003 for psychiatric opinion and management. Reported to be symptomatic for the last 10 days with episodes of short-lived bizarre abnormal behaviour. The indl had been reported to be excited and panicked, jumping from the bed and running out of the barrack, his body shaking from top to bottom and mumbling at night “leave me, leave me”. He felt being possessed by spirit (dark and tall figure), which drags him, presses his chest, throws him and tries to kill him. On few occasions he had even sustained injuries. He attributed this

for having unknowingly urinated at the dergah located at the unit firing range.

A detailed psychosocial history did not reveal past history of mental illness, head injury, epilepsy and drug abuse. He feels that his family had been cursed as a result there had been series of deaths – the grandfather died due to insanity and his brother committed suicide by jumping into the well; the patients' uncle (serviceman) died under mysterious circumstances and lastly his elder brother died two years ago due to unknown physical illness. The social adjustment prior to hospitalization (as per AFMSF-10 report dated 9 Jan 2003) is unsatisfactory. He is unpunctual, undisciplined and nondrinker. His competence and response to training is below average. He has shown poor response to training is below average. He has shown poor response to instructions and avoided attending routine parade. He has exhibited violent behaviour when ordered to attend parade.

Physical examination and relevant investigations (including EEG and CT Scan) ruled out any evidence of organicity, psychologically he looked anxious, tense and fearful. He comes from subculture with firm faith in culturally sanctioned beliefs. He had conflict regarding continuation in service - inability to bear the stress and

strain of military service though pretending to be brave and motivated towards features. Judgement correct, insight normal.

He was diagnosed as a case of Dissociation disorder ICD F 44, managed with antidepressants and anxiolytic drugs and psychotherapy. The response to therapy had been poor. He continued exhibiting episodes of abnormal behaviour in the ward. On 23 Feb 2003 he made serious suicidal attempt, and appeared demotivated towards service. This recruit with predominant histrionic features is unlikely to be a good soldier and hence recommended invalidment out of service in low medical category S5 of SHAPE factors.

Advised to continue Cap Dexepin 75 mg 0.0.1

Sd- xxxxx

(SK Mayanil)

Lt Col

Classified Specialist

(Psychiatry)

In view of the above the indl is brought before the IMB.

Sd-

M O i/c Case”

17. From conjoint reading of the Summary and Opinion of the Classified Specialist (Psychiatry) and the entries made in the relevant parts of the Invaliding Medical Board, following aspects emerge clearly:

- a) The disability was assessed at 11-14% (less than 20%) for life by a duly constituted Invaliding Medical Board at Military Hospital, Jabalpur; copy of Invaliding Medical Board (AFMS-16) dated 10.03.2003 is at Annexure R-1.
- b) The disability was considered neither attributable to nor aggravated by military service as also not connected with military service.
- c) The disease could have existed before entering into service.
- d) Being a constitutional disorder, the disease could not have been detected during the routine medical examination carried out at the time of entry into service.
- e) Lastly and most importantly, there was a family history of the disease.

18. There is no denying the fact that in deference to Union of India and Others vs. Damodaran, AV (Supra), which has opined that “17. I am of the considered view that the

Medical Board is an expert body and its opinion is entitled to be given due weight, value and credence.”, the opinion and recommendations of the aforesaid Invaliding Medical Board should be given due credence.

19. In order to admit disability pension, twin conditions of Regulation 173 of the Pension Regulations for the Army, 1961 (Part I) must be met; firstly; the disability must be assessed at 20 percent or over and secondly; the disability must be attributable to or aggravated by military service.

20. With regard to the first condition, there is no denying the fact that the aspect of non-adherence of the provisions of paragraph 28 of Chapter VII of the Guide to Medical Officers (Military Pensions), 2002 has not been pleaded by the applicant in the Writ Petition or the Rejoinder Affidavit. However, in the interest of justice, we are of the considered view that it is an important policy guideline and now the said plea has been raised

in verbal submissions, its scope requires to be considered. The said paragraph is reproduced herein under:

“Assessment of Mental Diseases

28. There seems to be a tendency to under-assess psychoneurosis particularly hysteria on the part of some medical boards. As long as there is no element of malingering, the disablement on account of hysterical deafness, blindness, paralysis etc. should be the same as for those conditions resulting from organic causes.

Since the brain functions as a whole, in such cases the assessment should cover all the mental conditions present, irrespective of whether or not all the conditions present are “accepted” disabilities. The Boards should also give separate assessment for each condition, as compensation would be discontinued when the total disablement falls below pensionable degree viz 20 per cent or only the “non-accepted” condition persists, whichever is earlier.

Assessment is based on the criteria of individual’s capability to look after himself and family:

(a) Person able to look after himself and interact with his family and gainfully employed :

Assessment 20-30% for a period of 5 years.

(b) Person is only able to look after himself but unable to interact with family :

Assessment 50-60% for a period of 5 to 10 years,

(c) Individual is not able to look after his basic needs :

Assessment 80-100% permanent.”

21. From plain reading of the aforesaid provision, it is apparent that the Invaliding Medical Board clearly disregarded paragraph 28 of the said Guide and erred in assessing the percentage of disability at less than 20% i.e. 11-14% for life, since the minimum assessment suggested in the said Guide is 20-30% for a period of five years.

22. To decide the question of meeting of the second condition i.e. attributability/aggravation to military service, it is imperative to consider the provisions delineated in Regulation 173 of the Pension Regulations for the Army, 1961 (Part I), Rules 5 to 9 of Appendix II, Referred to in Regulation 48, 173 & 185 (Entitlement Rules for Casualty Pensionary Awards,

1982), Paragraph 423 of the Regulations for the Medical Services of the Armed Forces - 1983 and Paragraph 54 of Chapter VI of the Guide to Medical Officers (Military Pension) 2002, which are sequentially reproduced in the succeeding paragraphs.

23. Regulation 173 of the Pension Regulations for the Army, 1961 (Part I) (as amended) is reproduced herein under:

“173. Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non battle casualty 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.”

24. Rules 5 to 9 of Appendix II of Regulation 173, Referred to in Regulation 48,173 & 185 (Entitlement Rules for Casualty Pensionary Awards, 1982) are reproduced herein 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) 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.

6. Disablement of death shall be accepted as due to military service provided it is certified by appropriate medical authority that:-

(a) the disablement is due to a wound, injury or disease which:

(i) is attributable to military service, or

(ii) existed before or arose during military service and has been and remains aggravated thereby. This

will also include the precipitating/hastening of onset of a disability.

(b) the death was due to or hastened by:

(i) a wound, injury or disease which was attributable to military service; or

(ii) the aggravation by military service of a wound, injury or disease which existed before or arose during military service.

7. Where there is no note in contemporary official records of a material fact on which the claim is based, other reliable corroborative evidence of that fact may be accepted.

8. Attributability/aggravation shall be conceded if causal connection between death/disablement and military service is certified by appropriate medical authority.

ONUS OF PROOF

9. 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.

25. Paragraph 423 of the Regulations for the Medical Services of the Armed Forces - 1983 is reproduced as under:

"423. Attributability of Service:

(a) For the purpose of determining whether the cause of a disability or death is or is not attributable to service, it is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a Field Service/Active Service area or under normal peace conditions. It is, however, essential to establish whether the disability or death bore a causal connection with the service conditions. All evidence both direct and circumstantial, will be taken into account and benefit of reasonable doubt, if any, will be given to the individual. The evidence to be accepted as reasonable doubt, for the purpose of these instructions, should be of a degree of cogency, which though not reaching certainly, nevertheless carry the high degree of probability. In this connection, it will be remembered that proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. If the evidence is so strong against an individual

as to leave only a remote possibility in his 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 as to render impracticable a determinate conclusion one way or the other, then the case would be one in which the benefit of the doubt could be given more liberally to the individual, in cases occurring in Field Service/Active Service areas.

(b) The cause of a disability or death resulting from wound or injury, will be regarded as attributable to service if the wound/injury was sustained during the actual performance of "duty" in Armed Forces. In case of injuries which were self inflicted or due to an individual's own serious negligence or misconduct, the Board will also comment how far the disablement resulted from self-infliction, negligence or misconduct.

(c) The cause of a disability or death resulting from a disease will be regarded as attributable to service when it is established that the disease arose during service and the conditions and circumstances of duty in the Armed Forces determined and contributed to the onset of the disease. Cases, in which it is established that service

conditions did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease, will be regarded as aggravated by the service. A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service if no note of it was made at the time of the individual's acceptance for service in the Armed Forces. However, if medical opinion holds, for reasons to be stated that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.

(d) The question, whether a disability or death is attributable to or aggravated by service or not, will be decided as regards its medical aspects by a Medical Board or by the medical officer who signs the death certificate. The Medical Board/Medical Officer will specify reasons for their/his opinion. The opinion of the Medical Board/Medical Officer, in so far as it related to the actual cause of the disability or death and the circumstances in which it originated will be regarded as final. The question whether the cause and the attendant circumstances can be attributed to service will, however, be decided by the pension sanctioning authority.

(e) To assist the medical officer who signs the death certificate or the medical board in the case of an invalid, the C.O. unit will furnish a report on:

(i) AFMS F-81 in all cases other than those due to injuries.

(ii) IAFY-2006 in all cases of injuries.

(f) In cases where award of disability pension or reassessment of disabilities is concerned, a Medical Board is always necessary and the certificate of a single medical officer will not be accepted except in case of stations where it is not possible or feasible to assemble a regular Medical Board for such purposes. The certificate of a single medical officer in the latter case will be furnished on Medical board form and countersigned by the ADMS (Army)/DMS (Navy)/DMS (Air).”

26. Paragraph 54 of Chapter VI of the Guide to Medical Officers (Military Pension) 2002, provides as under:

54. Mental (Psychiatric) Disorders. Psychiatric illness results from a complex interplay of endogenous (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 another and from case to case.

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. Grant of compensatory benefits related to aggravation by service factors may be considered in the following circumstances:

(a) Psychiatric disorder arising within 6 months (extendable upto 12 months in some cases) of serious/multiple injuries (e.g. amputation of upper/lower limb, paraplegia, quadriplegia, severe head injury resulting in hemiplegia or gross neurocognitive deficit) which are themselves considered attributable to military service. This includes Post Traumatic Stress Disorder (PTSD).

(b) Psychiatric disorders arising within 6 months extendable upto 12 months in exceptional cases of:

(i) CI ops tenure exceeding 2 years.

(ii) HA tenure exceeding 18 months.

(iii) Siachen tenure exceeding 6 months.

(iv) Deployment of extreme isolated posts for over 6 months.

(v) Incarceration as PW for more than 60 days.

(vi) Being held hostage under threat of death/ torture for over 30 days.

(vii) Separation from the immediate family for 12 months or more at a stretch owing to exigencies of service, except when such separation is due to the individual being under arrest/involved in disciplinary proceedings.

(c) Psychiatric disorders arising within 3 months of denial of leave due to exigencies of service in the face of :

(i) Death of parent when the individual is the only child/son.

(ii) Death of spouse or children.

(iii) Heinous crime (e.g. murder, rape or dacoity) against members of the immediate family.

(iv) Reprisals or the threat of reprisals against members of the immediate family by militants/terrorists owing to the fact of the individual being a member of the Armed Forces.

(v) Natural disasters such as cyclones-earthquakes involving the safety of the immediate family.

(vi) Marriage of children or sister when the individual is the only brother thereof and specially if their father is deceased.

(d) Attributability may be granted under special/extraordinary circumstances associated with any of the factors enumerated in para above, but the medical board must set out in writing the reasons for the same. This provision should be used sparingly/with transparent objectivity and the medical board should not allow its decision to be swayed by sympathy or other extraneous considerations.

27. In this connection Rule 14 of Appendix II, Referred to in Regulation 48, 173 & 185 (Entitlement Rules for Casualty

Pensionary Awards, 1982) as amended vide Corrigendum No. 1(1)/81/D.(Pen-C) dated 20.06.1996 of the Ministry of Defence, is reproduced herein under:

"14. In respect of diseases, the following Rules will be observed:

(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, the 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.

(c) 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 course of disease, will fall for acceptance on the basis of aggravation.

(d) In case of congenital, hereditary, de-generative and constitutional diseases, which are detected after the individual has joined service, entitlement to disability pension shall not be conceded unless it is clearly established that the course of such disease was adversely affected due to factors related to conditions of military service."

28. From conjoint reading of the Rules and Regulations reproduced herein above, we find that the following relevant issues emerge, which have a direct impact in adjudicating upon the controversy at hand:

- a) For acceptance of a disease as attributable to military service, the twin conditions viz. (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) Where it is established that the conditions of military service did not contribute to the onset of the disease, disability pension will not be conceded, even if the disease has arisen during the service.
- c) There must be a causal connection between the disability and military service for attributability or aggravation to be conceded.
- d) In deciding on the issue of attributability or aggravation all the evidence, both direct and circumstantial, must be taken into account and the benefit of reasonable doubt should be given to the claimant. This benefit will be given more liberally to the claimant in field service case.
- e) The cause of a disability resulting from a disease will be regarded as attributable to service when it is

established that the disease arose during service and the conditions and circumstances of duty in the Armed Forces determined and contributed to the onset of the disease.

- f) Attributability will be conceded where the psychiatric disorder occurs when the individual is serving in counter-insurgency operations, high altitude area, deployment in Siachen/extremely isolated posts, etc for specified prolonged durations.

29. The Hon'ble Supreme Court in Judgment and Order dated 20.04.2007, Union of India and Others vs. Keshar Singh, Appeal (Civil) 762 of 2001, has held that:

“A bare reading of the aforesaid provision makes it clear that ordinarily if a disease has led to the discharge of individual it shall ordinarily be deemed to have arisen in service if no note of it was made at the time of individual's acceptance for military service. An exception, however, is carved out, i.e. if medical opinion holds for

reasons to be stated that the disease could not have been detected by Medical Examination Board prior to acceptance for service, the disease would not be deemed to have arisen during service. Similarly, clause (c) of Rule 7 makes the position clear that 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 are due to the circumstances of duty in military service.....”

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“In view of the legal position referred to above and the fact that the Medical Board’s opinion was clearly to the effect that the illness suffered by the respondent was not attributable to the military service, both the learned Single Judge and the Division Bench were not justified in their respective conclusion. The respondent is not entitled to disability pension. However, on the facts and circumstances of the case, payment already made to the respondent by way of

disability pension shall not be recovered from him. The appeal is allowed but in the circumstances without any order as to costs.”

30. In so far as Nakhat Bharti (Supra) is concerned, the facts and circumstances of the controversy at hand are at complete variance as the applicant was afflicted by “DISSOCIATION DISORDER – F44” at the very nascent stage of his service in the Army without having been exposed to any of the service conditions delineated in Paragraph 54 of the Guide to Medical Officers (Military Pension), 2002. We also wish to add that since the controversy at hand arose in 2003, provisions of Paragraph 54 of the Guide to Medical Officers (Military Pension), 2002 and not Paragraph 54 of the Guide to Medical Officers (Military Pension), 2008 are applicable.

31. Considering the entire controversy holistically, there is no denying the fact that the Invaliding Medical Board should give “sufficient” reasons as to why the disease could not have been detected at the time of induction in service. However, it needs to

be pointed out that the Invaliding Medical Board proceedings (Annexure R-1) including Summary and Opinion of the Classified Specialist are a composite document which need to be read in its entirety together with the Summary and Opinion of the Classified Specialist (Psychiatry) which are inseparable part of the proceedings and these cannot be read in isolation. Furthermore, the provisions of Regulation 423, Rule 8 and Paragraph 54 (Supra) cannot be lost sight of in deciding whether or not there was causal connection between the onset of the disease and the service conditions. In the controversy at hand, it is also important to note that since the disease in question arose during the training period, in a peace area within less one year of his enrolment i.e. in the very nascent stage of the applicant's entry in the Army; and the undeniable fact that the applicant was never exposed to any of the conditions or stress and strain of the military services delineated in Paragraph 54 (Supra), there is no causal connection between the disease and the specific

conditions delineated therein. There is also a strong genetic preponderance which is evident from the Summary and Opinion of the Classified Specialist (Psychiatry) in that the genetic defect was inherited by the applicant from his grandfather who died due to insanity; his brother committed suicide by jumping into the well; the applicant's uncle (a serviceman) died under mysterious circumstances and lastly his elder brother who died due to unknown physical illness. In our considered opinion, it will thus not be prudent to arrive at a conclusion that the disease was not constitutional in nature and that it was attributable to or aggravated by military service contrary to the findings of the Invaliding Medical Board which is an 'expert body' who physically examined the applicant. It would also be reasonable to concur with the assessment of the said Medical Board that the disease could not have been detected during the routine medical examination carried out at the time of the entry as indicated in serial 3, Part V of the Invaliding Board Proceedings.

32. For the reasons discussed herein above, the instant case is distinguishable on facts from that of the cases quoted above. We are of the considered opinion that the ends of justice will be met, if the applicant's disability is assessed at 20% for five years, i.e. minimum disability as per Paragraph 28 of Chapter VI of the Guide to Medical Officers (Military Pensions), 2002. We, however, are unable to supplant our opinion over that of the Invaliding Medical Board with regard to attributability or non-attributability of the disability to military service and therefore, the applicant's disability shall be deemed to be 20% for five years not attributable to or aggravated by military service. Furthermore, ends of justice will be met if the applicant is brought before a Re-survey Medical Board to reassess the percentage of disability and attributability in accordance with rules and regulations on the subject.

33. Accordingly, the existing recommendation of the Invaliding Medical Board (Annexure R-1) at Serial No. 6, page

5 relating to “Composite assessment for all disabilities with duration” is set aside and we direct that the same be read as “20% for five years” from the date of discharge. We further direct the competent authority to bring the applicant before a special Re-survey Medical Board to assess the percentage of disability and attributability in accordance with rules and regulations on the subject, expeditiously but not later than four months from the date certified copy of this order is received, without considering the delay in holding such a Re-survey Medical Board which in accordance with our direction should have been carried out at the expiry of period of five years from the date of discharge. The Transferred Application is disposed of accordingly. Central Government Counsel is directed to serve a copy of the judgment and order to the competent authority in order to ensure expeditious compliance of our orders.

34. No order however as to costs.

(Lt. Gen. R.K. Chhabra)
Member (A)

(Justice S.C. Chaurasia)
Member (J)

Dwivedi