

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

O.A.NO. 34 OF 2012

TUESDAY, THE 7TH DAY OF FEBRUARY, 2012/18TH MAGHA, 1933

CORAM:

HON'BLE MR. JUSTICE A.C.ARUMUGAPERUMAL ADITYAN, MEMBER (J)

HON'BLE LT.GEN.THOMAS MATHEW, PVSM, AVSM, MEMBER (A)

DAMODARAN, AGED 55 YEARS, THIRUMANGALATH HOUSE,  
CHENGOTTUKAVU VILLAGE, (ELATTERRY),  
P.O. MELUR, VIA KOYILANDY, KOZHIKODE DISTRICT,  
KERALA STATE (NO.1373100H RANK:SAPPER)

**APPLICANT:**

BY ADV. SRI. A.V.M. SALAHUDEEN.

***versus***

1. UNION OF INDIA, REPRESENTED BY  
SECRETARY, MINISTRY OF DEFENCE,  
NEW DELHI -110 001.
2. OFFICER IN CHARGE, RECORD OFFICE,  
MADRAS ENGINEER GROUP, PIN 900 493,  
C/O.56 APO.
3. ACCOUNTS OFFICER, PCDA (PENSIONS),  
ALLAHABAD - 211 001.

**RESPONDENTS:**

**ORDER**

**A.C.A.Adityan, Member (J):**

Heard the learned counsel for the applicant. This case comes under the caption 'for admission'. Even in the pleadings the applicant would admit that as per the opinion of the Medical Board in AFMSF 16, the disability under which the applicant was suffering is neither aggravated by nor attributable to the military service, but the same is constitutional in

nature. As per the decision of the Honourable Apex Court in **Secretary, Ministry of Defence & Ors vs. Damodaran A.V.(Dead) through the LRs and Ors.** (2009) 9 SCC 140, followed in Civil Appeal No.4281/2006 dated 15<sup>th</sup> July, 2011, primacy shall be attached to the opinion of the Medical Board and the same cannot be set aside by this Tribunal, unless and until the opinion is shown as prima facie illegal. The learned counsel for the applicant, after knowing about the mind set of the Tribunal, has come forward to withdraw the Original Application with a liberty to challenge the opinion of the Medical Board in AFMSF-16 before the Review Medical Board. Endorsement made to that effect in the application.

2. The Original Application is dismissed as withdrawn with a liberty to the applicant to approach the Review Medical Board challenging the opinion of the Invaliding Medical Board in AFMSF 16. Time three months. If the applicant approaches the respondents, the respondents shall constitute a Review Medical Board within one month from that date and shall dispose of the same within two months thereafter.

Sd/-  
LT. GEN. THOMAS MATHEW,  
MEMBER (A)

Sd/-  
JUSTICE A.C.A. ADITYAN,  
MEMBER (J)

DK.

(True copy)

Prl. Private Secretary

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**ORDER**

DATED: 07.02.2012