IN THE ARMED FORCES TRIBUNAL
(REGIONAL BENCH) KOLKATA

O.A. NO.100/2012

THIS 25TH DAY OF SEPTEMBER, 2013

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

Ex-Nk Nabaghana Behera, Son of Late Balunki Behera
Vill/PO Balijhari, P.S. Kanpur, Dist. Cuttack, State - Orissa
……Applicant

-Vs-

1. Union of India, Service through the Secretary, Defence, South Block New Delhi
2. Chief of Army Staff, SenaBhawan, New Delhi
3. Director, Adjutant General Branch (PS-4), Integrated Headquarters of MOD (Army), DHQ P.O. New Delhi
4. Deputy Director General, Defence Security Corps, General Staff Branch, Integrated Headquarter of MoD (Army), West Block-III, R.K. Puram, New Delhi – 110 066
5. Director General of Armed Forces Medical Sciences (DGAFMS), Ministry of Defence, New Delhi
6. Principal Controller of Defence Accounts (Pension) Allahabad 14
7. O/C Records, RakshaSuraksha Corps Abhilekh, Defence Security Corps Records, Mill Road, Cannanore – 670 013
8. Secretary, Army Group Insurance Fund, AGI Bhawan, Rao Tula Marg, R.K. Puram, New Delhi - 68

……..Respondents

For the petitioner : Mr. BisikesanPradhan, Advocate

For the respondents (1-7) : Mr. Anup Kumar Biswas, Advocate
For the respondent No.8 : Mr. Mintu Kumar Goswami, Advocat

O R D E R

Per Justice Raghunath Ray, Member (Judicial):

Initiation

This OA arises out of an application u/s 14 of Armed Forces Tribunal Act, 2007 filed by Ex-NkNabaghanaBehara, who was subsequently re-employed in Defence Security Corps (in short DSC). The applicant has claimed inter-alia sanction of disability pension together with disbursement of disability benefit in his favour proportionate to his degree of disability from Army Group Insurance Fund for being invalidated out of DSC Service on account of Invaliding Disease (ID) "Primary Hypertension.

BACKGROUND FACTS

2. The relevant facts leading to initiation of this proceeding may, in resume, be enumerated as under :

The applicant No.14300323X Ex-Nk had initially rendered Military Service in the Regiment of Artillery on and from 29-8-1969 to 31-3-1988 for which he was granted Service Pension for life. On 29-9-1992 he was enrolled in DSC as Sepoy for an initial period of employment of 10 years subject to further extension on fulfillment of certain conditions as embodied in the relevant instruction of the MOD together with its

subsequent revision. He was granted further extension of service for three years from 28th August 2002 to 28th August 2005. Further extension of 2 years was, however, refused due to his placement in Permanent Low Medical Category. He was diagnosed as having disease "Primary Hypertension". Therefore, consequent upon recommendation of Release Medical Board, he was discharged from DSC Service w.e.f. 31-8-2005 on attaining the age of 55 years under Army Rule 13(3) item III(i) being placed in Low Medical Category. His degree of disability was assessed at 30% for life. The Medical Board, however, opined that the applicant's disability was neither attributable to nor aggravated by service and the same was constitutional in nature. The applicant was thus found not eligible for disability pension as per medical opinion of the Release Medical Board. Based upon such medical opinion, the PCDA(P) Allahabad rejected the petitioner's claim for disability pension and such rejection order was communicated to him vide letter dated 4-5-2006 by the Sr Record Officer, D.S.C. Records (A2).

3. Such decision of the PCDA(P) Allahabad was challenged by the applicant before the Appellate Committee on First Appeal on 26th July 2006. The committee upheld the decision of the RMB and opined that the applicant was not entitled to disability pension as per Regulation 173 of

Pension Regulations for Army Part – 1, 1961(in short Pension Regulations) and as such his appeal was not accepted by the Appellate Committee. The decision of the Committee was communicated to him vide letter dated 26-3-2007 on behalf of the Integrated HQ of MOD (Army)(A4).

4. A second appeal was also preferred against the decision of First Appellate Committee in the first week of July 2012 together with a separate petition dated 4-7-2012 seeking condonation of delay on the grounds as stated therein (A5 collectively). However, the applicant was informed by O/C Records vide his letter dated 16-7-2012 that no action could be taken on his second appeal 'at this belated stage due to policy constraints' with a specific direction that "further correspondence on the subject may be avoided as the same will not yield any result". Against such backdrop of compelling circumstances the present OA has been filed by the applicant.

CONTENTIONS

5. It is specifically contended inter-alia by the applicant in his petition that the onset of disease "Primary Hypertension" was caused because of stress and strain of DSC Service since he had to perform Security Duty on shift basis and to be extra vigil because of border/field area duty in course of service. It is further asserted that while he was posted to 625 DSC

Platoon Visakhapatnam, the disease was aggravated to such an extent that the applicant was downgraded to low medical category CEE (Permanent).

6. His discharge was recommended by the Release Medical Board and pursuant to such recommendation he was discharged from DSC service on 31-8-2005 under Army Rule 13(3) item III(i) being placed in low medical category. According to him, such move is contrary to Army Rule 13(3) item III(iii) of the Army Rules 1954 which clearly stipulates that, if an individual is found medically unfit for further service, discharge is to be carried out on the recommendation of an invaliding Board. It is further averred therein that at the time of discharge he rendered 12 years 11 months and 2 days of DSC Service and attained the age of 55 years. Since he could not put in 15 years of DSC service, he was not considered for payment of normal pension. His further contention is that the PCDA(P) as also the Appellate Committee on first appeal illegally and arbitrarily rejected his claim for grant of disability pension and it is totally inconsistent with the Regulation 179 of Pension Regulations. It also contravens Rule 5, 9 & 14 of the Entitlement Rules for Casualty Pensionary Awards 1982,(in short Entitlement Rules) Regulation 483 (c) & (d) of the Regulations for the Medical Officers of the Armed Forces (in short Regulations of the Medical Officers) and Para 43 of Chapter VI of the Guide to Medical Officers

(Military Pension) 2002 (in short Guide to Medical Officers). Further, by not considering the second appeal of the applicant on frivolous ground, the appellate authority has acted contrary to principles of law as enunciated by the Hon'ble Apex Court in a ruling reported in **AIR 2007 S.C. 1330 (Shiv Das vs. Union of India & Ors)** since the claim of pension cannot be barred by limitation.

7. By filing Affidavit-in-opposition the respondents No.1-7 have sought to resist the claim of disability pension on the ground that his disability was found neither attributable to nor aggravated by military service as opined by the Release Medical Board. In such a situation, he is not entitled to the grant of disability pension in terms of regulation 173 of Pension Regulations. It is also averred in the opposition that ex-servicemen who are discharged from three services (Army, Navy and Air Force) are re-enrolled in the DSC on the basis of contractual terms of engagement and on completion of initial contractual terms of engagement they are again granted extension of service accordingly on fulfillment of certain eligibility criteria. It is, however, pointed out therein that such extension of contractual period cannot be taken as actual terms of engagement of service which is applicable to the case of Regular Army, Navy, Air Force Personnel only. In this context they have referred to a decision of the

Hon'ble AFT, Principal Bench at New Delhi in **OA No.690 of 2010 (Ex-SepoyVidyasagar vs. UOI & Others).**

8. It is further contended therein that he is also not entitled to the grant of service element in view of specific 'Note' appended to regulation 183 of Pension Regulations since he is already in receipt of Army Pension for the service he rendered with Artillery Regiment. According to the answering respondents, he is also not entitled to the grant of disability benefit cover under AGI fund in view of his discharge from service on completion of contractual terms of engagement on attaining the age of superannuation. In this context they have also referred to Regulation 183 of Pension Regulations. Accordingly, the petition is liable to be dismissed.

9. The Army Group Insurance Fund (in short AGIF), Respondent No.8 has also filed a separate affidavit-in-opposition averring therein that the applicant who initially rendered his service in the Regiment from 29-8-1969 to 31-3-1988 was granted service pension for life. He was, thereafter, re-enrolled in DSC on 29th September 1992 as Sepoy for an initial fixed and contractual terms of engagement of 10 years and was also granted further extension of service for three years, i.e. on and from 29th September 2002 to 28th August 2005, i.e. till attainment of the age of superannuation as per Corrigendum dated 5th December, 1981 (Annexure R8/6) to Government of

India, Ministry of Defence New Delhi letter No. TER/257/MDSC/1747/D(IS) dated 23-3-1956. In view of his placement in permanent low medical category S1 H1 A1 P2 (Permanent) E1 w.e.f. 22 Feb 2003 due to diagnosis "PRIMARY HYPERTENSION", he was not granted further extension of service beyond 28th August, 2005. Accordingly, he was discharged from service on 31st August 2005 on attaining the age of 55 years after rendering 12 years 11 months and 2 days qualifying service in DSC due to non-fulfilment of the medical criteria. Since he was discharged on completion of tenure in DSC, he cannot be considered to be invalidated out of service. By quoting decision of various Regional Benches of the Tribunal, it is further submitted on behalf of respondent No.8 that this Tribunal has no jurisdiction to direct the payment of insurance amount in favour of the applicant. The respondent No.8 is thus not liable to pay any amount towards disability benefit to the applicant. It is, therefore, submitted on behalf of the AGIF that the present OA is not maintainable and as such it merits dismissal against the respondent No.8.

10. In the Affidavit-in-Reply the applicant has asserted that his discharge on the recommendation of the Release Medical Board under Army Rule 13(3) Item III(i) of Army Rule 1954 is not legally sustainable in view of Rajpal Singh's case. It is also averred that the medical opinion of RMB

suffers from legal infirmities since such opinion was formed without taking into consideration the findings of the initial Categorisation and Re-Categorisation Medical Boards held on 5-9-2002 and 22-02-2005 respectively. It is further emphatically contended that his service in D.S.C. has been cut short due to his placement in permanent low medical category. He was thus discharged from service on attaining the age of 55 instead of 57 years. He was, therefore, not liable to be discharged under Rule 13(3) Item III(i) of the Army Rule 1954 on the recommendation of the RMB. In such a situation he could have been discharged under Rule 13(3) item No.III(iii) of the Army Rule having been found medically unfit for further service on the recommendation of the Invalidment Medical Board.

11. The averments of the counter affidavit filed on behalf of the respondent No.8 have strongly been disputed by the applicant in his Rejoinder. It is contended inter-alia therein that the corpus of the fund flows right from sepoy to the Chief of Army Staff my means of compulsory deductions from their respective salaries in terms of Rule 205(b) of the Army Rules 1954 and the benefits are extended to the members under the provisions, schemes and modalities contained in AO 27/1981 and AO 23/2002/AGI. Furthermore, the Board of Governors, i.e. the Apex Body of the AGIF ischarired by the Chief of Army Staff while the members of the

Board of Governors of the Army Governors (GOC-in-C) discharge their responsibilities in their respective geographical jurisdiction. No direction/order of the AGIF is enforceable without the approval of the Board of Governors. Therefore, the respondent No.8 is a State within the meaning of Art.12 of the Constitution of India. In such view of the matter, the instant OA is maintainable before the Tribunal. The applicant is also fortified in this regard with the judgement of the Division Bench of Delhi High Court reported in **42(1990)DLT 537 (BrijBhushan Gupta v. UOI & Others** (para 12). It is further reiterated in the rejoinder that the applicant's release from DSC under wrong provision of law, i.e. under Rule 13(3) item III(i) of the Army Rules is illegal and arbitrary as held in **Rajpal Singh's case** reported in **2008 AIR SCW 7809**. The appropriate section would have been Rule 13(3) item III(iii) of Army Rules and he was to be examined mandatorily by the Invalidment Medical Board.

12. It is further averred in the Rejoinder that since the applicant was not granted further extension of service beyond 31-8-2005 for another two years till he attained the age of 57 years in terms of G.O.I., MOD letter dated 22-2-1999 because of his placement in low medical category, he was deemed to have been invalidated from service in terms of Rule 4 of Entitlement Rules read with Rule 179 of the Army Pension Regulation. The

petitioner is entitled to get disability benefit in terms of para 59 of A/O 23/2002 – the Army Group Insurance Scheme (Annexure R8/3).

13. A written note of submission on behalf of the applicant was also filed by Mr. Pradhan.

Arguments

14. In support of the applicant's claim for disability pension on the ground of his invalidment it is argued by Mr. Pradhan that, even though he was not considered for further extension of two years and was discharged on attaining the age of 55 years because of permanent low category, he was not treated as invalided out of service in terms of Rule 4 of Entitlement Rule read with 179 of Army Pension Regulation.

15. It is further argued emphatically that the applicant was entitled to continue to serve till he attained the age of 57 years as stipulated in MOD letter dated 22nd February, 1999 (Annexure R8/8) but it was cut short illegally and arbitrarily by exercise of unbridled discretionary power of the respondent authorities. The petitioner's discharge on curtailment of service is, therefore, not constitutionally sustainable. In this context he has referred to a ruling of the Constitution Bench of the Hon'ble Apex Court reported in **AIR 1991 S.C. 101 (Delhi Transport Corporation vs. D.T.C.**

Mazdoor Congress). Another limb of his argument on that score is that discharge of the applicant on the recommendation of the Release Medical Board under Rule (3) item (III)(i) of the Army Rule is also illegal since such discharge was ordered in contravention to Rule 13(3) item III(iii) of Army Rules as held by the Hon'ble Apex Court in Rajpal Singh's case reported in **(2009) 1 S.C.C. 216 (Union of India vs. Rajpal Singh)** (Supra). In this context he has referred to the letter dated 02 December 2008 issued by the Integrated HQ of MOD (Army) whereby as a follow-up action to the Judgement of the Apex Court, the Army Authorities evolved certain methodology for reinstatement of PBOR and further discharge of permanent LMC persons in terms Integrated HQ MOD Army letter dated 12th April 07 and even No. dated 27 June 2007 was ordered not to be carried out until further order. Mr. Pradhan, therefore assailed the impugned discharge on two fold grounds since it infringes constitutionally guaranteed right of continuance in service if he is found otherwise suitable and also contravens statutory provision of Army Rules.

16. It is next argued by him that even though the initial Medical Board held on 5th September 2002 opined that disability arising out of Primary Hypertension was contacted in service and was aggravated due to stress and strain in service and he was given employability restriction, the RMB

held on 12-3-2005 offered a different opinion without taking into consideration the medical opinion of the previous Medical Boards. The RMB opined that the disease in question was constitutional disorder. It is, therefore, submitted by him that such opinion is per incuriam and the Court should ignore it. In this context, he has referred to a decision of the Hon'ble High Court reported in **2012 AIR SCW 1772 (Rattiram&Ors v. State of Madhya Pradesh through Inspector of Police).**

17. He further refers to the positive opinion of the Commanding Officer recorded in Part III of the RMB proceedings. The Commanding Officer was of the opinion that the disease was attributable to service due to not own fault of the individual. He has, therefore, argued that non-consideration of such opinion of the Commanding Officer indicates sheer non-application of mind to the relevant factual materials on record on the part of the RMB.

18. Another facet of Mr. Pradhan's argument is that since AGIF is a 'state' within the meaning of Art.12 of Constitution of India and discharging public function and the Govt. has pervasive control over the functioning of the AGIF, this Court has absolute jurisdiction to pass necessary direction upon the Respondent No.8 in respect of the grant of disability benefit in favour of the applicant.

19. That apart, disability benefit comes under the purview of service matter as defined in Section 3(o) which includes 'pension and other retirement benefits'. Therefore, the Respondent No.8 is liable to disburse disability benefit in favour of the applicant proportionate to his degree of disability. He has contextually referred to an unreported decision of this Bench in OA No.29/2010 (Ex L/NkSantosh Kumar Maharana vs. Union of India & 6 Ors) whereby AGI, the respondent was directed to recalculate the benefits payable to the applicant and disburse the same to him treating that the applicant was boarded out with 20% disability as a case of aggravation due to military service.

20. Per contra it is argued by Mr. Anup Kumar Biswas, on behalf of the Respondents 1-7, that on his discharge from Army Service, the applicant voluntarily joined the DSC on contractual basis for a fixed term of tenure. He was, however, placed in Low Medical Category due to disability arising out of 'Primary Hypertension'. He was put through the RMB which considered the said disability neither attributable to nor aggravated by the service of DSC. As per recommendation of the RMB the applicant was discharged from DSC on completion of terms of contractual service. That apart, there is a sharp distinction between regular service in Army and contractual re-employment in DSC. The Army Personnel in regular

employment cannot be equated to re-employed personnel on contractual basis in DSC. It is forcefully contended that the discharge/release of the applicant by the RMB can in no way be treated as invalidating out of service on medical ground. In this context it is pointed out by Mr. Biswas that, a close look to the discharge order impugned would indicate that the applicant was discharged from DSC service w.e.f. 31-8-05 under the provisions of Rule 13(3)III(i) of Army Rules 1954 after rendering 12 years 11 months and 2 days of qualifying service because of his placement in permanent low medical category for which he was denied further extension of two years as stipulated in the relevant circular of MOD No.65730/DSC-1/505/D(Mov)/99 dated 22.2.1999 (annexure-R8/8) by which the age of retirement of NCOs excluding Subedar Major was enhanced to 57 years.

21. Mr. Biswas further draws our attention to a specific 'Note' appended under regulation 183 of Pension Regulations wherein it is clearly stipulated that a re-employed Pensioner who is in receipt of pension is not entitled to the grant of service element. The applicant is already in receipt of service pension for the former service rendered with the army regiment. Service element on disability pension is, therefore, not admissible to him. However, he is also not entitled for grant of disability element since he

was discharged on completion of contractual term of engagement on attaining the age of superannuation and was not invalidated out of DSC service on medical ground as claimed on behalf of the applicant. According to him, the disability pension is granted to those individuals who have been invalidated out of service after curtailment of service tenure. In the instant case, it is, therefore, emphatically argued by Mr. Biswas that in view of his completion of contractual terms of engagement on attaining the age of superannuation, his prayer for disability pension has rightly been rejected by the D.S.C. authorities in terms of relevant provisions of Pension Regulations.

22. In this context, he has sought to place reliance upon an unreported decision of the Principal Bench, AFT made on 27-04-2011 (Annexure R1) in **OA 690 of 2010 (Ex Sep. VidhyaSagar –vs- UOI & Ors).** It is vehemently argued by him that the Hon'ble Principal Bench rejected the prayer for disability pension of Ex SepoyVidhyaSagar, who was also enrolled in the Defence Security Corps (DSC) after his discharge from army service. VidhyaSagar's case is similarly situated because he was also discharged from DSC service on completion of 10 years fixed tenure and on refusal of extension of service therein because of low medical category. The petitioner's claim for disability pension under regulations 286 and 287 of

Pension Regulations because of invalidment due to placement in low medical category was rejected by the Principal Bench on the ground that the petitioner was discharged simpliciter on completion of his tenure. It was further held therein that simply because he was not granted extension on account of low medical category, that would not be deemed to be an order of discharge on account of being invalided out of service. Since the applicant therein was discharged on completion of tenure in DSC after a period of 10 years, such discharge can not be treated to be invalidated out of service. The petitioner was, therefore, found to be not entitled to the benefit of disability pension under regulations 286 and 287 of Pension Regulations.

23. Relying upon the averments made in the A/O, it is argued by Mr. MintuGoswami, Learned Advocate for Respondent No.8 at the outset that the provisions of AFT Act, 2007 would not be applicable to the AGI and any dispute with regard to the benefits payable by the AGI would have to be adjudicated by a Court of Appropriate Civil Jurisdiction. According to him, the function of AGIF is governed by the provisions of the Societies Regulation Act, 1860 and as such it has a separate legal entity and is not subject to the Army Act, 1950.

24. It is further contended by Mr. Goswami that those army personnel, who during their tenure in service, suffer from disability and are downgraded to medical category permanent, and are not found fit to continue in service due to the disability, i.e. their services are cut short due to the disability, are brought before an Invaliding Medical Board and are paid disability benefits by the AGIF, if their disability is 20% or more provided they fulfill the other criteria laid down by AGIF for grant of disability benefits. But the applicant failed to satisfy such eligibility criteria. On completion of his initial fixed and contractual term of engagement of 10 years, he was granted further extension of three years, i.e. till he attained the age of superannuation. His prayer for grant of further extension of two years was, however, refused due to his placement in permanent low medical category because of diagnosis 'Primary Hypertension' before the due date for extension. Mr. Goswami, therefore, forcefully asserts that since there was no curtailment in age/service limit of the applicant, he was not eligible for disability benefit as per rules and regulations of AGIF.

Discussion/Views

25. We have bestowed our anxious consideration to the rival contentions with reference to materials and circumstances on record. The issues requiring adjudication are :

(1) Whether the applicant was re-employed in D.S.C. service on casual and contractual basis for a fixed term of tenure?

(2) Whether he was discharged from DSC Service on medical ground before completion of the term of engagement?

(3) Whether he ought to have been invalidated out of service on account of his medical disability which caused curtailment of his service span?

(4) Whether the medical opinion to the effect that invaliding disease is constitutional as expressed by the RMB is legally sustainable?

(5) Whether the applicant is entitled to disability pension and AGIF benefit as per Rule because of his invalidment due to primary hypertension?

26. **Point No1&2** : Both the points are taken up together since they are interlinked with each other. To our mind, it would be apt and relevant to examine and analyse meticulously the various provisions of Pension Regulations, Entitlement Rules, Army Rules and Guide to Medical Officers etc. coupled with circulars/instructions issued by the MOD Govt of India from time to time in the backdrop of the factual scenario as unfolded in

the respective pleadings and arguments of the parties to adjudge the points at issue in its proper perspective.

27. It would be useful to advert to the instructions/circulars issued by the MoD stipulating terms and conditions of service for personnel of Defence Security Corps from time to time.

28. At the outset we are to refer to circular No. TER/257/MDSC/1747/D(IS) dt.23.3.1956 on the subject "Terms and conditions of service for personnel of Ministry of Defence Security Corps" (Annexure R-8/5). It is stipulated therein that the initial period of employment in the DSC will be 5 years and those who are recommended and selected for further retention may, if willing, be given 2 years extension at a time subject to the age limit indicated therein. The age limit so fixed in respect of Ors (Other Ranks) are as follows :-

Sepoys and Lance Naiks	- 45 years
Naiks and Havildars	- 48 years

29 A bare perusal of the said circular would reveal that the Govt. has ordered creation of substantive cadre in the Ministry of Defence. In this context, para3 also appears to be relevant and it is quoted below :-

> "3. The Ministry of Defence Security Corps will have to substantive cadre on 60% of the Corps strength respectively in each rank. Separate orders regarding the number of personnel in substantive cadre will issue from time to time".

Para 4 and 5 being relevant are also reproduced as under :-

> "4. They will be entitled to casual and sick leave as is admissible to equivalent ranks of the Regular Army,

COUNTING OF PREVIOUS SERVICE IN THE MINISTRY OF DEFENCE SECURITY CORPS AND IN THE INDIAN ARMY FOR PENSION/GRATUITY.

> 5. The personnel of the Ministry of Defence Security Corps/Indian Army joining the Corps will count, subject to the usual conditions, their previous service in the Ministry of Defence Security Corps and/or in the Indian Army for pension/gratuity at the rates and under the conditions laid down for other Ministry of Defence Security Corps personnel."

30. Corrigendum to the aforementioned circular dt. 23.3.1956 was subsequently issued vide No. A/00592/DSC-2/813-III/D(GS-IV) dated 5th Dec 1981 (Annexure-R8/6) whereby para 1(a) and (b) of the circulars dated 23-3-1956 were substituted and substituted para (b) reads as under :

> " (b) Sepoys : The initial period of engagement for Sepoys in the Corps will be 10 years. Those who are recommended and

selected for further retention may, if willing, be given 5 years extension at a time or till they reach the age of superannuation i.e. 55 years "

Paras 2 and 3 of the corrigendum being relevant are also reproduced below :-

" 2. Election : Serving personnel who elect the above terms will sign a willingness certificate. Election will be made within three months after the date of issue of this letter and election once made will be final and irrevocable. Those who refuse to elect the new terms will continue to be governed by the existing terms of engagement.

3. This issues with the concurrence of the Ministry of Finance (Def/AG) vide their u.o. No. 9604/2528-PD of 1981."

31. Such circular was further amended by circular No. 65730/DSC-2/390-C/D(GS-IV) dated 15th Dec 1985. This relates to the revised standard for re-enrolment in DSC specifying maximum age for re-employment as also age of superannuation in respect of the DSC personnel. It further lays down therein the service requirements of DSC personnel for being eligible for re-enrolment to DSC as under :

" * * * *

- Character should be ‘very good’.
- Should have rendered minimum five years colour service in the Army/Navy/Air Force or five years embodied service in case of Ex TA personnel.
- Should be medical category AYE.

- Further, all personnel joining DSC should do so within five years of their retirement/discharge from previous service or before attaining the following prescribed maximum ages for various ranks whichever is earlier :-

Rank	Maximum age for Re-employment/re-Enrolment (Years)	Age of superannuation (Years)
(a)	(b)	(c)
Sepoys	45	55
Naiks	45	55
Havildars	47	55
NbSubedars/Subedars	50	55
SubedarMajors(Lateral Entry)	52	55 years or on completion of 4 Years tenure whichever is earlier

- This Ministry’s corrigendum No. 65730/3/DSC-2/332-C/D(GS-IV) dated 22 Jun 83 is hereby cancelled.
- This will have effect from 01 Feb 86.. “

32. **The retirement age of DSC personnel in respect of all ranks excluding Subedar Major was enhanced to 57 years in terms of circular No. 65730/DSC-1/505/D(Mov)/99 dated 22nd Feb 1999 (annexure-R8/8)**.

It is recited therein as follows:-

(Emphasis is ours)

"……. to convey the sanction of the President to the laying down of the following revised terms of service/tenure and age limit for retirement in respect of DSC personnel with effect from 30 May 1998 in partial modification of the existing terms and conditions laid down for DSC pers vide Govt. of India, Ministry of Def letter No. 65730/DSC2/390/D(GS-IV) dated 15 Dec 1985 as amended :-

Srl No.	Rank	Age for retirement
(a)	All ranks excluding Subedar Major	57 years of age subject to screening at the time of last extension of service or 3 years before the date of retirement whichever is earlier
(b)	Subedar Major	57 years of age or 4 years of tenure as Sub Major whichever is earlier subject to screening at the time of last extn or 3 years before the age of superannuation whichever is earlier

* * * * * * * "

33. On the question of assessment of suitability for army personnel for DSC retention some guidelines have also been laid down in the said circular vide para 2(a) which is quoted as under:-

> "2 (a) All JCOs and NCOs shall be screened in advance at the time of grant of last extension of service or 3 years before the age of superannuation whichever is earlier by a screening board to assess their suitability for their retention. For such personnel who have already been granted last extension of service or those who have less than 3 years of service the Screening will be carried out within three months of the issue of these orders."

34. A conjoint reading of all these relevant circulars as referred to hereinabove tends to show that the substantive cadre in the DSC was created in the year 1956 and the requisite cadre strength of the Defence Security Corps was also specified/earmarked therein(Annexure R8/5). The subsequent revision of the parent circular in respect of terms and conditions of service as also enhancement of retirement age etc. do not support the contention of the respondents that the army people on their retirement are re-employed in DSC on purely contractual basis and in view of such casual re-employment the question of curtailment of service does not arise at all. On the contrary, it is quite evident that the service conditions of DSC personnel underwent revision from to time to award more benefits to them at per Army Personnel. There is also no whisper within the four corners of these circulars that it was a contractual re-

employment. Rather, as already pointed out earlier, there was a creation of a separate cadre for DSC personnel as far back as in the year 1956. Even their age of superannuation has also been enhanced from time to time. In the present case, the age of superannuation of the applicant was 57 years but because of his subsequent placement in low medical category, he was found not medically fit for two years extension to complete his full tenure on attaining the age of retirement as stipulated in the amended circular of 22 Feb 1999 i.e. 57 years, even though he was, otherwise quite fit to continue in service till the age of superannuation on attaining the age of 57 years. Unfortunately, there was onset of invalidating disease of 'primary hypertension' during service and he was downgraded to permanent low medical category. In other words, it can safely be said that his retention was found not acceptable medically by the DSC authorities since he suffered from primary hypertension which was detected while he was in DSC service. It is also not disputed that he was engaged in guard duties with rifle on shift basis for the entire period of his employment in DSC for more than 13 years. At any rate, the fact remains that his service tenure in DSC was cut short because of his placement in low Medical Category. In reality he was forced to retire at the age of 55 years due to his invalidment arising out of Primary Hypertension and was not allowed to

complete his service tenure till the attainment of superannuation age which was fixed at 57 years as per Ministry of Defence order dated 22-2-1999 (Annexure 8/8). We are, therefore, unable to accept the Respondents' contention that the applicant was re-employed on contractual basis and was discharged at the age of 55 years on completion of his term of engagement in DSC Service on attainment of the age of superannuation.

35. We have further perused the order dated 27-4-2011(Annexure R1) passed by the Hon'ble Principal Bench, AFT which have been referred to on behalf of the respondents to substantiate their view point that the service of the applicant was not curtailed and he was discharged on completion of full tenure of his term of contractual re-employment. It appears from the aforementioned order that the Principal Bench, AFT has been pleased to opine inter-alia that refusal to grant extension because of low medical category ''would not amount to invalidated out of service''. Applying the ratio of the afore-mentioned Order, it is submitted by both Mr. Biswas and Mr.Goswami, learned counsel for the respondents that since the petitioner in the present case has been discharged simplicitor he is not entitled to the benefit of pension under Regulation 286 and 287 of Pension Regulation.

36. The afore-mentioned decision of the Co-ordinate Bench, in our considered view, is of no help to the Respondents for several reasons. In the first place, the relevant provisions of M.O.D. Circulars/Instructions referred to hereinbefore whereby terms and conditions of DSC Service were regulated coupled with relevant provisions of Entitlement Rules, Pension Regulations & Army Rules as would be analysed hereinafter had not been brought to the notice of the Bench nor they were referred to in the decision. Therefore, the Principal Bench had no occasion to consider the core issue of curtailment of service as also invalidment of the applicant in the light of above Government Orders and Circulars together with other connected Rules and Regulations including Entitlement Rules etc. which have absolute relevance and are also essentially required for such consideration in order to arrive at a just decision on proper adjudication of the issues under reference. Secondly, it is well settled that every case is to be adjudicated on its own facts and peculiarity of circumstances which are not identical in two cases. Thirdly, in the present case two successive Medical Boards opined concurrently that invalidment of the applicant was aggravated due to stress and strain of DSC service while the RMB expressed a different opinion that the disease 'Primary Hypertension'was Constitutional in nature and not connected with service even not taking

into account the concurrent finding of the previous Medical Boards. In Ex-SepoyVidhyasagar's case there was no conflicting medical opinion to settle the dispute regarding the applicant's discharge on invalidment. The decision of the Co-ordinate Bench is thus both factually and legally distinguishable. Considering all these, we do not find any substance in the argument advanced by Mr. Biswas on that score.

37. We are, therefore, of the considered opinion that the applicant was discharged from DSC Service before completion of terms of employment and his tenure got cut due to Low Medical Category. His re-employment in DSC was not on contractual and casual basis for a fixed term of tenure. On the contrary, the applicant's service limit was till the attainment of age of superannuation, i.e. 57 years subject to fulfilment of eligibility criteria before the Screening Committee. In such view of the matter, it is crystal clear that his service tenure was curtailed at least by two years. The curtailment of applicant's service tenure has thus been well established.

Issue No.1 is answered in the negative, while Issue No.2 is answered in the affirmative accordingly.

38. Point No.3,4& 5 : All these points are taken up together for the sake of convenience in discussion and brevity in treatment.

39. It is now absolutely obvious from the foregoing discussion that this is a case of discharge on curtailment of the applicant's service tenure on medical ground. His service tenure was curtailed because of disability arising out of 'Primary Hypertension'. Such being the factual position, the proposition of law laid down in Rajpal Singh's case (supra), reported in **(2009) 1 SCC 216(Union of India v. Rajpal Singh),** to the effect that a permanent low medical category person can only be discharged by putting him through an Invalidment Medical Board (IMB) is squarely applicable to the facts and circumstances of the present case. In other words, holding of Invalidment Board is a condition precedent for discharge of a Sepoy in DSC Service on account of low medical category. In view of Rajpal Singh's case, the discharge of the applicant Sepoy without holding an Invaliding Board in terms of Rule 13(3)III(iii) of Army Rules was illegal. It is strictly prescribed in Rule 13(3) III(iii) of the said Rules that the order of discharge in respect of a Sepoy can be made only on the recommendation of the Invaliding Board. The main ground of discharge being medical unfitness for further service, the respondent authorities are bound to follow the prescribed rules. It is well settled position of law that arbitrariness should be eliminated in a state action. In fact, the requirement of recommendation of Invalidating Board is a safeguard against arbitrary curtailment of statutory

tenure. That apart, ‘‘it is well settled rule of administrative law that where power is given to do certain thing in a certain manner, the thing must be done in that way”. It is, therefore, mandatory for the Respondents to strictly adhere to the prescribed rules. Taking such legal requirement into account we are to opine that the Constitution of the RMB, is not legally tenable in the facts and circumstances of the present case.

40. As already opined earlier, the applicant’s re-employment in DSC cannot be treated as contractual re-employment and in that view of the matter the plea of discharge on completion of his fixed tenure of appointment on attaining the age of superannuation is also not acceptable. The relevant circular (Annexure R-8/8) as analysed above stipulates that the applicant’s age of retirement was 57 years subject to screening at the time of last extension of service or 3 years before the retirement whichever is earlier. It is an admitted position that he was refused extension for two years more as per recommendation of Release Medical Board which was of the opinion that his disability arising out of ‘Primary Hypertension’ is neither attributable to nor aggravated by service and as such it is not connected with D.S.C service. By no stretch of imagination it can be denied that he was not allowed to attain the prescribed age of superannuation at 57 years only because he was found medically unfit for

further service in view of his invalidment arising out of disability due to Primary Hypertension. He was thus discharged at the age of 55 years even though the prescribed age of retirement was 57 years. The contention of Mr Biswas that he was discharged on attainment the age of superannuation appears to be factually incorrect on the face of the record itself. At any rate, the fact remains that his tenure has thus been cut short by two years because of his permanent low medical category. In this context it would be relevant to reproduce Rule 179 of Pension Regulations as under :

> "*179. An individual retired/discharged on completion of tenure or on completion of service limits or on completion of terms of engagement or on attaining the age of 50 years (irrespective of their period of engagement), if found suffering from a disability attributable to or aggravated by military service and recorded by Service Medical Authorities, shall be deemed to have been invalided out of service and shall be granted disability pension from the date of retirement, if the accepted degree of disability is 20 percent or more, and service element if the degree of disability is less than 20 per cent. The service pension/service gratuity, if already sanctioned and paid, shall be adjusted against the disability pension/service element, as the case may be.*
> *(2) The disability element referred to in clause (1) above shall be assessed on the accepted degree of disablement at the time of retirement/discharge on the basis of the rank held on the date on which the wound/injury was sustained or in the case of disease on the date of first removal from duty on account of that disease.*
>
> **Note :***In the case of an individual discharged on fulfilling the terms of his retirement, his unwillingness to continue in service beyond the period of his engagement should not affect his title to the disability element under the provision of the above regulation".*

41. A close analysis of the aforequoted provisions of Pension Regulations reveals that on attaining the age of 50 years (irrespective of their period of engagement) an individual retired/discharged if found is suffering from disability attributed to or aggravated shall be deemed to have been invalidated out of service and shall be granted disability pension on the date of retirement if the accepted degree of disability is 20% or more.

42. In this connection on the question of the applicability of the provisions under reference to the case of the applicant, it is pertinent to refer to the relevant provision of Chapter-IV of Army Pension Regulations which deal with pensionary awards admissible to the personnel of the Defence Security Corps. Rule 265 under the heading **Extent of Application** and Rule 266 under the heading **General Provision** read as under :

"**Extent of Application**

265. Unless otherwise provided, the regulations in this chapter shall apply to personnel of the Defence Security Corps who were in service on the 1st June, 1953 and who joined or join service on or after that date".

"General provision

266. **The grant of pensionary awards to personnel of the Defence Security Corps shall be governed by the same general rules as are applicable to combatants of the Army,** except where they are inconsistent with the provisions of the regulations in this chapter".

(Emphasis supplied)

43. It is also equally important to quote **Section V –Invalid Pension and Gratuity** which deals with admissibility of Invalid Pension and Gratuity to DSC Personnel. The relevant provisions under Section V of Chapter IV of Pension Regulations are accordingly reproduced below :

"Extent of Application

285. The regulations in this section shall apply to such of the personnel of the Defence Security Corps referred to in Regn.265.

Invalid Pension/Gratuity – when admissible

286. Invalid pension/gratuity shall be admissible in accordance with the Regulations in this section to :

(a) an individual who is invalided out of service on account of a disability which is neither attributable to nor aggravated by service.

(b) an individual who is though invalided out of service on account of a disability which is attributable to or aggravated service, but the disability is assessed at less than 20%, and

(c) a low medical category individual who is discharged from service for lack of alternative employment compatible with his low medical category.

Minimum Qualifying Service

287. The minimum period of qualifying service actually rendered and required for grant of invalid pension is 10 years. For less than 10 years actual qualifying service invalid gratuity shall be admissible".

44. It is further contextually relevant to refer to Section 4 of Entitlement Rules, which read 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.** JCO/OR and equivalents in other services who are placed permanently in a medical category other than 'A' and are discharged because no alternative employment suitable to their low medical category can be provided, as well as those who having been retained in alternative employment but are discharged before the completion of their engagement will be deemed to have been invalidated out of service".

(Emphasis is ours)

45. A set of Rules pertaining to Pension Regulations and also the relevant provisions of Entitlement Rules as quoted hereinbefore clearly spells out the circumstances and conditionalities leading to invalidment of any individual as also his admissibility/entitlement to disability pension.

46. It is also to be borne in mind that the relevant provision of Entitlement Rules referred to in Pension Regulations 48, 173 & 185 are to be construed & interpreted liberally so that the maximum benefit can be enured to the claimants since the Government is a benevolent employer and perhaps that is why as per Rule 9 of Entitlement Rules onus of proof is

cast upon the respondent employers and the claimant shall not be called upon to prove the conditions of entitlements. The claimant should be entitled to the benefit of any reasonable doubt and further such benefit is to be given more liberally to the claimants in appropriate cases. It is also to be noted with all seriousness that as per Rule 10 of Entitlement Rules even post discharge claims are also admissible in cases in which a disease did not actually lead to the member's discharge from service but arose within 10 years thereafter, may be recognized as attributable to service if it can be established medically that the disability is a delayed manifestation of a pathological process set in motion by service condition obtaining prior to the discharge and that if the disability had been manifest at the time of discharge, the individual would have been invalided out of service on this account. Such beneficial rules have been framed only to protect the interest of service personnel even after their discharge only in recognition of their service to the nation as a whole. Therefore, denial of benefit of disability pension to a deserving Army/DSC personnel was never intended by the rule framing authorities. As a court of law, the Judicial forums are entrusted with the solemn task of interpreting rules and regulations liberally in the light of their intended meaning and true spirit to uphold the dignity of the service personnel in its proper perspective.

47. Against the backdrop of such rule position we are now to weigh the medical opinion of the RMB with reference to the relevant materials and circumstances on record including the medical opinion recorded by (i) Categorisation and (ii) Re-categorisation Medical Boards. It is an admitted position that prior to holding of RMB, the categorization Board was initially formed on 5-9-2002 when the applicant was 53 years old. On perusal of the initial Medical Board's proceeding in original we find that the applicant was placed in low medical category temporarily for a period of 6 months w.e.f. 5-9-2002 with 20% disability and the date of attendance before Re-categorisation Board was fixed on 21st February 2003. It was opined by the Initial Medical Board that the disability was contacted in service and due to stress and strain of service it was aggravated. Accordingly, the applicant appeared before the Re-categorisation Medical Board which, on physical examination placed the applicant in Medical Category S1 H1 A1 P2 E1 w.e.f. 22-02-2003 with 20% disability. He accordingly continued in low medical category w.e.f. 22-2-2003 on account of 'primary hypertension' and his employment restriction was re-imposed by opining that he was to avoid severe physical exertion. He was asked to appear before the next Re-Categorisation Board on 22-02-2005. The next Re-Categorisation Board held on 12-03-2005confirmed the findings of the

Initial Medical Board held on 5th September, 2002 in Column No.17,18,19& 20 of Part I of the Re-Categorisation proceedings of the Medical Board. The Medical Board reiterated the Initial Board's opinion that the disability was aggravated by service. It was further opined by the Re-Categorisation Board that the disability of the applicant contacted in service in the circumstances over which the applicant had no control.The date of appearance before the next Re-Categorisation Medical Board was fixed on 22-02-2007. He accordingly continued in low medical category w.e.f. 22-2-2005 on account of Primary Hypertension.

48. However, on production of the applicant before the Release Medical Board, the RMB recorded its opinion on 2nd April 2005 to the effect that the disability is neither attributable to nor aggravated by service and it is a constitutional disorder not connected with service. In fact, the RMB failed to put forward any cogent and convincing reason as to why the applicant's disability was a constitutional disorder. It has simply stated that the disability arose out of primary hypertension and assessed the degree of disability as 30% for life long. It is distressing to note that the Release Medical Board did not take into consideration the findings of the Categorisation and Re-Categorisation Medical Boards which were held earlier to examine the nature, cause and degree of disability suffered by

the applicant. It is also quite evident from the proceedings of the Release Medical Board itself that the Board even had not cared to take into consideration the recommendation of the Commanding Officer who categorically opined that the disability was attributable to service and due to no fault of the applicant he had to suffer the disability. In Part-V of the RMB proceedings it is, however, vaguely noted that it was a constitutional disorder not connected to service. It would be apt to reproduce Part V of Board's proceedings to show how the Medical Board applied their technical mind for recording an opinion without highlighting the reason/, specific condition of the disease in question. Part V of the RMB proceedings reads as under :

" PART V
OPINION OF THE MEDICAL BOARD
(Not to be communicated to the individual)

• Causal Relationship of the Disability with Service conditions or otherwise				
Disability	Attributable to service (Y/N)	Aggravated by service (Y/N)	Not connected with Service (Y/N)	Reason/Cause specific condition and period in service
(a)PRIMARY HYPERTENSION ICD.I.10.0	No	No	Yes	Constitutional disorder not connected with service
Note : A disability Not connected with service would be neither				

Attributable nor Aggravated by service

Sd/- (Ashok Bhandari)	Sd/- (Rajneeth K. Patel	Sd/-(KaushikChatterjee)
Surgeon Lt.Commander	Surg. Lt.Cdr	Surgeon Commander
Member Medical Board		Classified Specialist
INHS Kalyani		(Phychiatry)"

49. The question as to whether the petitioner was found suffering from a disability aggravated by service as per opinion of medical authorities is to be addressed on the basis of findings of four Medical Boards, viz., (i)Initial Medical Board for categorisation held on 5-9-2002 (ii) Re-categorization Medical Boards held on 24-2-2003 and 12-03-2005 also (iii) Release Medical Board held on 02-04-2005. As indicated earlier the applicant was initially placed in low medical category T-24 weeks with effect from 5-9-02. The Initial Categorization Board was of the opinion that the applicant's disability was contacted in service and even though his disability was not directly attributable to service but was aggravated thereby due to stress and strain of service. The re-categorisation Medical Board also concurred with the medical opinion of the Categorisation Board. Accordingly it is to be accepted that, it was aggravated by service as was opined by the Categorisation Medical Board held on 5-9-2002. It was, however, subsequently opined by the Release Medical Board that Primary Hypertension suffered by the applicant was constitutional disorder not connected with service. The percentage of disability was, assessed as 30%

life long. The Release Medical Board, as it appears from the proceedings itself, had no occasion to consider the concurrent opinion of three earlier Medical Boards which were formed at different point of time and recorded their medical opinion on the basis of connected materials and circumstances on record. Such positive opinion of the Initial Board and Re-Categorisation Medical Boards is also quite in consonance with the recommendation of the Commanding Officer.

50. The opinion of the Release Medical Board in Part-V of Medical Proceedings reproduced verbatim hereinbefore unequivocally tends to show that expression in single word like 'No' merely written in the column 'Attributed to Service and Aggravated to Service', while 'yes' noted against the column 'Not connected with service' is of no consequence. It is to be pointed out here that despite specific instruction, under 5th column to record reason, cause, specific condition etc. it has, however, simply been commented upon'constitutional disorder not connected with service'. The recording of Medical Opinion cryptically in such a fashion indicates sheer-non application of mind.The RMB has mechanically opined that the disease in question is not connected with service, through vague hints and expression like 'constitutional disorder' without elucidating the cause, reason and nature of such constitutional disorder in the context of primary

(essential) hypertension which itself was described as invalidating disease. In our considered opinion, such 'inchoate medical opinion' cannot be acted upon, especially when there existed concurrent medical opinion by earlier medical boards firmly establishing the factum of aggravation in service caused by invalidating disease of primary hypertension due to stress and strain of DSC service. But as ill luck would have it, the Release Medical Board differed in its opinion without taking into consideration the concurrent opinion of Initial Medical Board and Re-Cateogorisation Medical Boards. It is an admitted position that the Release Medical Board never considered the concurrent opinion of earlier Medical Boards at any stage of its proceedings. We are, therefore, of the considered view that the opinion of the Initial Medical Board being confirmed by the subsequent Re-Categorisation Medical Boards carries much weight and conviction being backed by sufficiently strong corroborative materials and circulars on record especially when such opinion is quite in consonance with the recommendation of the Commanding Officer, who is well conversant with the ground realities as also the nature of job which the applicant had to perform during his service career in the DSC.

51. As is evident from earlier discussion, the RMB is in conflict with the concurrent medical opinion of earlier Medical Boards. Strangely enough,

such conflicting medical opinion was recorded by the RMB whose constitution suffers from legal infirmities since such Medical Board was formed in contravention to Rule 13(3)(III)(iii) of Army Rules. At any rate, it is more shocking that the Release Medical Board did not care to take into account the relevant circumstances on record including the positive opinion of the Commanding Officer recorded in Part III of the RMB Proceeding. Furthermore, the Release Medical Board have also not taken into consideration the relevant provisions of Entitlement Rules as also Guide to Medical Officers in course of the process of formation of Medical opinion. It is obligatory for the Release Medical Board to assign sufficiently strong reasons as to why it was opined that the Primary Hypertension is constitutional disorder having no connection with the service. The recording of sufficient reasons in support of the medical opinion is also necessitated since RMB differed from the concurrent Medical Opinion of Medical Boards held earlier. Such medical opinion recorded in a very casual and mechanical fashion does not appear to be legally sustainable for the simple reason that they failed to take into account the relevant circumstances on record which include concurrent findings of previous Medical Boards as also the positive opinion of the Commanding Officer recorded in Part III of the RMB proceedings. There is also nothing on record to indicate that when the applicant was re-employed in DSC Service on enrolment he

suffered from any sort of hypertension or any other virulent disease. In fact, no adverse entry in respect of his health condition is available in the medical records pertaining to his enrolment in DSC service. We have addressed the core issue as to whether the petitioner was found suffering from disability aggravated by DSC service as per opinion of Medical Authorities on the anvil of findings of four Medical Boards, viz., (i) initial medical board for categorization held on 5-9-2002, (ii)Re-Categorisation medical board held on 24-2-2003 and 12-3-2005 and also (iii) Release Medical Board held on 02-04-2005. On a meticulous scrutiny of relevant documents, evidence and circumstances on record we, however, do not find sufficiently strong and valid reason to discard the concurrent findings of the Initial Medical Board and Re-Categorisation Medical Board which were properly constituted in order to determine the applicant's medical category on his physical examination at the relevant point of time. In fact, Initial Medical Board's finding that the disease of Primary Hypertension was aggravated by service was also subsequently confirmed by the Re-Categorisation Medical Board on consideration of relevant materials and circumstances on record. On the contrary, the opinion of Release Medical Board is not backed by any reason whatsoever not to speak of sufficiently

strong reasons and cogent grounds compelling the RMB to form an opinion overruling the opinion of earlier Medical Boards.

52. We are, therefore, of the considered view that Release Medical Board proceedings suffer from serious legal infirmities and as such release/discharge of DSC personnel based on such perfunctory opinion of the RMB can be tested by Courts/Tribunals by examining record of Medical Board and such expert opinion is not totally excluded from judicial review. (Vide **AIR 2013 SC 2827**(**Veer Pal Singh, Appellant vs. Secretary, Ministry of Defence, Respondent)**. Consequently, the medical opinion of the RMB does not appear to us to be acceptable since the RMB was not constituted validly in terms of Rule 13(3)(III)(iii) which speaks about formation of Invalidating Board which is alone competent to declare an individual's invalidment because of aggravation of invaliding disease in service. Apart from constitutional deficiency in formation of the RMB, it is also on record that no steps were taken by the RMB to call for relevant records from the concerned authorities for the purpose of formation of medical opinion in the light of relevant provisions of Entitlement Rules and Guide to Medical Officers etc. which are required to be followed mandatorily coupled with

evidence and circumstances on record. The RMB thus failed to satisfy all essential legal requirements prior to formation of its medical opinion.

53. In that context of the matter reliance can be placed on a very recent ruling of the Hon'ble Apex Court reported in **AIR 2013 SC 2840 (Dharamvir Singh v. Union of India & Ors)**.It is held therein that the question whether the invalidation or death of a member has resulted from service conditions, has to be judged in consultation with the record of the member's physical and mental condition during enrolment as noted in service documents together with all other available evidence both direct and indirect. In fact, a member is to be presumed in sound physical and mental condition if there is no note on record at the time of entrance. Therefore, in addition to any documentary evidence relating to the member's condition at the time of entry to the service and during service, the member must carefully and closely be questioned on the circumstances which led to the advent of his disease, the duration, the family history, his pre service history, etc. so that all evidence in support or against the claim is elucidated. It is also incumbent upon the Presidents of Medical Boards to ensure that opinions on attributability, aggravation or otherwise are supported by cogent reasons. Furthermore, the approving authority should also be satisfied that the question has been replied to in such a way as to leave no reasonable

doubt. But even though it was incumbent 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 acceptance of service, the Release Medial Board has failed to call for relevant records and to consult the same prior to formation of an opinion regarding attributability/aggravation of the disease.

54. As a matter of fact, there is nothing on record to suggest that any such relevant medical record pertaining to his entry to DSC service was called for by the Release Medical Board or looked into it by the Board. No reasons have been recorded in writing to come to the conclusion that the disability arising out of primary hypertension was not connected to service and was constitutional disorder.

55. Hypertension as described in para 43 of Guide to Medical Officers indicates that at the first instance it is to be considered as to whether hypertension is primary (essential) or secondary. It is further stated therein that “where disablement for essential hypertension appears to have been arisen or become worse in service the question whether service compulsions have caused aggravation must be considered and each case should be judged on its merits taking into account particularly the physical

condition on entry into service, the age, the amount and duration of any stress and whether any service compulsions have operated".

56. We feel constrained to observe that even though three earlier Medical Boards have taken into consideration service compulsions, duration of service and other relevant factors which contributed to aggravation of disease, the RMB however, did not feel it necessary and it has thus not taken care to follow the guidelines as enumerated in para 43 of Guide to Medical Officers. There is, however, nothing on record to indicate that the applicant suffered from such primary hypertension during his long tenure in army service for about 19 years, after which he was enrolled in DSC service. There is no medical record to show that he was a victim of the disease of primary hypertension at the time of entry to DSC service. Such being an admitted position it is reiterated that no endeavor was made by the RMB to call for the relevant medical records pertaining to his enrolment in DSC service.

57 It is also held in **Veer Pal Singh's case** (supra) that Courts and other 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. It is,

therefore, held, that whenever the opinion of the Medical Board is not well founded and requires a review in the context of observations and findings made by other Medical Boards, the Courts are quite competent to interfere with such 'an inchoate medical opinion'. Such being the established position of law, we are emboldened to examine and review the RMB proceedings in the context of concurrent opinion of Categorization and Re-Categorisation Medical Boards. Accordingly, on proper review, its medical opinion is found unacceptable being unfounded. Our interference to such unfounded medical opinion is therefore, justified. Its assessment on percentage of disability, however would remain undisturbed. In such view of the matter, we have no hesitation in accepting the medical opinion of the Initial Categorisation Board which stood confirmed by Re-Categorisation Medical Boards.

58. As regards to the preliminary objection sought to have been raised by Mr. Goswami, in course of his argument, that AGIF being a Society registered under the Societies of the Registration Act 1908 is not amenable to the jurisdiction of this Tribunal we are to opine that such argument does not appear to be a meritorious one for the simple reason that such preliminary objection already stood overruled by a judicial pronouncement of the Division Bench of Delhi High Court. In an unreported judgement of

Delhi High Court delivered in **WP(C) 3850/2010 on 29-8-2011 (Sagrika Singh, Petitioner vs. UOI & Others, Respondents),** it is held as under :

> "19. As already stated hereinabove, AGIF performs a public duty by providing insurance cover to the Army Personnel and their families by way of premium being compulsorily deducted from the salary of Army Personnel and thus a writ of mandamus can certainly be issued to AGIF to compel it to perform its duty".

59. It is pertinent to mention here that in the aforementioned case Sagrika Singh, the petitioner who was appointed as a Short Service Commissioned Officer in the Indian Army Medical Corps was denied the disability benefit stipulated under the Army Group Insurance Scheme on the plea that she was not entitled to any disability benefit since she had completed the extended tenure of service and denial of extension by another 4 years did not amount to curtailment of tenure of service. Such plea was turned down by the Delhi High Court and the AGIF was directed to pay the sum assured to the petitioner in terms of Para 59 of the Army Group Insurance together with simple interest on the said sum @8% per annum reckoned from the date when such demand was raised to the authorities concerned till the date the payment was to be released.

60. On the question of entitlement of AGIF benefits, we are to advert to paragraphs 58 & 59 of Part IV - Disability Benefits of AO 23/2002/AGI – ARMY GROUP INSURANCE SCHEME (Annexure R-8/3), which enables an

individual to claim financial benefit under the scheme. In order to ensure a close examination of the eligibility criteria in this regard, it would be apt to quote paras 58 & 59 which read as under :

"58. AGIF Disability Scheme was introduced on 01 Jan, 80 to compensate those personnel whose service was cut short and were invalided out of service in Medical category EEE with 40 percent and above disability. The progressive improvement of percentage of disability criteria was introduced for disability benefit as under :

Disability Percentage	Medical Category	Eligible date for those Discharged/Invalided out before Complet-ing Contractual Servi-ce on or after
• 40% and above	BEE, CEE or EEE	27 Sep 1987
• 30% and above	-do-	01 Oct 1990
• 20% and above	-do-	01 May 1992

59. The objective of AGIF Disability Scheme is to provide financial benefit to individual whose service is cut short due to invalidment or release on medical grounds before completion of the terms of engagement of service applicable to that rank. The disability benefit is paid as a lumpsum benefit based on initial assessment by Invaliding Medical Board or Release Medical Board before completing the contractual period of service for the rank and meeting the the eligibility conditions. The disability benefit admissible is 50 percent or as specified of the prevalent insurance cover for 10 percent disability on the date of invalidment and proportionately reduced for lower percentage of disabilituyupto 20 percent or as specified……"

61. It is, therefore, quite evident that the objective of AGIF Disability Scheme is to provide financial benefits to individuals whose service is cut short due to invalidment or release on medical ground (i) before

completion of the terms of engagement (ii) or service being cut short with reference to the service applicable to that rank. In such view of the matter, in our considered opinion, the petitioner is entitled to AGI benefits since his service was cut short due to invalidment before completion of the term of engagement as his retirement was due at the age of 57 years. Fortified with the above-mentioned unreported decision of the Division Bench of Delhi High Court cited on behalf of the petitioner, we are emboldened to opine that the instant petition is quite maintainable against the AGIF – the respondent No.8 and preliminary objection raised by Mr. Goswami on that score being devoid of merit stands rejected. His further argument that the applicant's re-employment being contractual in nature for a fixed tenure, he is not entitled to AGI benefits is neither factually nor legally tenable for the afore-indicated reasons.

62. In view of foregoing discussion, we are of the considered view that the petitioner ought to have been produced before IMB in terms of Rule 13(3)(III)(iii) of Army Rules and such being the essential legal requirement, the constitution of RMB is not legally justified. That apart, the medical opinion of the RMB has already been found to be unacceptable on several other compelling grounds as already indicated earlier.

Point No.3 and 5 are thus decided in favour of the applicant, while Point No.4 is answered in the negative accordingly.

Findings

63. As a corollary to our detailed analysis as also views recorded in preceding paragraphs, we cannot but hold that the applicant was discharged from DSC service on medical ground before completion of the term of engagement. It is further held that his tenure of engagement was palpably cut short in view of his invalidment arising out of invaliding disease 'primary hypertension'. Consequently, he could not continue till 57 years which was the age limit for being superannuated in terms of Policy letter dated 22nd February, 1999 (Annexure R8/8). It is further held that the applicant was enrolled in DSC service not on casual and contractual basis for a fixed term of tenure as claimed on behalf of the respondents. On the contrary, it is established from the circulars and instructions issued by MOD that the service of the applicant in DSC was regulated as per revised norms and procedure specifying maximum age of re-employment as also the age of superannuation in respect of the DSC personnel. Further, service requirements of DSC personnel were also categorically specified in those circulars, even guidelines for retention of DSC personnel on assessment of suitability have also been laid down in the

circular issued on behalf of the MOD. We are, therefore, unable to accept the respondents' contention that the applicant's re-employment in DSC was casual and on contractual basis for a fixed tenure of engagement. Accordingly, it is held that the applicant was discharged from service before completion of his term of engagement and invariably prior to reaching the age of superannuation, i.e. 57 years, even though all other eligible criteria barring the required standard of medical fitness were satisfied.

64. We further feel inclined to hold that the production of the applicant before the RMB instead of IMB despite curtailment of service span on medical ground is highly irregular since it contravens Rule 13(3)(III)(iii) of Army Rules. The findings of RMB which suffers from serious legal infirmities cannot be also allowed to sustain legally in view of RMB's failure to record any reason whatsoever in the process of forming its opinion to justify its finding that the invaliding disease primary hypertension is neither attributable to nor aggravated by service. Therefore, such perfunctory medical opinion can legally be interfered with. More so, whenever the RMB has even not cared to call for the records of Initial Medical Board and Re-Categorisation Board which recorded their concurrent findings that the 'primary hypertension' suffered by the applicant was aggravated by

service. They also accepted the recommendation of the Commanding Officer that the petitioner is entitled to disability pension. We, therefore, think it just and proper to accept the findings of the Initial Medical Board concurred by Re-Categorisation Boards. Accordingly on acceptance of its finding, the Re-Categorisation Medical Board held on 14-03-2005 be deemed to be an Invalidment Board. In such view of the matter the Medical Opinion expressed by the RMB cannot be legally sustainable and as such the medical opinion in question recorded by the RMB is liable to be set aside. However, the assessment of percentage of disability at 30% life long appears to be just and proper. Such assessment, therefore, stands accepted.

65. In view our specific finding that the petitioner was invalided out of service on account of medical disability assessed at 30% life long arising out of invaliding disease Primary Hypertension, it is held that the applicant is entitled to disability pension with AGIF benefits as admissible under relevant rules.

Decision

66. Consequent upon our afore-noted irresistible conclusion we have no other alternative but to record our decision as under :

I) The discharge order impugned (Annexure A1) issued in contravention to Rule 13(3) item III(iii) of Army Rules which prescribes discharge of an individual on the recommendation of an Invaliding Board for being found unfit for further service be set aside accordingly.

II) The letter dated 10th April 2006 issued by PCDA Allahabad rejecting the claim of disability pension (Annexure A2) and also order of non-acceptance of Appeal by the Appellate Committee on first Appeal (ACFA) communicated through letter dated 26th March 2007 (Annexure A4) be quashed.

III) The medical opinion recorded by such irregularly/illegally constituted Release Medical Board in Part V of the Medical Proceedings which led to the discharge of the applicant is hereby set aside.

IV) The Re-Categorisation Board held on 12-3-2005 confirming the findings of Initial Medical Board held on 6-9-2002 be deemed to be the Invalidment Board and their concurrent findings to the effect that invaliding disease Primary Hypertension was aggravated due to stress and strain of DSC service be upheld accordingly.

V) The percentage of disablement and probable duration of such degree of disablement, i.e. 30% life long as assessed by the RMB is, however, upheld in the facts and circumstances of the present case.

VI) The applicant being invalidated out of service due to invaliding disease Primary Hypertension which was aggravated due to the stress and strain of DSC service is entitled to the benefit of disability pension coupled with AGI benefits admissible as per rules.

Directions

67. In the result, OA No.100/2012 stands allowed in terms of directions as indicated herein below:

i) The Re-Categorisation Medical Board held on 14-03-2005 which confirmed the medical findings of Initial Medical Board held on 06-09-2002 be treated as Invalidment Board for the purpose of applicant's discharge on invalidment in terms of Rule 13(3)III(iii) of Army Rules.

ii) The applicant shall be deemed to have been discharged after being invalidated out of service on account of medical disablement which was aggravated by conditions of DSC service on the strength

of concurrent findings of Initial Medical Board held on 6th September 2002 and Re-Categorisation Board held on 14-03-2005.

iii) The applicant be, accordingly, entitled to disability pension together with AGI benefits as per rules.

iv) In view of the applicant's entitlement to disability pension, the Principal Controller of Defence Accounts (Pension), Allahabad Respondent No.6 is directed to sanction disability pension with effect from 14-3-2005 @30% disability life long in his favour with the usual benefits of rounding off in terms of the relevant G.O. issued under Government Policy and further to issue the PPO for disbursement of disability pension to the applicant within three months from the date of receipt of this order.

v) AGI benefit together with other consequential reliefs as per entitlement due to his invalidment on account of medical disability shall be paid by the Respondent No.8 within three months from the date of receipt of this order.

vi) The petitioner shall be entitled to get arrears of disability pension three years prior to the date when he approached this AFT

Bench by filing the present OA No.100 of 2012, i.e. with effect from 21-08-2009.

vii) The arrears of disability pension shall be paid within 4 months from the date of receipt of this order by the PCDA(P) Allahabad, in default whereof the respondents shall be liable to pay an interest @12% per annum till the date of payment of arrears.

viii) The PCDA(P) Allahabad, Respondent No.6 shall continue to disburse disability pension @30% life long as per initial award in RMB with the benefit of rounding off as per extant policy of the Government to the applicant.

ix) Parties are to bear their respective cost in the facts and circumstances of the case.

68. The relevant records pertaining to the proceedings of different Medical Boards produced in original be returned to the Respondents on proper receipt.

69. Let a plain copy of the order countersigned by the Court Officer be furnished to both sides on observance of due formalities.

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

(JUSTICE RAGHUNATH RAY)
JUDICIAL MEMBER