FORM NO – 21
(See Rule 102 (1)

ARMED FORCES TRIBUNAL, KOLKATA BENCH

APPLICATION NO : TA 50 OF 2011 (CWJC 15803/2007)

This 17th Day of July, 2013

CORAM: Hon'ble Mr. Justice Raghunath Ray, Member (Judicial)
Hon'ble Lt. Gen. K.P.D. Samanta, Member (Administrative)

Manoj Kumar @ Manoj Kumar Pandey, Son of Lakshman Pandey, resident of Village Bhaluahin, P.O. Siawank, Teh Rajpur (Garh Nokha), P.S. Nokha, Dist. Rohtas (Bihar)

..... Petitioner

-VS -

1. Union of India represented through
The Chief of the Army Staff, Defence HQ, New Delhi

2. Chief of Army Staff, Army H.Q. Defence H.Q. New Delhi 110011

3. The Defence Secretary, Army HQ, Defence HQ, New Delhi

4. The Chief Record Officer, EME Records, Secunderabad (AP)

5. The Director General, EME Directorate, South Block, Army HQ, New Delhi

6. The Officer In-charge, CCDA (P), G-3 Section, Allahabad (UP)

..... Respondents

For the applicant : Mr. Fulman Singh, Advocate

For the respondents: Mr. S.K.Bhattacharyya, Advocate

O R D E R

Per Lt. Gen. K.P.D.Samanta, Member(A) :

This is the second round of litigation by the applicant seeking benefit of disability pension.

2. The brief facts of the case are that the applicant was enrolled in Corps of EME of the Indian Army on 16.5.1987. Unfortunately, within one year of his enrolment, while he was on training, he was detected to be suffering from the disease of 'Schizophrenia (ICD-295)' and was placed in low medial category of EEE (Psy). Accordingly, he was placed before an Invalidating Medical Board and was eventually invalidated out of service on medical ground w.e.f. 30.3.88 under Army Rule 13(3)(III). The IMB held that the disease with which the applicant was suffering was neither attributable to nor aggravated by military service. However, the percentage of his disability was assessed at 40%. After his discharge, the applicant was paid his due terminal benefits. No disability pension was, however, paid. Being aggrieved, the applicant preferred the first appeal on 11.3.96 which was rejected after due consideration vide order dt. 10.3.98. The applicant also filed a second appeal on 7.7.98 before the MoD, which was also considered and rejected on 25.7.01. Both the rejection orders were duly communicated to the applicant.

3. The applicant, however, was not satisfied and he approached the Hon'ble Patna High Court by filing a writ petition (No. CWJC 9749 of 2004) claiming disability pension. This WP was disposed of by the Hon'ble High Court on 23.8.04 directing the respondents to reconsider the matter. Accordingly, the respondents reconsidered the matter and by a speaking order dt. 5.1.2005 rejected the prayer for grant of disability pension to the applicant (annexed at page 23). It appears that being dissatisfied; the applicant once again moved the Hon'ble High Court by filing contempt petition (MJC

1588 of 2005), which was rejected by order dt. 8.10.07. In the ibid order, however, liberty was granted to the applicant to challenge the speaking order dt. 5.1.2005, if he was so advised. Pursuant to this liberty, the applicant filed the instant writ petition (CWJC 15803 of 2007) challenging the said speaking order dt. 5.1.05, praying for a direction upon the respondents to grant him disability pension at the rate of 40% from the date of his discharge from Army with interest.

4. After coming into force of the Armed Forces Tribunal Act, 2007, the said writ petition stood transferred to this Tribunal for disposal and accordingly, it has been renumbered as TA 50 of 2011.

5. The respondents have opposed the application by filing a counter affidavit to which a rejoinder has been filed by the applicant. The applicant has also filed supplementary affidavit.

6. Mr. Fulman Singh, ld. adv. for the applicant in challenging the impugned speaking order dt. 5.1.05, has argued with much vehemence that when the applicant joined service, he was hail and hearty and there was no indication of the ibid illness which arose during the course of service due to stress and strain of military training. He submitted that the condition of the applicant was so bad that he had to be escorted back to his home after discharge from service. According to Mr. Singh, this made it quite clear that due to rigorous military training the applicant had suffered the illness and hence, he could not be denied disability pension to the extent of percentage of disablement as recommended by the medical board. He has also raised the point of discrimination by submitting that in similar circumstances, one Shri Baij Nath Prasad was granted disability pension at the intervention of the Hon'ble High Court for the same disease of 'Schizophrenia 295" vide annexure-3. But in the case of the applicant, despite direction

of the Hon'ble High Court, the respondents illegally and arbitrarily rejected his claim for disability pension. Ld. Counsel has also referred to Reg. 185 of Pension Regulations for the Army and contended that in terms of this regulation the applicant ought to have been placed before re-survey medical board for re-assessment of his disabled condition due to the aforesaid disease. He has also pointed out that the applicant was granted benefit of disability element at the time of his discharge which clearly indicated that he was disabled due to army service for which such benefit was paid. Therefore, he cannot be denied disability pension. He has further submitted that the applicant is in a very poor pecuniary condition and has no other source of income with no employment opportunity on account of such disablement. Therefore, the respondents cannot shirk off their responsibility to help such a person who was invalidated out of service on account of ibid disability that he suffered during the course of service. The ld. adv. has placed much reliance on the decision of Hon'ble Patna High Court in the case of **Mahesh Prasad Mandal vs UOI & Ors** reported in 2000(1) PLJR 1060 where interpreting Reg. 173 of Pension Regulations, it was held that disability pension has to be granted to an individual who is invalidated from service on account of disability assessed at 20% or above irrespective of the fact that it was either directly attributable to or aggravated in course of discharge of duty in military service.

7. Mr. Bhattacharyya, ld. adv. for the respondents has referred to page 5, para (v) of the counter affidavit and has submitted that the applicant preferred his appeal more than 7 years after his claim for disability pension was rejected by the PCDA (P) in December 1988. However, the said appeal, even though time barred, was considered by the competent authority; but the appellate committee on first appeal rejected the same stating that the applicant was invalidated out of service on account of disability which was a

constitutional disorder. It was observed that the onset of the disability was in October 1987 i.e. within 6/7 months of his enrolment and there was no evidence of any service related aggravating factor and there was also no head injury or debilitating illness prior to the onset of the above disability. Therefore, the disability of the petitioner was considered by the appellate committee as neither attributable to nor aggravated by the duties of military service. His second appeal was also considered and rejected. However, after the direction of the Hon'ble High Court in the earlier writ petition filed by the applicant, the matter was reconsidered but it was found that the applicant was not entitled to get any disability pension in view of Reg. 173 of Pension Regulations. Therefore, the speaking order was passed on 5.1.2005 giving adequate reasons for not accepting the claim of the applicant.

8. So far as the point of discrimination is concerned, Mr. Bhattacharyya contended that each case has to be adjudged on the basis of facts of that case. Only because one person was granted disability pension, it does not mean that the applicant is also to be granted the same benefit because medical condition can only be certified by the medical board. He has further contended that grant of disability benefits is different from grant of disability pension. The disability benefits like insurance claim are paid by AGI Directorate which has no relation to grant of disability pension which is sanctioned by PCDA (P). Therefore, the applicant's claim in this regard is not sustainable.

9. So far as case of **Mahesh Prasad (supra)**, as cited by the ld. adv. for the applicant, is concerned, Mr. Bhattacharyya has placed reliance on the decision of the Hon'ble Supreme Court in **A.V.Damodaran'**s case and submitted that the Hon'ble Apex Court in that decision has clearly laid down that opinion of the medical board is to be given primacy and court or tribunal cannot overrule the same unless glaring error is

established. He reiterated that in the case of the applicant, the medical board has clearly opined that the disease with which the applicant was suffering was not at all connected with the military service and therefore, disability pension was rightly denied. He has referred to rule 8 of Entitlement Rules to contend that there must be a casual connection between disablement and military service to be certified by appropriate medical board. He has also referred to rule 7(b) and 7(c) to appendix II to para 173 of Pension Regulations for the Army, 1961 to submit that even if a disease with which an individual is suffering could not be detected at the time of his enrolment, it has to be established that such disease has arisen due to military service with appropriate reason, and even in that case appropriate medical opinion is essential.

10. We have heard the ld. advocates for both sides in details and have perused the averments and annexures placed on record. We have also gone through the original medical board proceedings produced by the respondents, which were also inspected by the ld. adv. for the applicant with leave of this Tribunal. We have given our thoughtful consideration to the rival contentions.

11. The applicant has mainly challenged the impugned speaking order dt. 5.1.05 passed by the respondent authorities in terms of earlier direction of the Hon'ble High Court as discussed above. The said order is quoted below:-

> *"1. In compliance with Hon'ble High Court of Patna order dated 23 Aug 2004 in CWJC No.9748/2004, your case for grant of disability pension has been carefully re-considered by appropriate authorities in the light of the relevant regulations on the subject.*
>
> *2. It is evident from the records that you were enrolled in the Army on 16 May 1987 and were invalided out of service in low medical category "EEE" on 30 Mar 1988. The Invaliding Medical Board, which had physically examined you, had considered your disability "SCHIZOPHREIC (ICD-295)" as neither attributable to nor aggravated by military service as its onset was in peace and*

assessed the degree of disablement at 40% for two years. As per Regulation 173 of Pension Regulations for the Army 1961 (Part I), disability pension is granted to an individual on his invalidment from service only when his disability is viewed as either attributable to or aggravated by military service by the Competent Medical Authority. In your case, the Medical Board, which had physically examined you, had itself considered your disability as neither attributable to nor aggravated by military service. Further, Hon'ble Supreme Court has held that opinion of the Medical Board who has examined the individual should be respected. In view of above, you are not entitled to grant of disability pension in terms of above Regulation".

12. The main contention of the ld. adv. for the applicant is that when the applicant was enrolled there was no indication that he was suffering from the disease of Schizophrenia and it was only within a year of his joining the army, that he had developed such disease. Therefore, it is implied that such disease was devolved due to stress and strain of military service. In such circumstances, the applicant cannot be denied disability pension.

13. In this connection, the respondents have referred to Rule 7(b) and 7(c) of Entitlement Rules (annexure-II to regulation 173 of Pension Regulations), which are quoted below:-

"Rule 7(b) : A disease, which has led to an individual's discharge or death, will ordinarily be deemed to have arisen in service if no note of it was made at the time of individual's acceptance for military service. However, if medical opinion hold, 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. "

Rule 7 (c) : If a disease is accepted as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service. "

14. The respondents have categorically stated in the reply that within a few months of enrolment of the applicant, the ibid disease was detected. Therefore, it cannot be said the said disease had developed during the course of service. It is also submitted in this

connection, that at the time of enrolment, only a physical examination is conducted when every disease may not be detected, particularly, those diseases which may be at latent stage at that point of time but manifest subsequently at an advance stage. It appears from the IMB proceedings that it was mentioned that the ibid disability was "personality defect and not connected with military service." In this connection it may be noted that the disease of 'Schizophrenia' was defined by the Hon'ble Apex Court in the case of **Secretary, Ministry of Defence & Ors –vs- Damodaran A.V.(Dead) through LRs & Ors,** 2009(7) SLR 171 (SC) as under :-

> *"22. Schizophrenia is a term used to describe a mental disorder characterized by abnormalities in the perception or expression of reality, which is most commonly manifested as auditory hallucinations, bizarre delusions, or disorganized speech and thinking with significant social or occupational dysfunction. The medical studies have opined that there is no known single cause responsible for Schizophrenia. However, they have pointed towards likelihood of genetic, behavioural and environmental factors playing a role in the development of this mental health condition.*

15. Mr. Fulman Singh has mainly relied on the decision of the Hon'ble Patna High Court in **Mahesh Prasad'**s case (supra). In para 9 of the said judgement (decided on 3.2.2000) it was held as under:-

> "9. Thus, from the said principle decided, it is evident that a disability pension has to be granted to an individual who is invalidated from service on account of his disability assessed at 20% or above irrespective of the fact that it was either directly attributable to or aggravated in course of discharge of duty in military service.

16. However, Mr. Bhattacharyya has submitted that the decision of the Hon'ble Supreme Court in the **Damodaran'**s case (supra) was rendered on 20.8.09. According to Mr. Bhattacharyya in view of this decision of the Apex Court, the decision of the Hon'ble Patna High Court cannot be relied upon.

17. It appears that Hon'ble Patna High Court in **Mahesh Prasad**'s case relied on this regulation 173 and also on some earlier decisions of the Hon'ble Supreme Court and High Courts. The Hon'ble Apex Court in **Damodaran**'s case [**Secretary, Ministry of Defence & Ors –vs- Damodaran A.V.(Dead) through LRs & Ors,** 2009(7) SLR 171 (SC)] also analysed the scope and ambit of Reg 173 and referred to several earlier decisions of the Apex Court on the issue and it was inter alia observed as under :-

> "33. Here is also a case where the Medical Board has given its definite opinion that disease from which the petitioner was suffering was not attributable or aggravated by military service. It was recorded by the Medical Board that the case is of Schizophrenia in a young officer with five years service manifested in disorder of thought, perception, behaviour and motional incongruity. Further opinion of the Board is that he had been reviewed by the medical specialist and no physical contributory factor elicited for the psychiatric breakdown. In disablement assessed is 60% (sixty percent) disability neither attributable nor aggravated by service.
>
> 34. Clearly therefore, the opinion of the Medical Board ruled out the possibility of the disease of the respondent being attributable to or aggravated by military service. That being the position, the respondent cannot claim for payment of any disability pension. Another relevant factor which is required to be noted is that the report of the medical board is not under challenge. As has been held by the Court, such opinion of the medical board would have the primacy and therefore, it must be held that the learned Single Judge and the Division Bench of the High Court were not justified in allowing the claim of the respondent".

18. In the case in hand, it is evident that when the ibid disease had developed within a short time of joining the military service, it cannot be definitely stated to have arisen due to stress and strain of such service. It is also true that at the time of enrolment, there was no sign of the disease and no note in this regard was made; it has developed after joining, which according to the ld. adv. for the applicant, was due to stress and strain of service. The medical board, however, did not specifically state that why such disease could not be detected at the time of enrolment and why no note was made to that effect. Ld. adv. for the applicant has also submitted that the commanding officer of the applicant

recommended grant of disability pension in favour of the applicant. It is true, as found in the original IMB proceedings, that the CO has recommended the applicant for disability pension. The recommendation of the commanding officer is an important input for the specialist doctor and the medical board to ascertain the impact of the working/ service environment upon onset or aggravation of such disease and for assessment of disability; but it is the medical board which, on consideration all such inputs has to take a final decision by giving reason in support of its finding.

19. In **Damodaran's** case (supra) the Hon'ble Apex Court has held that opinion of Medical Board is final and it cannot be interfered with. Such observation was also reiterated in subsequent decisions of the Hon'ble Apex Court.

20. But in this case, the main issue raised by the ld. adv. for the applicant that when the applicant entered into service, there was no indication of the disease which had developed during the course of service and admittedly, no note was also recoded at the time of enrolment about the said disease or its possibility in future. Therefore, benefit of doubt should go in favour of the applicant.

21. In this context, we may refer to a very recent decision of the Hon'ble Apex Court in the case of **Dharamvir Singh –vs- UOI & Ors,** (Civil Appeal No. 4949 of 2013) decided on 2nd July 2013 (unreported). In that case the appellant was detected to have been suffering from 'Generalized seizure (Epilepsy)" 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 as 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?*

22. 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. 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 (not printed or published), 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 decision 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.

23. 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©].

(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.

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

"25. Therefore, as per rule 423 following procedures to be followed by the Medical Board :

(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.

24. Therefore, it is 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.

25. It will be appropriate to quote below the observations of the Hon'ble Apex Court in paras 30-33 as under :-

> " ***30. In the present case it is undisputed that no note of any disease has been recorded at the time of appellant's acceptance for military service. The respondents have failed to bring on record any document to suggest that the appellant was under treatment for such a disease or by hereditary he is suffering from such disease. In absence of any note in the service record at the time of acceptance of joining of appellant it was incumbent on the part of the Medical Board to call for records and look into the same before coming to an opinion that the disease could not have been detected on medical examination prior to the acceptance for military service, but nothing is on the record to suggest that any such record was called for by the Medical Board or looked into it and no reasons have been recorded in writing to come to the conclusion that the disability is not due to military service. In fact, non-application of mind of Medical Board is apparent from clause (d) of paragraph 2 of the opinion of the Medical Board, which is as follows :***
>
> ***' (d) <u>In the case of a disability under C the board should state what exactly in their opinion is the cause thereof</u> <u>Yes</u>***
>
> ***Disability is not related to mil service"***

31. *Paragraph 1 of 'Chapter II' – "Entitlement : General Principles" specifically stipulates that certificate of a constituted medical authority vis-à-vis invalidating disability, or death, forms the basis of compensation payable by the Government, the decision to admit or refuse entitlement is not solely a matter which can be determined finally by the medical authorities alone. It may require also the consideration of other circumstances e.g. service conditions, pre-and post-service history, verification of wound or injury, corroboration of statements, collecting and weighing the value of evidence, and in some instances, matters of military law and dispute. For the said reasons the Medical Board was required to examine the cases in the light of etiology of the particular disease and after considering all the relevant particulars of a case, it was required to record its conclusion with reasons in support, in clear terms and language which the Pension Sanctioning Authority would be able to appreciate.*

32. *In spite of the aforesaid provisions, the Pension Sanctioning Authority failed to notice that the Medical Board had not given any reason in support of its opinion, particularly when there is no note of such disease or disability available in the service record of the appellant at the time of acceptance for military service. Without going through the aforesaid facts the Pension Sanctioning Authority mechanically passed the*

impugned order of rejection based on the report of the Medical Board. As per Rules 5 and 9 of 'Entitlement Rules for Casualty Pensionary Awards, 1982', the appellant is entitled for presumption and benefit of presumption in his favour. In absence of any evidence on record to show that the appellant was suffering from "Genrealised seizure (Epilepsy)" at the time of acceptance of his service, it will be presumed that the appellant was in sound physical and mental condition at the time of entering the service and deterioration in his health has taken place due to service.

33. ***As per Rule 423 (a) of General Rules for the purpose of determining a question whether the cause of a disability or death resulting from disease 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. "Classification or diseases" have been prescribed at Chapter IV or Annexure I; under paragraph 4 post traumatic epilepsy and other mental changes resulting from head injuries have been shown as one of the diseases affected by training, marching, prolonged standing etc. Therefore, the presumption would be that the disability of the appellant bore a casual connection with the service conditions".***

26. Here, we may also refer to yet another recent decision of the Hon'b le Apex Court in the case of **Veer Pal Singh –vs- Secretary, Ministry of Defence,** (Civil Appeal No. 5922 of 2012) decided on 2nd July 2013 (unreported). In that case, the appellant was

invalidated out on being detected to have been suffering from Schizophrenia. He was denied disability pension since the medical board opined that the ibid disability was not connected with military service. The writ petition filed by the appellant was transferred to Lucknow Bench of AFT and the said Bench rejected the case relying on **Damodaran case** (supra) holding that the medical opinion cannot be interfered with. The apex Court held in para 6 of the judgement as under :-

> " The second writ petition filed by the appellant remained pending before the High Court for 13 years. On the establishment of Lucknow Bench of the Tribunal under the Armed Forces Tribunal Act, 2007 (for short, the Act) the same was transferred to the Tribunal and was registered as Transferred Application No. 1431 of 2010. The Tribunal examined the record of the Medical Board referred to the judgement of this Court in **Secretary, Ministry of Defence –vs- A.V.Damodaran** (2009) 9 SCC 140 and dismissed the application by making the following observations :-
>
> > " In view of the aforesaid the Medical Board's opinion is to be accorded supremacy. We in exercise of our jurisdiction cannot sit over the opinion expressed by the Medical Board which is an expert body. The disease that the applicant was suffering from has been found to be constitutional and not aggravated by military service. We cannot hold anything contrary to the medical opinion."

Further, in para 11 of the said judgement, the Hon'ble Apex Court has observed as under :-

> **" 11. Although, the Courts are extremely loath to interfere with the opinion of the experts, thee is nothing like exclusion of judicial review of the decision taken on the basis of such opinion. What needs to be emphasized is that the opinion of the experts deserves respect and not worship and the Courts and other judicial/quasi-judicial forums entrusted with the task of deciding the disputes relating to premature release/discharge from the Army cannot, in each and every case, refuse to examine the record of the Medical Board for determining whether or not the conclusion reached by it is legally sustainable."**

27. In view of the above decisions of the Apex Court, we have to examine the present case. On going through the original medical board proceedings we find that it is clearly

written in Sl. No. 1 of the Board proceeding that in respect of item No. 1 it is mentioned as under :-

1. Did the disability/ies exist before entering service ? No

In respect item No. 2(d) it is recorded as under :-

2(d) In the case of a disability under 'C; the Board should state hat exactly in their opinion is the cause thereof ? The disability is a Personality defect not connected with service.

28. Thus, it is apparent that the medical board did not give any reason in support of its opinion, particularly when there is no note of such disease or disability available in the service record of the appellant at the time of acceptance of military service. The opinion of the medical board is that the percentage of disability is 40% for two years. As per annexure-III to Appendix II dealing with "classification of diseases" it appears that psychosis and psychoneurosis may arise due to stresses and stain of service. From the board proceedings it also appears that there was no history of such disease and the applicant was in sound health at the time of recruitment. The medical expert has opined as under:-

"OPINION OF CLASSIFIED SPECIALIST IN PSYCHIATRY D.BHATTACHARYA LT COL AMC OF MH JHANSI : 11-2-88

This EME/Recruit had a breakdown of the nature of Schizophrenia in Nov'87 while undergoing training at EME Centre Bhopal. There was no apparent precipitating factor. The illness manifested in withdrawal from reality, pshychomotor excitation, disorders of thought and affect with lack of insight and judgement. His response to treatment has been satisfactory, however because of the psychotic nature of the illness in a recruit, I consider him unfit for further military service. Rec. med cat **'EEE'** (Psychological).

Advised to continue (i) Tab Largact j1 100 mg and Tab Phenergon 25 mg 1 TDS each for 3 months more (ii) Review in nearest civil hospital after that and as and when required."

29. In the absence of any explanation or cogent reason being given either by the specialist (Psychiatrist) in his opinion or by the medical Board (IMB), it cannot just be assumed that this disability was just a personality disorder not connected with service. In fact the onus is upon the employer to prove that the disability could not have at all been attributable to or aggravated by the applicant's service conditions and the environment in the training centre where he was undergoing training. The medical board guided by the specialist's opinion, therefore, must conclusively endorse their opinion after detailed deliberation on all facts and circumstances that led to such disability. No such analysis has been made that should have been done in a language which is understood by a lay organization like the pension sanctioning authorities. The benefit of doubt should always go to the applicant in such a case.

30. The second issue is that the medical board has also not assigned any reason as to why such a disease or 'personality disorder', as stated by the psychiatrist in his opinion, could not have been detected when the applicant was subjected to a preliminary medical examination at the time of enrolment and later seen by another medical officer at the training centre. Mere submission made in affidavit in opposition cannot absolve the duties of the medical board that are specified in provisions of the Entitlement Rules and in the Guide to Medical Officers, as quoted above.

31. The third issue is that the medical board as well as the psychiatrist has totally ignored the commanding officer's endorsement in the board proceedings that the applicant was recommended for disability pension. It must have been done with some relationship to his service environment which would be best known to the CO. This aspect was not probed at all by the medical board. A recruit is brought to a military environment from a protective social environment of his family without much time to adjust. Will it have any impact in manifestation of such personality disorder? These are

few such important aspects that could have been obtained by the medical board after a detailed interaction with the CO and his Subedar Major who are more acquainted with the recruit's background and service environment. None of such efforts were even attempted by the medical board. We also observe that the Psychiatrist was examining the recruit at Jhansi (MH Jhansi) whereas the recruit (applicant) was being trained at Bhopal. He would have had no inputs about the applicant's background and service conditions/environment except for what little was filled up in a 'question/answer' kind of format by the CO. Even that sketchy information where the CO recommended him for disability pension was ignored.

32. When we analyze the lapses made by the medical board (IMB) as pointed out above, we cannot but come to a conclusion that the applicant was put through the said medical board in a very mechanical manner and none in that IMB including the specialist applied their mind with reason and in accordance with detailed guidelines made out for conduct of such boards. We are therefore of the considered opinion it is a fit case where the applicant should get the benefit of doubt in his favour while entitling him to disability pension having been invalidated out of service. Since the matter is quite delayed, no purpose will now be solved by contemplating to hold another Medical Boad to look into the aspect of service related attributability/aggravation of his disability. He may be given benefit of doubt as per rules that the ibid disability had a casual connection with his service and thus could have been aggravated implying that the trauma of recruit training and change of environment could have precipitated early onset of the disease. Re-survey Medical Board should, however, be held to determine the current percentage of disability since the initial award of 40% was for two years.

33. In the result, the application is partially allowed to the extent as ibid with following directions:-

i) The respondents are directed to grant disability pension in favour of the applicant at the rate recommended by the IMB (40%) including rounding off benefit if admissible, from the date of his discharge on invalidment. However, the arrears will be limited to 3 years before he approached the Hon'ble Patna High Court in writ petition No. CWJC 9749 of 2004. Therefore, the arrears shall be calculated and paid to the applicant w.e.f. 1.4.2001.

ii. The respondents are further directed to hold a Re-Survey Medical Board which would determine the percentage of disability pension as per current state of the applicant. Such determination will be for life with effect from the date awarded by such RSMB.

iii) For this purpose, the speaking order and all other connected orders stand quashed.

iv) This order be implemented within 90 days from the date of communication of this order.

v) No costs.

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

35. Let a plain copy of the order duly countersigned by the Tribunal Officer be supplied to both sides on observance of usual formalities.

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

(JUSTICE RAGHUNATH RAY)
JUDICIAL MEMBER