ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI

O A No.152 OF 2012

FRIDAY, THE 22ND DAY OF MARCH, 2013/1ST CHAITHRA, 1935

CORAM:

HON'BLE MR. JUSTICE SHRI KANT TRIPATHI, MEMBER (J)

HON'BLE LT.GEN.THOMAS MATHEW, PVSM, AVSM, MEMBER (A)

APPLICANT:

E.HUSAIN, AGED 50 YEARS, S/O LATE SHRI O.EBRAHIM KUTTY, (EX NO. 1375261 K SPR OF INDIAN ARMY), KOCHANATHU VEEDU, KUREEPUZHA POST, PERINAD, KOLLAM, KERALA – 691601.

BY ADV. SRI. T.R.JAGADEESH

versus

RESPONDENTS:

1. UNION OF INDIA, REPRESENTED BY ITS SECRETARY, MINISTRY OF DEFENCE, SOUTH BLOCK, NEW DELHI-110 001.

2. THE CHIEF OF THE ARMY STAFF INTEGRATED HEAD QUARTERS (ARMY) SOUTH BLOCK, NEW DELHI – 110 011.

3. OIC RECORDS, RECORD OFFICE, MADRAS ENGINEERING GROUP, PIN – 900493, C/O 56 APO.

4. PRINCIPAL CONTROLLER OF DEFENCE ACCOUNTS (PENSIONS) OFFICE OF THE PCDA(P) DRAUPATI GARH, ALLAHABAD – 211014.

BY ADV. SMT.E.V.MOLY (CENTRAL GOVERNMENT COUNSEL)

ORDER

Shri Kant Tripathi, Member (J):

1. Heard Mr. T.R.Jagadeesh for the applicant and Mrs.E.V.Moly for the respondents and perused the record.

2. By the instant O.A. filed under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant, E.Husain, Ex.No.1375261 K, has claimed the benefit of disability pension at the rate of 20% with effect from the date of his discharge. He has further claimed for rounding off of the 20% of disability pension to the extent of 50% as per the Government of India, Ministry of Defence letter No.1(2)/97/D (Pen-C) dated 31st January 2001.

3. The relevant facts are that, the applicant, E.Husain, Ex.Sapper No.1375261 K, was enrolled in the Indian Army (Madras Engineering Group) on 26.3.1982. During the service he suffered primary hypertension, consequently, he was placed in low medical category, CEE (Temporary) for six months with effect from 27.7.1988 by a duly constituted Medical Board held at Military Hospital, Secunderabad. A copy of the Medical Board proceedings is on record as Annexure R1. It is also significant to mention that on recategorisation, the applicant was placed in low medical category, CEE (Permanent) with effect from 21.1.1999 by another Medical Board, vide its report, Annexure R2. However, the specialist doctors

constituting the Release Medical Board opined that the applicant's disability was constitutional. So, it was neither attributable to nor aggravated by the military service. The applicant was discharged from the service on 31st March, 1999 under Army Rule 13(3)III (iv) at his own request on compassionate grounds before fulfilling the conditions of his enrolment. In view of the fact that the applicant had rendered 17 years and 5 months qualifying service, he was sanctioned service element of pension with effect from 1.4.1999 vide PPO No.S/014243/99 (Army) and is admittedly in receipt thereof along with the benefit of revision granted by the Government from time to time. A copy of the PPO is on record as Annexure R4. The applicant requested for disability element of pension with effect from the date of discharge, which was rejected by the P.C.D.A.(P), Allahabad vide letter dated 24.11.1999 (Annexure A4) on the ground that the applicant was not entitled to disability pension as he had been discharged on his own request on compassionate grounds before fulfilling the conditions of his enrolment. Learned counsel for the applicant submitted that, no doubt, P.C.D.A.(P) Allahabad rejected the applicant's claim for disability pension

by the aforesaid letter dated 24.11.1999, but he was not provided any opportunity to prefer an appeal. He next submitted that the applicant's claim for disability pension was not considered in the light of the judgment of the Delhi High Court in ***Mahavir Singh Narwal vs. Union of India*** [2004 (74) DRJ 661], and the Apex Court judgment in ***K.J.S.Buttar vs. Union of India***, (JT 2011 (3) SC 626). The learned counsel for the applicant next submitted that the rejection of the prayer for disability pension only on the ground that the applicant's discharge was on his own request, was not proper. He next submitted that the claim on merit was not examined by the P.C.D.A.(P), Allahabad. Learned counsel for the applicant further submitted that according to the Entitlement Rules for Casualty Pensionary Awards, 1982 and the various decisions of the Apex Court, the applicant was entitled to the disability pension because he was physically fit at the time of enrolment and no note of adverse physical factor was made at the time of entry into the service. The applicant's discharge was due to the aforesaid disability, therefore, according to the settled principles, the proper inference was that the applicant suffered the disability due to the service conditions. Learned

counsel for the applicant next submitted that the Medical Board was duty bound to record reasons before arriving at the conclusion that the disability was constitutional, but no reason was recorded.

4. Counsel for the respondents, on the other hand, submitted that the Medical Board's opinion was binding and no inference could be drawn contrary to the opinion of the Medical Board, according to which, the disability was constitutional. It was next submitted that the applicant was posted at a peace station at the time of onset of the disease, therefore, the service conditions were not instrumental in causing the disability. More so, it was also submitted on behalf of the respondents that the applicant had himself requested for discharge and in such matters, disability element was not payable.

5. In O.A.No.3 of 2012, We had occasion to consider the question whether or not the disability pension is payable in a case where the individual seeks discharge on compassionate grounds and had arrived at the relevant conclusions recorded in Para 4 to 9 of the order rendered in the said O.A. which may

be reproduced as follows:

"4. The learned counsel for the applicant submitted that no doubt the applicant was discharged on his own request but he had a disability which was aggravated due to the military service, therefore, his request for the disability pension was tenable as per the judgment of the Delhi High Court in Mahavir Singh Narwal v. Union of India and Others (2004 (74) DRJ 661). It was also submitted that the judgment of the Delhi High Court remained in tact even before the Apex Court, as the Special Leave Petition filed by the Union of India and others was dismissed.

5. Regulation 173 of the Pension Regulations for the Army, 1961 (hereinafter referred to as 'the Regulations'), which deals with the disability pension of P.B.O.Rs, being relevant in the present case, is reproduced as follows:

> *"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 disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 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."*

6. A perusal of the aforesaid Regulation 173, therefore, reveals that the disability pension is payable to an individual who is discharged from service on account of a disability which is attributable to or aggravated by military service and assessed at 20% or more. The question whether the disability is attributable to or aggravated by military service is to be determined under the rules contained in Appendix II. The said Appendix II contains the Entitlement Rules for Casualty Pensionary Awards, 1982 as

amended from time to time. Prior thereto, there had been other Entitlement Rules for Casualty Pensionary Awards. Rule 4 of the Entitlement Rules for Casualty Pensionary Awards, 1982, being relevant on the point, is re-produced as follows:

> *"4. Invaliding from service is a necessary condition for grant of disability pension. An individual who, at the time of his release under the Release Regulations, is in a lower medical category than that in which he was recruited will be treated as invalidated from service. ICO/OR and equivalents in other services who are placed permanently in a medical category other than 'A' and are discharged because of alternative employment suitable to their low medical category can be provided, as well as those who having been retained in alternative employment out are discharged before its completion of their engagement will be deemed to have been invalidated out of service."*

The aforesaid rule 4 inter alia provides that an individual who, at the time of his release under the Release Regulations, is in a lower medical category than that in which he was recruited, will be treated as invalidated from service. It may not be out of context to mention that a similar provision had been incorporated even in the Entitlement Rules for Casualty Pensionary Awards, 1948 as rule 1. Therefore it is crystal clear that rule 1 of the Entitlement Rules for Casualty Pensionary Awards, 1948 was in pari materia with rule 4 of the Entitlement Rules for Casualty Pensionary Awards, 1982. The case of Mahavir Singh Narwal (supra) had arisen under the aforesaid 1948 Entitlement Rules. The Division Bench of the Delhi High Court examined the extent and scope of Regulation 173 of the Regulations as also rules 1 and 2 of the Entitlement Rules for Casualty Pensionary Awards, 1948 and held as follows:

> *"6. On careful perusal of the aforesaid rule it is*

manifestly clear that invalidated from service is necessary condition for grant of disability pension. What has to be seen for entitlement for disability pension is whether an individual at the time of his release was in a low medical category than that in which he was recruited if it was so then such person will be treated as invalidated from service. It is the admitted case of the parties that at the time of recruitment the petitioner did not have any disability. It is also admitted case of the parties that the petitioner got disability on account of stress and strain of military service and his category was initially lower down temporary (sic) to CEE on 21st September, 1978 for a period of 6 months and after the Release Medical Board examined the petitioner on 11th April 1979 it found the disability to be 30% aggravated by stress of military service and he was down graded to permanent low medical category. Once the petitioner was in low medical category according to Rules 1 and 2 of Appendix II of Pension Regulations 173 he shall be treated as invalidated from service. It seems that on careful consideration of the Pension Regulations 173, read with Rules 1 and 2 of Appendix II, the respondents themselves have recommended for grant of disability pension to the petitioner ....."

(emphasis supplied)

7. The Delhi High Court further held that merely because a person has been discharged from service on compassionate ground, although his disability has been acquired on account of his stress and strain of military service, will not be a ground to reject the claim of disability pension, if he has been invalidated as per the Appendix II of Entitlement Rules for Casualty Pensionary Awards, 1948.

8. The aforesaid view of the Delhi High Court which was affirmed by the Apex Court still holds good on the point.

9. In our view, invalidment from service is one of the main conditions for grant of disability pension. According to the rule 4 of the Entitlement Rules for Casualty Pensionary Awards, 1982 if an individual, at the time of his release, was in a low medical category

than the medical category he had been placed at the time of his recruitment, it is to be treated that the individual was invalided out of service. In such matters the disability pension cannot be denied on the ground that the individual himself requested for his discharge. Invalidment from the service cannot be inferred only when the individual is discharged by the authorities due to the disability. It can also be inferred in a case where discharge is sought for by the person suffering from the disability. What is material in such matters, is to see as to what was the medical category of the person at the time of his entry and also at the time of his discharge. If the medical category which was at the time of the recruitment, is found downgraded at the time of the discharge, it is to be treated that the person was for invalidated from the service and in such matter the question whether the discharge was granted by the authorities themselves at their own or it was granted due to the request made by the concerned person, does not appear to be material at all." .

6. Learned counsel for the respondents tried to rely upon the decision of a Division Bench of the Kerala High Court in **Chief of Air Staff vs. Augustine**, 2010 (2) KLT 514, and contended that the Division Bench of the Kerala High Court had found that the decision rendered by the Division Bench of the Delhi High Court in ***Mahavir Singh Narwal vs. Union of India and Others*** (2004) 74 DRJ 661, did not hold a good law. In ***Augustine's*** case, the Division Bench of the Kerala High Court had considered two matters, one W.A.No.774 of

2009, which related to an individual who had requested for discharge on educational grounds. The other matter was W.A.No.1105 of 2009, which related to an individual who had opted for his discharge on the ground of disability. In both the matters, the Division Bench examined the ambit and scope of Regulation 153 of the Pension Regulations for the Air Force 1961, along with Rule 1 in the Appendix II to the said Regulation. The Bench further examined the ambit and scope of Regulations 173 and 173-A of the Pension Regulations for the Army 1961 along with Rule 1 in the Appendix II to the said Regulations, and found that Rule 1 of Appendix II to both the Regulations contain similar provisions. The Bench accordingly held that Rule 1 of the aforesaid Appendix II could not be relied on to hold that an individual who was not invalided from service on account of a disability, based on the recommendations of an Invaliding Medical Board, but was discharged on compassionate grounds at his own request has to be treated as invalided from service. The Bench further held that Rule 1 of Appendix II could not be pressed into service to hold that as the individual was in a lower medical category at the time of discharge than that in which he was placed at the

time of entry into service, he should be deemed to have been invalided from service. In this view of the matter, the Bench concluded the matter with the observation that Rule 1 of Appendix II could not enlarge the scope of Regulation 153 of the Pension Regulations for the Air Force, 1961 and Regulation 173 of the Pension Regulations for the Army, 1961. The said rule could be applied only to determine whether the disability which led to the discharge of the individual was attributable to or aggravated by service. In para 17 of the judgment, the Division Bench further observed that the concept of invaliding applies only to cases where the tenure of service is cut short on account of disability and it does not apply to cases where the employee choses to retire from service after completing his tenure of service or on compassionate grounds.

7. We have, therefore, divergent views. One view is of the Division Bench of the Delhi High Court in ***Mahavir Singh Narwal's*** case (supra) and the other view is of the Division Bench of the Kerala High Court in ***Augustine's case*** (supra). Therefore, we have to see as to which of these two decisions holds the good law. In this connection, it may be stated that

the Apex Court in the matter of ***K.J.S.Buttar vs. Union of India***, JT 2011 (3) SC 526, had occasion to examine the expression "invalidment from service". In that case, the appellant therein was invalided out and released in low medical category with permanent disability. The Apex Court took into account the Defence Service Regulations/Pension Regulations for the Army, 1961 and held that where an officer is found suffering from a disability attributable to or aggravated by military service, he shall be deemed to have been invalided out of service. No doubt, in ***K.J.S.Buttar*** (supra), Regulation 53 of the Pension Regulations for the Army 1961, which pertain to officers was taken into account. But, this does not affect the legal position with regard to PBOR/ORs, because in the matter of PBOR and ORs, a similar provision has been incorporated in Regulation 179 of the Pension Regulations for the Army, therefore, in our view, the verdict of the Apex Court in ***K.J.S.Buttar*** (supra), with regard to the expression "invalidment from service" is squarely applicable.

8. More so, the Pension Regulations for the Army along with its Appendix is a part of the same Scheme. Neither the

Pension Regulations nor the Appendix can be read in isolation, both have to be read together to give meaning to various provisions. Appendix II to Pension Regulations contain the Entitlement Rules. Rule 1 of the Entitlement Rules for Casualty Pensionary Awards, 1948 was in *pari materia* with Rule 4 of the Entitlement Rules for Casualty Pensionary Awards, 1982. Therefore, Rule 1 (new Rule 4) of Entitlement Rules, has to be given a meaning and purpose while implementing Regulation 173 and other related regulations. Any interpretation giving the provisions of Rule 1 (new Rule 4) of Entitlement Rules, as redundant or ineffective, cannot be accepted. It is well settled that while making interpretation of any provision, no rule can be made redundant or ineffective. If there is any contradictory provision, a harmonious construction/interpretation has to be applied to give effect to both the provisions. In our view, when a question arises whether a person has been invalided from service or not, it has to be decided keeping in view the provisions of the Pension Regulations along with the Entitlement Rules. For deciding the said question, neither the Regulations nor the Entitlement Rules can be read in isolation de hors the other.

9. The view of the Division Bench of the Delhi High Court in ***Mahavir Singh Narwal's*** case (supra), which finds support from the view of the Apex Court in ***K.J.S.Buttar*** (supra) had read Regulation 173 alongwith Rule 1 (new Rule 4) of the Entitlement Rules, for laying down the principle that if a person is released in low medical category than the one in which he was recruited, he will be treated as invalided from service. Therefore, in our view, the view of the Delhi High Court is liable to be followed in the present matter.

10. In view of the aforesaid, we are of the view that merely because the person seeks discharge on compassionate ground, the claim for disability pension cannot be denied, if the disability sustained by him is attributable to or aggravated by the military service and is 20% or more.

11. The next question that falls for our consideration is whether the applicant's disability was attributable to or aggravated by military service or not. The Medical Board arrived at the opinion that the disability was constitutional but has not recorded any reasons to support the opinion. In the

matter of **Kishan Singh vs. Union of India**, (O.A.No.389 of 2010), the Chandigarh Bench had occasion to examine a similar case of Primary Hypertension and arrived at the conclusion that hypertension normally arises due to the stress and strain of military service. The findings of the Chandigarh Bench may be reproduced as follows:

> "There is no doubt that the Medical Board has held all the three diseases as neither attributable to nor aggravated by military service, and they were found to be constitutional in nature. However, no reason has been given in support of their findings. In absence of any reason it is difficult to rely on the findings. Apart from it, according to Annexure III to Appendix-II of Entitlement Rules, it is quite clear that the disease – „HYPERTENSION" normally arises as a result of stress and strain of the military service. In this case, the petitioner joined the DSC in the year 1982 in a medically fit condition and was discharged from the service w.e.f. 30-11-2006. The admitted position is that at the time of enrollment either in the Army or in DSC, the petitioner was found medically fit and no note regarding any disease was made by the Medical Authorities in his medical record. The petitioner was found to suffer from the disease "Hypertension" after rendering 24 years of service. Therefore, in accordance with Rule 14 (b) of Entitlement Rules, it is deemed to be attributable to military service. The percentage of the disability has been given as 30% for life. Therefore, apparently, the case of the petitioner falls within paragraphs 173/179 of Pension Regulations for the Army, 1961 (Part -1). Accordingly, we are of the view that the petitioner is entitled to get disability element only for the disease – "HYPERTENSION", whose percentage is 30% for life.

> In view of the decision of this Bench dated 4-08-2010 in OA No. 329 of 2010 (Lt. Gen Vijay Oberoi vs UOI & Ors.) as well as the decision of Hon"ble Supreme Court dated 31-03-2011 in Civil Appeal No. 5591 of 2006 (K.J.S. Buttar vs UOI & another), the petitioner is also entitled to the benefit of "rounding off" of his disability from 30% to 50% from the date of his release from the Defence Security Corps."

12. In order to consider the question of relevancy of the opinion of the Medical Board and other related provisions, we have to consider the various judgements of the Apex Court on the point. The following decisions rendered by the Apex Court seem to be relevant on the point:

1. **Union of India & Ors. vs. Keshar Singh**, (2007) 12 SCC 675;
2. **Union of India & Ors. vs. Surinder Singh Rathore**, (2008) 5 SCC 747;
3. **Secretary, Ministry of Defence and Ors. vs. A.V.Damodaran (Dead) through LRs. and others**, (2009) 9 SCC 140;
4. **Union of India & Ors. vs. Jujhar Singh**, (2011) 7 SCC 735;
5. **Union of India and Anr. vs. Talwinder Singh,** (2012) 5 SCC 480;

13. In **Union of India vs. Keshar Singh,** (supra), the individual was discharged from the Army on 18.10.1984 as he was found suffering from "Schizophrenia". In that case, the Medical Board opined that the disability did not exist before entering the service, but it was not connected with the service. In para 5, the Apex Court propounded

mainly two principles, firstly that,

> "*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*"

and, secondly, 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."*.

The Apex Court then considered the Regulation 173 of the Pension Regulations for the Army, 1961 and Para 423 of the Regulation for Medical Services for Armed Forces and its previous decisions rendered in **Union of India vs. Baljit Singh,** (1996) 11 SCC 315, **Union of India vs. Dhir Singh China,** (2003) 2 SCC 382, and **Controller of Defence Accounts (Pension) vs. S.Balachandran Nair,** (2005) 13 SCC 128 and opined in Para 6 that the respondent was not entitled to disability pension as the Medical Board's opinion was clearly to the effect that illness suffered by him was not attributable to the military service. It is also significant to specify that the Apex Court had relied on certain observations of its previous decisions rendered in **Baljit Singh** (supra)

and Dhir Singh China (supra). In **Baljit Singh's case** (supra), the Apex Court observed in para 6 as follows:

> "6.....It is seen that various criteria have been prescribed in the guidelines under the Rules as to when the disease or injury is attributable to the military service. It is seen that under Rule 173 disability pension would be computed only when disability has occurred due to wound, injury or disease which is attributable to military service or existed before or arose during military service and has been and remains aggravated during the military service. If these conditions are satisfied, necessarily the incumbent is entitled to the disability pension. This is made ample clear from clause (a) to (d) of para 7 which contemplates that in respect of a disease the Rules enumerated thereunder required to be observed. Clause (c) provides 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 were due to the circumstances of duty in military service. Unless these conditions satisfied, it cannot be said that the sustenance of injury per se is on account of military service. In view of the report of the Medical Board of Doctors, it is not due to military service. The conclusion may not have been satisfactorily reached that the injury though sustained while in service, it was not on account of military service. In each case, when a disability pension is sought for and made a claim, it must be affirmatively established, as a fact, as to whether the injury sustained was due to military service or was aggravated which contributed to invalidation for the military service".

In **Dhir Singh China**'s (supra), the Apex Court observed in para 7 as follows:

> "7. That leaves for consideration Regulation 53. The said Regulation provides that on an officer being compulsorily retired on account of age or on completion of tenure, if suffering on retirement from a disability attributable to or aggravated by military service and recorded by service medical authority, he may be granted, in addition to retiring pension, a disability element as if he had been retired on account of disability.
>
> It is not in dispute that the respondent was compulsorily retired on attaining the age of superannuation. The question, therefore, which arises for consideration is whether he was suffering, on retirement, from a disability attributable to or aggravated by military service and recorded by service medical authority. We have already referred to the opinion of the Medical Board which found that the two disabilities from which the respondent was suffering were not attributable to or aggravated by military service. Clearly therefore, the opinion of the Medical Board ruled out the applicability of Regulation 53 to the case of the respondent. The diseases from which he was suffering were not found to be attributable to or aggravated by military service, and were in the nature of constitutional diseases. Such being the opinion of the Medical Board, in our view the respondent can derive no benefit from Regulation 53. The opinion of the Medical Board has not been assailed in this proceeding and, therefore, must be accepted."

14. In the matter of **Union of India vs. Surinder Singh Rathore** (supra), the respondent therein was discharged from the military service due to “Maculopathy (RT) Eye” which was assessed as 30% for two years, but it was neither attributable to nor aggravated by the military service. In that case, the Apex Court relied upon its previous decision rendered in **Baljit Singh** (supra), **Dhir Singh China** (supra) and also in

Keshar Singh (supra) and believed the medical opinion that the disability was not attributable to military service and accordingly held that respondents was not entitled to disability pension.

15. In **Secretary, Ministry of Defence and Others vs. A.V.Damodaran(Dead) through LRs. and Others,** (supra), the Apex Court had considered the question of grant of disability pension in respect of late A.V.Damodaran, an ex-Air Force personnel, who was boarded out due to “Schizophrenia” within seven years of service. More so, the question of applicability of the Entitlement Rules for Casualty Pensionary Awards, 1982 contained in Appendix II to the Pension Regulations for the Army 1961 was also involved in that case. The Apex Court propounded mainly two principles, firstly, the opinion of the Medical Board is entitled to be given due weight, value and credence and secondly, the conditions of service play a pivotal role in deciding the question of disability being attributable to or aggravated by the service. It is significant to mention that both the Hon'ble Judges of the Apex Court in Damodaran's case (supra) delivered their judgments separately, but concurred on all points. The relevant observations of each of the Hon'ble Judges are being reproduced as follows:. Hon'ble Dalveer Bhandari, J., speaking for the Bench, observed as follows:

> “17. I have heard the learned counsel for the parties. 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. In the instant case, the Medical Board has clearly opined that the disability of late Shri A.V.Damodaran was neither attributable nor aggravated by the military service. In my considered view, both the learned Single Judge and the Division Bench of the High Court have not considered this case in proper prospective (sic. perspective) and in the light of the judgments of this Court. The legal representatives of A.V.Damodaran are not entitled to the disability pension."

Hon'ble Dr. M.K.Sharma, J., in His Lordship's concurring judgment, has observed as follows:

"30. When an individual is found suffering from any disease or has sustained injury, he is examined by the medical experts who would not only examine him but also ascertain the nature of disease/injury and also record a decision as to whether the said personnel is to be placed in a medical category which is lower than `AYE' (fit category) and whether temporarily or permanently. They also give a medical assessment and advice as to whether the individual is to be brought before the Release/Invalidating Medical Board.

31. The said Release/Invalidating Medical Board generally consists of three doctors and they, keeping in view the clinical profile, the date and place of onset of invaliding disease/disability and service conditions, draw a conclusion as to whether the disease/injury has a causal connection with military service or not. On the basis of the same they recommend (a) attributability, or (b) aggravation, or (c) whether connection with service.

32. The second aspect which is also examined is the extent to which the functional capacity of the individual is impaired. The same is adjudged and an assessment is made of

the percentage of the disability suffered by the said personnel which is recorded so that the case of the personnel could be considered for grant of disability element of pension. Another aspect which is taken notice of at this stage is the duration for which the disability is likely to continue. The same is assessed/recommended in view of the disease being capable of being improved.

33. All the aforesaid aspects are recorded and recommended in the form of AFMSF-16. The Invalidating Medical Board forms its opinion/recommendation on the basis of the medical report, injury report, court of enquiry proceedings, if any, charter of duties relating to peace or field area and of course, the physical examination of the individual.

34. The aforesaid provisions came to be interpreted by the various decisions rendered by this Court in which it has been consistently held that the opinion given by the doctors or the medical board shall be given weightage and primacy in the matter for ascertainment as to whether or not the injuries/illness sustained was due to or was aggravated by the military service which contributed to invalidation from the military service"

The Apex Court further found that late A.V.Damodaran was posted at Allahabad which was neither a sensitive, border area nor a difficult terrain or high altitude region. More so, he was not posted at an isolated location and had access to the society there. On the basis of such conditions of service, the Apex Court found that Schizophrenia was neither attributable to nor aggravated by nor connected with the military service and accordingly held in para 40 as follows:

"In the present appeal, the record reveals that in the

> *opinion of the Medical Board, no physical contributory factor was elicited for the psychotic breakdown of the respondent. Thus, the condition of military service cannot be said to have triggered the onset of the Schizophrenia in the respondent. However, the possibility of the development of Schizophrenia in the respondent as a result of family stress and pressure, (which is regarded as a factor triggering the onset of this mental condition in some individuals), cannot be ruled out totally.*

On the basis of the aforesaid observations and facts and circumstances of the case, the Apex Court held that the respondent therein was not entitled to claim for disability pension as the Medical Board had ruled out the possibility of the disease Schizophrenia being attributable to or aggravated by the military service and accordingly relied upon the medical opinion.

16. In **Union of India vs. Jujhar Singh,**. (supra), the Apex Court reiterated the aforesaid principles and propounded mainly two principles, in para 22, as follows:

firstly, "... ... . *a personnel can be granted disability pension only if he is found suffering from disability which is attributable to or aggravated by military service and recorded by Service Medical Authorities"*

secondly, *"the Medical Board is a specialised authority composed of expert medical doctors and it is*

the final authority to give information regarding attributability and aggravation of the disability to the military service and the condition of service resulting in disablement of the individual."

17. In para 23 of the judgment, the Apex Court considered the relevancy of the finding on the nexus between the act resulting in the injury/disease and the normal expected standard of duties and way of life expected from a member of the Armed Forces and held as follows:

"...The member of the armed forces who is claiming disability pension must be able to show a normal nexus between the act, omission or commission resulting in an injury to the person and the normal expected standard of duties and way of life expected from a member of such force. ....".

18. No doubt, **Jujhar Singh'**s case was with regard to an injury while on leave,but the Apex Court propounded the aforesaid principles for deciding the question as to how a claim for the disability pension is to be considered.

19. The decision in **Union of India vs. Talwinder Singh**, (supra) being the latest, has reiterated the above principles and propounded the relevant principles in para 9, 10, 11, 12 and 14 as follows*:*

"9. ....It is also a settled legal

proposition that opinion of the Medical Board should be given primacy in deciding cases of disability pension and the court should not grant such pension brushing aside the opinion of the Medical Board.

10. ... . ordinarily, the court should not interfere with the order based on opinion of experts on the subject. It would be safe for the courts to leave the decision to experts who are more familiar with the problems they face than the courts generally can be.

11. .... In view of regulation 179, a discharged person can be granted disability pension only if the disability is attributable to or aggravated by military service and such a finding has been recorded by Service Medical Authorities. In case the Medical Authorities records the specific finding to the effect that disability was neither attributable to nor aggravated by the military service, the court should not ignore such a finding for the reason that Medical Board is specialised authority composed of expert medical doctors and it is a final authority to give opinion regarding attributability and aggravation of the disability due to the military service and the conditions of service resulting in the disablement of the individual.

12. A person claiming disability pension must be able to show a reasonable nexus between the act, omission or commission resulting in an injury to the person and the normal expected standard of duties and way of life expected from such person. .....

14....*the opinion of the Medical Board which is an expert body must be given due weight,*

value and credence. A person claiming disability pension must establish that the injury suffered by him bears a causal connection with the military service. ....."

20 A Full Bench of the Kerala High Court in the case of **Baby vs. Union of India,** 2003 (3) KLT 362, has on the basis of the Entitlement Rules for Casualty Pensionary Awards, 1982 contained in Appendix II of the Pension Regulations for the Army, 1961 (hereinafter referred to as the Entitlement Rules) held that when an individual is physically fit at the time of enrolment and no note regarding adverse physical factor is made at the time of entry into service and if the individual is discharged before the completion of full tenure on account of his physical disability, the initial onus of proving that the disability is not attributable to the Army Service shall be on the authority. However, in the cases where it is found on perusal of the available evidence that the individual had withheld relevant information or that the service conditions were not such as could have resulted in physical disability, the onus shall shift to the claimant.

21. Apart from giving due consideration to the relevant provisions of the Entitlement Rules, the Medical Board and other Medical Authorities are required to observe the relevant provisions contained in

the Guide to Medical Officers (Military Pension), 1980 as amended from time to time as also Regulation 423 of the Regulation for Medical Services for Armed Forces, which contain guidelines to be followed in considering and fixing whether a disability is attributable to Military Service. Regulation 423 (c) which is relevant, in the present matter, reads as follows:

> **"423.**
> *(a) xxx xxx xxx*
> *(b) xxx xxx xxx*
> (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 risen during service.*

22. The legal position as emerged out from the aforesaid

decisions is shortlisted as follows:

(i) The disability pension is payable only when the disability has occurred due to wound, injury or disease which is attributable to military service or existed before or arose during military service and has been and remains aggravated during the military service and recorded as such by the service medical authorities.

(ii) The opinion of the Medical Board should be given primacy in deciding cases of disability pension. In case the Medical Authorities record the specific finding that the disability was neither attributable to nor aggravated by the military service, the court should not ignore such a finding for the reason that Medical Board is specialised authority composed of expert medical doctors and it is a final authority to give opinion regarding attributability and aggravation of the disability due to the military service and the conditions of service resulting in the disablement of the individual. As such, the opinion of the Medical Board must be given due weight, value and credence.

(iii) When an individual is physically fit at the time of enrolment and no note regarding adverse physical factor is made at the time of entry into service and if the individual is discharged before the completion of full tenure on account of his physical disability, the initial onus of proving that the disability is not attributable to the Military Service shall be on the authority. However, in the cases where it is found on perusal of the available evidence that the individual had withheld relevant information or that the service conditions were not such as could have resulted in physical disability, the onus shall shift to the claimant.

(iv) The disease which has led to the individuals discharge will ordinarily be deemed to have arisen in the course of service if no note of it was made at the time of individual's acceptance for military service. However, the above deeming fiction is not available to the individual if the medical opinion, for the reasons to be recorded, hold the disease could not have been detected on medical examination prior to the claimant's acceptance to the service.

(v) A person claiming disability pension must establish that the disease or injury suffered by him bears a causal connection with the military service.

(vi) The direct and circumstantial evidence of the case is to be taken into

account and the benefit of doubt if any is to be given to the individual.

(vii) A liberal approach is to be adopted in the matter of services rendered in the field areas.

23. In view of the aforesaid decisions, it is crystal clear that when an individual is physically fit at the time of enrolment and no note of adverse physical factor is made at the time of entry and the individual is discharged before completion of full tenure on account of a disability, the burden to prove that the disability is neither attributable to nor aggravated by military service is on the authority. This principle is equally applicable in a case where the discharge is claimed by the individual purely on account of the disability, but it cannot be applied in a case where despite the disability the discharge is claimed on some personal grounds other than the disability. It is well settled that the disease which has led to the individual's discharge is ordinarily deemed to have arisen in the course of service, if no note of it was made at the time of individual's acceptance to military service. However, this requirement has no relevance where the Medical Board records reasons and on the basis of those reasons holds that the disease could not have been detected on medical examination

prior to the claimant's acceptance to service.

24. In the present matter, the applicant was medically fit at the time of his entry into the service and there does not appear to be any note of any medical authority to the effect that the disease suffered by the applicant could not be detected on medical examination at the time of enrolment. In this view of the matter, the Medical Board's opinion has to be considered, keeping in view whether the Medical Board recorded any reason or not, as per the principles laid down in the aforesaid decisions.

25. Learned counsel for the respondents relied upon Rule 18 of the Entitlement Rules, 1982 and submitted that predisposition of an inherent constitutional tendency in itself is not a disease and if there is a precipitating or causative factor in service which produces the disease, then it is attributable to service notwithstanding the inherent disposition.

26. In our view, the P.C.D.A.(P), Allahabad did not consider the applicant's case in the light of the aforesaid

settled principles and rejected the claim only on the ground that the applicant was not entitled to disability pension as he had himself opted for his discharge on compassionate grounds. The rejection of the applicant's claim only on that ground was not proper in view of the decision of the Delhi High Court in ***Mahavir Singh Narwal's*** case (supra) and the decision of the Apex Court in ***K.J.S.Buttar's case*** (supra) and various other decisions of the different Benches of the Armed Forces Tribunal. In this view of the matter, the proper course for the P.C.D.A.(P) and other respondents was to examine the applicant's case as per the various provisions of the Entitlement Rules coupled with the various decisions of the Apex Court mentioned hereinbefore, but they have not done so. Therefore, the matter has to go back for reconsideration.

27. Counsel for the applicant submitted that the applicant would file an appeal against the order of the P.C.D.A.(P), Allahabad, which he could not do so earlier as no such opportunity was provided to him and even no mention of availability of this remedy was made in Annexure A4, so, the applicant being a layman, could not file any appeal. In this

view of the matter, the applicant needs to be provided an opportunity to file an appeal, submits the counsel. In our view, he may do so, within one month from today. If any such appeal is filed within one month, the respondents may give due consideration to it in accordance with law and also keeping in view the observations made hereinbefore. The first appellate authority may seek opinion of the Appellate Medical Board in the light of the aforesaid observations before forming its final conclusion. The first appellate authority is directed to dispose of the appeal within three months from the date of receipt of the appeal.

28. With the aforesaid observations, the Original Application is disposed of.

29. There will be no order as to costs.

30. Inform parties.

Sd/-
LT. GEN. THOMAS MATHEW,
MEMBER (A)

Sd/-
JUSTICE SHRI KANT TRIPATHI,
MEMBER (J)

DK.

(True copy)

Prl. Private Secretary