ARMED FORCES TRIBUNAL, CHANDIGARH REGIONAL BENCH AT CHANDIMANDIR

TA No. 789 of 2010
(Arising out of
CWP No.18062 of 2003) **Rajpal Singh versus Union of India and others**

TA No. 469 of 2010
(Arising out of
CWP No.10319 of 2009) **SNS Tanwar versus Union of India and others**

O.A No. 483 of 2010 **Sukhdev Singh versus Union of India and others**

O.A No. 324 of 2011 **Amrik Singh versus Union of India and others**

For the Petitioner (s) Mr. Surinder Sheoran, Advocate
Mr N.R.Dahiya, Advocate
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For the Respondent (s) Mr. Navin Chopra, Sr.PC
Mr. Ram Chander, Sr.PC
Mr. S.K.Sharma, Sr.PC for Mr.Gurpreet Singh,Sr.PC

Coram : Justice Rajesh Chandra, Judicial Member
Justice Vinod Kumar Ahuja, Judicial Member
Lt Gen (Retd) NS Brar, Administrative Member

ORDER
04.03.2014

1. This Full Bench was constituted consequent to reference for constitution of full bench being made on 29.11.2010 in TA **789 of 2010, Rajpal Singh vs Union of India** wherein the Bench having comprehensively considered the issues involved in the claim of the petitioner for disability pension was apprised that a Coordinate Bench of this Tribunal had decided a similar issue in favour of the petitioner on 20.01.2010 in **TA 141 of 2009, Sajjan Kumar vs Union of India.** The judgment in that case being at variance with the Bench in this case, the matter was referred for constitution of a full bench. The issue involved is the applicability and interpretation of the relevant Entitlement Rules as also the sanctity of medical board proceedings in determining the attributability or aggravation of a disability to military service for the purpose of disability pension.

2. In both the cases the petitioners were suffering from 'Epilepsy' and were discharged from service on medical grounds after rendering about two years and nine years of service respectively. In the case of Sajjan Kumar, the individual had served in the Territorial Army (TA) for four years and having been discharged from there was again enrolled in the Defence Security Corps (DSC). After having served for about three years in the DSC he was found to be suffering from the disease for which he was discharged. His claim for disability pension was rejected as being neither attributable to nor aggravated by military service. The Tribunal while deciding the case was of the view that he had been medically examined when he was enrolled in the TA and again in the DSC and as no note was made at the time of enrolment, and no reasons were given as to why it could not be detected at the time

of enrolment, it was held to be attributable to military service. In the present case of Rajpal Singh, the Bench went into the medical literature related to Epilepsy, its causes and the circumstances under which the individual was found to be suffering from the disease. It also went into the Entitlement Rules for Casualty Pensionary Awards, 1982 and was of the view that in the case of Sajjan Kumar the import of Rule 14(c) had not been taken into account. Also Para 423 of Regulations For Medical Services, 1983 was not fully appreciated and therefore that case stood on a different footing. However, as on the face of it, and on the argument of the learned counsel for the petitioner, there appeared to be conflicting views on the same disease, the matter was referred for constitution of a full bench.

3. Consequent to the reference, **TA No 469 of 2010 - SNS Tanwar versus Union of India and others, OA No 483 of 2010 - Sukhdev Singh versus Union of India and others and OA No 324 of 2011 - Amrik Singh versus Union of India and others** were said to be similarly related and came to be tagged with this case and the parties in all these cases were heard together.

4. To answer the reference, we consider it appropriate to take into account the rival contentions. The contention of the learned counsel for the petitioners is that the Entitlement Rules provide that if no disability existed at the time of enrolment, and no entry of any disability was made in the records, then the disability having arisen in service would be attributable to military service. It was similarly contended that if a disease listed in the Entitlement Rules is found to be existing in an individual at the time of discharge or invalidment, that itself should be taken as attributable to and aggravated by military service. It was also contended that psychiatric disorders or ailments are a result of stress and strain of military service and are to be conceded as attributable to military service. Similar approach was sought for hypertension, deterioration of vision etc. Quoting Article 141 of the Constitution of India, and placing strong reliance on the recent judgments of the Hon'ble Supreme Court in the case of **Veer Pal Singh vs Secretary Ministry of Defence (Civil Appeal No 5922 of 2012** decided on **02.07.2013), Dharamvir Singh vs Union of India (Civil Appeal No 4949 of 2013** decided **on 02.07.2013),** and **Union of India vs Chander Pal (Civil Appeal No 2337 of 2009** decided on **18.09.2013)** it was contended that these judgments for the first time took into account the Entitlement Rules, 1982 and they support the contention of the petitioners. It was also contended that the Apex Court had in the past taken into account the old rules and not the 1982 Rules. The diseases normally affected by military service as given in the Entitlement Rules cannot be ignored by the medical boards. The opinion of medical boards cannot be taken as final and there can be judicial intervention in the light of the relevant rules and regulations. The medical boards are to take into account the details of service endorsed by the Commanding Officer to evaluate the conditions and circumstances under which the disability developed. Diseases developing over a prolonged period are to be taken as attributable to military service. In case the medical boards do not ascribe any reasons for their opinion holding the disability to be neither attributable to nor aggravated by military service, then it must be taken in favour of the individual in accordance with the Entitlement Rules.

5. The learned counsel for the petitioners also read out and led us through the entire Entitlement Rules for Casualty Pensionary Awards, 1982 and the judgments of the Apex Court referred above.

6. The learned counsel for the respondents stated that the scope of interpretation of medical boards and their opinion could not be limited to a narrow and academic evaluation and must be interpreted in the light of universally accepted medical standards along with the pathological and clinical material on record. Diseases or disabilities like a missing kidney, flat foot etc could not be attributed to military service merely because no note was made at the time of enrolment as these are genetic or hereditary diseases which come to light at some point of time after enrolment. Similarly, diseases which can only be detected after detailed investigations cannot be detected at the time of enrolment. It was then argued that in exercising judicial review the courts travel into and beyond the rules and by doing so all available material related to the disease must be evaluated. It was also argued that the endorsement 'Constitutional Disease' in the medical board proceedings is often said to be incoherent whereas most constitutional diseases by their very nature are not detected at the time of enrolment and as such no note is made at that time. It was then stated that there was no dispute about the applicability of Entitlement Rules for Casualty Pensionary awards, 1982, however, these need to be read and interpreted in their entirety and not selectively.

7. We heard the learned counsel for the parties at length.

8. At the outset we consider it appropriate to note the judgments of the Hon'ble Supreme Court relied upon by the petitioners. In the case of **Veer Pal Singh (supra)** the petitioner was invalided out of service in 1977 for Schizophrenic Reaction and his claim for disability pension was rejected on the grounds that the disability was neither attributable to nor aggravated by military service. Appeal for holding a Re Survey Medical Board was rejected. The petitioner filed a writ petition in the Hon'ble Allahabad High Court in 1997 for a fresh medical board to assess his disability which remained pending and was transferred to the Lucknow Bench of the Tribunal who referred to the judgment of the Apex Court in **Secretary Ministry of Defence vs AV Damodaran [(2009) 9 SCC 140]** and dismissed the application with the following observations

> "In view of the aforesaid, the Medical Board's opinion is to be accorded supremacy. We in exercise of our jurisdiction cannot sit over the opinion expressed by the Medical Board which is an expert body. The disease that the applicant was suffering from has been found to be constitutional and not aggravated by military service. We cannot hold anything contrary to the medical opinion".

9. The Review Application and Leave to Appeal were also dismissed by observing that the recommendations of the Medical Board are binding and could not be subjected to judicial review. The Hon'ble Supreme Court by observing that the individual was not suffering from any disease at the time of enrolment, and there being no evidence in support of the opinion of the medical board, observed

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

10. The Apex Court then reproduced extensive medical literature related to Schizophrenia from various sources at length and again observed that the Tribunal had failed to study standard medical literature which showed the observations of the medical board to be incompatible with the literature on the subject. It further observed that the Tribunal should thus have ordered constitution of a Review Medical Board as prayed by the petitioner.

11. The Apex Court had thereafter noted that in the case of **Controller of Defence Accounts (Pension) vs S Balachandran Nair [(2005) 13 SCC 128]** the Apex Court had held that the definite opinion of the medical board in accordance with Regulation 173 of the Pension Regulations and Para 423 of Regulations for Medical Services, 1983 that the disease was not attributable to military service and the individual was not entitled to disability pension was binding and the High Court was not justified in directing disability pension to be paid. It is also noteworthy that the same view was reiterated in the case of **AV Damodaran (supra).** It was , however, further clarified that in both these cases the Apex Court was not called upon to consider a situation where the medical board relied entirely on an inchoate specialist opinion. The respondents were thereafter ordered to refer the case to a Review Medical Board for re assessing the medical condition and to decide the claim of the petitioner afresh.

12. Here we may summarise the views of the Hon'ble Supreme Court in **Veer Pal Singh's case (supra)** for our reference and guidance:

- The Courts and Tribunals can and if required must go into the medical evidence, literature and the material on record to adjudicate on the findings and opinion of medical boards to ascertain their legality and validity. Conversely, when the evidence on record and the opinion of the medical boards is well considered, it must be respected as an opinion of experts.
- Where the medical examination or opinion is inadequate, re examination by a fresh medical board may be ordered.

13. In the case of **Dharamvir Singh(supra)** the judgment of the learned single judge of the High Court of Himachal Pradesh, Shimla was set aside by a Division Bench in appeal by the Union of India. The question involved before the Hon'ble Supreme Court was 'Whether a member of the Armed Forces can be presumed to have been in sound physical and mental condition upon entering service in absence of disabilities or disease noted or recorded at the time of entrance' and ' Whether the appellant was entitled for disability pension'.

14. The brief facts in the case of Dharamvir Singh were that the appellant was enrolled in the Army in 1985. He was boarded out of service after about nine years of service with 20% permanent disability 'Generalised Seizure (Epilepsy)'. The medical board opined the disability to be not related to military service. The single judge of the Hon'ble High Court on observing that there was nothing on record to show that the appellant was suffering from the disease at the time of enrolment, deemed the disability to be attributable to or aggravated by military service and held the appellant entitled to disability pension in terms of Regulation 173 of the Pension Regulations for the Army, 1961. The Division Bench referring to the judgment of the Apex Court

in the case of **Union of India vs Keshar Singh [(2007) 12 SCC 675]** and Rule 7 of the old entitlement Rules, as noticed in that judgment, set aside the order passed by the learned single judge. The Division Bench had taken into consideration Rule 7(c) of Appendix II of the Pension Regulations and held that the learned single judge had erred in allowing the petition solely on the basis of Rule 7(b).

15. The appellant Dharamvir Singh had contended that the Entitlement Rules 1982 effective from 01.01.1982 are required to be read in conjunction with Guide to Medical Officers (Military Pensions), 1980. Then Para 423 of Regulations For Medical Services, 1983 was relied upon to attribute the disability to military service as no note was made at the time of enrolment. Rule 5,6,9 and 14 of Entitlement Rules for Casualty Pensionary Awards, 1982 were also relied upon and it was further contended that it was for the service authorities to make all practical investigations to establish the alleged facts and call upon the claimant to assist if necessary. The respondents had reiterated the case of **Keshar Singh(supra)** and the opinion of the medical board which had examined the individual**.** It was also contended that in each case it must be affirmatively established as a matter of fact whether the disease was due to military service or not. Reliance was placed on Rule 6,8,14(c) and 17 of the Entitlement Rules for Casualty Pensionary Awards, 1982 (In short Entitlement Rules 1982).

16. The Apex Court observed that the judgment of **Keshar Singh (supra)** relied upon by the Hon'ble High Court had taken the old Rule 7 of the Entitlement Rules into consideration, which stood superseded by Rule 14 of the Entitlement Rules 1982. The respondents also contended that Rule 14 had been amended vide Government of India Ministry of Defence letter No 1(1)/81/D(Pen – C) dated 20 June 1996. The Apex Court, while observing that there was nothing to show this amendment through a Gazette notification, proceeded to rely upon the "Pension Regulations for the Army 1961" and Appendix II "Entitlement Rules for Casualty Pensionary awards, 1982" as originally published. We consider it appropriate to reproduce Para 16 to 28 of the judgment wherein the relevant extracts of rules and the observations thereon made by the Apex Court have been detailed. It reads as under

> "16. Regulation 173 of Pension Regulations for the Army, 1961 relates to the primary conditions for the grant of disability pension and reads as follows
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> *"Regulation 173. Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed 20 per cent or over.*
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> *The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II."*
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> 17. From a bare perusal of the Regulation aforesaid, it is clear that disability pension in normal course is to be granted to an individual (i) who is invalided out of service on account of a disability which is attributable to or aggravated by military service and (ii) who is assessed at 20% or over disability unless otherwise it is specifically provided.
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> 18. A disability is 'attributable to or aggravated by military service' to be determined under the "Entitlement Rules for Casualty Pensionary Awards, 1982', as shown in Appendix-II. Rule 5 relates to approach to the Entitlement Rules for Casualty Awards, 1982 based on presumption as shown hereunder:

*"**Rule 5**. The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions:*

PRIOR TO AND DURING SERVICE

(a) Member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance.
(b) In the event of his subsequently being discharged from service on medical grounds any deterioration in his health which has taken place is due to service."

From Rule 5 we find that a general presumption is to be drawn that a member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance. If a person is discharged from service on medical ground for deterioration in his health it is to be presumed that the deterioration in the health has taken place due to service.

19. "Onus of proof" is not on claimant as apparent from Rule 9, which reads as follows:

*"**Rule 9**. **ONUS OF PROOF**- The claimant shall not be called upon to prove the conditions of entitlements. He/she will receive the benefit of any reasonable doubt. This benefit will be given more liberally to the claimants in field/afloat service cases."*

From a bare perusal of Rule 9 it is clear that a member, who is declared disabled from service, is not required to prove his entitlement of pension and such pensionary benefits to be given more liberally to the claimants.

20. With respect to disability due to disease Rule 14 shall be applicable which as per the Government of India publication reads as follows:

Rule14. DISEASE - In respect of diseases, the following rule will be observed:-

(a) Cases in which it is established that conditions of military service did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease will fall for acceptance on the basis of aggravation.

(b) A disease which 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 military service. However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.

(c) If the 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.

As per clause (b) of Rule 14 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 military service.

As per clause (c) of Rule 14 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.

21. If we notice Rule 14 (a), 14 (b), 14 (c) and 14 (d) as quoted by the respondents in their counter-affidavit, it makes no much difference for determination of issue. According to the respondents, Rule 14 (a), 14(b), 14 (c) and 14(d) as amended vide Government of India, Ministry of Defence letter No. 1(1)/81/D (Pen-C) dated 20th June, 1996 reads as follows

> **Rule 14 (a)** For acceptance of a disease as attributable to military service, the following two conditions must be satisfied simultaneously:
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> (i) That the disease has arisen during the period of military service, and
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> (ii) That the disease has been caused by the conditions of employment in military service.
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> **Rule 14 (b)** – If medical Authority holds, for reasons to be stated, that the disease although present at the time of enrolment could not have been detected on medical examination prior to acceptance for service, the disease, will not be deemed to have arisen during service. In case where it is established that the military service did not contribute to the onset or adversely affect the course of disease, entitlement for casualty pensionary award will not be conceded even if the disease has arisen during service.
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> **Rule 14 (c)** Cases in which it is established that conditions of military service did not determine or contribute to the onset of the disease but, influenced the subsequent course of the disease, will fall for acceptance on the basis of aggravation.
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> **Rule 14 (d)** – In case of congenital, hereditary, degenerative and constitutional diseases which are detected after the individual has joined service, entitlement to disability pension shall not be conceded unless it is clearly established that the course of such disease was adversely affected due to factors related to conditions of military service.

22. As per Rule 14(a) we notice that for acceptance of a disease as attributable to military service, conditions are to be satisfied that the disease has been arisen during the military service, and caused by the conditions of employment in military service which is similar to Rule 14 (c) of the printed version as relied on by the appellant. Rule 14 (b) cited by the respondents is also similar to published Rule 14.

Rule 14 (c) cited by the respondents relates to the cases in which it is established that conditions of military service did not determine or contribute to the onset of the disease but, influenced the subsequent course of the disease, will fall for acceptance on the basis of aggravation.

Rule 14 (d) cited by the respondents relates to diseases which are detected after the individual has joined the serviced, which entails disability pension but it is to be established that the course of such disease was adversely affected due to factors related to conditions of military service.

23. If the amended version of Rule 14 as cited by the respondents is accepted to be the Rule applicable in the present case, even then the onus of proof shall lie on the employer-respondents in terms of Rule 9 and not the claimant and in case of any reasonable doubt the benefit will go more liberally to the claimants.

24.The Rules to be followed by Medical Board in disposal of special cases have been shown under Chapter VIII of the “General Rules of Guide to Medical Officers (Military Pensions) 2002. Rule 423 deals with “Attributability to service” relevant of which reads as follows:

> *“ 423 (a) For the purpose of determining whether the cause of a disability or death resulting from disease is or is not attributable to service, it is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a Field Service/Active Service area or under normal peace conditions. It is, however,*

essential to establish whether the disability or death bore a causal connection with the service conditions. All evidence both direct and circumstantial will be taken into account and benefit of reasonable doubt, if any, will be given to the individual. The evidence to be accepted as reasonable doubt, for the purpose of these instructions, should be of a degree of cogency, which though not reaching certainty, nevertheless carries a high degree of probability. In this connection, it will be remembered that proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. If the evidence is so strong against an individual as to leave only a remote possibility in his/her favour, which can be dismissed with the sentence "of course it is possible but not in the least probable" the case is proved beyond reasonable doubt. If on the other hand, the evidence be so evenly balanced as to render impracticable a determinate conclusion one way or the other, then the case would be one in which the benefit of the doubt could be given more liberally to the individual, in cases occurring in Field Service/Active Service areas."

(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 arisen during service.

(d) The question, whether a disability or death resulting from disease is attributable to or aggravated by service or not, will be decided as regards its medical aspects by a Medical Board or by the medical officer who signs the Death Certificate. The Medical Board/Medical Officer will specify reasons for their/his opinion. The opinion of the Medical Board/Medical Officers, in so far as it relates to the actual cause of the disability or death and the circumstances in which it originated will be regarded as final. The question whether the cause and the attendant circumstances can be accepted as attributable to/aggravated by service for the purpose of pensionary benefits will, however, be decided by the pension sanctioning authority."

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

(i) Evidence both direct and circumstantial to be taken into account by the Board and benefit of reasonable doubt, if any would go to the individual;

(ii) a disease which has led to an individual's discharge or death will ordinarily be treated to have been arisen in service, if no note of it was made at the time of individual's acceptance for service in Armed Forces.

(iii) If the medical opinion holds that the disease could not have been detected on medical examination prior to acceptance for service and the disease will not be deemed to have been arisen during military service the Board is required to state the reason for the same.

26. 'Chapter-II' of the Guide to Medical Officers (Military Pensions) 2002 relates to "Entitlement: General Principles." In the opening paragraph 1, it is made clear that the Medical Board should examine cases in the light of the etiology of the particular disease

and after considering all the relevant particulars of a case, record their conclusions with reasons in support, in clear terms and in a language which the Pension Sanctioning Authority would be able to appreciate fully in determining the question of entitlement according to the rules. Medical Officers should comment on the evidence both for and against the concession of entitlement; the aforesaid paragraph reads as follows

> "1. Although the certificate of a properly constituted medical authority vis- à- vis the invaliding disability, or death, forms the basis of compensation payable by the government, the decision to admit or refuse entitlement is not solely a matter which can be determined finally by the medical authorities alone. It may require also the consideration of other circumstances e.g. service conditions, pre and post service history, verification of wound or injury, corroboration of statements, collecting and weighing the value of evidence, and in some instances, matters of military law and discipline. Accordingly, Medical Boards should examine cases in the light of the etiology of the particular disease and after considering all the relevant particulars of a case, record their conclusions with reasons in support, in clear terms and in a language which the Pension Sanctioning Authority, a lay body, would be able to appreciate fully in determining the question of entitlement according to the rules. In expressing their opinion Medical Officers should comment on the evidence both for and against the concession of entitlement. In this connection, it is as well to remember that a bare medical opinion without reasons in support will be of no value to the Pension Sanctioning Authority."

Paragraph 6 suggests the procedure to be followed by service authorities if there is no note, or adequate note, in the service records on which the claim is based.

Paragraph 7 talks of evidentiary value attached to the record of a member's condition at the commencement of service, e.g. pre-enrolment history of an injury, or disease like epilepsy, mental disorder etc. Further, guidelines have been laid down at paragraph 8 and 9, as quoted below :

> *7, Evidentiary value is attached to the record of a member's condition at the commencement of service, and such record has, therefore, to be accepted unless any different conclusion has been reached due to the inaccuracy of the record in a particular case or otherwise. Accordingly, if the disease leading to member's invalidation out of service or death while in service, was not noted in a medical report at the commencement of service, the inference would be that the disease arose during the period of member's military service. It may be that the inaccuracy or incompleteness of service record on entry in service was due to a non-disclosure of the essential facts by the member, e.g., pre-enrolment history of an injury or disease like epilepsy, mental disorder etc. It may also be that owing to latency or obscurity of the symptoms, a disability escaped detection on enrolment. Such lack of recognition may affect the medical categorization of the member on enrolment and/or cause him to perform duties harmful to his condition. Again, there may occasionally be direct evidence of the contraction of a disability, otherwise than by service. In all such cases, though the disease cannot be considered to have been caused by service, the question of aggravation by subsequent service conditions will need examination.*
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> *The following are some of the diseases which ordinarily escape detection on enrolment-*
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> *(a) Certain congenital abnormalities which are latent and only discoverable on full investigations, e.g. CONGENITAL DEFECT OF SPINE, SPINA BIFIDA, SACRALIZATION,*

(b) Certain familial and hereditary diseases, e.g., HAEMOPHILIA, CONGENITAL SYPHILIS, HAEMOGIOBINOPATY.

(c) Certain diseases of the heart and blood vessels, e.g. CORONORY ATHEROSCLEROSIS, RHEUMATIC FEVER.

(d) Diseases which may be undetectable by physical examination on enrolment, unless adequate history is given at the time by the member, e.g., GASTRIC AND DUODENAL ULCERS, EPILEPSY, MENTAL DISORDERS, HIV INFECTIONS.

(e) Relapsing forms of mental disorders which have intervals of normality.

(f) Diseases which have periodic attacks e.g .BRONCHIAL ASTHMA, EPILEPSY, CSOM ETC.

8. The question whether the invalidation or death of a member has resulted from service conditions, has to be judged in the light of the record of the member's condition on enrolment as noted in service documents and of all other available evidence both direct and indirect.

In addition to any documentary evidence relative to the member's condition to entering the service and during service, the member must carefully and closely 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. Presidents of Medical Boards should make this their personal responsibility, and ensure that opinions on attributability, aggravation or otherwise are supported by cogent reasons; the approving authority should also be satisfied that this question has been dealt with in such a way as to leave no reasonable doubt.

9. On the question whether any persisting deterioration has occurred, it is to be remembered that invalidation from service does not necessarily imply that the member's health has deteriorated during service. The disability may have been discovered soon after joining and the member discharged in his own interest in order to prevent deterioration. In such cases, there may even have been a temporary worsening during service, but if the treatment given before discharge was on grounds of expediency to prevent a recurrence, no lasting damage was inflicted by service and there would be no ground for admitting entitlement. Again a member may have been invalided from service because he is found so weak mentally that it is impossible to make him an efficient soldier. This would not mean that his condition has worsened during service, but only that it is worse than was realized on enrolment in the army. To sum up, in each case the question whether any persisting deterioration on the available evidence which will vary according to the type of the disability, the consensus of medical opinion relating to the particular condition and the clinical history."

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28. A conjoint reading of various provisions, reproduced above, makes it clear that:

(i) Disability pension to be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable or aggravated by military service to be determined under "Entitlement Rules for Casualty Pensionary Awards, 1982" of Appendix-II (Regulation 173).

(ii) A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service.[Rule 5 r/w Rue 14 (b)].

(iii) Onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally. (Rule 9)

(iv) If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service. [Rule 14 (c)].

(v) If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service. [14(b)]

(vi) If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons. [14(b)]; and

(vii) It is mandatory for the Medical Board to follow the guidelines laid down in Chapter-II of the "Guide to Medical Officers (Military Pension), 2002 – "Entitlement: General Principles" including paragraph 7, 8 and 9 as referred to above."

17. The Hon'ble Supreme Court thereafter noted the absence of any records or medical opinion to show that the appellant was suffering from the disease at the time of enrolment, and the absence of reasons for concluding that the disability was not attributable to military service. It also noted that the Pension Sanctioning Authority also failed to notice that the Medical Board had not given any reasons in support of its opinion. The Apex Court accordingly allowed the appeal and held the appellant entitled to disability pension.

18. In so far as the reasons are concerned, these must justify and support the conclusion, however, the reasons to be stated can very well be brief and may need no elaboration in cases where things are so apparent and writ large that the conclusion either way is clearly deducible on the bare facts.

19. Here again we may summarise the views of the Hon'ble Supreme Court for our reference and guidance:

- Disability pension to be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over.
- If no note of any disability or disease was made at the time of individual's acceptance for military service, a member is to be presumed in sound physical and mental condition upon entering service. In the event of his subsequently being discharged from service on medical grounds the discharge or death will be deemed to have arisen in service.
- If a disease is accepted to have 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.

- Onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally.
- If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service that disease will not be deemed to have arisen during service, however, the Medical Board is required to state the reasons.
- It is mandatory for the Medical Board to follow the guidelines laid down in Chapter-II of the "Guide to Medical (Military Pension), 2002 – "Entitlement: General Principles".

20. It has often been argued, and has been strongly argued in these cases, that if no entry of a disease or disability is made in the record at the time of entry into service then the disease having arisen in service is attributable to military service. We cannot subscribe to these submissions. This cannot be taken as a standalone and straight jacket argument. In cases like amputation as a consequence of an accident in a private activity or acquiring AIDS as a consequence of visiting CSWs or being detected with having only one kidney from the time of birth, and such like situations, it is quite obvious that no entry in the records could have been made at the time of entry into service and on the other hand these cannot also be said to be attributable to military service.

21. Similarly, merely because an individual is found to be suffering from a disease listed in Annexure III of Appendix II at the time of discharge or invalidment, it cannot be taken as attributable to military service without taking into account the attendant conditions, circumstances and the medical record. Here we may refer to Rule 15 which reads as under

> 15. The onset and progress of some diseases are affected by environmental factors related to service conditions, dietic compulsions, exposure to noise, physical and mental stress and strain. Disease due to infection arising in service, will merit an entitlement of attributability. Nevertheless attention must be given to the possibility of pre-service history of such condition, which, if approved, could rule out entitlement of attributability but would require consideration regarding aggravation. For clinical description of common diseases reference shall be made to the Guide to Medical Officers (Military Pensions) 1980, as amended from time to time. The classification of diseases affected by environmental factors in service is given in Annexure-III to these rules.

Therefore we may also conclude that

- Mere absence of entry of a disease at the time of enrolment does not confer attributability or aggravation to military service
- A clear distinction needs to be made between a disease or death arising or occurring while in service and it being because of or due to service.
- Attributability or aggravation of diseases listed in Annexure III of Appendix II of Entitlement Rules is to be assessed on the basis of attendant conditions, circumstances and the medical record.

22. In the case of **Chander Pal (supra)**, the Hon'ble High Court had observed that in the medical board no specific finding had been endorsed**,** which was upheld by the Hon'ble Supreme Court. The applicability of Regulation 173 of the Pension Regulations was declined to be gone into by the Apex Court. In the peculiar circumstances of the case, it is distinguishable from the issues at hand.

23. In so far as 'Constitutional Diseases' are concerned, Stedman's Medical Dictionary defines 'Constitutional Diseases' as 'Malfunctions or pathological lesions whose etiology depends to a significant degree upon the action of genetic factors. If a disease occurs sporadically among genetically heterogeneous individuals, it may be possible to distinguish between hereditary and environmental influences'. It is also defined as 'A disease involving the entire body or having a widespread array of symptoms. Any deviation from or interruption of the normal structure or function of any body part, organ, or system that is manifested by a characteristic set of symptoms and signs and whose etiology, pathology, and prognosis may be known or unknown. An inherent characteristic of the patient. Usually a systemic defect.' Thus we find that depending upon the nature of disability, its categorization as a constitutional disease may be appropriate.

24. We find that Rule 422 of Regulations for Medical Services, 1983 is also relevant and the relevant part of the same reads as under

> **RECORDING OF BOARD PROCEEDINGS**
>
> 422.
>
> (a) When answering questions on the various forms, members of Medical Boards must bear in mind that the disposal of the individual, and the determination of his eligibility for a disability pension, gratuity is mainly decided on the facts brought to the notice and opinions expressed by the Board. Various financial queries affecting the patients' entitlements may arise at a later date and answers may have to be based on the Medical Board documents.
>
> (b) – (c) xxxx
>
> (d) The specialist report will be reproduced in the statement of the case. However, any reference in this report to attributability/aggravation of a disability due to service conditions as also to the percentage at which the disability should be assessed will not be included.
>
> (e) – (g) xxxx
>
> (h) Medical Boards when recording their opinion as to causation, degree of disability and fitness for service will be careful not to allow their decisions to be influenced by the proceedings of the previous Medical Boards. However, in the event of their disagreeing with the opinions expressed by previous Boards, they will state the grounds on which they base their disagreement.
>
> (j) Medical Boards which assemble to re-assess the degree of disability will confine their remarks to:-
>
> > (i) whether the individual is still suffering from the disability on account of which he was invalided or from its effects.
> >
> > (ii) whether the disability, on account of which the individual was invalided, has increased or decreased and the present degree of disablement on that account. They will not record opinions with regard to the origin of such disabilities when original invaliding boards have recorded a definite opinion to this point.

25. It may also be argued that the summary and opinion given by the specialist could not be considered by the Medical Board, as the Board comprises of the President and two other Members, while the Specialist giving the opinion is not a constituent part of the Medical Board. Of course the Specialist is not one of the constituents of the Medical Board, however, Regulation 422 specifically mandates that Specialist's Report will be reproduced in the statement of case. It would, thus, form part of the Medical Board proceedings. In our view it forms an important part of the proceedings and as all evidence, both direct and circumstantial, is to be taken

into account to establish whether the death or disability bore a causal connection with the service conditions, it too must be given due credence as an available input, for deciding attributability or aggravation. Similarly, the endorsement of the Commanding Officer as part of the medical board proceedings and the facts stated by the individual to the medical authorities also needs to be taken into account.

26. It is often prayed that the petitioner be sent for Re-Survey Medical Board to determine the aspect of attributability/ aggravation. Regulation 422(j) of the Medical Regulation clearly provides that the Medical Boards which assemble to re-assess the degree of disability will confine their remarks as to whether the individual is still suffering from the disability on account of which he was invalided or from its effect, and, secondly, whether the disability on account of which the individual was invalided has increased or decreased and the present degree of disablement on that account. It further provides specifically that they will not record opinion with regard to the origin of disability, when original Invaliding Medical Boards have recorded definite opinion on that point. Where Review Medical Boards are ordered for the purpose of re assessing the medical condition, this aspect can be gone into.

27. Here we may also take into account death, or disabilities resulting from injuries which result in invalidment or the consequent disability is present at the time of discharge. Rule 423(b) of Regulations for Medical Services, 1983 , Rule 12 and 13 of the Entitlement Rules and Regulation 520 of the Regulations for the Army, are relevant in this respect.

Rule 423(b) reads as under

(b) The cause of a disability or death resulting from wound or injury, will be regarded as attributable to Service if the wound/ injury was sustained during the actual performance of "duty" in Armed Forces. In case of injuries which were self inflicted or due to an individual's own serious negligence or misconduct, the board will also comment how far the disablement resulted from self-infliction, negligence or misconduct.

Duty as defined in Rule 12 reads as under

DUTY

12. A person subject to the disciplinary code of the Armed Forces is on "duty'"-

(a) When performing an official task or a task, failure to do which would constitute an offence triable under the disciplinary code applicable to him.

(b) When moving from one place of duty to another place of duty irrespective of the mode of movement.

(c) During the period of participation in recreation and other unfit activities organized or permitted by Service Authorities and during the period of travelling in a body or singly by a prescribed or organized route.

NOTE:1

(a) Personnel of the Armed Forces participating in

(i) Local/national/international sports tournaments as member of service teams, or

(ii) Mountaineering expeditions/gliding organized by service authorities, with the approval of Service Hqrs., will be deemed to be 'on duty' for purposes of these rules.

(b) Personnel of Armed Forces participating in the above named sports tournaments or in a privately organized mountaineering expeditions or indulging in gliding as a hobby in their individual capacity, will not be deemed to be 'on duty' for purposes of these rules, even though prior permission of the competent service authorities may have been obtained by them.

(c) Injuries sustained by the personnel of the Armed Forces in impromptu games and sports outside parade hours, which are organized by, or with the approval of the local service authority, and death or disability arising from such injuries, will continue to be regarded as having occurred while 'on duty' for purposes of these rules.

NOTE: 2

The personnel of the Armed Forces deputed for training at courses conducted by the Himalayan Mountaineering Institute, Darjeeling shall be treated on par with personnel attending other authorized professional courses or exercises for the Defence Services for the purpose of the grant of disability/family pension on account of disability/death sustained during the courses.

When proceeding from his leave station or returning to duty from his leave station, provided entitled to travel at public expenses i.e. on railway warrants, on concessional voucher on cash TA (irrespective of whether railway warrant//cash TA is admitted for the whole journey or for a portion only), in government transport or when road mileage is paid/payable for the journey.

When journeying by a reasonable route from one' quarter to and back from the appointed place of duty, under organized arrangements or by a private conveyance when a person is entitled to use service transport but that transport is not available.

An accident which occurs when a man is not strictly on duty, as defined may also be attributable to service, provided that it involved risk which was definitely enhanced in kind or degree by the nature, conditions, obligations or incidents of his service and that the same was not a risk common to human existence in modern conditions in India. Thus, for instance, where a person is killed or injured by another party by reason of belonging to the Armed Forces, he shall be deemed 'on duty' at the relevant time. This benefit will be given more liberally to the claimant in cases occurring on active service as defined in the Army/Navy/Air Force Act.

Rule 13, relating to injuries, reads as under

INJURIES

13. In respect of accidents or injuries, the following rules shall be observed:-

(a) Injuries sustained when the man is 'on duty' as defined, shall be deemed to have resulted from military service, but in cases of injuries due to serious negligence/misconduct the question of reducing the disability pension will be considered.

(b) In cases of self-inflicted injuries whilst on duty, attributability shall not be conceded unless it is established that service factors were responsible for such action; in cases where attributability is conceded, the question of grant of disability pension at full or at reduced rate will be considered.

Regulation 520 reads as under

"520. Inquiry to a Person subject to Army Act. - (a) When an officer, JCO, WO, OR or nurse, whether on or off duty, is injured (except by wounds received in action), a certificate on IAFY-2006 will be forwarded by the medical officer in charge of the case to the injured person's CO as soon as possible after the date on which the patient has been placed on the sick list, whether in quarters or in hospital. In the case of injuries which are immediately fatal, a report of the court of inquiry proceedings referred to in sub-para (c)(i) will take the place of IAFY-2006.

(b) If the medical officer certifies that the injury is of a trivial character, unlikely to cause permanent ill-effects, no court of inquiry need be held, unless considered necessary under sub-paras (c) (ii), (iii), (iv) or (v). In any event, however, IAFY-2006 will be completed and in all cases, except those of JCOs, WOs and OR will be forwarded through the prescribed channels to Army Head Quarters, Org Dte in the case of non-medical officers and Medical Dte in other cases, a copy being retained at Command or other headquarters. In the case of a JCO, WO or OR, IAFY-2006 will be forwarded to the Officer i/c Records for custody with the original attestation, after the necessary entry, stating whether he was on duty and whether he was to blame, has been made by the CO in the Primary Medical examination report (AFMSF-2A).

(c) In the following cases a court of inquiry will be assembled to investigate the circumstances:-

(i) If the inquiry is fatal or certified by the medical officer to be of serious nature. Where an inquest is held, a copy of the coroner's report of the proceedings will be attached to the court of inquiry proceedings.
(ii) If, in the opinion of the CO, doubt exists as to the cause of the injury.
(iii) If, in the opinion of the CO, doubt exists as to whether the injured person was on or off duty at the time he or she received the injury.
(iv) If, for any reason, it is desirable thoroughly to investigate the cause of the injury.
(v) If the injury was caused through the fault of some other person.

In cases where the injured person is a JCO, WO or OR, the court may consist of one officer as presiding officer, with two JCOs, WOs or senior NCOs as members.

(d) The court of inquiry will not give an opinion, but the injured person's CO will record his opinion on the evidence, stating whether the injured person was on duty and whether he or she was to blame. When no evidence as to the circumstances attending the injury beyond that of the injured person is forthcoming it should be stated in the proceedings. The proceedings will then be sent to the Brigade Commander or the officer who has been authorized under Section 8 of the Army Act to exercise the legal and disciplinary powers of a brigade commander who will record thereon his decision whether disability or death was attributable to military service and whether it occurred on field service. After confirmation, the medical officer will, in all cases except those of JCOs, WOs and OR, record his opinion in the proceedings as to the effect of the injury on the injured person's service. The proceedings will then be forwarded by the CO through the prescribed channel to Army Headquarters, Org Dte in the case of non-medical officers and Medical Dte in other cases, a copy being retained at Command or other headquarters. In the case of a JCO, WO or OR a record will be made in the primary medical examination report (AFMSF-2A) by the CO that a court of inquiry has been held, and also as to whether the man was on duty and whether he was to blame. The primary medical examination report will then be passed to the medical officer who will record his opinion as to the effect of the injury on the man's service. The proceedings of the court of inquiry will then be forwarded to the Officer i/c Records for enclosure with the injured person's original attestation (see sub-para (b) above), except in the case of a court of inquiry under sub-para (c)(v) above, in which case

the proceedings, together with a copy of the medical opinion as to the effect of the injury on the man's service, will be forwarded without delay to Army Headquarters.

(e) When an officer, JCO, WO, OR or nurse, not on duty, is injured in any way by or through the fault of a civilian or civilians, and receives compensation from such civilian or civilians, in lieu of any further claim, this will be recorded in the proceedings of the court of inquiry.

(f) A Court of inquiry need not necessarily be held to investigate deaths or injuries sustained through taking part in organized games, sports and other physical recreations as defined in Para 271.

In all cases where a court of inquiry is not held, IAFY-2006 will be completed with the statements of witnesses as required by item 4 thereon and when applicable, the CO will certify that the games, sports, or physical recreations were organized ones.

(g) The injury report will be submitted to the Brigade Commander or the officer who has been authorized under Section 8 of the Army Act to exercise the legal and disciplinary powers of a brigade commander only if the injury is severe or moderately severe or if a court of inquiry to enquire into the causes of injury has been held. The Brigade Commander or the officer who has been authorized under Section 8 of the Act to exercise the legal and disciplinary powers of a brigade commander will record on the form his decision whether or not the injury was attributable to military service, and whether it occurred on field service. In all other cases, the CO will record his opinion.

(h) In case where the injury report on IAFY-2006 is prepared in addition to the court of inquiry proceedings and the Brigade Commander or the officer who has been authorized under Section 8 of the Army Act to exercise the legal and disciplinary powers of a brigade commander has recorded his opinion on the court of inquiry proceedings or adjudicated the case, it will not be necessary for him to do so again on the injury report (IAFY-2006) which may be signed by a senior staff officer on his behalf. The senior staff officer will, however, clearly state that the decision given is as recorded by the Brigade Commander or the officer who has been authorized under Section 8 of the Army Act to exercise the legal and disciplinary powers of a brigade commander on the court of inquiry proceedings.

(j) IAFY-2006 or the proceedings of the court of inquiry, so endorsed, as the case may be, will accompany the pension claim when submitted to the pension sanction authority, who will either accept the decision of the Brigade Commander, or, if in doubt, will submit the pension claim for the orders of the Central Government. The medical board or the medical officer who furnishes a death certificate will not express any opinion in such cases in regard to attributability to service, except on purely medical grounds which should be clearly specified.

28. The procedure prescribed in Regulation 520, read with Rule 12 and 13, for determining attributability of an injury needs to be followed to determine attributability to military service in such cases. Here we may once again observe that when the endorsements made by the competent authority in the court of inquiry or by an authority authorized under Section 8 of the Army Act to exercise the legal and disciplinary powers of a Brigade Commander are well supported by the evidence on record, they must be respected and not be allowed to be interfered by an intermediate authority. Where these are divorced from the facts or are apparently a consequence of colourable exercise of authority, the Tribunal must intervene appropriately.

29. As per Government of India, Ministry of Defence (Department of Ex-Servicemen Welfare) New Delhi policy Letter No.1(2)/2002/D (Pen-C) dated 01.09.2005,as amended by Letter No.1(2)/2002/D (Pen-C) dated 31.05.2006 the

pension sanctioning authorities and the procedure to be followed in deciding / finalising medical boards and deciding disability pension claims has been laid down. Accordingly

> (i) The decision in respect of disability and special pension in respect of officers will be taken by AG/ADGP, and their equivalent in Navy and Air Force, in consultation with Defence (Finance). OIC Records in Army, Navy and Air Force in respect of PBOR.
> (ii) The next higher medical authority for the purpose of approving the medical boards will be the authority other than the one which constituted the Board. In case where disability is abnormally high or low, the approving authority will refer the proceedings back to the Medical Board for consideration. If required, he may physically examine/get the individual re-examined to ascertain the correct position.
> (iii) Disability/Special Family Pension claims arising in the following contingencies shall be referred to DGAFMS by Record Office/Service HQrs, for adjudication by Review Medical Board constituted by DGAFMS and the findings of the Board will be final:-
>
> > (a) Cases of substantial increase in the disability claimed by an individual after invalidment/retirement/discharge.
> > (b) Manifestation of any disability with 10 years of retirement/discharge.

30. Here again we are of the view that the pension sanctioning authority must state its reasons for disallowing such claims.

31. Hon'ble the Supreme Court in its order dated 11.07.2012 passed in bunch of cases led by **Civil Appeal No. 7979 of 2009, Union of India Vs. Hardwari Lal**, referring to the provisions of Para 423 of Regulations for Medical Services, 1983, observed that it mandates the Medical Board/Medical Officer to specify reasons for its/his opinion for the purpose of determining as to whether or not the disability is attributable to or aggravated by service, and since in those cases the reasons were not specified, Hon'ble the Supreme Court directed Re-Survey Medical Board to be held in respect of the individual therein, and directed the Medical Board to submit its opinion about attributability or aggravation, and required the Board to state fully the reasons in support of its opinion.

32. In view the above discussion we may summarise our findings as under

- The Courts and Tribunals can and if required must go into the medical evidence, literature and the material on record to adjudicate on the findings and opinion of medical boards to ascertain their legality and validity. Conversely, when the evidence on record and the opinion of the medical boards is well considered and reasoned, it must be respected as an opinion of experts.
- Where the medical examination or opinion is inadequate, re examination by a fresh medical board may be ordered as the Tribunal is both a court of fact and law.
- Entitlement to disability pension arises when the findings and opinion of medical boards conforms to the regulations related to the entitlement. Where a valid opinion of the medical board shows that the requirements of Pension Regulations for entitlement to disability pension are not met, the same cannot be granted.

- A distinction needs to be made between a challenge to the findings and opinion of the medical board which otherwise does not entitle an individual to disability pension under the Regulations, and a claim to disability pension based on the opinion of the medical board favouring entitlement.
- Disability pension to be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over.
- If no note of any disability or disease was made at the time of individual's acceptance for military service, a member is to be presumed to be in sound physical and mental condition upon entering service. In the event of his subsequently being discharged from service on medical grounds the discharge or death will be deemed to have arisen in service.
- Mere absence of entry of a disease at the time of enrolment does not confer attributability or aggravation to military service. If a disease is accepted to have 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.
- Attributability or aggravation of diseases listed in Annexure III of Appendix II of Entitlement Rules is to be assessed on the basis of attendant conditions, circumstances and the medical record.
- If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service that disease will not be deemed to have arisen during service, however, the Medical Board is required to state the reasons.
- Reasons to be stated can very well be brief and may need no elaboration in cases where things are so apparent, writ large or self explanatory and the conclusion either way is clearly deductible on the bare facts.
- A clear distinction needs to be made between a disease or death arising or occurring while in service and it being because of or due to service.
- Onus of proof is not on the claimant. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally. However, the claimant may be called upon to assist and show (not prove) his entitlement.
- It is mandatory for the Medical Board to follow the guidelines laid down in Chapter-II of the "Guide to Medical (Military Pension), 2002 – "Entitlement: General Principles".
- The opinion of the specialist, all available evidence, endorsements of the Commanding Officer and the facts stated by the individual to the medical authorities are to be taken into account by the medical board in arriving at its opinion.
- Where there is substantial difference between the opinion of initial award recommended by the medical board and subsequent findings of a medical board a Review Medical Board may be ordered.
- Entitlement to disability pension must be decided in light of the opinion of the medical board, read in conjunction with Pension Regulations for the Army, 1961 and corresponding regulations for the Navy and Air Force,

Entitlement Rules for Casualty Pensionary Awards, 1982 and Guide to Medical Officers (Military Pension), 1980 as amended from time to time.

- Depending upon the nature of disability, its categorization as a constitutional disease may be appropriate. However, the findings are required to be supported with reasons
- Endorsements made by the competent authority in the court of inquiry in case of injury must be respected and not allowed to be interfered by an intermediate authority. Where such endorsements are divorced from the facts or are apparently a consequence of colourable exercise of authority and not in conformity with the Rules, the Tribunal must intervene appropriately.
- Pension sanctioning authority must state its reasons for disallowing such claims.

33. Having analysed the relevant Regulations and Rules and their applicability, and the judgments of the Hon'ble Supreme Court referred above, we are of the view that so far as the judgment in the case of **Sajjan Kumar (supra)** is concerned**,** it was decided on the basis of the material on record, the circumstances and the Regulations and Rules which were taken into consideration. To that extent we find no conflict with the present case of **Rajpal Singh** as this has to be examined on its own merits and in accordance with the full application and interpretation of the Regulations, rules and the circumstances.

34. With the above conclusions and considering the large number of litigations related to disability pension, and most importantly in compliance with the spirit and import of the judgments of the Hon'ble Supreme Court, we consider it appropriate to direct the Director General Armed Forces Medical Services (DGAFMS) to expeditiously amend and incorporate the following in the medical board forms and procedures

- The nature of disease must be amplified so as to make it comprehensible by the executive and appellate authorities.
- Where a disease is opined to exist before enrolment, adequate reasons must be stated to as to why it was not or could not be detected at the time of enrolment.
- Reasons must be stated in arriving at its opinion as to why the disease or disability is not attributable to or aggravated by military service in conjunction with the accompanying medical record / specialist opinion.
- Medical Boards when recording their opinion as to causation, degree of disability and fitness for service will be careful not to allow their decisions to be influenced by the proceedings of the previous Medical Boards, however, where Medical Boards carrying out initial categorisation at the time of onset of disease or injury opine on its attributability/ aggravation and final medical board comes to a different finding, reasons for arriving at these findings must be stated.

35. The reference is accordingly answered. These petitions may be listed before a regular bench for adjudication on their merits.

36. A copy of this order is directed to be sent to the DGAFMS for compliance. Copies will also be sent to the Adjutant General, Army Headquarters and the corresponding appointments in the other Service Headquarters.

[Justice Rajesh Chandra]

[Justice Vinod Kumar Ahuja]

[Lt Gen (Retd) NS Brar]

04.03.2014
RS

Whether the judgment for reference is to be put on internet? Yes