FORM NO. 21

(SEE RULE 102(1))

ARMED FORCES TRIBUNAL, KOLKATA BENCH

APPLICATION NO: O. A NO. 94 OF 2011

ON THIS 24th DAY OF APRIL, 2014

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

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

Shri Ranjit Kumar Dutta,
Of Village and Post: Gangadhari,
Via Amtala,
District: Murshidabad,
West Bengal, Pin – 742 121.

……Applicant

-VS-

1. Union of India through
The Secretary,
Ministry of Defence (Navy),
Sena Bhawan,
New Delhi- 110 011.

2. The Chief of the Naval Staff,
(For PDPA),
Integrated Head Quarters,
Ministry of Defence (Navy),
New Delhi 110 011.

3. The Principal Director,
Directorate of Pay & Allowances,
Integrated Head Quarters,
Ministry of Defence (Navy),
D-II Wing, Sena Bhawan,
New Delhi – 110 011.

4. Defence Minister's Appellate Committee on Pension,
The Secretary,
Ministry of Defence, Government of India,
Sena Bhawan,
New Delhi – 110 011.

5. The Commander/Sr. Staff Officer (Pension)
For Commodore Bureau of Sailors Cheetah Camp,
Mankhurd,
Mumbai – 400 088.

6. The Commanding Officer
INS Netaji Subhas,
Hastings, C/O Navy Office,
Kolkata – 700 022.

7. The Under Secretary to the Government of India,
Ministry of Defence,
Sena Bhawan,
New Delhi – 110 105.

…. …. Respondents.

For the Applicant: Mr. Abhishek Banerjee, Advocate/ Mr. Asish Kumar Roy, Advocate.

For the Respondents: Mr. Dipak Kumar Mukherjee, Advocate.

O R D E R

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

This applicant is a retired sailor from the Indian Navy holding the rank of Petty Officer (PO) at the time of retirement. He was aggrieved by the decision of the respondent authorities for not granting him disability pension, despite the fact that he was discharged from Naval Service in permanent low medical category. He has thus filed this application challenging such decision of the respondents and for a direction upon them to grant him disability pension from the date of his discharge.

2. The applicant was enrolled in the Indian Navy in the trade of a Chef (Sailor-Cook) on 04.05.1985. He had been discharging his duties satisfactorily keeping good health and there was no complaint regarding his physical fitness. However, the applicant submits that in October 2005, while he was returning from his home town in order to rejoin duty after a short leave, he

suffered a heart attack. Thereafter he was immediately brought back to his unit, INS Netaji Subhash at Kolkata. He was then admitted to Command Hospital, Kolkata on 12.10.2005 and treated there till 17.10.2005. It was at the Command Hospital that he was diagnosed as a case of Coronary Artery Disease and was implanted with a stent. Thus, his diagnosis came to rest as 'Coronary Artery Disease STE IWMISTK + STENT LCX ICD I 24.9'. On account of the ibid disability he was placed in permanent low medical category. He was discharged from service on 31.05.2008 in Low Medical Category S2A2 (Permanent) through a Release Medical Board (RMB) which considered his disability 'Coronary Artery Disease STE IWMISTK + STENT LCX ICD I 24.9' as neither attributable to nor aggravated by naval services. However, the extent of his disability was assessed at 50% for life. As a result, although the applicant was sanctioned service pension vide PPO No.09/97B/S/00910/2008 dt. 30.05.2008, his claim for disability pension was not entertained and rejected by the competent authority. The said decision was conveyed to him on 31.05.2008 providing him opportunities to appeal against the ibid decision.

3. The applicant preferred an appeal on 05.07.2008 (first appeal) against the decision for non-grant of disability pension. The first appeal was rejected by the Naval HQ on 26.02.2009 (Annexure R-3 to the A/O of the respondents). Being dissatisfied, the applicant preferred a second appeal before the Defence Minister's Appellate Committee on Pension on 18.03.2009. However, the said second appeal was also rejected on 14.12.2009 (Annexure R-4 to the A/O of the respondents). Finding no other alternative, the applicant has approached this Tribunal praying for a direction upon the respondents to grant him disability pension from the date of his discharge (31.05.2008) after setting aside the orders rejecting his claim made in that regard.

4. The respondents have contested the claim of the applicant by filing a written reply in which they have not disputed that the applicant was enrolled on 4.5.1985 and was discharged on

31.5.2008 in low medical category for the ibid disease. The release medical board considered his disease as neither attributable to nor aggravated by naval service and therefore, his claim for disability pension could not be entertained. It is further submitted by the respondents, in fact, the applicant was discharged on completion of his term of engagement after 23 yrs and 28 days of qualifying service in medical category S2A2(pmt) and it is not a case of premature discharge. His appeals made to the higher authorities were also duly considered but were finally rejected. It is, therefore, contended by the respondents that there is no merit in this application which may be rejected.

5. We have heard the ld. advocates for both sides and have perused the documents placed on record. The respondents have also produced before us the original medical board proceedings which we have carefully gone through.

6. The learned counsel for the applicant, during his oral submissions, has very strongly made a point that the Coronary Artery Disease may occur at any time. The contention raised in the appellate order dt. 14.12.09 that it occurred to the applicant while on leave and, therefore, not connected with service cannot be accepted. He further points out that it is true that the onset of the disease happened while he was on leave but it happened on 12.10.05 in course of journey to return to place of his work after a short leave. Therefore, leave or otherwise has no connection with the ibid disability. It must have developed during the course of his service but the manifestation in the form of a heart attack happened on a day when he was on leave, which should not be the factor to consider the disability as attributable or otherwise. The fact that he was on leave does not have anything to do with attributability or aggravation. Therefore, it was in fact attributable to/aggravated by the naval services. In this regard, the learned counsel brings to our notice the endorsement made by the Medical Board in part V of the opinion of the Release

Medical Board in form AFMSF-16 wherein it says that 'sustained an MI on 13 Oct 2005 while on leave'. Such an endorsement is not supported by the Specialists' opinion which is attached to the Medical Board proceedings wherein the cardiologist had made no mention of the fact that being on leave could have been the cause or reason for sustaining the ibid disability. In fact, the cardiologist has opined that the applicant was recommended to be released in medical category P2 which is considered as S2A2 in Navy. The learned counsel for the applicant in course of his oral submissions clarified that the applicant was a cook and was engaged in cooking from before sunrise till late at night, day in and day out without hardly any respite because there was always shortage of cooks in the unit. He was over-burdened and was always under pressure. The nature of work and environmental condition in the cook-house are well known. He has also submitted that the applicant was always under pressure for time bound nature of work in difficult working conditions. Therefore, his posting in peace station or ashore is not of much importance. According to the ld. counsel, it is the pressure of work and exposure to heat generated from cooking oven throughout may also be contributing factor for development of the ibid disease. The learned counsel for the applicant also drew our attention to Para 47 of the Guide to Medical Officers (Military Pensions) in Chapter VI and VII of the Entitlement Rules, the amended version of 2008. As per the ibid paragraph, physical and mental strain could be attributing factor for any heart related disease including coronary artery disease. The ld. adv. for the applicant prays that benefit of doubt should be given to him and the ibid disability should be considered as attributable and/or aggravated due to naval services. The ld. advocate further submits that the applicant cannot be denied the benefit of disability pension since the said disability is due to stress and strain in Naval service as it relates to his trade (cook) work which was cooking for large number of personnel in a regular time bound manner thus subjecting to stress. Ld. Advocate for the applicant has referred to the recent decision of the Hon'ble Apex Court in

Dharamvir Singh vs. Union of India, AIR 2013 SC 2840 and **Veer Pal Singh vs. Secretary, Ministry of Defence,** AIR 2013 SC 2827 in support of the claim of the applicant.

7. The ld. adv. for the respondents has relied on their affidavit-in-opposition (A/O) and pointed out that the applicant had never complained about any difficulty in the working environment or otherwise that would lead to his stress and strain. Moreover, it is a fact that the applicant had no problem except when he went on leave although it was within a week of his departure from the unit that he suffered heart attack and was later treated with stent placed in his affected arteries. The ld. adv. has submitted that the applicant had completed his engagement term and was not willing to serve any further. He gave a written declaration to that effect. Therefore, he was discharged on completion of his term. At the time of his discharge he was brought before a Release Medical Board as is done for all those proceeding on discharge in low medical category (LMC); he was in LMC for the past three years i.e. from 2005 and was discharged in 2008. Mr. Dipak Kumar Mukherjee, ld. counsel for the respondents further submits that the opinion of the expert and that of a duly constituted valid medical board cannot be challenged by the applicant nor interfered with by this Tribunal as is held by the Hon'ble Supreme Court in a number of decisions. He further submitted that the applicant was given opportunities to file appeals against the Medical Board decisions which he has availed. The said appeals were duly considered and rejected with reasons.

8. We have carefully considered the rival submissions of the learned counsel from both sides. We have also gone through the respective averments of both sides. We have also perused the original records pertaining to Medical Board proceedings.

9. It is admitted by both parties that the applicant was enrolled in the Navy on 4.5.1985 and was discharged on 31.5.2008 in low medical category on account of disease of Coronary Artery

Disease STE IWMISTK + STENT LCX ICD I 24.9'. It is also admitted that the ibid disease was detected in October 2005 while the applicant was on short leave to visit his home station. It is the case of the applicant that on 12th Oct 2005 while he was returning from home to join his work place, he suffered the attack for the first time and was hospitalized in Command Hospital, Kolkata. He was rendered all necessary treatment. Such treatment continued for the next three years and the applicant was also working with occasional hospitalization for treatment. It is admitted by both parties that the applicant has rendered total 23 years and 28 days qualifying service.

10. On our specific direction, the respondents have produced some documents indicating the terms of service of a sailor in the Navy. It appears from their reply dt. 5.3.14 addressed to the Law Officer, copy produced before us that as per Para 9(d) of Navy Order (Str); the maximum period of service permissible for a PO CK(S) {i.e. PO (NMER)} rank is 26 years. However, the applicant, the ex-sailor retired on 31.05.2008, prior to completion of 26 years since the applicant did not opt to do further service. He had thus rendered 23 years and 28 days of service and was sanctioned his service pension. The respondents have also given the break up of the service tenure of the applicant, which is as follows:-

a) Initially engaged for 15 years
b) Three years extension from 4th May 2000 to 31st May 2003
c) Five years extension from 1st June 2003 to 31st May 2008
d) Since the applicant expressed unwillingness for further extension, he was discharged on 31st May 2008 on completion of term of engagement.

11. It is also not in dispute that the applicant has been granted his normal service pension after his discharge, which he is in receipt. The entire controversy is with regard to two issues. Firstly, whether the discharge of the applicant is to be considered as discharge with curtailed

service span or normal discharge on fulfillment of terms of service? In case the service was curtailed on account of his medical disability then applicant's case is to treat the severance as invalidment from service. The respondents have, however, put the onus of non-grant of extension on the applicant, because he was voluntarily unwilling for further extension, a fact that has not been disputed by the applicant. Secondly, whether the applicant is entitled to disability pension despite a contrary medical opinion on the release medical board? We may now examine the issues with reference to the rule position. In this connection, regulations 100 and 101 (applicable for Sailors) of the Pension Regulations for the Navy, 1964 are relevant and are quoted below:-

> **"100. Eligibility – subject to the provisions hereinafter contained, the following persons shall be eligible for disability pension, namely;-**
>
> **i) sailors on continuous service terms**
>
> **ii) boys and apprentices**
>
> **iii) reservist when called up for service or for training.**
>
> **101. Conditions for the grant of disability pension – Unless otherwise specially provided, a disability pension may be granted to a person who is invalidated from service on account of a disability which is attributable to or aggravated by service and is assessed at twenty percent or over.**
>
> **Explanation (1) - The question whether a disability is attributable to or aggravated by service shall be determined in accordance with the rules contained in Appendix V to these regulations.**
>
> **Explanation (2) – Service rendered in aid of the civil power shall be treated as service in the Indian Navy for the purpose of this regulation.** "

12. Now, it appears that in order to be eligible for disability pension, three conditions are required to be satisfied, viz. (i) the sailor is invalidated out of service, (ii) the disability is attributable to or aggravated by service and (iii) the disability is assessed at twenty percent or over. Of these, the condition at (i) that the sailor had to be invalidated out of service to be eligible for disability pension is no more relevant after Vth CPC awards have been implemented by the government with effect from 1.1.96. **As per Para 8 (8.1, 8.2, 8.3) of Pt II of GoI letter**

No 1 (2)/ 97/ I/ D (Pen C) dated 31 Jan 2001 addressed to Chiefs of three Services, applicable to all three services, quoted below, disability pension can also be paid to those who continue to serve their full tenure while remaining in low medical category because of a medical disability; such disability has to be, however, attributable to or aggravated by service and the percentage of disability would have to be 20% or more as assessed by a release medical board at the time of retirement.

" 8. Disability Element on retirement/discharge:-

8.1 Where an Armed Forces Personnel is retained in service despite disability arising/sustained under the circumstances mentioned under Category 'B' & 'C' in para 4.1 above and is subsequently retired/discharged on attaining age of retirement or on completion of tenure, he/she shall be entitled to disability element at the rates prescribed at Para 7.1.II(a) above for 100% disablement.

8.2 For disabilities less than 100% but not less than 20% the above rates shall be proportionately reduced. No disability element shall be payable for disabilities less than 20%. Provisions contained in Para 7.2 above shall not be applicable for computing disability element. Disability actually assessed by the duly approved Release Medical Board/Invaliding Medical Board as accepted by the Pension Sanctioning Authority, shall reckon for computing disability element.

8.3 Retiring/Service pension or Retiring Service Gratuity as admissible as per Ministry of Defence letter No. 1(6)/98/D(Pen/Services) dated 03 Feb 93 shall be payable in addition to disability element from the date of retirement/discharge."

13. Therefore, as regards to the applicant's claim for disability pension is concerned, what stands on the way is the release medical board that has opined the disability as neither attributable to nor aggravated by (NANA) naval service, while the percentage of disablement has been awarded at 50%. Admittedly, when the applicant was enrolled in the Navy he was hail and hearty and he was in acceptable medical category; but at the time of discharge, he was in low medical category in S2A2(perm). Therefore, although he was released in a lower medical category than that in which he was recruited, his service was not curtailed on account of such medical disability. He remained in low medical category till retirement.

14. Further, it is admitted that the tenure of service of a sailor is 15 years extendable to 26 years with certain conditions, as submitted by the respondents vide reply to the query (C) as communicated in Bureau of Sailors letter dt. 5.3.14. The applicant rendered 23 years and 26 days of service and hence there appears to be some curtailment of service on account of non-grant of extension. The respondents have explained in their submission in the ibid communication that the applicant gave his unwillingness to continue for further extension of service as is evident from his unwillingness certificate dated 20 Sep 06 (annexed to the affidavit filed by the respondents on 25.2.14); a fact that has not been denied by the applicant. It does not appear to be a case of premature/voluntary retirement, but a case where the applicant was not willing to extend his service, although his low medical category of S2A2 did not debar him from extension. It is just that the he was not willing for extension of service; 'willingness for extension' is a condition for the screening board to consider him for extension. Therefore the applicant has not been able to make out a case to justify that he was invalidated out of service. The applicant, in the prayer portion of the OA, has restricted his prayer for grant of disability pension.

15. Now, we come to the question of attributability or aggravation aspect of the disability of the applicant. As stated earlier, the release medical board opined that his disability, though 50% for life, was neither attributable to nor aggravated by service. Before we examine the medical board proceedings, we may consider the decision of the Hon'ble Apex Court in the case of **Veer Pal Singh'**s case (supra), as referred to by the ld. adv. for the applicant. It is held by the Hon'ble Supreme Court that the opinion of the medical board "deserves respect but not worship" and in appropriate cases, judicial review of medical opinion is permissible. Therefore, even though the ld. adv. for the respondents has contended that the medical opinion, which is rendered by experts, cannot be interfered with by the court or tribunal, we are of the view, this Tribunal can embark upon a judicial review of the said board proceedings.

16. At this stage, it will also be appropriate to consider the case of **Dharam Veer Singh** (supra), as referred to by the side of the applicant. In this case, the appellant was detected to have been suffering from 'Generalized seizure (Epilepsy)" which developed after 9 years of service, although at the time of his enrolment there was no indication of such illness. He was discharged from service on medical ground and was denied disability pension, because the medical board held that the disability was not attributable to military service and the same was constitutional in nature. However, the contention of the applicant was that since the disease could not be detected at the time of his enrolment and no note of such illness was made to that effect, it has to be assumed that the ibid illness had developed due to stress and strain of military service. In that context, the Hon'ble Apex Court considered the matter; after carefully explaining all the rules and regulations on the subject and formulated the following two issues:-

i) Whether a member of Armed Forces can be presumed to have been in sound physical and mental condition upon entering service in absence of disabilities or disease noted or recorded at the time of entrance?

ii) Whether the appellant is entitled for disability pension?

17. The Hon'ble Supreme Court has graphically discussed the scope of rules 5.6, 7(a), (b) and (c), 8, 9 and 14(a), (b), (c) and (d) of Entitlement Rules, 1982 as also regulation 173 of Pension Regulations for the Army. It was also noticed by the Apex Court that the Entitlement Rules, 1982 were allegedly amended by Ministry of Defence letter No. 1(1)/81/D (Pen-C) dated 20th June, 1996 and after comparison of the Rules obtaining in 1982 Entitlement Rules as also amended Entitlement Rules of 1996, it was held that both sets of rules were basically the same without any significant difference. The Apex Court also discussed the effect of earlier decisions of the Hon'ble Supreme Court in **UOI & Ors –vs.- Keshar Singh**, (2007) 12 SCC 675, as also the case of **Om Prakash Singh –vs- UOI & Ors**, (2010) 12 SCC 667. The Apex Court also

considered rule 423 of General Rules of Guide to Medical Officers (Military Pensions) 2002. In Para 28 of the judgement it is held as under:-

> ***"28. A conjoint reading of various provisions, reproduced above, makes it clear that –***
>
> ***(i) Disability pension to be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable or aggravated by military service to be determined under "Entitlement Rules for Casualty Pensionary Awards, 1982" of Appendix-II (Regulation 173)***
>
> ***(ii) A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service. [Rule 5 r/w Rule 14(b)]***
>
> ***(iii) Onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally. (Rule 9).***
>
> ***(iv) If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service. [Rule 14(c)].***
>
> ***(v) If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service. [rule 14(b)]***
> ***(vi) If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical board is required to state the reasons. [Rule 14(b)]***
>
> ***(vii) It is mandatory for the Medical board to follow the guidelines laid down in Chapter II of the "Guide to Medical (Military Pension), 2002 – Entitlement: General Principles", including paragraph 7, 8 and 9 as referred to above.***

18. After explaining Rule 423 of Guide to Medical Officers (Military Pensions) 2002, which deals with attributability/aggravation aspects, 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:***
>
> ***(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 top 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.

19. It is, thus, crystal clear that in the case of **Dharamvir Singh** (supra), the Hon'ble Apex Court has mainly dealt with the role and duty of medical board in assessing the condition of disability of the individual with reasons. It has been categorically pointed out that as per rule 9 of Entitlement Rules, 1982, the "onus of proof" is not on the claimant and he shall not be called upon to prove the conditions of entitlements and he will get any benefit of doubt. In other words, the claimant is not required to prove his entitlement of pension such pensionary benefit is to be given more liberally. The duty of the medical board has also been highlighted in that decision as reproduced above.

20. Now, keeping in mind the principle as laid down by the Hon'ble Apex Court in the above case, we may consider the medical board proceedings, the original of which have been produced by the respondents.

21. It appears that the RMB was held on 5th April 2008 at Command Hospital Kolkata while the applicant was posted in INS Netaji Subhash, Kolkata. At page 5 of the relevant form i.e. AFMSF 16, against column 2, it has been clearly indicated that the disability did not exist before entering service. The disability had its first onset on 12/13 Oct 2005 while the applicant was on leave. So far as attributability and aggravation aspects are concerned, against column 5 (a) and (b), it is only recorded 'No' without giving any reason. Further against column 3 on the specific question i.e. 'in case the disability existed at the time of entry, is it possible that it could not be detected during routine medical examination carried out at the time of entry?' it is only stated

"NA". However, the specialist in his opinion did not also suggest whether the disability was attributable or aggravated by service. He has only recommended for his release in medical category P2 (S2A2 in Navy).

22. Thus, it is clear that the disability was not there at the time of his entry i.e. in the year 1985 and it manifested in 2005 i.e. after about 20 years of service when the applicant was aged about 39 years of age. It is also established that no note regarding possibility of any disease was made at the time of applicant's entry into naval service. Therefore, it is to be assumed that the disease has arisen during the course of service. In this context, rule 8 of the Entitlement Rules may be referred to, which is extracted below:-

> "8. In respect of diseases, the following rules will be observed:-
>
> (a) Cases in which it is established that conditions of naval service did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease, will fall for acceptance on the basis of aggravation.
>
> (b) A disease which had 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 naval service. However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service the disease will be deemed to have arisen during service.
>
> (c) If a disease is accepted as having arisen in service, it must also be established that the conditions of naval service determined or contributed to the onset of the disease and that the conditions were due to the circumstances o duty in naval service.
>
> (d) In considering whether a particular disease is due to naval service, it is necessary to relate the established facts, in the aetiology of the disease, and of its normal development, to the effect that conditions of service, for example, exposure, stress etc. may have had on its manifestation. Regard must also be had to the time factor. "

23. We have already seen that the medical board did not record any reason that the disease could not be detected on medical examination prior to acceptance for service and therefore, in

terms Para 8(b), the disease should be deemed to have arisen during service. We are now to see whether the condition of naval service has caused or contributed to the onset of the disease or its aggravation, as the case may be.

24. The applicant admittedly was working as a Chef i.e. Cook. The respondents have stated that the applicant was posted in peace station on ground duty since Nov 2002 (vide appellate order dt. 14.12.09). It is also mentioned that there was no evidence of excessive stress and strain involved in war like duties. The commanding officer also noted in his comment in part III of the RMB that the applicant was doing ground duties since 20 Jun 2005. It is also stated that the disease occurred when the applicant was on leave at his home town and not on duty. All these points have been taken by the respondents to make out a case that the applicant is not eligible to get disability pension since he does not fulfill the main condition i.e. the disability is neither attributable nor aggravated by service.

25. Coronary Artery Disease, as described in the Wikipedia, "**Coronary artery disease** (**CAD**) also known as **atherosclerotic heart disease**, **coronary heart disease**, or **ischemic heart disease** (**IHD**), is the most common type of heart disease and cause of heart attacks. The disease is caused by plaque building up along the inner walls of the arteries of the heart, which narrows the arteries and reduces blood flow to the heart. While the symptoms and signs of coronary artery disease are noted in the advanced state of disease, most individuals with coronary artery disease show no evidence of disease for decades as the disease progresses before the first onset of symptoms, often a "sudden" heart attack". It is thus evident that this cannot have its onset within a short period of time and usually takes a long time to have its manifestation. Therefore, only because the onset happened while the applicant was on leave at his home town, it cannot be definitely stated that the disease has occurred when the applicant was not on duty. **That apart, the applicant has clearly stated in his petition that he suffered the attack when**

he was coming to join his duty after leave. This averment has not been rebutted by the respondents in their counter. Therefore, his journey undertaken for the purpose of joining duty had a casual connection with his service. It is also common knowledge that heart attacks are very common now a day and daily stress and strain may also be one of the causes for such disease. The applicant has stated that he was basically a cook and had to work constantly for want of sufficient staff in kitchen with exposures to heat generated by oven burners. Whether he was on ashore or peace station duty or on sea is immaterial because his job is to cook food maintaining time schedule, the stress of which will remain the same in both environments. Therefore, the disease with which he was suffering if not held to be attributable but surely it had aggravated by conditions of his service because the working condition in the Navy as cook has influenced the subsequent course of the disease. Therefore, at least aggravation by service should have been awarded in his case.

26. We are of the view that the release medical board (RMB), held at the time of discharge of the applicant, did not apply its mind before coming to a conclusion that the said disability was neither attributable to nor aggravated by service. We observe the following facts and circumstances, which to our view, have not been addressed nor considered by the RMB:-

(a) In the opinion of the RMB, as opined in Part V Para 1 (a) of the RMB proceedings the President of the Board has endorsed in the column for '*Reasons/ Causes for such disability'* that, "**sustained an MI on 13 Oct 2005 while on leave".** This part of the RMB form is meant to comment on the casual relationship of the disability with service conditions or otherwise as has been explained in the printed form itself. The Board should have applied its mind by obtaining opinion from the CO in detail regarding the stress in his working

environment for the past few years and other service related factors that could have either caused the blockage in his heart or precipitated to result in a heart attack. From the remarks endorsed by the Board President as ibid, it appears that 'leave' was the cause of his heart attack. Few days prior to proceeding on leave he was in good health; how can 'leave' be a contributory factor to such a disability?

(b) We have gone through the opinion of the cardiologist as attached with the RMB proceedings. Nowhere has he opined on the likely cause of such a cardiac disability nor has he ruled out that service conditions could have attributed or aggravated the said disability. Under such circumstances how could the Board opine to rule out any casual relationship with service conditions to be a contributing factor?

(c) The applicant's submissions that he was cook who has been working for long 23 years in the Navy in various sea as well as shore establishments is borne from records and not denied by the respondents. The working conditions specially during past few years before onset of heart attack in 2005, is stated to have been stress prone, as submitted by the applicant. One cook is authorized for every 40 to 60 personnel in an establishment so that adequate relief and rest is ensured. Applicant submits, emphasised by his counsel that he had to work for long hours without relief, which also added to stress. This aspect has also not been denied by the respondents. The RMB should have considered all these aspects before ruling out casual connection with service related stress for such a disability; instead putting the whole onus of cause of disability on 'leave' with sheer non-application

of mind. In fact we are of the view that being on few days leave should have nothing to do with cause of a cardiac disability.

27. We also find that the RMB has not applied its mind on the relevant provisions of the 'Entitlement Rules for Casualty Pensionary Awards 1982'. For ease of reference we bring to their notice provisions of Rule 20 (a) of Appendix II; and B 12 'Classification of Diseases' in Annexure III to ibid Appendix II that describes those diseases where 'stress' is a contributing factor. Ibid rules could have been discussed and ruled out or otherwise by the Medical Board; but with sheer non-application of mind the Board attributed 'leave' as the possible cause of such a cardiac disability without even any discussion or any supporting opinion from the cardiologist who has endorsed his opinion in this case. For ease of reference we quote the ibid rules as below:-

" 'Entitlement Rules for Casualty Pensionary Awards, 1982'

20. Conditions of Unknown Aetiology : There are a number of medical conditions which are unknown aetiology. In dealing with such conditions, the following guiding principles are laid down:

(a) If nothing at all is known about the cause of the disease, and the presumption of the entitlement in favour of the claimant is not rebutted, attributability should be recorded.

(b) If the disease is one which arises and progresses independently of service/environmental factors than the claim may be rejected.

ANNEXURE III TO APPENDIX II

(Classification action of Diseases)

A. Diseases Affected by Climatic Conditions.

****

B. Diseases Affected by Stress and Strain

****

12. Myocardial infarction, and other forms of IHD."
*****"

28. Without going into the controversy whether it was attributable or aggravated by conditions of service, we are of the view that since the medical board did not record any reason for its opinion that the disease was neither attributable nor aggravated by naval service, which they ought to have done in terms of rules, it will be appropriate to subject the applicant to a further medical examination for determination of attributability and/or aggravation aspect only, maintaining the percentage of disablement at 50% as earlier.

29. In view of the above, and subject to what has been observed in the preceding paragraph, we dispose of this application with a direction to the respondents to constitute a review medical board within 60 days from the date of communication of this order to examine the applicant only to determine, by recording proper reasons, as to whether the ibid disability of the applicant was attributable to or aggravated by the conditions of his naval service, keeping in view the observations made by us above. For the purpose, we set aside all the impugned orders/appellate orders whereby his claim for disability pension was rejected. After constituting the board, the applicant be given advance notice intimating the date of holding of the board proceedings. If the ibid disability of the applicant is opined to be attributable and/or aggravated by service, then he will be sanctioned appropriate disability pension to the extent of 50% disablement. No costs.

30. The original documents submitted by the respondents be returned to them on proper receipt.

31. Let a plain copy of this order, duly countersigned by the Tribunal Officer be furnished to the learned Advocates for both the sides.

(Lt. Gen. K.P.D.Samanta)
MEMBER (ADMINISTRATIVE)

(Justice Raghunath Ray)
MEMBER (JUDICIAL)