

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI**

O A No.53 OF 2010

FRIDAY, THE 24TH DAY OF MAY, 2013/3RD JYAISTHA, 1935

CORAM:

HON'BLE MR. JUSTICE SHRIKANT TRIPATHI, MEMBER (J)  
HON'BLE LT. GEN.THOMAS MATHEW, PVSM, AVSM, MEMBER (A)

**APPLICANT:**

M. SURESH, AGED 38, EX.HAVILDAR, NO.9512166 K,  
ARMY EDUCATION CORPS, NO.II MADRAS UNIT,  
THIRUVANANTHAPURAM, RESIDING AT JAISHA NIVAS,  
P.O. MOWANCHERY, KANNUR DISTRICT.

BY ADV. SRI. P.M. PAREETH.

***versus***

**RESPONDENTS:**

1. UNION OF INDIA, REPRESENTED BY  
SECRETARY TO GOVERNMENT OF INDIA,  
MINISTRY OF DEFENCE, SOUTH BLOCK, NEW DELHI.
2. DEFENCE MINISTER'S APPEAL COMMITTEE ON PENSIONS (DMACP),  
MINISTRY OF DEFENCE, SOUTH BLOCK, NEW DELHI.
3. OFFICER IN CHARGE, A E C RECORDS,  
PACHMARHI, MADHYAPRADESH – 461 881.
4. THE PRINCIPAL CONTROLLER OF DEFENCE ACCOUNTS (PENSION),  
ALLAHABAD, DRAUPADI GHAT, UTTER PRADESH.

R1 TO R4 BY SR. PANEL COUNSEL SRI. TOJAN J. VATHIKULAM.

O R D E R

Shrikant Tripathi, Member (J):

1. The applicant M. Suresh, Ex Havildar No.9512166 K has filed the instant Original Application for a direction to the respondents to sanction and pay him disability pension with effect from the date of his discharge. Alternatively, he has prayed for grant of invalid pension. He has further prayed for quashment of the second appellate order Annexure A8.

2. The facts relevant for the decision of the instant Original Application are that the applicant M.Suresh joined the Indian Army Education Corps on 4<sup>th</sup> of the March 1993 and was invalided out of service on 21<sup>st</sup> of December, 2006 on the ground that he had the disability "Obsessive Compulsive Disorder". He made a request for disability pension but his request was turned down on the ground that the disability was neither attributable to nor aggravated by the military service. He preferred first appeal against the

rejection order which was dismissed. The dismissal order was communicated to the applicant vide the letter dated 24<sup>th</sup> March 2009 (Annexure A5). The applicant then preferred second appeal vide Annexure A6. He also filed W.P (C).No.17705 of 2009 in the Kerala High Court for a direction to the second respondent therein to consider and pass orders in the second appeal. The High Court admitted the writ petition on 6<sup>th</sup> July 2009 and passed an interim order directing the second respondent therein to consider the second appeal and pass orders thereon within three months from the date of receipt of a copy of the order. The High Court further directed that the second respondent shall also afford the applicant a reasonable opportunity of being heard before passing the order. It was made open to the applicant either to appear in person or submit a written brief for setting out his contentions. In compliance of the order of the High Court, the applicant submitted a written brief vide his letter dated 31<sup>st</sup> December 2009 before the

second appellate authority. The appellate authority, after taking into account the relevant facts of the case and written brief of the applicant, dismissed the appeal with the following observations:

*"The Committee has observed that the onset of Invaliding Disease (ID) "Obsessive Compulsive Disorder" was detected in June 2005 when you are posted in peace. As per posting profile, you last served in field till Feb 2004. No evidence of contributing medical illness was found. There had been no trauma, infection, denial of leave. You performed sedentary duties as an educational NCO. ID is a psychiatric disorder which is, as per medical consensus, caused by interation of multiple genetic vulnerabilities coupled with environmental, biological, psychological and psychosocial stressors during (sic) early childhood development or structural and neuro-chemical damage to the brain in infancy manifesting in adult life. However, benefit of doubt is given to an individual on possibility of stress and strain service in war like situations, threat to life by enemy action in CI Ops or extreme environmental conditions of prolonged field/high altitude serve, basterning the onset of aggravating it. No such stress is evident in your case. Hence, the ID is assessed as neither attributable to nor aggravated by military service."*

3. It is also significant to mention that the applicant

had no problem during the initial period of his service, particularly from 1996 to 2003. During 1996 to 2000, he completed two Post Graduate courses at Bangalore.

4. In the year 2004 the applicant was allegedly posted in Doom-Dooma, Assam and Shillong situating extreme North-East area of the country where he developed the symptom of psychiatric disorder. From Doom-Dooma he was sent to Mechuka Post (Arunachal-China border) which is alleged to be cold and hostile zone. The applicant has further alleged that he had no symptom of illness or problem at the time of entering in the Army. He has next alleged that he was provided six times sensitive shock treatment at Military Base Hospital, Guwahati during the period 2005-2006 which affected his memory power and speedy action. But the Medical Board overlooked this aspect of the matter. He has further pleaded that the Medical Board did not give due consideration to the past service environment etc.

5. The defence of the respondents, on the other hand, is that there is no record of hospitalization of the applicant due to mental disease during 1995-1996. According to the respondents, the date of onset of the disease was 11<sup>th</sup> June 2005 and on that date he was posted at a peace station. It is also alleged in the reply statement that the applicant being invalided out of service with less than 15 years service but more than 10 years service, has already been sanctioned invalid pension vide PPO.No.D/010080/2008 dated 13<sup>th</sup> March 2007 as revised vide P.P.O.No.D/CORR/)15195/2010 dated 21<sup>st</sup> April 2010. The respondents have further alleged that the applicant used to seek clarification repetitively and did not respond to instructions in time and also used to react slowly and was late everywhere. These were the symptoms noticed by the officers. It is mentioned in the report Annexure R3(A) in para 8 that it was learnt that the applicant had been taking psychiatric treatment from civil hospital and the prescription

obtained by him was enclosed. According to the respondents, the applicant had developed psychiatric disorder caused by iteration of multiple genetic vulnerabilities, coupled with environmental, biological, psychological and psychosocial stresses during early childhood, development of structural and neuro-chemical damage to the brain in infancy manifesting in adult life. The respondents have further alleged that benefit of doubts are ordinarily given on possibility of stress and strain service in war like situations, threat to life by enemy action, extreme environmental conditions of prolonged field, high altitude service bastering the onset of aggravating it, but no such stress was found in the matter of applicant and as such the Medical Board opined that the disability was neither attributable to nor aggravated by the military service.

6. The learned counsel for the applicant submitted that the applicant had been posted in the extreme North East Doom-Dooma, Assam and Shillong and then in Mechuka

situated in Arunachal-Chia border and these places were very cold hostile zone, therefore, the service conditions contributed the disability.

7. The learned counsel for the respondents, on the other hand, submitted that the aforesaid places as well as other places of posting were almost peace stations . More so, on the date of the onset of the disease, i.e. 11<sup>th</sup> June 2005, the applicant was posted in a peace area. Learned counsel for the respondents submitted that no evidence was adduced to show that the applicant had been treated in civil hospital. Even if it is assumed that he had been given some treatment in a civil hospital, it was of no help to the applicant.

8. It is next submitted on behalf of the respondents that there was no material to show that the applicant had been given shock treatment at Military Base Hospital, Guwahati in the year 2005-2006. Counsel for the respondents next submitted that the opinion of the Medical



Board which was based on clinical and physical examination of the applicant was liable to be given due weight, value and credence and there was no material on record to controvert the same, therefore, merely on the basis of oral assertions the applicant could not be said to be justified in saying that the opinion of the Medical Board was not correct.

9. The Apex Court had occasion to consider the relevancy of the opinion of the Medical Board in various decisions and some of them are as follows:

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

10. In **Union of India vs. Keshar Singh**, (supra), the individual was discharged from the Army on 18.10.1984 as he was found suffering from "Schizophrenia". In that case, the Medical Board opined that the

disability did not exist before entering the service, but it was not connected with the service. In para 5, the Apex Court propounded mainly two principles, firstly that,

*“if a disease has led to the discharge of individual it shall ordinarily be deemed to have arisen in service if no note of it was made at the time of individual's acceptance for military service. An exception, however, is carved out, i.e. if medical opinion holds for reasons to be stated that the disease could not have been detected by Medical Examination Board prior to acceptance for service, the disease would not be deemed to have arisen during service”*

and, secondly, that,

*“if a disease is accepted as having arisen in service it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions are due to the circumstances of duty in military service.”.*

The Apex Court then considered the Regulation 173 of the Pension Regulations for the Army, 1961 and Para 423 of the Regulation for Medical Services for Armed Forces and its previous decisions rendered in **Union of India vs. Baljit Singh**, (1996) 11 SCC 315, **Union of India vs. Dhir Singh China**, (2003) 2 SCC 382, and **Controller of Defence**

**Accounts (Pension) vs. S.Balachandran Nair**, (2005) 13 SCC 128 and opined in Para 6 that the respondent was not entitled to disability pension as the Medical Board's opinion was clearly to the effect that illness suffered by him was not attributable to the military service. It is also significant to specify that the Apex Court had relied on certain observations of its previous decisions rendered in **Baljit Singh** (supra) and Dhir Singh China (supra). In **Baljit Singh's case** (supra), the Apex Court observed in para 6 as follows:

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

not on account of military service. In each case, when a disability pension is sought for and made a claim, it must be affirmatively established, as a fact, as to whether the injury sustained was due to military service or was aggravated which contributed to invalidation for the military service".

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

"7. That leaves for consideration Regulation 53. The said Regulation provides that on an officer being compulsorily retired on account of age or on completion of tenure, if suffering on retirement from a disability attributable to or aggravated by military service and recorded by service medical authority, he may be granted, in addition to retiring pension, a disability element as if he had been retired on account of disability.

It is not in dispute that the respondent was compulsorily retired on attaining the age of superannuation. The question, therefore, which arises for consideration is whether he was suffering, on retirement, from a disability attributable to or aggravated by military service and recorded by service medical authority. We have already referred to the opinion of the Medical Board which found that the two disabilities from which the respondent was suffering were not attributable to or aggravated by military service. Clearly therefore, the opinion of the Medical Board ruled out the applicability of Regulation 53 to the case of the respondent. The diseases from which he was suffering were not found to be attributable to or aggravated by military service, and were in the nature of constitutional diseases. Such being the opinion of the Medical Board, in our view the respondent can derive no benefit from

Regulation 53. The opinion of the Medical Board has not been assailed in this proceeding and, therefore, must be accepted."

11. In the matter of **Union of India vs. Surinder Singh Rathore** (supra), the respondent therein was discharged from the military service due to "Maculopathy (RT) Eye" which was assessed as 30% for two years, but it was neither attributable to nor aggravated by the military service. In that case, the Apex Court relied upon its previous decision rendered in **Baljit Singh** (supra), **Dhir Singh China** (supra) and also in **Keshar Singh** (supra) and believed the medical opinion that the disability was not attributable to military service and accordingly held that respondents was not entitled to disability pension.

12. In **Secretary, Ministry of Defence and Others vs. A.V.Damodaran(Dead) through LRs. and Others**, (supra), the Apex Court had considered the question of grant of disability pension in respect of late A.V.Damodaran, an ex-Air Force personnel, who was boarded out due to "Schizophrenia" within seven years of service. More so, the question of applicability of the Entitlement Rules for Casualty Pensionary Awards, 1982 contained in Appendix II to the Pension Regulations for the Army 1961 was also involved in that case. The Apex Court propounded mainly two principles, firstly, the opinion of the Medical Board is entitled to

be given due weight, value and credence and secondly, the conditions of service play a pivotal role in deciding the question of disability being attributable to or aggravated by the service. It is significant to mention that both the Hon'ble Judges of the Apex Court in Damodaran's case (supra) delivered their judgments separately, but concurred on all points. The relevant observations of each of the Hon'ble Judges are being reproduced as follows: Hon'ble Dalveer Bhandari, J., speaking for the Bench, observed as follows:

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

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

“30. When an individual is found suffering from any disease or has sustained injury, he is examined by the medical experts who would not only examine him but also ascertain the nature of

disease/injury and also record a decision as to whether the said personnel is to be placed in a medical category which is lower than 'AYE' (fit category) and whether temporarily or permanently. They also give a medical assessment and advice as to whether the individual is to be brought before the Release/Invalidating Medical Board.

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

32. The second aspect which is also examined is the extent to which the functional capacity of the individual is impaired. The same is adjudged and an assessment is made of the percentage of the disability suffered by the said personnel which is recorded so that the case of the personnel could be considered for grant of disability element of pension. Another aspect which is taken notice of at this stage is the duration for which the disability is likely to continue. The same is assessed/recommended in view of the disease being capable of being improved.

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

34. The aforesaid provisions came to be interpreted by the various decisions rendered by this Court in which it has been consistently held that the opinion given by the doctors or the medical board shall be given weightage and primacy in the matter for

ascertainment as to whether or not the injuries/illness sustained was due to or was aggravated by the military service which contributed to invalidation from the military service”

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

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

secondly, “*the Medical Board is a specialised authority composed of expert medical doctors and it is the final authority to give information regarding attributability and aggravation of the disability to the military service and the condition of service resulting in disablement of the individual.*”

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



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

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

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

“9. .... It is also a settled legal proposition that opinion of the Medical Board should be given primacy in deciding cases of disability pension and the court should not grant such pension brushing aside the opinion of the Medical Board.

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

11. .... In view of regulation 179, a

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

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

14....*the opinion of the Medical Board which is an expert body must be given due weight, value and credence. A person claiming disability pension must establish that the injury suffered by him bears a causal connection with the military service. ...."*

17. A Full Bench of the Kerala High Court in the case of **Baby vs. Union of India**, 2003 (3) KLT 362, has on the basis of the Entitlement

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

18. Apart from giving due consideration to the relevant provisions of the Entitlement Rules, the Medical Board and other Medical Authorities are required to observe the relevant provisions contained in the Guide to Medical Officers (Military Pension), 1980 as amended from time to time as also Regulation 423 of the Regulation for Medical Services for Armed Forces, which contain guidelines to be followed in considering and fixing whether a disability is attributable to Military Service. Regulation 423 (c) which is relevant, in the present matter, reads as follows:

**"423.**

(a) xxx xxx xxx

(b) xxx xxx xxx

- (c) *The cause of a disability or death resulting from a disease will be regarded as attributable to Service, when it is established that the disease arose during Service and the conditions and circumstances of duty in the Armed Forces determined and contributed to the onset of the disease. Cases, in which it is established that Service conditions did not determine or contribute to the onset of the disease, but influenced the subsequent course of the disease, will be regarded as aggravated by the service. A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in Service, if no note of it was made at the time of the individual's acceptance for Service in the Armed Forces. However, if medical opinion holds, for reasons to be stated that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have risen during service.*

19. The aforesaid decisions have, thus, laid down the following principles regarding relevancy of the opinion of the Medical Board and the principles governing the matters pertaining to disability pension:

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

- (ii) The opinion of the Medical Board should be given primacy in deciding cases of disability pension. In case the Medical Authorities record the specific finding that the disability was neither attributable to nor aggravated by the military service, the court should not ignore such a finding for the reason that Medical Board is specialised authority composed of expert medical doctors and it is a final authority to give opinion regarding attributability and aggravation of the disability due to the military service and the conditions of service resulting in the disablement of the individual. As such, the opinion of the Medical Board must be given due weight, value and credence.
- (iii) When an individual is physically fit at the time of enrolment and no note regarding adverse physical factor is made at the time of entry into service and if the individual is discharged before the completion of full tenure on account of his physical disability, the initial onus of proving that the disability is not attributable to the Military Service shall be on the authority. However, in the cases where it is found on perusal of the available evidence that the individual had withheld relevant information or that the service conditions were not such as could have resulted in physical disability, the onus shall shift to the claimant.
- (iv) The disease which has led to the individuals discharge will ordinarily be deemed to have arisen in the course of service if no note of it was made at the time of individual's acceptance for military service. However, the above deeming fiction is not available to the individual if the medical opinion, for the reasons to be recorded, hold the disease could not have been detected on medical examination prior to the claimant's acceptance to the service.

- (v) A person claiming disability pension must establish that the disease or injury suffered by him bears a causal connection with the military service.
- (vi) The direct and circumstantial evidence of the case is to be taken into account and the benefit of doubt if any is to be given to the individual.
- (vii) A liberal approach is to be adopted in the matter of services rendered in the field areas.

20. Merely on the ground that the applicant was found medically fit at the time of his enrollment in the Army and nothing adverse was reported against him by the medical authorities at that time, it cannot be concluded that the disability sustained by the applicant during the service had occurred due to the stress and strain of the service conditions. It was further required from the applicant to show that his service conditions and places of posting had been so tough as to aggravate the disability or to cause the disability. According to the record, his posting on the date of the onset of the disease, i.e. 11<sup>th</sup> June 2005, was at Shillong which is a peace station and as such the contention

that the disability occurred or aggravated due to the posting in tough, cold and hard area does not appear to be correct. According to the respondents themselves, the applicant had served in field till February 2004 which was much prior to the date of onset of the disease. There does not appear to be any evidence to show that the applicant had any symptom or origin of the disability during the period he had been posted in field till February 2004. In absence of any evidence regarding psychiatric treatment of the applicant in Military Base Hospital, Guwahati it cannot be held that the applicant's disability occurred due to his service conditions. It is also significant to mention that the applicant was an Education Instructor and had no field duty. As per his designation he was required to impart training in classes and had no field job, therefore, there was hardly any reason to say that his conditions of service were responsible either to originate the disability or aggravate the same.

21. For the reasons stated above, we are of the view

that the Original Application lacks merit and is accordingly dismissed.

22. There will be no order as to costs.

23. Issue copy of the order to both side.

Sd/-

LT.GEN.THOMAS MATHEW  
MEMBER (A)

an

(true copy)

Sd/-

JUSTICE SHRIKANT TRIPATHI  
MEMBER (J)

Prl.Pvt.Secretary