

(2006) 08 DEL CK 0201

In the Delhi High Court

Case No : WP (C) 970 of 1998, 17709, 20150 and 23618 of 2005 and 3697 and 12084 of 2006

Ex. Sep. Roop Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 31-08-2006

Acts Referred:

Entitlement Rules for Casualty Pensionary Awards, 1982 — Rule 14
Pension Regulations for Army, 1961 — Regulation 173, 185, 212, 231, 48

Citation : (2006) 91 DRJ 324

Hon'ble Judges : Swatanter Kumar, J;G.S. Sistani, J

Bench : Division Bench

Advocate : Rajeev Anand, for the Appellant; Amit Singh, for Kamal Sawhney and Col. T. Parshad, DY. JAG, for the Respondent

Final Decision : Allowed

Judgement

Swatanter Kumar, J.—By this common judgment, we shall dispose of the above six petitions as common question of law, based upon somewhat similar facts though with different diseases, falls for consideration of the court.

2. Learned Counsel appearing for the petitioners have relied upon a recent judgment of a Division Bench of this Court in the case of Ex.Cfn. Sugna Ram Ranoliya v. UOI and Ors. WP(C) No. 3699/2004, decided on 27.7.2006 as well as judgments of other High Courts and the Supreme Court of India in support of their plea that the diseases for which the petitioners have been invalided out of military service are either attributable to or aggravated by military service and they are entitled to receive disability pension in accordance with Regulation 173 of the Pension Regulations for the Army, 1961 (hereinafter referred to as "the Regulations"). It is also contended by the learned Counsel appearing for the respective petitioners in these different writ petitions that the medical record which has not been prepared in accordance with the regulations, defense service regulations and the instructions contained in the medical manual for army cannot

form the basis for denial of such benefits. It is a common contention in all these cases that the petitioners had served the army for number of years without suffering from any ailment much less from any physical or mental disability. They were subjected to strict fitness standards during medical and physical tests and thereafter the rigorous training. They had no complaint of any kind prior to their being diagnosed as suffering from different ailments resulting in their invaliding out of military service. In all these petitions, the petitioners have been invalided out of army service as a result of their suffering from Carcinoma Oesophagus, Schizophrenia, Neurosis, Essential or Primary Hypertension and Psoriasis with Arthropathy. It is the case of the petitioners that they were not suffering from any of the diseases indicated in the medical report at the time of their induction into army and for a number of years when they were serving. It is the rigours of service posting at different places including high altitudes or injuries suffered by them during the course of their service that resulted in onset of such diseases. All these diseases even if said to be not attributable would, in any case, be aggravated by army service. The regulations, instructions and entitlement rules clearly show that the intention of the rule making authorities is to extend such benefit to the sufferers rather than deprive them of such a benefit. While heavily relying upon the Division Bench judgment of this Court in the case of *Ex.Cfn. Sugna Ram Ranoliya (supra)*, they laid emphasis on the following paragraphs of the said judgment:

22. In order to examine this aspect in some depth we may refer to certain hypothetical illustrations. A person who joined Army after satisfying all the prescribed standards and rigours of physical and medical tests, after having rendered service for number of years in Army, without suffering any illness and then is suddenly taken ill, normally such an illness would be attributable to or aggravated by military service unless in the opinion of the Medical Board there was clinical or investigative evidence to show to the contrary. It is possible that an individual may join the Army in a fit condition and despite normal medical examinations it was not possible to diagnose a disease at the time of his entry into service, however, such a disease surfaces after his joining the Army and upon investigations it could safely be stated that the disease was existing even prior to his joining the Army Service. It could also be found and medically demonstrated that the disease was "Constitutional" though it appeared or aggravated after the individual had joined the Army Service.

23. The present case is one of the case out of a bunch of writ petitions which were heard by us. When we were hearing the bunch of these writ petitions, a writ petition bearing W.P.(C) No. 3843/1994 titled as *Ex. Hav. Maman Singh v. Union of India* decided on 20.7.2006, was also heard. In that case, the petitioner was suffering from "HEMISPLEGIA (left)" and was invalidated from Army Service but the Medical Board had conducted investigation upon the patient and it was found that the said disease was existing in his brain even prior to his joining the Army, however, it surfaced at a much subsequent stage. It was also recorded in the Medical Board proceedings that further investigations were necessary and the

same was advised to the patient by the Medical Board. In that case, further investigation and treatment was refused by the petitioner which, in fact, could have given the exact time of the onset of the disease and whether it surfaced or aggravated during the Army Services. The said writ petition, on production of Records, was withdrawn by the learned Counsel appearing for the petitioner. This would be an example where a person had entered into army service with pre-existing disease and, thus, could not be entitled to the benefits of disability pension on the ground of attribution to military service.

24. Still there could be other cases where opinion of the Medical Board is not supported by a reasoning or comments upon clinical examination and investigations conducted on the concerned person and, in fact, on the face of it they may even appear to be perverse. For example, a person, during the course of his service suffers a fracture while on duty and the same as a result of defective surgery results in disability to him, resulting in his invalidation out of service but with a declaration that it was neither attributable to nor aggravated by service. In some cases, onset of a disease may be the most relevant factor to be determined or answered by a Medical Board while in others the emphasis may be on progression of the disease. Such a progression or onset is attributable to or aggravated by military service or not is again a matter on which the medical as well as the administrative authorities are expected to make record-based conclusions or sanctions. But once these two ingredients of Regulation 173 of the Pension and Regulations for the Army, 1961 are satisfied and the authorities sanction the pension, the PCDA has hardly any jurisdiction to sit over the finality of these views given by the competent authorities under these provisions.

25. An Officer or the persons other than the Officers, under Regulation 48a and 173 could claim disability pension, which consists of Service element and Disability element. Regulations 48, 173 and 185 of the Pension Regulations provide for the complete scheme and entitlement for grant of such relief, which of course, is subject to change, again as per Rules and particularly in the cases where the Re Survey Medical Board finds that the disability no longer exists or has been reduced . The above principles of law are well-settled and well-explained with hardly any scope for variation. Undue reliance upon opinion of a Medical Board which patently violates the Regulations and Instructions of the Army and gives no historical, diagnostic details of the treatment and the basis for concluding non-attributability or non-aggravation to military service could result in travesty of justice and frustration of the very object of the relevant rules.

3. They have also relied upon another recent judgment of a Division Bench of this Court in the case of Navin Chandra v. UOI and Ors. WP(C) No. 5720/2006, decided on 27.7.2006, to contend that the concept of constitutional disease or disorder without any basis or proper diagnosis cannot legally form the basis for denial of the disability pension. They referred to the following part of the judgment:

14. It is a known fact that initial training of a jawaan before he is enrolled as a

member of the Force and posted to regular regiments, is a real test of physical and mental ability for the jawaan. Before a person could be invalidated out of service on medical grounds, it is obligatory upon the Board to act in accordance with the Rules, Regulations and Instructions issued by the competent authority in that regard. Strict adherence to these provisions would be essential because it vests the member of the Force with serious consequences. Whenever and wherever an authority is to act prejudicial to the interest of an employee, adherence to the prescribed procedure would have to be construed strictly. It is obligatory upon the Medical Board to explicitly express its views and provide reasonable answers to the questions formulated in the form which are capable of being understood in normal course of life by any person including the Courts. In most of the cases writing of words "No" and/or "Yes" would neither serve the purpose nor achieve the ends of the object specified in Rules and Regulations of the Army. The means of medical diagnosis makes it possible for the authorities to exactly determine the cause, onset, progression, treatment and result of the disease from which a member of the force is suffering and which necessitated his invalidating out of the service. Wherever the Medical Board is of the opinion that the disease is "Constitutional", and/or is relatable and/or has its onset prior to the person joining the Army, it is expected to give that opinion in clear terms, with reference to supportive investigation. Such an expectation by the petitioner would be a legitimate expectation as he is not only to be boarded out of Army Service but it would even determine his pensionary benefits including its denial.

15. In furtherance to direction of the Court, medical specialists have appeared during the course of hearing of these petitions. In response to query by the Court, the medical specialists have expressed their opinion that "Constitutional disorder" or "Constitutional disease" would relate to a situation where the Medical Board is unable to find a cause for the disease which a person is suffering from. In those circumstances, it is recorded that the disease is neither attributable nor aggravated by army service. In other words, if the medical authorities failed to determine cause, onset or arrive at a definite diagnostic opinion in relation to disease of a member of the force, it is bound to adversely affect the interest of the member in relation to grant of disability pension. According to these experts, the constitutional disorder would normally result in recording of remark "not attributable to nor aggravated by military service" without any further or proper diagnosis. Butterworths Medical Dictionary defines "Constitutional" as:- "Relating to the state of constitution, inherent in the Constitution of mind or body, relating to the bodily system as a whole". The expression Constitutional Disorder or disease would thus have to be understood even in its common parlance as something which is relatable to human mind and/or body. Its existence in either of them could be specifically diagnosed both in relation to cause, time of its existence as well as onset of the disease. This can hardly be termed as just and fair approach in consonance with rules and regulations. The diseases like Schizophrenia, Neurosis and other Psychiatric related diseases can be aggravated if not attributable to Army service. If they are

constitutional diseases or disorders, then they must be relatable to human body and/or mind and can be detected by proper diagnose including the time i.e pre or post joining the Army. It would be required of the authorities concerned to reasonably show on record that such diseases or their basic symptoms existed prior, though the disease manifested later or even co-relate the onset of the diseases to a period prior to the joining of service by the petitioner. It is reasonably expected that the medical experts would be able to even trace the cause, origin of the disease as was done in the case of JC 264149M Ex. Naib Sub Marut Sharan Tiwari v. Union of India and Ors. being CWP No. 23320/2005 decided on 13.7.06

16. Still in another CWP No. 17733/04 titled as Saroj Devi v. Union of India decided on 26.7.06 where the patient himself had informed the Medical Board that he had suffered the Epilepsy attacks at the age of 12 years i.e much prior to the joining the Army and that was the foundation of opinion of the Medical Board that Epilepsy was neither attributable to nor aggravated by military service.

4. Learned Counsel appearing for the respondents referred to the medical records produced before the court wherever they were available and contended that all these diseases are neither attributable to nor aggravated by army service and the petitioners have rightly been denied the benefit of disability pension. According to them and while relying upon the judgment of the Supreme Court in Controller of Defence Accounts (Pension) and Others Vs. S. Balachandran Nair, , they argued that the medical report has to receive precedence in judicial proceedings. It is also the stand of the respondents that some of these petitions suffer from the defect of delay and latches and resultantly, the same should be dismissed. In the case of Ex.Cfn. Sugna Ram Ranoliya (supra), the Division Bench of this Court had discussed at great length all these contentions and after referring to various judgments of the Supreme Court and other High Courts, has granted relief to the petitioners who in accordance with law were entitled to receive disability pension. There cannot be a quarrel to the proposition of law enunciated by the Supreme Court in the case of Controller of defense Accounts (Pension) and Ors. v. S. Balachandran Nair (supra) that the medical report has to receive precedence in judicial proceedings. However, the said certificate or the board proceeding has to be in conformity with the regulations, defense service regulations and the instructions/orders contained in the medical manual for army. It is a settled principle of law that once the regulations or rules require proceedings to be taken and recorded in a particular way, then they must be recorded in that way alone. Furthermore, adherence to the prescribed methods of proper diagnosis and reasoning in the medical report would be a sine qua non for its acceptance and grant of precedence in law. A report which is contrary to the regulations and/or is absurd at the face of it, cannot be equated to a report properly recorded and which is supported by proper investigation and diagnosis by the prescribed medical authorities. It is not a discretion which the medical board is expected to state but is an opinion to be formed by the authorities by plausible and well known reasons of medical science as it determines the fate of

an individual for retention in the army and/or grant or denial of benefits like disability pension.

5. As far as the question of delay is concerned certainly some of these petitions have been filed after some delay. The delay, per se, may not be a ground for rejecting these writ petitions. In most of these cases, the petitioners have been corresponding with the respondents. They have also filed appeals before the competent authorities in the recent past, which were rejected by the authorities during the period 2000 to 2005 where after the present writ petitions have been filed. This aspect of delay cannot be totally ignored. Though, firstly the cause of action had arisen in favor of the petitioners, if at all, more than 15 to 20 years back but the same was revived by subsequent rejection of their claim by the competent authorities, more so, this has been treated as a recurring cause of action. Even if we treat these petitions as having been filed after some delay, it has been settled by the Supreme Court in the cases of S.R. Bhanrale Vs. Union of India and others, M.R. Gupta v. UOI and Ors. 1996 (1) SCT 8 as well as by various High Courts in the cases of Major Rajinder Singh v. UOI 2002 (3) SCT 434 , Loka Ram Vs. Haryana State Electricity Board and Another, Manjit Singh, Ex. Naik v. Government of India 2000 (2) SCT 52, Sardara Singh v. UOI 92 (6) SLR 683 and a Full Bench Judgment of Punjab & Haryana High Court in the case of Saroj Kumar and Ors. v. The State of Punjab 1998 (3) RSJ 350 that such petitions may not be dismissed on the ground of delay alone but reliefs be moulded. Some of these petitions have also been pending in this Court for number of years. At this stage to dismiss these petitions on the ground of delay, otherwise, may not be just and fair. Furthermore, it is a recurring cause of action and the court can mould the relief by denying benefits to the petitioner prior to a period of three years from the date of filing of these petitions. Thus these objections on principle of law taken by the respondents deserve to be rejected.

6. Now we shall proceed to discuss the facts of each of the above stated 6 petitions.

FACTS OF EACH CASE

WP(C) 3697/2006

7. Sepoy Roop Singh was enrolled in the Indian Army on 27.7.1968 and posted to Sikh Regiment. He was discharged on compassionate grounds on 8.10.1971 but was again enrolled in defense Security Corps (in short "DSC") on 14th July, 1972. While serving in the said Corps, the petitioner was posted to 65, DSC Platoon attached to 45 DSC Battalion and was performing duties at 21 Field Ammunition Depot at Khundru (J&K). After joining the unit on 27.04.1975, the petitioner was sent through the Military Convoy to Transit Camp Udhampur on 29th April, 1975 from where the petitioner was sent to his unit i.e. 21 Field Ammunition Depot again by the Military Convoy. However, near Banihal Tunnel the military vehicle in which the petitioner was traveling fell in a nallah and in the said accident, eight military personnel were died on the spot while the petitioner

was seriously injured having multiple injuries in his head and back bone including the neurological injuries. He was evacuated to Army Hospital at Srinagar. He was placed in the dangerously ILL list and was placed in low medical category "CEE" on 30.04.1975. The petitioner was posted in low medical category and employment restrictions. He was thereafter admitted to military hospital Pune on 2.5.1977 for re-categorization. He was placed in medical category "EEE" i.e. unfit for any military duty and boarded out of service. According to the petitioner, the disability pension claim including the service as well as the disability element was rejected by the respondents on 23.8.1977. Appeal dated 2.2.1978 filed by the petitioner against this order was also rejected by the respondents. The petitioner received a communication on 13.6.1978 wherein details of the accident etc. were asked which the petitioner supplied. According to the petitioner, the injury report was not given to the authorities concerned which was an essential document and the decision for rejection of his pension was taken in absence of material documents lying in power and possession of the respondents. The petitioner kept on making correspondence with the respondents and kept on filing appeals but of no result. On 2.2.1984, the petitioner was informed that his second appeal is pending with the defense Minister's Appellate Committee. Again the petitioner exchanged some correspondence with the respondents and finally on 8.7.2003, the petitioner addressed a communication to respondent No. 4 wherein he requested for supply of certain documents so as to enable the petitioner to approach the court for the redressal of his claim. The petitioner received a letter on 14.8.2003 intimating that the petitioner cannot be supplied with the documents. He served a notice through his counsel, firstly, demanding the documents and then on 15th August, 2005 requesting the respondents to dispose of the request of the petitioner. On 17th December, 2005, the petitioner received a communication (Annexure-P17 to the writ petition) informing the petitioner that he was not entitled to any disability pension as his appeals had been rejected earlier and the disability was neither attributable to nor aggravated by military service. Similar reply was sent on 16.1.2006 (annexure-P18 to the writ petition), thus, resulting in filing of the present writ petition.

8. According to the respondents, the records have been destroyed. However, in the counter affidavit, no denial has been made of the basic facts as well as the communications which have been received from/by the petitioner and placed on this file. The basic stand taken in the counter affidavit is that the disability suffered by the petitioner is neither attributable to nor aggravated by army service. According to the respondents, it is constitutional in nature and is not related to service. The CDA(P) Allahabad has decided against the petitioner and the said decision does not call for any interference. They have also taken up the plea of delay and latches.

9. We find no delay and latches in the present case inasmuch as the respondents have rejected continuously the claim of the petitioner right from the year 1977 till December, 2005. But, in any case the petitioner could have approached this Court on an earlier occasion and there was no justification on the part of the

petitioner to wait for this long period of about 30 years before filing the present writ petition. However, while granting the relief, we would keep this factor in mind.

10. There is no denial to the fact that the total service rendered by the petitioner in Army and DSC is more than 7 years. The petitioner was not suffering from any disease or Neurosis for all this period. The petitioner met with an accident which resulted in death of eight military personnel and the petitioner suffered serious head and spinal injuries including neurological injuries. If the medical records in relation to the petitioner are missing or destroyed as stated by the respondents, it is really strange as to how they have filed such a detailed counter affidavit. There is no medical board proceedings placed on record before the court to show that even in such circumstances, the disease will not be attributable to or aggravated by military service. In the appeal filed by the petitioner, as back as on 2.2.1978, he had specifically taken up the pleas that he had suffered head injury in the accident, was admitted to the hospital, was on the dangerous list for quite some time, was given 20 per cent disability by the medical board and that he was entitled to disability pension. If these were the recommendations of the medical board, the CDA(P) would hardly have jurisdiction to reject the claim of the petitioner. We fail to understand as to how, the head and spinal injuries could not result in Neurosis resulting in invalidation of the petitioner from military service. The order of CDA(P) Allahabad dated 23.8.1977 denying the disability pension to the petitioner and without giving any proper reason was a cyclostyled order. Even in this order, the respondents have scored out Clause (iii) relating to the fact that the disability of the petitioner was less than 20%.

11. In these circumstances, we are unable to accept the objections raised by the respondents and in our opinion, the petitioner is entitled to the claimed relief.

WP(C) 20150/2005

12. Smt. Dharya Kanwar widow of late Sh. Devi Singh has filed this petition for grant of special family pension which was declined by the respondents and for setting aside and quashing of the orders dated 6.10.2001 and 15.3.2004 (Annexures-P1 and P2 respectively to the writ petition).

13. Sh. Devi Singh was enrolled in the Army after being subjected to strict medical and physical tests. At the relevant time, he was found to be not suffering from any disease or disability. During his long tenure of service, the deceased was posted to different stations all over the country and during his entire service, he was not suffering from any disease and in fact he was subjected to various medical examinations at regular intervals. While posted in 6 Raj Bn NCC, the deceased was sent to 15 Grenadiers on 2.7.2000. There he fell sick and was admitted to L.N. Memorial Hospital & Research Centre, Rathi Hospital Jodhpur and was subsequently admitted to Army Hospital, Delhi where unfortunately he died on 16.1.2001 due to disease "Carcinoma Oesphaus". The petitioner after the death of her husband applied to the respondents for grant of special family

pension which was declined by the CDA(P) Allahabad on the ground that the disease which resulted in the death of the husband of the petitioner, was not attributable to or aggravated by military service and as such, she was not entitled to special family pension. The petitioner submits that according to the relevant provisions of defense Regulation for the Army (Pension) and Entitlement Rules, the benefit has to be extended to the petitioner. The said regulations read as under:

The cause of disability or death resulting from disease attributed to service when it is established that the disease during service. On the conditions are circumstances of the disease. Cases in which it is established that service condition did not determined or contributable to the on set of the disease but influenced the subsequent courses of disease which let to an individual's discharge or death with all ordinarily be deemed to have arisen in service if no note of it was at the time if the individual acceptance for service in the Armed forces. However, if medical opinion holds for the 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.

14. Under Regulations 212 and 231, the petitioner would be entitled to get special family pension after her husband's death if the death was due to or hastened by an injury or disease attributable to or aggravated by military service or disease arose during military service.

15. In the counter affidavit filed, it has been stated that "Matastatic Small Cell Carcinoma Oesophagus" is a Cancer which is a constitutional disease, not attributable to or aggravated by military service. The death of the deceased was due to the constitutional disease and as such the petitioner is not entitled to grant of special family pension. In the counter affidavit, no medical record has been placed before the court which could demonstrate that the disease was pre-existing and/or was relatable to a period prior to which the deceased joined the military service. Admittedly, the deceased has served the Army for 20 years and 5 months which period is sufficiently long for any disease to show its onset. For the first time, the deceased is stated to have been hospitalized on 21.12.2000 and he died on 16.1.2001. This obviously shows that the disease had been aggravated to its last stages when the deceased was serving. Learned Counsel appearing for the petitioner has also placed reliance upon the judgment of the Supreme Court in the case of Smt. Charanjit Kaur Vs. Union of India and others, to contend that even in case of mysterious deaths, the respondents are liable to pay special family pension to the family members of the deceased. The reliance is placed upon the following paras of the said judgment:

13...It is also difficult to believe that when he was being airlifted at this own request, he had refused to board the plane and instead had left for his said alleged private business. All that thereafter was found was his charred body with 98% burns. No enquiry whatsoever seems to have been made and if made, its

results are kept a secret....

14...the conclusion is, Therefore, inescapable that the officer died while in service in mysterious circumstances and his death is attributable to and aggravated by the military service. The responsibility of his death is prima facie traceable to the act of criminal omissions and commissions on the part of the concerned authorities. The petitioner is, Therefore, entitled to suitable compensation as well as to the Special Family Pension and the Children Allowance according to the relevant Rules. w.e.f. 23.6.1978, i.e., the date of the death of her husband. We award her compensation in the amount of Rs. 6,00,000/- [Rupees six lakhs] and direct that the said amount be paid to her within six weeks from to-day. We further direct that the arrears of the Special Family Pension and the Children Allowance be paid to her within eight weeks from to-day with interest at 12% per annum....

16. In the case of Ex.Cfn. Sugna Ram Ranoliya (supra), the court has already discussed the effect of the above regulations holding that the object of all these regulations indicates towards liberal construction and principles of beneficial legislation are to be adopted in their application. There is nothing on record before us which can persuade the court to come to the conclusion that the disease of the petitioner's husband was not attributable to or at least not aggravated by military service. A person serving the Army for more than 20 years can get any disease and cancer would be no exception to such approach.

17. In our considered view, the petitioner would be entitled to the relief claimed.

WP(C) 23618/2005

18. The petitioner was enrolled in the Indian Army on 29th March, 1950 after completion of his training. He was subjected to physical and medical examination at the time of his entry into service. The petitioner was posted at Ferozpur as Sepoy in the year 1953 and continued to serve at different stations all over the country. In the year 1957, when the petitioner was posted at Srinagar, the petitioner was sent to Delhi Base Hospital where he was treated for few months and thereafter was sent home on the ground that the petitioner was suffering from "Schizophrenia" on 24.8.1957. The petitioner claims that he made various representation during this period and having failed to get any justice from any quarters, he has filed the present writ petition.

19. In the counter affidavit filed by the respondents, they state that the records have been destroyed being older to 25 years and as per the extract of long roll available in the records, the petitioner was enrolled on 29th March, 1950 and was medically boarded out on 25th August, 1957 being a case of Schizophrenia. According to them, the said disease is neither attributable to nor aggravated by military service and the petitioner is not entitled to any relief. The claim of the petitioner was rejected by the CDA(P) in December, 1957 as the pension was not admissible to the petitioner.

20. The petitioner has relied upon the judgments of the Division Benches of this Court in the cases of Satpal Singh v. UOI and Ors. 1991 4 AD (Delhi) 321 and Ex. Captain Randhir Singh Gurra v. UOI and Ors. WP(C) No. 2420/1994, decided on 25th July, 1997 to contend that Schizophrenia is attributable to and aggravated by army service. In view of the settled position of law, we cannot deny the relief to the petitioner. The petitioner was, in no way, found to be ailing at any point of time during his seven years of service period and it was only in 1957 that the disease surfaced.

21. In the counter affidavit, it is not even stated that the disease reasonably could be relatable to or its onset was prior to the petitioner's joining the army.

22. In our view, the petitioner is entitled to the claimed relief.

WP(C) 17709/2005

23. The petitioner was enrolled in the Indian Army as Gunner in the year 1980 and was allotted the Corps of Artillery. He was found medically fit and was placed in medical category "AYE" by the Recruiting Medical Officers. He was not suffering from any ailment, sickness or problem with his health. The petitioner was subjected to regular medical and physical tests till the year 1995 and he remained in the prescribed fit medical category "AYE". In April, 1995, the petitioner was posted at Deolali and he developed some skin problems and pain in joints for which he was referred to Navy Hospital, INHS, Ashwini and he remained admitted there for a period of six months. The petitioner was diagnosed with the disease "Psoriasis" with Arthropathy by the graded specialist of dermatology and was placed in low medical category "CEE". In June 1996, the petitioner was brought before the Release Medical Board. The medical opinion of the specialist of the disease of the petitioner stated that the petitioner continues to have skin lesion and arthralgia which is aggravated by cold environment and the petitioner should not be posted to high altitudes and he was exempted from physical training and wearing boots etc. In violation of the medical opinion, the petitioner was posted to extreme cold climate area in the Siachen Glacier and remained there till he was discharged. The petitioner was discharged for the same disease and after his discharge from the army, the petitioner preferred a claim for grant of disability pension. This claim of the petitioner was rejected vide order dated 27.8.1998 (annexure-P2 to the writ petition) against which the petitioner preferred an appeal on 28.12.1998 which was also rejected vide order dated 23.2.2000. The second appeal preferred by the petitioner also met the same fate. The petitioner through his counsel served a legal notice on the respondents on 27.11.2004 but of no help to the petitioner, thus, resulting in filing of the present petition.

24. The primary grievance of the petitioner is that the orders passed by the respondents suffer from a patent error as the injuries suffered by him are the result of Army service and the same are attributable to or aggravated by military service. The action of the respondents in posting the petitioner to high altitudes

despite a clear direction from the medical authorities not to do so, has resulted in finishing his entire service career. In the prayer, the petitioner has prayed that the orders passed by the respondents should be quashed and they be directed to grant disability pension to the petitioner.

25. In the counter affidavit filed on behalf of the respondents, it is stated that the claim of the petitioner has been rejected for valid reasons on the ground that the disability from which the petitioner suffered during his service on which the disability claim is based, was neither attributable to nor aggravated by military service and also not connected with service and the same was the result of a constitutional disease. The facts are not disputed. However, it is nowhere stated that the medical opinion was ignored. It is stated that the petitioner was granted service pension @ 439/- plus dearness allowance from time to time and in addition thereto, the petitioner was also granted and paid certain terminal benefits at the time of his discharge.

26. In the summary and opinion dated 12.6.96 given by the Specialist (Dermatology), copy of which has been placed on record by the petitioner as annexure-P1, it is recorded as under:

However, he complains of pain in (L) knee and (Rt) ankle joints. General exam NAD CVSCNS, GIT Reap System-NAD Inv HB 172% gm ESR 08 TLS-8400 DLC-P-62 L-34, Esonc-03 mono-03 Refracts Negative Pt continues to have skin lesion and arthralgia which is aggravated by cold environment the cause of the disease is unpredictable. In view of the above it is recommended that he placed in low med cat CEE (PMT) physical, and he released in the med cat CEE physical permanent. Adv.

27. There is no dispute before us that after the said opinion, the petitioner was posted to high altitudes in Siachen Glacier and remained there till the time of his discharge from Army. The medical record has also been placed on record by the respondents which show that the disability of the petitioner has been detailed as 20% for two years. Of course, it has been recorded as vaguely as possible as "Constitutional Disorder". This finding of the medical board is not based upon any diagnosis or data. On the contrary, it is in direct conflict with the opinion of the specialist who had noticed that the petitioner's disease could result from or in the course of the service and had specifically recommended that he should not be posted to high altitudes and should be given normal duties. In the beginning of AFMSF-16, it has been shown that the petitioner was given as many as 5 field postings and 4 peace postings. In the medical view of the Specialist, onset of the disease was stated to be March, 1995 and before that date the petitioner was not found to be ailing and no complaint was raised by the petitioner in regard to the same disease or any other disease. The constitutional disorder is referable to, as per the Doctors of the Army, for which a cause is not known. This is in apparent conflict with the opinion of the Specialist that the disease could be caused or aggravated by weather and particularly high altitudes. It was contended by the respondents that the petitioner had gone to Siachen Glacier to make money. This

has been denied by the petitioner in the rejoinder. It is not only improbable but even unfair for the army authorities to contend that despite a medical advice, the petitioner would seek such a posting and in violation to all norms of army discipline, the army authorities would have acceded to such request. The petitioner has rightly placed reliance upon the provisions of Rule 14 of the Entitlement Rules, 1982 as amended by the Ministry on 20th June, 1996 to contend that such a disease, in fact, even would be attributable to military service.

28. In these circumstances, we have no doubt in our mind that even if the disease was not attributable to army service and if it is so assumed for the sake of argument, the same was definitely aggravated by the act of the respondents in posting the petitioner to a place not recommended by the medical authorities. Thus, in our considered view, the petitioner is entitled to the relief prayed for.

WP(C) 970/1998

29. The petitioner was enrolled on 23.9.1988 in the army. He was placed in medical category "Shape-I" and sent for training at Secunderabad on 16.12.1989. The petitioner completed his rigorous training and thereafter he was attested. During his training period, he was subjected to periodical medical examinations and every time he was found to be fit. He was made a soldier in "EME Vehicle Mechanical Trade". The petitioner was posted and remained till 1992 in Bag Dogra where the climatic conditions were not fair and the petitioner withstood all physical and service strains. Thereafter, the petitioner was posted at Panagarh where he remained till May, 1993. There a sad incident took place when some jawans committed the murder of a Subedar and as a result of which the torture was caused to the non-commissioned officers including EME personnel. Certain letters were also written in this regard to the Army Headquarters. Due to this mental torture, the petitioner started getting high blood pressure which ultimately resulted in Hypertension. In September, 1992, the petitioner was produced before the medical board and was treated at Military Hospital, Meerut Cantt., where he was given treatment for 15 days and he was placed in Low Medical Category "CEE" (Temporary). In early 1994, the petitioner was posted to 3 Advance Base Workshop, Udhampur (J&K), a heavily committed unit. Here the petitioner remained absolutely fit and was never admitted to R.I. Room/Hospital for any treatment. The petitioner was again sent for review medical board in April, 1994 and the petitioner was placed in medical category "BEE" (Permanent). It is the case of the petitioner that he was willing to serve in the Army but he was neither given treatment as indoor patient nor placed in Category "A". The petitioner was made to sign certain papers to indicate that he did not want to serve while the petitioner actually wanted to serve the army but the record office in August, 1994 issued release orders in respect of the petitioner. The claim of the petitioner for grant of disability pension was rejected despite the fact that the petitioner had been released from Army with the disease "Essential Hypertension" though it is stated to be 20% but neither attributable to

nor aggravated by military service. Against the order of the respondents dated 12.2.96, the petitioner filed an appeal which was also rejected vide order dated 28.11.1997, thus, resulting in filing of the present writ petition.

30. According to the respondents, the petitioner was downgraded to low medical category "BEE" due to diagnosis for "Essential Hypertension" for two years on 16th April, 1994. The Release Medical Board Doctors considered his disease as aggravated by military service but the same was considered as neither attributable to nor connected with service. The Medical Board assessed his disability at 20% and the individual gave his unwillingness to continue in permanent low medical category. Consequent to this, he was discharged from service and the disability pension claim was forwarded by the Department to CCDA(P) Allahabad on 27th June, 1995 which after due consideration rejected the same as being neither attributable to nor aggravated by military service.

31. At the very outset, we may notice that no records have been placed before us by which it could be shown that the petitioner had submitted papers of unwillingness and requested the respondents to discharge the petitioner from service. A vague averment in the counter affidavit would be of no consequence. Furthermore, it may be noticed that it is an admitted position in the case that the petitioner's claim for grant of disability pension was forwarded by the concerned authorities to the CCDA(P) Allahabad which in its discretion sat over the findings of the medical board and rejected the same as not attributable to or aggravated by military service. The proceedings of the medical board have been placed on record where the disability of the petitioner was recorded as 20% due to "Essential Hypertension" for a period of two years. In Part III of AFMSF-16, in Clause (c) while answering to the question - "The specific condition and period in service which aggravated the disability", it is recorded - "due to stress and strain of service in 1992 while serving on peace". It has also been recorded that the aggravation will persist for a material period.

32. In face of the medical findings recorded by the medical board, we fail to understand as to how could the CCDA(P) Allahabad can sit over the judgment of the medical board without giving any opportunity, examining the petitioner or following any procedure prescribed under law and could record a finding contrary to the opinion of the medical board. According to the opinion of the medical board, the disease was aggravated by military service. The petitioner had put in nearly five years of service and served at different stations. The Supreme Court in the case of Ex. Sapper Mohinder Singh v. Union of India WP(C) No. 164/ 1993 decided on 14.1.1993 and a Division Bench of this Court in its recent judgment in the case of JC 264149M Ex. Naib Sub Marut Sharan Tiwari v. UOI and Ors. WP(C) 23320/2005, decided on 13th July, 2006, have clearly stated that CCDA(P) has no jurisdiction to overrule the view of the medical board.

33. Thus, in our view, the petitioner is entitled to the grant of disability pension.

WP(C) 12084/2006

34. The petitioner was enrolled in the Army on 3.9.1985 after careful medical examination by the competent recruiting medical authority and was found free from all kind of diseases. In fact he was found fit in medical category "AYE". He put in 15 years of service without any problem, medical complaints and had served at different stations. On 31st December, 2001, the petitioner was invalidated out of service with the disease "Primary Hypertension" as a result of which the petitioner requested for payment of disability pension which was rejected by the PCDA(P) Allahabad on the ground that the accepted I.D. is neither attributable to nor aggravated by military service. The same was informed to the petitioner vide letter dated 9.8.2002. The Record Office informed the petitioner vide letter dated 7.4.2003 that his disability pension claim has already been rejected by PCDA(P). Further correspondence of the petitioner claiming such a relief also proved to be futile and finally vide order dated 8.1.2005, the petitioner was informed that his appeal has been rejected. The petitioner also claims to have served a notice dated 23.1.2006 but of no consequences, resulting in filing of the present writ petition.

35. The facts are hardly in dispute. In fact, neither counter affidavit was filed on behalf of the respondents nor despite order of the court, record was produced during the course of hearing. The petitioner has served the army for 15 years and the disease of hypertension would, in any case, be aggravated by military service even if, not attributable to such service. The petitioner claims that he was posted to different stations. No reason whatsoever has been given in the letter of the PCDA(P) as to why the said disease is not attributable to or aggravated by military service. Passing of stereo type orders without giving any reason much less opinion of the medical board is a practice which needs to be deprecated as the PCDA(P) is only a disbursing authority and it is primarily for the medical board and the administrative authorities to accept or reject such a request. In normal course, hypertension would be normally relatable to and can be result of the serving conditions in which the petitioner has remained for 15 years particularly when at no point of time earlier than 2001 he was not noticed to be suffering from any disease or physical or mental disability which could result in such invalidation.

36. In our opinion, the petitioner is entitled to the prayed relief.

37. Keeping in view the well-enunciated principles of law as discussed at the very outset of this judgment and the facts of each case as mentioned above, all these writ petitions are allowed. The respondents are directed to consider the requests of the petitioners for payment of special family pension/disability pension and to pay the same to them within a period of six months from the date of pronouncement of this judgment. We make it clear that none of the petitioners would be entitled to any benefits beyond three years preceding the date of filing of these writ petitions. However, in the facts and circumstances of the cases, the parties are left to bear their own costs.