

(2006) 08 DEL CK 0039

In the Delhi High Court

Case No : Writ Petition (C) No. 21671 of 2005 and CWP No's. 4456 of 2002, 2150 and 9496/03, 5798 and 19751 of 2004, 7294 and 19960/05 and 120/06

Ex. Spr. Bhim Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 31-08-2006

Acts Referred:

Army Rules, 1954 — Rule 13(3)
Pension Regulations — Regulation 173

Citation : (2006) 91 DRJ 308

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

Bench : Division Bench

Advocate : S.R. Kalkal, for the Appellant; Barkha Babbar and T. Parshad, Dy. JAG, for the Respondent

Final Decision : Dismissed

Judgement

Swatanter Kumar, J.—By this common judgment we will dispose of the above referred nine petitions.

2. The facts of this case are that petitioner Bhim Singh was enrolled in the regular Army on 17.12.1973 as combatant soldier. After being subjected to medical and physical check ups in January, 1975, he was brought before a properly constituted Medical Board because he had suffered from different problems in the past. The Medical Board examined the petitioner and on the opinion of the specialised Invaliding Medical Board held on January, 1975 the disability of the petitioner was assessed as 40% and he was placed in medical category EEE. The petitioner was diagnosed as a case of Neurosis (Schizophrenia) H 120 which is a classified disease under the Pension Regulations. He was discharged on 6.6.75. After discharge, the petitioner applied for grant of disability pension. The same was forwarded to CDA (P) Allahabad. But despite sending numerous letters to the respondents, the petitioner did not

receive any information for a very long time from CDA(P) Allahabad. Hence, petitioner preferred an appeal. On 8.10.1987 the letter rejecting the appeal was also received by the petitioner. The petitioner being a patient of Neurosis was under treatment and his wife filed the second appeal on his behalf. The petitioner's wife kept on making regular correspondence with the respondents and Ministry of defense and on all occasions including of 17.3.89, the petitioner was informed that the disease of the petitioner was not attributable or aggravated by Military service as such he is not entitled for grant of disability pension. The petitioner then served the respondents with a legal notice dated 16.8.05. The petitioner received reply to his legal notice on the same lines resulting in filing of the present writ petition.

3. According to the respondents, the petitioner is not entitled to any disability pension and he was invalided out of military service on 6.6.75 before completion of the terms of engagement in terms of Item IV of the table annexed to Rule 13(3) of Army Rules, 1954. Being placed in low Medical Category "EEE" as a case of "NEUROSIS-300" his disability was assessed at 40% for two years. The petitioner was granted invaliding gratuity which he had received without protest. A specific objection has been taken by the respondents that the present writ petition has been filed after the gap of nearly 29 years and 8 months and the petition should be dismissed on that ground itself. During the course of hearing, the respondents have also placed on record the Medical Record containing proceedings of the Invaliding Medical Board. It is evident from these proceedings that the disability of the petitioner was recorded to be 20% and not 40% as alleged by the petitioner. It was initially recorded for two years with a specific finding that the same was neither attributable nor aggravated by military service. It was stated to be a constitutional disorder not connected with service. These findings of the Medical Board was also supported by the opinion of the Specialist which has recorded his findings as under:

OPINION OF MAJOR R.K.JETLEY, AMC CLASSIFIED SPECIALIST (MEDICINE)
DATED 10 MAR 75

A case of Neurosis for invalidment. Has been referred for medical assessment for exclude any organic medical contributory factor.

On Examination: Average build and Nutrition. No pallor. Pulse 80/ min. Resp 18/ min. BP 110/70 mm Hg. Thyroid gland - normal. Systemic examination - NAD. Lab investigation including FTM, X-Ray chest, Be meal, series and ECD all are normal. No medical illness is detected.

4. The Specialist has observed that the patient has multiple somatic symptoms of headache, giddiness, chest pain, difficulty in breathing and abdominal distension after meals. All these diseases would hardly be said to be attributable or aggravated by military service particularly when the petitioner had been in service only for a period of one year and few months. The findings of the Medical Board are supported by record and Specialist opinion and cannot be said to be

perverse. Furthermore, the petitioner took no steps and never made any request to the respondents for being subjected to Appellate Medical Board if he was not satisfied with the findings of the Invaliding Medical Board. The petitioner has also relied upon the judgment of the Supreme Court in the case of Ex. Sapper Mohinder Singh v. Union of India CWP No. 164/1993 decided on 14.1.93 which he has annexed to the writ petition as Annexure P-3 in support of his contention that the disease would be attributable to Army service. We have perused this judgment. The facts of that case were entirely different. Initially, the disability of the petitioner in that case was recorded as 100% which was reduced from time to time and finally the Medical Board had made recommendation of percentage of disability @ 40%. This was reduced by the CDA (P) to less than 40%, which was not accepted by the Court. These facts have no application to the present case. The plea of delay of 20 years and 08 months taken by the respondents is also not without merit and could be a reasonable ground for declining the relief. In our opinion, the petitioner is not entitled to the prayed relief.

5. The petitioner was enrolled in Army after medical examination and physical check ups on 26.6.1996. He had hardly put in any service when he was invalided out of service on 7.7.98. The petitioner was placed in low medical category because he was suffering from "Unspecified Psychosis" which was stated by the respondents to be a constitutional disorder with disability of 30%. It has been averred by the petitioner in the writ petition that the Medical Board had recommended the case of the petitioner for grant of disability pension with 20% disability as being attributable to Army service, however, the PCDA (P) without jurisdiction and in arbitrary manner has rejected the relief on the ground that the disease of "Unspecified Psychosis" was not attributable or aggravated by military service. It is also the case of the petitioner that originally disability was 30% for two years as such the respondents were obliged to subject the petitioner to a Resurvey Medical Board which they have failed to do. On these grievances, the petitioner had also filed an appeal against the order of invalidation out of service which was rejected on 15.11.2000 and second appeal preferred by the petitioner on 14.4.04 was also rejected vide order dated 24.8.05 giving rise to the filing of the present writ petition.

6. According to the respondents, the facts are not in dispute and it is stated that the petitioner under Item 111 of the table annexed to Rule 13(3) of Army Rules, 1954 was discharged from Army for the disability of "UNSPECIFIED PSYCHOSIS". The said disease was neither attributable to nor aggravated by military service. There is no relationship between the disease and the military service and as such all the orders passed by the respondents are in accordance with law and the petitioner is entitled to no relief. It is also averred on behalf of the respondents that appeals were filed by the petitioner much beyond the prescribed period and so they were also liable to be rejected on that ground itself.

7. During the course of hearing, the respondents have produced the Medical Record of the Invaliding Medical Board of the petitioner. It has been recorded by

the concerned Medical Board that petitioner suffered from the disease of "Unspecified Psychosis" and the disability percentage has been stated to be 30% for two years. The Medical Board has also recorded its findings as under:

In the case of a disability under C, the board should state what exactly in their opinion is the cause thereof.

This is psychological in nature and constitutional in origin and hence has no relationship to military service.

8. Besides the above observation, the opinion of the Specialist (Psychiatry) has also been placed on record according to which the onset of the disease was stated to be in the year 1997. In August, 1997, the disease manifested with abnormal behavior including violence. According to the Specialist (Psychiatry), the disease is neither attributable to nor aggravated by military service. There is nothing on record placed by the petitioner which could even remotely suggest that the observations of the Medical Board were not in consonance with the prescribed procedure. The petitioner was subjected to Medical Board, was examined by the Specialist in terms of the Medical Manual for Army and thereafter the petitioner was invalided out of Army service.

9. In these circumstances, the petitioner can hardly claim any benefit in the present writ petition. The contention of the petitioner that he should be subjected to Resurvey Medical Board is also without merit because once the disability though being 30% for two years was not attributable to nor aggravated by military service, subsequent Medical Board would give no cause of action to claim disability pension. In view of this, there is hardly any merit in this writ petition.

10. The petitioner who was enrolled as a Clerk in the Indian Army on 23.3.1963 was invalided out of service on 27.7.1970 as suffering from Schizophrenia (295) with 40% disability not attributable to nor aggravated by military service.

11. According to the petitioner, he was inducted into Army when he was mentally and physically fit and was placed in category AYE. During the period of his service, he had not suffered from any disease. Suddenly, on 27.7.1970 when the petitioner was unwell, he was examined by the Medical Board at Military Hospital, Meerut and was released from Army. According to him, the disease Schizophrenia was directly attributable to or aggravated by military service and was a result of stress and strain. The petitioner's claim for disability pension was declined vide order dated 5.7.1990. According to him, the respondents have taken no action to grant him disability pension which compelled the petitioner to serve a legal notice upon the respondents dated 25.1.05. Despite all this, the respondents failed to grant relief to the petitioner compelling the petitioner to file the present writ petition.

12. As already noticed, the stand of the respondents in the counter affidavit is that the petitioner was released from Army w.e.f 2.8.1970 under Army Rule

13(13) III (iii) being suffering from disease of Schizophrenia. The claim of the disability pension was rejected by the respondents as well as the PCDA (P) Allahabad vide their letter dated 6.9.71 and appeal filed by the petitioner against that order was also dismissed by the Ministry of defense vide its order dated 24.2.1972. It is also stated that when the invaliding disease/disability is considered attributable to or aggravated by military service and is assessed more than 20% then alone the petitioner is entitled to receive disability pension that too by specifying the provisions of the Entitlement Rules for Casualty Pensionary Awards, 1982. The respondents have also taken up the plea of delay as the present writ petition has been filed more than 35 years from the date of his invalidation out of service. We have perused the medical records produced by the respondents during the course of hearing. In accordance with the report of the Medical Board, the disability of the petitioner was stated to be 40% but it was stated that the disease was neither attributable nor aggravated by military service. It was said in reply to question at Column 2(d) of AFMSF-16 "The disability being of hereditary in nature, hence not connected with service". This opinion of the Medical Board was based upon the opinion of the Specialist who also stated the disability of the petitioner arising from Schizophrenia and recommended that the petitioner should be invalided out of service. In the opinion of the expert, it was specifically noticed as under:

This patient suffered from Schizophrenia Characterised by apathy, indifference, general withdrawal from reality, in congruity of mood, auditory hallucinations allusions of influence, reference, persecution and grandeur and marked disturbances of thought processes. He has shown some improvement by treatment with FCT, Largatil and psychotherapy but is considered unfit for further service view of psychotic nature of the mental breakdown. Recommended Category EEE.

13. The opinion of the Medical Board and particularly the opinion of Specialist is based upon investigations and is in conformity with the rules and regulations. In terms of the opinion of the Medical expert, the petitioner was suffering from the disease of Neurosis till the age of 10 years where after he had recovered. In other words, the onset of the disease was when the petitioner was 10 years old and it resurfaced with great severity in the year 1970. The petitioner was also posted as a Clerk in peace stations and was not exposed to any extraordinary conditions of service which could result in aggravation of the disease. In fact, it is the own case of the petitioner that for number of years he was suffering from no ailment. We are unable to find any arbitrariness in the action of the respondents as the Medical Board itself never recommended the case of the petitioner for grant of disability pension. In addition to the fact that the present petition has been filed after grave delay, there was no occasion for the petitioner to wait in approaching the Court of law after 35 years.

14. In this case the petitioner had joined the Army after being subjected to Medical examination on 17.6.94. During the course of training itself, the

petitioner was unwell. He was given medical treatment and subjected to Medical Board. The Medical Board invalided the petitioner out of military service on the ground that the petitioner was suffering from Schizophrenia. He was invalided by Medical Board and by the competent authority from service on 6.12.94 itself. In other words, the petitioner had served the Army for a period of less than six months. After discharge, the petitioner submitted his request for grant of disability pension which was rejected by the authorities. Vide letter dated 26.6.2000 the CCDA(P) Allahabad rejected the claim of disability pension of the petitioner against which the petitioner preferred an appeal on 18.8.2000 and that appeal was also rejected by the Ministry of defense by stating that the disease was neither attributable nor aggravated by military service vide its order dated 30.8.01. Petitioner further filed a second appeal which has also been rejected vide order dated 28.8.03 on the same basis giving rise to the filing of the present writ petition.

15. The respondents have taken following stand in their counter affidavit:

That the Petitioner, No. 14621860 Ex Rect Raj Singh was enrolled in the Army on 17.06.1994, he was invalided out of service on 06.12.1994 (F/N) in low medical category "EFF (PSY)" under item III (iii) of Table Annexed to Rule 13(3) of Army Rules 1954 due to his disability "SCHIZOPHRENIA-295". The above invaliding disability (ID) of the Petitioner was considered by the Invaliding Medical Board as neither attributable to nor aggravated by military service being psychogenesis in origin and not connected with service factors. However, the above Invaliding Disability of the Petitioner was assessed at 50% for two years by the said Invaliding Medical Board.

The fact regarding rejection of disability pension claim was also communicated to the Petitioner vide EME Records letter 14621860/DP-6/ Pen dated 26.06.2000 with an advice to prefer an appeal within six months from 25.05.2000 against the rejection of his disability pension, if he so desired on the grounds, he deemed fit to put forth. Thereafter, the Petitioner had submitted an appeal dated 18.08.2000 against rejection of his disability pension, which was carefully examined by the First Appellate Committee at Government of India, Ministry of defense and the same was finally rejected vide Government of India, Ministry of defense letter No. 7(1626)/2000/D(Pen A& AC) dated 30.08.2001 stating that the Appellant Medical Authority had found that the onset of Invaliding Disability was within 15 days after enrolment even before beginning of proper military training and the Invaliding Disability of the Petitioner is a constitutional multifunctional psychiatric ailment and not connected with service. In view of the above facts that the Invaliding Disability viz "SCHIZOPHRENIA-295" of the Petitioner was regarded by the Appellate Medical Authorities as neither attributable to nor aggravated by the duties of military service, as such he is not entitled to disability pension under the provisions of existing rules (Annexure R-1). Aggrieved of the said decision of Government of India, Ministry of defense, the Petitioner had preferred his second appeal dated 21.09.2001 against

rejection of his disability pension, which was considered afresh by defense Minister's Appellate Committee on pensions. But, the said committee had not found any ground to alter the decision of the First Appellate Committee which was communicated to the Petitioner vide Government of India, Ministry of defense letter No. 7(626)/2000/D (Pen A&AC) dated 30.08.2001. Therefore, the ibid second appeal of the Petitioner was correctly rejected vide Government of India, Ministry of defense letter No. 6(75)/2002/D (Pen A&AC) dated 28.08.2003 (Annexure P1 to the CWP) as per rules in force.

16. From the above narrated facts, it is clear that the petitioner was in Army not even for six months and was diagnosed to be suffering from Schizophrenia of a high order. The disability of the petitioner was assessed at 50% but not attributable nor aggravated by military service. In the rejoinder filed by the petitioner except making reference to certain judgments of the Court, the factual aspect disclosed in the counter affidavit has not been disputed. Once the Medical Board has found the petitioner suffering seriously from Schizophrenia within such a short period, we fail to understand how it can said to be attributable to or aggravated by military service. Despite a specific opinion to the non-aggravation and non-attributability to military service in relation to disease of the petitioner, the petitioner in these circumstances can hardly take any benefit of the orders.

17. The petitioner joined Indian Army on 25.4.1963. After having put in nearly 10 years of service he was discharged on 28.9.1973. In furtherance to the recommendation of the Invaliding Medical Board which diagnosed the disease of the petitioner as Grandmal Epilepsy, the disability of the petitioner was assessed at 30% for two years. It was said to be neither attributable nor aggravated by military service and was recorded to be a constitutional disease.

18. According to the petitioner, he was entitled to grant of disability pension for which he made repeated requests on 19.6.74, 8.4.85 and 11.6.95 but his requests were declined. The competent authority has held that the said disease was not attributable to nor aggravated by military service and the petitioner was not entitled to grant of disability pension. The petitioner has also placed on record the copy of the order dated 25.10.1997 vide which the petitioner was informed that he is not entitled to disability pension. The petitioner was discharged/invalided out of service on 28.9.73. There appears to be no occasion for the petitioner to wait for 30 years to file the present writ petition. Be that as it may, the petitioner has no case on merits. The findings of the Medical Board are not a mere scratchy observations but are based upon complete investigations and clinical examination of the patient. The Classified Specialist which has recorded his findings as back as on 23.8.73 are as under:

A case of idiopathic grandmal Epilepsy. It had first attack in April, 1973 gives H/o similar attack when pt was of 12 yrs of age, but pt. became alright within two years. Now he gets occasional attacks of unconsciousness and convulsions. The interval between attacks not certain. During attacks, froth comes out of his mouth, pt. injures himself. Pt. in 9000 general health, no mental changes, CNS-

NAD, no neurological deficit, fasting blood sugar lever 65 mm, PP-76 Mgm %
X-Ray skull-NAD, Fundus-NAD, C&F-NAD.

OPINION OF MED SPLT MAJR.SHARMA ON 01 Aug 73

A case of grandmal Epilepsy clinically he is getting the Epilepsy form convulsions since 2 years, he has sustained injuries in his forehead and bit his tongue during the fits. No neurological deficit X-Ray skull-NAD. Fasting blood sugar 64 m gm%, fundus-NAD, C.S.F. Normal

Recommended to be invalided out of service in Cat.

19. The bare reading of the opinion of the Specialist shows that onset of his disease was when the petitioner was 12 years of age and he had suffered an attack in April, 1973 for which he was treated. In other words, the onset of the disease was prior to joining the Army and aggravated in the year 1973 resulting in discharge of the petitioner from Army. The petitioner in our opinion, thus, is not entitled to any relief.

20. The petitioner, Chitar Bhuj joined Army as a combatant soldier on 8.4.1994. He was discharged from military service on 12.3.95 with 20% disability as being suffering from "Generalized Seizure". According to the petitioner, he was entitled to the grant of disability pension but his request was declined by CDA (P) Allahabad on 26.7.98. The petitioner submitted an appeal on 29.9.98 against the arbitrary rejection of his request which was also rejected vide order dated 13/14 Oct., 98. Being aggrieved from the action of the respondents, the petitioner has filed the present writ petition.

21. The facts in the present case are undisputed. The petitioner even earlier had filed a writ petition being CW No. 1921/99 which was disposed of by the Court directing the respondents to consider the claim of the petitioner after passing of the said order. The respondents again vide their order dated 3.3.04 have rejected the claim of the petitioner giving rise to the present writ petition.

22. The stand of the respondents in the present case is also similar to that taken by them in other cases where the disease has been stated to be neither attributable nor aggravated by military service. In fact, according to them it is no way connected with the service. In the order passed by the respondents on 29.2.04 in furtherance to the order of the High Court dated 6.3.03, the respondents conveyed the order of rejection to the petitioner. The relevant part of which reads as under:

In compliance with the Delhi High Court Order dated 06 Mar 2003 your case for grant of disability pension has been reconsidered by appropriate and the competent administrative, medical and legal authorities in the light of the relevant regulations on the subject and the observations of the Hon'ble High Court in its order *ibid*.

It is evident from the record that you were enrolled in the Army on 08 Apr 1994

and were invalided out from service with effect from 12 Mar 1995. The invaliding Medical Board considered your invaliding Disability (ID), "GENERALISED SEIZURE 345" as neither attributable to nor aggravated by military service.

As per Regulation 173 of Pension Regulations for the Army 1961, Part-I, disability pension is granted to an individual on his invalidment from service only when his disability is viewed as either attributable to or aggravated by military service by the invaliding Medical Board (IMB) and percentage of such disablement assessed at 20% or above.

The Delhi High Court in its order dated 06 Mar 2003 passed in your CWP 1921/99, has followed the ratio of the judgment of Delhi High Court in Ex Signalman Shri Bhagwan v. UOI and Ors. wherein the court held that opinion of a Medical Board that examines an individual will have primacy of over the opinion of any other medical authority.

In your case, the IMB itself considered your ID as neither attributable to nor aggravated by military service. Moreover, Hon''ble Court has held that opinion of the Medical Board who has examined the individual should be respected.

In view of the above, you are no entitled to grant of disability pension in terms of above Pension Regulations.

Authority : Army Headquarters letter No A/10150/Legal/PC-1189/GS/Arty-7C dated 16 Feb 2004.

23. The medical record produced before the Court shows that the IMB had opined that petitioner was suffering from "Generalized Seizure" and it was not connected with service. The disability was stated to be constitutional in its nature with disability percentage being 20% for two years. It is interesting to refer to the opinion of the Classified Specialist of Medicine and Neurology who stated as under:

This 19 years young recruit has presented with repeated Episodes of giddiness and unconsciousness for last 4 months. No definite eyewitness account is available. There is history of tongue bite on various occasions during these episodes but it has not been documented. There is no history of urinary incontinence or poetical deficit during these attacks. There is no history of pyrexia, head injury, diplopia or any specific illness associated with it. He says that he is a boxer for last one year. However, there is no history of knockout or frank head injury during there bouts. No relevant past or family history is available.

24. The opinion of the medical expert was taken in December, 1994 and as per the above opinion four months prior thereto the petitioner was suffering from repeated episodes of "Generalized Seizure". In these circumstances and in face of the clear medical opinion, this Court cannot hold that the disease of the petitioner was neither constitutional nor relatable to a period prior to the petitioner joining the Indian Army. In this view of the matter, the petitioner, in

our considered view, would not be entitled to the claimed relief.

25. The petitioner was enrolled with the defense Security Corps (in short "DSC") on 21.12. 1979 after subjecting to proper medical examinations and physical check-ups. Thereafter, he was directed to undergo training and transferred to Clothing Centre, Shahjahanpur, UP where he remained posted till 1985. The petitioner was then transferred to different stations at UP, West Bengal and J&K etc. during his service tenure. In the year 1992-93, he was posted in Ammunition Depot, Jammu. Thereafter, he was transferred to Itarsi, MP where he suffered mental depression and was admitted to Mental Hospital at Jabalpur, MP during the period 1994-1996. Subsequently, he was admitted to Agra Mental Hospital and remained under their treatment for 12 days where after he was again taken to Jodhpur Hospital and remained there till 21.12.1996. On 28.2.1997, the petitioner was discharged from service and was sent back to his residence. The petitioner applied for disability pension which was rejected by the CCDA(P) vide their letter dated 29.5.1998 on the ground that the disability was neither attributable to nor aggravated by military service. The appeal of the petitioner was also rejected vide letter dated 13.10.1998. On 7.3.2000, the petitioner was informed that Ministry of defense, Government of India, New Delhi had also rejected his request on the same ground. The petitioner then fell sick and in the year 2002 after serving a legal notice upon the respondents, has filed the present writ petition.

26. In the counter affidavit filed by the respondents, it has been stated there is delay in filing the present writ petition and the legal notice served by the petitioner on 2.2.2002 was without merit and has been rightly ignored. According to the respondents, the petitioner was posted to different places in the "DSC". It is not disputed that the petitioner had an aggregate qualifying service of 27 years and 184 days to his credit at the time of his release and the petitioner was granted service element of pension @ Rs. 1,647/- p.m. w.e.f. 17th May, 1997 for life with dearness relief as admissible under the Rules. According to the respondents, the petitioner was also paid a sum of Rs. 36,495/- on account of retirement gratuity besides pension payment order. It is stated that he was invalided out of service in medical category "EEE" with 20% disability for two years due to disease "Depressive Disorder³¹¹". According to the respondents, this disease was not connected with the military service and neither attributable to nor aggravated by military service and, thus, he was not entitled to claim benefit.

27. The proceedings of the invaliding medical board have been placed on record wherein it is stated that the petitioner suffered from "Depressive Disorder" with 20% disability for a period of two years. The medical board, in its wisdom, has recorded that the disease is not attributable to or aggravated by military service. This finding has been recorded on the basis of the clinical examination and medical history of the petitioner. It is clear from the record that the petitioner was not exposed to any such harsh condition of service or place of posting which

could aggravate the disease. The petitioner had all through been posted on peace stations and in the opinion of the medical board, the depressive disorder was not result of service conditions. There is nothing on record placed before us by the petitioner to show that such a mental depressive disorder could result from the conditions of service.

28. In our considered view, the petitioner is not entitled to the relief prayed for.

29. The petitioner was enrolled in regular Army as Combatant Soldier on 12.9.04. Petitioner claimed that he was subjected to medical and physical tests and was found fit in all respects. On completion of his basic training, the petitioner was posted to a unit of infantry battalion. The petitioner started having health problems in the year 1987 itself and was immediately sent for medical check up. The petitioner was admitted to Military Hospital for treatment and was diagnosed as a case of "Generalized Seizure" which could not be cured. The petitioner, Therefore, was placed in low medical category CEE (temporary) for 24 weeks and was to appear before the Medical Board subsequently. In March, 1998, the petitioner appeared before the constituted Medical Board which recommended that the petitioner be invalided out of service with 30% disability and placed the petitioner in permanent medical category "EEE". The petitioner was not provided with any alternative or shelter appointment as a result of which AFMSF-16 was submitted and a discharge certificate was prepared in furtherance to which the petitioner was discharged on 19.5.88. The claim of the petitioner for grant of disability pension which was forwarded to the CDA (P) Allahabad was rejected and it was stated that the petitioner was not entitled to disability pension as the disease of the petitioner was neither attributable nor aggravated to military service. On 14.11.88 the petitioner preferred an appeal which was also rejected vide order dated 23.2.1990. The petitioner claims to be corresponding with the respondents and finally served a notice through his counsel dated 1.11.04 on the respondents. Despite service of such notice, no relief was granted to the petitioner and the respondents vide their letter dated 28.1.05 reiterated their stand and declined the request for grant of disability pension made by the petitioner resulting in filing of the present writ petition.

30. The respondents have filed a detailed counter affidavit stating that at the time of entry of the petitioner into Army, no special investigations could be carried out as it is done in primary medical examination. The petitioner was suffering from "Generalized Seizure" which could not be detected despite due care at that time and the disease of the petitioner has resurfaced which was detected by the Medical Board on 13.2.88. It is also specifically pleaded by the respondents that the disease of the petitioner is neither attributable to nor aggravated by military service. The petitioner was not entitled to the claimed relief and as such the writ petition should be dismissed. The medical record of the petitioner was produced before us during the course of hearing. It has been recorded by the IMB in relation to answer to Clause 2(d) of AFMSF-16 as follows:

In the case of a disability under C, the board should state what exactly in their

opinion is the cause thereof.

He is a case of generalized epileptic fits who has been investigated in detail. No cause which can be related to service factor has been found. His condition is idiopathic in nature and as such neither attributable nor aggravated by service.

31. Though the disability of the petitioner was fixed at 30% for two years but still the same was said to be neither attributable to nor aggravated by military service. The Classified Specialist who had examined the petitioner prior to his being subjected to IMB recorded that he was having recurring fits three to four times a week and that he has poor motivation and persistent symptomatology. It was also stated that he is unlikely to be a fit soldier ever. In face of this reasoned findings recorded by the Classified Specialist as well as the Medical Board, this Court cannot accept the plea of the petitioner that the disease was attributable to military service. The learned Counsel appearing for the petitioner while referring to the provisions of the Guide to Medical Officers (Military Pensions), 2002 Clause 33 contended that Epilepsy has to be taken as a disease attributable and/or aggravated by military service. We are unable to accept this contention primarily for the reason that guidelines are required to be followed in their application to the physical and mental condition of a patient. But once after complying with these guidelines, the medical authorities arrived at a conclusion that disease is not attributable to military service then the Court cannot sit over such judgment of the experts unless the view was unreasoned, absurd or was not in conformity with the rules and regulations. Again in our considered opinion, the petitioner in this case also cannot claim any relief.

32. Rajesh Kumar, the petitioner was listed in Indian Navy as a Sailor on 2.2.85. He developed certain mental problems and was admitted to the hospital on 17.6.87 and was placed in medical category E. Keeping in view his mental condition, the Medical Board diagnosed petitioner as suffering from Schizophrenia and was placed in low medical category EEE (P) and it was recommended that petitioner be boarded out from the force. Accordingly, the petitioner was invalided out of service vide letter dated 17.3.88. The petitioner was informed that the documents of the petitioner had been forwarded for consideration of disability pension. The petitioner made a request for grant and payment of disability pension which was rejected and even the appeal filed by the petitioner against the rejection of his disability pension which he had preferred by representation dated 24.7.04, was also rejected vide order dated 10.9.04 giving rise to filing of the present writ petition.

33. The respondents have filed a counter affidavit and it is not disputed that petitioner joined INS Venduruthy (ASW School) in October, 85 for professional training which is mandatory for all recruits but during the course of training the petitioner showed abnormal behavior and periodical fits of violence. The disease "ID viz "Schizophrenia" was detected in February, 1986. In fact, the stand of the respondents can be stated as under:

In reply to para 4 of the petition, it is submitted that the petitioner was admitted in Army Hospital, Delhi Cantt on 28 April 1987 and not on 17 June 1987 as stated in the petition. It is pertinent to mention here that the petitioner absconded from Hospital on 02 June 1987 and discharged in absentia vide Army HQ Hospital discharged slip dated 02 June 1987. However, the petitioner was brought back and readmitted in Army Hospital, Delhi Cantt on 17 June 1987. The Invaliding Medical Board held on 25 September 1987 recommended that petitioner is considered unfit for further service. The Medical Board proceeding were approved by DMS(Navy) at IHQ/MOD(Navy) on 19 October 1987. Accordingly the petitioner was discharged from the hospital on invalidment and sent to his home with an escort on 30 October 1987.

The contents of para 5 of the petition need no reply.

In reply to para 6 of the petition, it is submitted that the disability pension claim of the petitioner was forwarded to PCDA (Navy), Mumbai for onward transmission to the Competent Authority i.e. Medical Advisor (Pension) attached to PCDA (P), Allahabad for adjudication vide respondent letter dated 14 March 1998. The disability claim of the petitioner was rejected by MA(P), attached to PCDA(P), Allahabad and the decision was communicated to the petitioner vide respondent No. 2 letter dated 06 June 1998.

34. The respondents during the course of hearing have produced the medical records in Court. The Medical Board opined that petitioner was suffering from Schizophrenia which was a mental disorder and was not attributable or aggravated by military service. The disability percentage of the petitioner was fixed at 40% for two years. The denial of disability pension was primarily on the ground that the disease of the petitioner was neither attributable nor aggravated by military service. The Specialist who examined the petitioner on 17.6.87 recorded that the petitioner suffered from a transients situational disturbance in 1986 as a result of which he was placed in low medical category for 6/12 yrs. He even absconded from the ward on 2.6.86 and had to be brought back and readmitted. Taking into account the history of the petitioner and clinical examination, the Specialist further observed that in view of his short tenure of service, psychotic nature of illness with significant past history of breakdown about an year back, he is considered unfit for further service. Recommended medical Cat.EEE and its equivalent in Navy.

35. In view of the reasoned and firm opinion of the medical Specialist, which was duly considered by the Medical Board, this Court finds no reason to take a view different than the one taken by the Medical Board which, in any case, would have precedence as it has been recorded in accordance with rules and upon due clinical examination of the patient.

36. The petitioner was inducted into the force in February, 1985 and signs of serious mental disorder of Schizophrenia were traced in 1986. That means within few months of his being enrolled in the Navy. Such aggravated stage of the

disease could not be said to be attributable or aggravated by military service as it essentially relates to a period prior to the petitioner joining the force.

37. In view of this, we find no reason to grant any relief to the petitioner.

38. The learned Counsel appearing for different petitioners in these writ petitions have relied upon judgments of this Court in the cases of Ex. Ct. Jasbir Singh and Others Vs. Union of India (UOI) and Others, , Deepak Kumar Singh Vs. Union of India, and Satpal Singh v. Union of India 1999 4 AD (Del.) 321 . In addition to the above mentioned judgments, they have also relied upon the judgment of this Court in the case of Ex.Cfn.Sugna Ram Ranoliya v. Union of India and Ors. being CWP No. 3699/2004 decided on 27.7.06 , in support of their contention that all such diseases like Schizophrenia, mental disorder or Generalized Seizure would be attributable and/or aggravated by military service. They would, according to them, be entitled to receive disability pension in law. There is no doubt that in these judgments, various such diseases have been held to be attributable to and/or aggravated by military service but they have not been held as a proposition of law. It relates to the cases which have been referred to in those judgments. In those cases, there was no definite opinion of the Invaliding Medical Board or that of the Classified and/or Specialists to substantiate the plea of the respondents that the disease is neither attributable to nor aggravated by military service. The principles enunciated by the Benches in those judgments are to be applied to the facts of each case. Unless the material (opinion of the Medical Board) produced before the Court is ex facie unbelievable, absurd and is not in accordance with rules, regulations and instructions issued by the department, would have precedence. In the present cases, the medical experts have clearly indicated the diseases of the petitioners relatable to a period much prior to their joining the Army though it surfaced with gravity after their joining the Army. A person who was suffering from Generalized Seizure at the age of 10 or 12 years and had joined the Army and the disease manifested with greater gravity within few months or initial years of service, the Court cannot be expected to hold that such disease was attributable to or aggravated by military service particularly when the Medical Board in specific terms have recorded their findings against such attributability or aggravation. In the case of Controller of defense Controller of Defence Accounts (Pension) and Others Vs. S. Balachandran Nair, the Supreme Court has held that precedence has to be given to the findings recorded by the Medical Board. In the present cases, the findings of the Medical Board are in conformity with the rules, regulations and guidelines meant for medical officers as the patients have been subjected to examination by a Specialist or a Classified Specialist prior to their being examined by the Medical Board. Due investigations have been conducted and the history given by the petitioners themselves relate such diseases much prior to a period of their joining the Indian Army. Besides this, some of these writ petitions have been filed after grave delay which can hardly be justified. In some of the cases, the period of service of the petitioner is so little that even from a common man's point of view, it is difficult to accept the contention that they have suffered the diseases as a result of stress and strain of

service. The petitioners were even posted in peace stations all through their tenure but have a grievance that it is the rigours of service which have resulted in their being invalided out of Army service. Thus, the petitioners can hardly get any benefit or advantage from the judgments cited by them as on facts they have no application to the present cases.

39. Consequently, all the above writ petitions are dismissed, while leaving the parties to bear their own costs.