(2006) 01 AHC CK 0130

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 20205 of 1994

Nishan Singh — APPELLANT

Vs

Union of India & Ors. — RESPONDENT

Date of Decision : 31-01-2006

Acts Referred:
Pension Regulations for Army, 1961 — Regulation 423

Citation : (2006) 01 AHC CK 0130

Hon'ble Judges : Sabhajeet Yadav, J

Final Decision : Allowed

Judgement

Sabhajeet Yadav, J.—By this petition, the petitioner has challenged the order dated 1641993 passed by Respondent No. 3 whereby the claim of the petitioner''s disability pension has been rejected and order dated 2191994 whereby the appeal of the petitioner filed against rejection of disability pension has been dismissed and further relief for mandamus was sought for directing the respondents to pay the disability pension to the petitioner.

2. The relief sought for in the writ petition rests on the allegation that the petitioner was enrolled in the Indian Army and allotted signal branch. While posted at 2. Field Trial Sub(Gp) Core of 56 A.P.O., he was sent on Form A.F.M.S.I.O. to Medical Hospital on a suspected ailment of PARANOID State (I.C.D. No. 297) and was boarded out after down grading his medical category to ?EEE? by Medical Board on 621991.Thereafter the petitioner submitted a disability pension claim to the Chief Controller of Defence Accounts (Pension) Allahabad through the Officer Incharge Signal Records which was rejected vide letter/order dated 1641993 by Chief Controller of the Defence Accounts (Pension) with the remarks that the petitioner was suffering from Paranoid State during the service on which the claims is based : (a) is not attributable to Military Service; (b) does not fulfill the conditions namely that is existed before or arose during the Military Service and has been aggravated thereby. This was intimated to the petitioner vide letter dated 751993 by the Officer Incharge Signal Records

(Respondent No. 2). The petitioner has challenged the aforesaid action of the respondent No. 3 as mechanical and arbitrary on the ground that he was enrolled in Army Service after a thorough medical examination but nothing abnormal was found against him so the Paranoid state from which he is suffering now arose during the Military Service and is fully attributable to the Military Service.

3. It is further stated that the Government of India, Ministry of Defence has published a Manual namely guide to Medical Officers (Military Pension), 1980. The Chapter VI of which deals with the clinical aspect of certain diseases. Para 35 of the said chapter deals with mental (Psychiatric) Disorder. The paranoid state of which the petitioner alleged to be suffering comes under the aforesaid heading. The claims for same usually arises in the circumstances namely: (a) Prolonged field service; (b) Participation in war like front like operations; (c) Intensive Military training with troops; (d) service in high attitude area; (e) Long patrolling duties in mountains and hazardous area but the aforesaid list is not exhaustive rather illustrative in nature and in each and every case careful consideration should be given as to whether the individual in question would or would not have been subjected to similar stress if he had not joined the service. While considering the claim in such circumstances, the stress factor, the genetic factor and time factor must be considered. Where the stress factor predominates and breakdown occurs within at most six months the entitlement of attributability may be appropriate, where genetic factor is predominant, the possibility of aggravation must be considered.

4. It is further stated that the petitioner fell a victim to paranoid state due to stress and strain of the Military Service and it is fully attributable to the Military Service. It is further stated that evidentiary value is attached to the records of the members condition at the time of entry into service and such records therefore has to be accepted unless any different and contrary conclusion has been reached due to inaccuracy of records in a particular case or otherwise. Accordingly if the disease leading to the members'' invalidation out of service was not noted in the medical report at the time of entry into service, the inference would be that the disease arose during the course of Military Service. It is further stated that the petitioner never suffered from any mental ailment before joining the service. The recruitment Medical Board did not find any abnormality in petitioner nor for that matter anybody in his family is suffering nor has suffered from any mental disorder. In view of these circumstances the Paranoid State suffered by the petitioner is fully attributable to the Military Service and the petitioner is entitled to the disability pension. In given facts and circumstances of the case he is entitled for grant of disability pension on account of benefit of reasonable doubt also. Besides this it is also stated that impugned order has been passed on the basis of recommendation of two members medical board but the said recommendation was made by the said medical board in fanciful manner without observing the norms laid down in the Manual of Guide to Medical Officers Military Pension, 1980.

5. While justifying the impugned orders passed by respondents a detail counteraffidavit has been filed on their behalf, wherein before making parawise reply of the writ petition, the stand taken by the respondents has been stated in para 3 of the counteraffidavit as under:

?(3) That before giving a parawise reply to the writ petition, the deponent craves the leave of this Hon''ble Court to place following facts which are necessary for early disposal of the controversy involved in the present petition:

(a) That the petitioner was enrolled in the corps of Signals on 27th March, 1981 and invalided out of service on 4th March, 1991 under Army Rule 13(3) III (iii) due to PARANOID STATE and sent to home from unit.

(b) That invaliding medical board considered the disability of the petitioner as neither attributable to nor aggravated by Military Service and also viewed that the disease is constitutional in origin and hence unrelated to service conditions. However, his disability was assessed by the invaliding medical board at 30% for 2 years. A copy of IMB proceedings are attached herewith and marked as Annexure CA 1 to this affidavit.

(c) That disability pension claim of the petitioner was rejected by the Chief Controller of Defence Accounts (Pension), Allahabad vide letter dated 16th April, 1993 on the plea that the disability suffered by the petitioner was not attributable to Military Service and did not fulfill the conditions namely it existed before or arose during Military Service and has remained aggravated thereby, with an advice to prefer an appeal within six months from 15th April, 1993. However, on rejection of his disability pension, he was granted a sum of Rs. 19,250 on account of invalid gratuity and D.C.R.C. a Xerox copy of the letter dated 4th May, 1993 and 16th April, 1993 are enclosed herewith and marked as Annexures CA2 and C.A3 to this affidavit.

(d) That the petitioner submitted an appeal dated 8th October, 1993, which was received under Army Headquarters letter dated 22nd October, 1993. The same was submitted to the Government of India, Ministry of Defence, through Chief Controller of Defence Accounts (Pension), Allahabad vide Signals Records Letter dated 5th November, 1993, a xerox copy of which is enclosed as contained in Annexure3 to petition. On perusal of his service/medical documents, the appellate Medical Authority found that he came under medical supervision on 30th November, 1990 because of abnormal behaviour when he was sentenced to 28 days R.I. and 14 days detention in military custody for an offence under Section 53 of the Army Act by Commanding Officer, 2 Field Trial SubGroup Onset of the invaliding disability was in peace station. He had two earlier punishments also during December, 1986 and April, 1989 for indiscipline. There is no history of field/H.A. Area service inclose time relationship onset of Invaliding disability. The petitioner had some family domestic friction. He got married in 1985 but had no issue and his wife had two miscarriages. As such in the case of the petitioner no service related stress and strain are involved. In view of the fact that the

petitioner''s disability has been regarded by the Medical authority as neither attributable to nor aggravated by Military Service and a constitutional disease he is not entitled to disability pension under the existing Rules. Government of India, Ministry of Defence vide their letter No. 7/86/94/D (PenA and AC) dated 21st September, 1994, has rejected his appeal on the above grounds addressed direct to the petitioner with copy to Record Office amongst others. A Xerox copy of the rejection order dated 21st September, 1994 is enclosed herewith and marked as Annexure CA4 to this affidavit.

(e) That keeping in view the above, it is considered that the disability of the petitioner was not due to service conditions but various other reasons as is evident from the following:

(i) The disability on account of which he was released from service is a constitutional disease. Also the disability has been assessed as neither attributable to nor aggravated by Military Service.

(2) As per record of service of the petitioner the on set of the diseases was in peace station and there is no history of field/HA Area service in close time relationship to onset of disease. In the instant case no service related stress and strain are involved.

(iii) Commission of offences by the petitioner repeatedly. He was awarded punishments for the offences committed by him as under:

(x) 14 days RI in Military Custody under Army Act Section 41(2) (disobedience of lawful command given by his superior).

(y) 14 days RI in Military custody under Section 40(c) of Army Act (Using insubordinate language to his superior office).

(x) 28 days R.L and 14 days detention in military custody under Section 53 of Army Act (An omission prejudicial to good order and military discipline).

(iv) Some family domestic friction.

(v) Got married in 1985, but had no issue and his wife had two miscarriages.

(f) That in view of the facts and circumstances mentioned above, the above noted writ petition is wholly devoid of merit and is liable to be dismissed with costs to the answering respondents.?

6. Besides this, the averments contained in para 6 of the counteraffidavit are also of much significant and have material bearing with the question in controversy involved in the case, thus reproduced as under:

?(6) That the contents of para 3 of the writ petition are incorrect hence denied. Mere mentioning that when the petitioner was enrolled in the Army Service a Medical Examination was carried out and nothing abnormal was found, a disease cannot be considered as attributable to Military Service. At the time of enrolment medical examination is conducted by the Recruiting Medical Officer within a very

short period and not be a specialist. Hence, complicated diseases like ?Paranoid? cannot be detected during such normal medical examinations. Before an award is made for a disability claim to be related to service, a causal connection between disability and service/personal factors of the affected individual has to be established by evidence. The Invaliding Medical Board held at Command Hospital (Western Command), Chandimandir on 6th February, 1991 considered the disability of the petitioner as neither attributable to nor aggravated by Military Service. Also the board opined that the disease is constitutional in original and hence unrelated to service conditions. However, it was assessed at 30% for two years. His claim for disability pension was also adjudicated by Medical Advisor (Pensions) attached with Chief Controller of Defence Accounts (Pensions), Allahabad and rejected correctly vide order dated 16th April, 1994 as he does not fulfill the primary conditions for grant of disability pension under Regulation 173 of Pension Regulation for the Army, 1961, Part I, which stipulates as under:

?Unless otherwise specifically provided a disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by Military Service is assessed at 20 percent or over.?

7. Heard Sri G.D. Mukherji and Sri S. Mukherji, learned Counsel for the petitioner and Sri S.K. Rai, learned Additional Senior Standing Counsel for Union of India.

8. Since the affidavits have been completely exchanged between the parties and case is ripped for hearing. Therefore I have heard the case on merit with a view to dispose it of finally with the consent of Counsel for the parties.

9. Having heard the learned Counsel for the parties and on perusal of the materials available on records the question arises for consideration as to whether, in given facts and circumstances of the case the disease in question leading to invalidity from service of the petitioner arose during Military service or attributable to or aggravated by Military Service and as to whether the petitioner is entitled for grant of disability pension thereby ?

10. In this connection it is necessary to point out that it is not in dispute that disability was assessed by Medical Invalidation Board is about 30% which is more than minimum requirement of grant of disability pension under Rule 173 of rules governing the matter, but another requirement of eligibility or entitlement of disability pension has been highly disputed in the counteraffidavit filed on behalf of respondents. Therefore, before examining the issue with reference to factual backdrop of the case it is necessary to examine legal aspect of the matter in this regard.

11. In this connection a reference can be made to a decision of Hon''ble Apex Court rendered in Controller of Defence Accounts (Pension) & Ors. v. Balachandran Nair, 2005 (7) Supreme 129, upon which learned Counsel for the respondents has placed strong reliance. In the aforesaid case while taking note of earlier decisions Hon''ble Apex Court in paras 7, 9, 10 and 11 of the decision

observed as under:

?(7) Reference was also made to Pension Regulations for the Army (in short the Pension Regulations) Rule 173 of such Regulations read as follows:

Primary conditions for the grant of disability pension:

?(173) Unless otherwise specifically provided a disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service and is assessed at 20 percent or above.

The question whether a disability is attributable to or aggravated by military service shall be determined under rule in Appendix II.

Relevant portion in Appendix II reads as follows:

?(2) Disablement or death shall be accepted as due to Military Service provided it is certified that

(a) The disablement is due to wound, injury or disease which

(i) is attributable of military service; or

(ii) exited before or arose during military service and has been and remains aggravated thereby;

(b) the death was due to hastened by

(i) a wound, injury or disease which was attributable to military service, or

(ii) the aggravation by military service of a wound, injury or disease which existed before or arose during military service.

Note.The Rule also covers cases of death after discharge invaliding from service.

(3) There must be a causal connection between disablement or death and military service for attributability or aggravation to be conceded.

(4) In deciding on the issue of entitlement all the evidence, both direct and circumstantial, will be taken into account and the benefit or reasonable doubt will be given to the claimant. This benefit will be given more liberally to the claimant in field service case.?

(9) In order to appreciate rival submissions Regulation 423 needs to be extracted. The same reads as follows:

?423. Attributability to Service:

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

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

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

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

(d) The question, whether a disability or death is attributable to or aggravated by service or not, will be decided as regards its medical aspects by a medical board or by the medical officer who signs the death certificate. The medical board/ medical officer will specify reasons for their/his opinion. The opinion of the medical board/medical officer, in so far as it relates to the actual cause of the disability or death and the circumstances in which it originated will be regarded as final. The question whether the cause and the attendant circumstances can be attributed to service will, however, be decided by the pension sanctioning authority.

(e) To assist the medical officer who signs the death certificate or the medical board in the case of an invalid, the CO. unit will furnish a report on:

(i) AFMS F81 in all cases other than those due to injuries.

(ii) IAFY2006 in all cases of injuries other than battle injuries.

(f) In cases where award of disability pension or reassessment of disabilities is concerned, a medical board is always necessary and the certificate of a single medical officer will not be accepted except in case of stations where it is not possible or feasible to assemble a regular medical board for such purposes. The certificate of a single medical officer in the latter case will be furnished on a medical board form and countersigned by the ADMS (Army)/DMS (navy)/DMS (Air).

(10) In Union of India and Anr. v. Baljit Singh, 1996 (11) SCC 315 this Court had taken note of Rule 173 of the Pension Regulations. It was observed that where the Medical Board found that there was absence of proof of the injury/illness having been sustained due to Military Service or being attributable thereto, the High Court''s direction to the Government to pay disability pension was not correct. It was inter alia observed as follows:

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

(11) The position was again reiterated in Union of India & Ors. v. Dhir Singh China, Colonel (Retd.), 2003(2) SCC 382. In para 7 it was observed as follows:

?(7) That leaves for consideration Regulation 53. The said Regulation provides that on an officer being compulsorily retired on account of age or on completion of tenure, if suffering on retirement from a disability attributable to or

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

12. Thus in view of settled legal position enunciated by Hon''ble Apex Court it is clear that while considering the claim of disability pension of an Army Personnel the opinion of Medical Board regarding invalidation for discharge from service should be examined to ascertain the relevant facts for consideration of claim and to find out as to whether the disability disease from which personnel was suffering at that time was attributable to or aggravated by military service. The opinion of Medical Board constituted for the said purpose, which is an expert body should not be lightly brushed aside by the Court unless it is disputed and found contrary to the instructions issued by Defence Ministry for guidance to Medical Officers or otherwise found faulty within wellsettled parameters of judicial review. Therefore, it is necessary to examine the stand taken by the respondent in this regard in the counteraffidavit filed in the writ petition.

13. Now coming to the pleading of the parties it is necessary to point out that in para 3(a)(b) and (c) of the counteraffidavit it is stated that the petitioner was enrolled in corps of signal on 27th March, 1981 and invalided out of service on 4th March, 1991 under Army Rule 13 (3) Ill(iii) due to ?Paranoid State? and sent to home from Unit. Invaliding Medical Board opined that the disability of the petitioner is neither attributable to nor aggravated by military service and also viewed the disease was constitutional in nature hence unrelated to the service condition. However, disability was assessed by invaliding Medical Board at 30% for two years. In para 3(d) of the counteraffidavit it is stated that on rejection of claim of disability pension, the petitioner preferred an appeal, whereupon Appellate Medical Authority found that the petitioner came under medical supervision on 30th November, 1990, because of his abnormal behaviour when he was sentenced to 28 days R.I. and 14 days detention in military custody for an offence under Section 53 of Army Act. Onset of the invaliding disability disease was in peace station. He had two earlier punishments also during December, 1986 and April, 1989 for indiscipline. There is no history of field or

High Altitude Area service in close time relationship of onset of invaliding disability. The petitioner had some family domestic friction. He got married in 1985 but had no issue and his wife had two miscarriages as such in case of petitioner no service related stress and strain are involved. In view of the aforesaid facts the said appeal was rejected on 2191994. Similar facts have also been repeated in Paras 3(e), 6 and 7 of the counteraffidavit wherein it is stated that when the petitioner was enrolled in the Army Service, a Medical examination was carried out and nothing abnormal was found. This examination was carried out by Recruiting Medical Officer within a very short period, which was not done by a Specialist hence a complicated disease like Paranoid state could not be detected during normal medical examination. It is further stated that before an award is made for disability claim, it must be established that there is causal connection between disability and Military service. The service records of the petitioner reveals that he was never placed in circumstances mentioned in paras 4 and 5 of the writ petition. Onset of disease was in peace station. He has never served in High Altitude Area. There is no history of Field/H.A. service, in close time relationship to onset of disease. Therefore, in fact it is not the service factors but some personal factors and his disgruntledness that led to his paranoid state.

14. The aforesaid facts stated in the counteraffidavit have been very aptly replied in para 4, 5, 7, 8 and 9 of the Rejoinder affidavit filed by the petitioner in above noted writ petition. It would be useful to reproduce the same in toto for better appreciation of question in controversy involved in the case as under:

?(4) That the contents of paragraph No. 3 (b) of the counteraffidavit are not disputed as such, but the disease Paranoid State (I.C.T. No. 297) was caused due to harassment by his Commanding Officer who deliberately punished the petitioner to undergo 28 days'' R.I. and 14 days'' detention with effect from 30th day of November, 1990. When he was escorted his behaviour was normal. There is no pasthistory of illness nor there is any family history of mental illness.

(5) That subclauses (a), (b), (c) and (d) of Paragraph No. 9 as contained in Chapter IV (entitlement Rules) in the Guide to Medical Officers (Military Pensions), 1980 reads as under:

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

(b) A disease which has led to an individual''s discharge or death will ordinarily be deemed to have arisen in service, if no note of it was made at the time of the individual''s acceptance forms. However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service. ?

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

(d) In considering whether a particular disease is due to military service, it is necessary to relate the established facts in the aetiology of the disease, and of its normal development to the effect that conditions of service, e.g. exposure, stress, climate etc. may have had on its manifestation or aggravation (See Annexure I). Regard must also be had to the time factor. ?

That in the instant case the disease was certainly caused due to harassment while in service and it is fully attributable to Military service and this is fully fortified by the recommendations of the Medical Board.

(7) That the contents of paragraph No. 3 (d) of the counteraffidavit are disputed.

(8) That the contents of paragraph No. 3 (e) of the counteraffidavit are not correct as stated and they are at best a wishful thinking on the part of the respondents. The petitioner was continuously harassed in the Unit by his superior officers and when the last punishment was awarded to him sometimes in 1990, the petitioner broke down under the stress of Military service and during the course of his punishment he was sent for Psychiatric treatment where he was recommended for discharge from service after having assessed his disability to the extent of 30 per cent. The mention above the fact that the onset of the disease did not take place in the field area is not relevant and each case should be judged on its own merits. In every case, a careful consideration should be given as to whether the individual in question would, or would not, have been subjected to similar stress if he had not joined the service.

In such circumstances the stress factor, the genetic factor and the time factor, must be considered. Where the stress factor predominates and breakdown occurs within, at most, six months, entitlement of attributability may be appropriate. Where the genetic factor is predominant the possibility of aggravation must be considered.

In any case this disease is not one of those diseases which originally escaped detection on enrolment. From the above it would be abundantly clear that the disease Paranoid state occurred during the Military service and during excessive harassment and strain, so the question of discharging the petitioner on the grounds of his disability are fully attributable to military service only. All the allegations to the contrary are denied.

(9) That the contents of Paragraph No. 4 of the counteraffidavit are not disputed except that the recommendation of the Medical Board are not in conformity with the Guide to Medical Officers (Military Persons), 1980 which has been published by the Ministry of Defence and is binding on all the Medical Officers.?

15. At very outset it is necessary to point out that there is no statutory rule

governing the Award of disability pension to the Army Personnel''s. The instruction issued by Union of India, Ministry of Defence in this regard holding the field and in absence of contrary statutory rules shall be binding upon the concerned department of Union of India. The relevant instructions having material bearing with the issue have been compiled in the shape of guide to Medical Officers (Military Pensions), 1980. Section or Chapter IV of which deals with disability Pension Awards. Para 173 of aforesaid section or Chapterprescribes condition for grant of disability pension requires to be determined according to rules given in AppendixII. The rule prescribed in AppendixII of said rules provides modes and manner in which question whether the disability is attributable to or aggravated by Military service is to be determined. Rule7 of which is relevant Rule given at Pages 106107 of the Guide. The reference of same has already been made hence need not be repeated. A plain reading of Rule 7(a) of which provides that the cases in which it is established that conditions of Military service does not determine or contribute to onset of the disease but influenced subsequent course of disease will fall for acceptance on the basis of aggravation. Para 7(b) provides that a disease which has led to an individual''s discharge or death will ordinarily be deemed to have arisen in service if no note of it was made at the time of individual acceptance for Military service. However, if medical opinion holds, for the reasons to be stated that the disease could not be detected on medical examination prior to acceptance for service the disease cannot be deemed to have arisen during the service. Virtually same and similar rules have been incorporated in para 9, page 18, Chapter IV of guide to Medical Officers (Military Pensions), 1980, dealing with entitlement of the pension as quoted in para 5 of the rejoinderaffidavit, referred in preceding paragraph of this decision.

16. At this juncture it is necessary to point out that in the counteraffidavit, it is stated that the disease in question i.e. Paranoid state could not have been detected in the medical examination prior to acceptance for service as at the time of enrolment in service the medical examination was carried out within short duration by Recruiting Medical Officer who are not specialist in the matter accordingly the disease will not be deemed to have arisen during service. From the perusal of records enclosed with the counteraffidavit there is nothing to show that either any note of it was made at the time of petitioner''s acceptance for Military service or any medical opinion has been given stating the reasons that the disease could not be detected on medical examination prior to acceptance for service as required by aforesaid rules. Therefore bald assertion made by respondents in the counteraffidavit in this regard in absence of positive material in support thereof cannot be accepted and has to be rejected. Thus there can be no difficulty to hold that in given facts and circumstances of the case, the disease in question will be deemed to have arisen during Military service.

17. However assuming for the sake of arguments even if disease in question could not be detected in medical examination of Recruitment Medical Board and onset of disease appeared during service while the petitioner was undergoing

imprisonment to carry out sentences awarded to him as disciplinary measure on his conviction under the provisions of Army Act, in that eventuality it was necessary for the invaliding Medical Board to examine and ascertain the causes of aggravation or manifestation of disease as it was admittedly persisting on the date of discharge of the petitioner as required by para 19 of the circular of Defence Ministry dated 22nd November, 1983 read with Rule 7 (c) and (d) of rules referred earlier but from the perusal of the records there is no indication at all that such efforts were made by such Medical Board at the time of discharge of petitioner from the Military service rather a fanciful opinion has been recorded by Medical Board that since the disease is constitutional in nature hence unrelated to service condition without observing the aforesaid instructions issued in this regard, therefore, opinion of Medical Board being contrary to the aforesaid instruction cannot be countenanced and has to be rejected.

18. Apart from it in support of his case learned Counsel for petitioner has also placed reliance upon para 35 Pages 6465 of aforesaid guide 1980, which deals with Mental (Psychiatric) Disorders, and reads as under:

?(35) The psychiatric disorders are generally classified as neurosis, psychoneurosis, psychosis and personality disorders. This classification does not divide the disease into watertight compartments. There is at times even difficulty in distinguishing the neurotic from the psychotic as transitions occur so that a patient reacts neurotically at one time and may react psychotically at another.

Entitlement:

(a) Claims usually arise in the following circumstances

(i) mental disorder arising in closetime relationship to physical injury/illness.

(ii) mental disorder arising in closetime relationship to operation/medical treatment.

(iii) Prolonged overseas or field service or service afloat.

(iv) Participation in battle, warlike frontline operations, bombing, siege, jungle warfare training or Prisoner ofwar state.

(v) Intensive military training with troops.

(vi) service in high altitude areas.

(vii) strenuous operational duties in aid of civil power where life is in danger all the time.

(viii) long patrolling duties in mountainous and hazardous areas.

(ix) high altitude flying over hazardous area/territory, particularly if the plane is nonpressurized.

This list is not exhaustive and each case should be judged on its own merits. In

every case, a careful consideration should be given as to whether the individual in question would, or would not, have been subjected to similar stress if he had not joined the service.

(b) Such claims should be considered as follows

In such circumstances the stress factor, the genetic factor and the time factor, must be considered. Where the stress factor predominates and breakdown occurs within at most six months entitlement of attributability may be appropriate. Where the genetic factor is predominant the possibility of aggravation must be considered.?

19. From bare perusal of list of circumstances in which claim for entitlement usually arises it is clear that the aforesaid list is not exhaustive rather it is intended to be illustrative in nature, therefore, cases should be judged on its own merit and in such circumstances, the stress factor, genetic factor and time factor must be considered. Where the stress factor predominates and break down occurs within at most six months, entitlement of attributability may be appropriate. In every case a careful consideration should be given as to whether the individual in question would or would not have been subjected to similar stress if he had not joined the service.

20. In this connection it is necessary to point out that although in para 11 of the rejoinder affidavit it is stated that the Medical Board has not opined that disease is constitutional in origin hence unrelated to service condition as wrongly alleged in paragraph under reply. But from a bare perusal of opinion of Medical Board which has been filed alongwith the counter affidavit, it is clear that it has been mentioned that disability was not existing before entering into service and it is neither attributable to the service conditions nor it has been aggravated thereby and remain so. The disease is constitutional in origin and hence unrelated to service conditions. Thus in such a circumstances this Court cannot brush aside the opinion of Medical Board unless it is found contrary to the aforesaid instructions contained in the guide to Medical Officers referred herein before and/ or otherwise found within the well accepted norms of judicial review.

21. In this connection it is to be pointed out that it is well settled that like opinion of other experts, the opinion of Medical Board is also expert opinion and has ? evidentiary value? of only ?relevant evidence? and does not furnish ?conclusive proof? of the facts stated therein as such it requires to be examined scrupulously with other corroborative evidence, direct or circumstantial such as from attending circumstances.

22. The disease in question causing disability to the military service was ? paranoid state,? the meaning of which has been given in the Collins, Advanced Learner''s English Dictionary is that patients suffer from mental illness of paranoia. If you say that some one is paranoid, you mean to say that they are extremely suspicious and afraid of other people. It means paranoid delusions, A Paranoid Schizophrenic.

23. In Taber''s Cyclopedic Medical Dictionary the ?Paranoia disease? has been described as under:

?This term indicate patients who show persistent persecutory delusions of delusional jealousy, emotion and behaviour appropriate to the content of the delusional system, the disorder has been present at least one week; symptoms of schizophrenic such as bizarre delusions or incoherence are present, no prominent hallucinations, a full depressive or manic syndrome is either not present or is of brief duration; the illness is not due to organic disease of the brain. This disorder, which usually occurs in middle or late adult life and may be chronic, often includes resentment and anger that may lead to violence. These patients rarely seek medical attention. They are brought for care by associates or relatives.?

24. Chapter12 of 21 Edition, Medicine For students an authoritative book on subject by ASPIF Golwalla and Sharukh A. Golwalla deals with Psychiatry which is also known as Psychological medicine. It is that branch of medicine, which deals with the diagnosis, treatment and prevention of mental disorders. Psychology is science which studies structure and functions of the mind. Paranoid has been described as a form of Psychiatric disorders

At page 797 of the book Personality has been defined as under:

Personality: Definition.Unique characteristics of an individual which differentiate one person from another.

Depending on the dominant personality traits various kinds of personalities can be described.

(1) Aggressive dominating and assertive.

(2) Anxious worrying over trivial and minor things, highly strung, irritable and panicky.

(3) Hypomanic always happy and cheerful, happy go lucky type, witty and jovial, extroverted.

(4) Historionic exhibitionistic and dramatizing, attention seeking immature, highly suggestible.

(5) Avoidant shunning responsibilities, diffident.

(6) Melancholic depressed and sad, pessimistic outlook and philosophy.

(7) Obsessive rigid in habits and outlook, perfectionist, conscientious, fond of cleanliness, regularity and punctuality.

(8) Paranoid extremely suspicious.

(9) Psychopathic antisocial traits like lying, stealing, etc., nonconformist; not observing the codes of ethics, culture, etc. very little feelings of shame and guilt,

cannot evolve stable emotional relationship.

(10) Schizoid shy, reserved, asocial, poor mixers, have very few friends, introverted.

(11) Dependant Unduly compliant to wishes of others, fears abandonment, allowing others to make decisions for self.

Knowledge of individual''s personality helps in (a) Understanding behaviour of normal persons (b) Diagnosing the patient''s psychological problems, (c) Predicting the response to treatment (d) Rehabilitating the patient after recovery from illness.

Causes of mental disorders.The development of psychiatric disorders depends upon an interaction between predisposing and precipitating factors.

Predisposing factors.These determine an individual''s vulnerability to develop psychiatric disorders. Many of these operate from early life. Some of the predisposing factors are (a) Biological factors heredity, constitution, metabolic and biochemical abnormalities, physical defects and illness (b) Psychosocial factors personality traits, faulty parentchild relationships, psychologically traumatic experience during early years, socioeconomic conditions, adverse life events.

Precipitating factors.These are events that occur before the onset of a psychiatric disorder and appear to have induced its onset. These could be (i) Physical Puberty, pregnancy, child birth, menopause, systemic disease, drugs, etc. (ii) Psychological Disturbed interpersonal relationships, marital disharmony, financial difficulties, occupational maladjustments, etc., (iii) Environmental Calamities: War, famine, earthquakes, cyclones, etc. (iv) Sociocultural factors Sexual discrimination, racial discrimination, migration, etc.

Risk factors

Early environmental factors Obstetric complications appear to be important in mothers of schizophrenics (e.g. during pregnancy, preeclampsia, antepartum hemorrhage), and difficulties during labour (e.g. protracted labour, asphyxia, low birth weight) than normal controls and patients with other psychiatric disorders, Epidemiological studies have found an association between maternal exposure to influenza epidemics in the second trimester and increased rate of schizophrenia in offspring.

Precipitating factors The first psychotic breakdown often follows an adverse life event, or abuse of hallucinogens (e.g. LSD) or heavy consumption of cannabis.

At Pages 806808 of the same book Paranoid disease has been described as subtypes of schizophrenia the Main characteristics of which is prominent delusions and hallucinations.

25. Another authorititative Text book of medicine namely A.P.I. Text Book of

Medicine 7th Edition by Siddharth N. Shah Chapter XXIV of which deals with Psychiatry. At Page 1378 of the book Psychotic Disorder and Schizophrenia has been dealt with. The Aetiology and Pathophysiology of disease has been discussed as under:

?Recent work has emphasized the importance of the interaction of both genetic and nongenetic factors in disease expression. Individuals may carry a genetic predisposition, but this vulnerability is not ?released? unless other factors also intervene. Current studies of the neurobiology of schizophrenia examine a multiplicity of factors including genetics, anatomy (through structural neuroimaging), functional circuitry (primarily through neuroimaging), neuropathology, electrophysiology, neurochemistry, neuropharmacology and neurodevelopment.

GENETICS

Both single gene and polygenic theories have been proposed, polygenic theory appears to be more consistent with presentation of schizophrenia.

NEVROANATOMY AND STRUCTURAL NEUROIMAGING

Several neuroanatomical abnormalities are reported in schizophrenia. They are ventricular enlargement, cerebellar atrophy, decreased frontal size, decreased total brain volume, increased CSF on brain surface and in ventricles, increased frequency of large cavum septum pellucidi and midline anomaly.

FUNCTIONAL CIRCUITRY AND FUNCTIONAL NEUROIMAGING

Regional cerebral blood flow (Rcbf) showed that schizophrenics had a relative ? hypofrontality?, which was associated with prominent negative symptoms. Recent studies postulates a disruption in functional circuits.

NEURODEVELOPMENT

Schizophrenia is speculated to be a neurodevelopmental disorder resulting from neuronal injury occurring early in life that interferes with normal brain maturation. Patients are more likely to have enlarged ventricles of the brain with a history of obstetrical complications.

NEUROCHEMISTRY AND NEUROPHARMACOLOGY

For many years, the most widely accepted explanation for the biochemical pathophysiology of schizophrenia was the dopamine hypothesis, which suggests that the disorder is primarily caused by a functional hyperactivity in the amine system.

Recent hypotheses also include the role of other neurotransmitter systems (e.g. norepinephrine, serotonin, glutamate, aminobutyric acid, neuropeptides, and neuromodulatory substances in the pathophysiology of schizophrenia.

At Page 1380 Paranoid disease has been described as subtype of Schizophrenia.

Paranoid Disease is Preoccupation with one or more delusions or frequent auditory hallucinations.?

26. At this juncture it is necessary to point out that in Taber''s Medical Dictionary the constitutional disease means:

Constitution: The physical makeup and functional habits of the body.

Constitutional: Pert. To the body as a whole.

27. From the aforesaid discussion of medical authorities it is clear that Psychiatry is a branch of medical science which deals with the diagnosis, treatment and prevention of mental disorders. It is also known as Psychological Medicine. Psychology is a branch of science which studies the structure and functions of the mind. Psychotic disorder and Schizophrenia is a mental illness or disease, of which paranoia is subtypes of mental disease. The paranoid state is state of patients suffering from paranoia disease. The causes of disease according to Golwalla and Golwalla, depends upon an interaction between predisposing and precipitating factors. The predisposing factors determines individual''s vulnerability to develop Psychiatric disorders, which may be Biological factors, like heredity, constitution, metabolic and biochemical abnormalities, physical defects and illness. Psychosocial factors are such as personality traits, faulty parent''s child relationship, socioeconomic conditions and adverse life events. The precipitating factors are those events which occur before onset of Psychiatric disorder and appear to have induced its onset. These could be (i) Physicalpuberty, pregnancy, child birth systematic disease drugs etc. (ii) Psychologicaldisturbed interpersonal relationships, marital disharmony, financial difficulties, occupational maladjustment etc. (iii) Environmentalsuch as calamities war, famine, Earthquakes, Cyclone etc. (iv) Sociocultural factors such as sexual discrimination, racial discrimination and migration etc. It is also emphasized that first Psychotic breakdown often follows an adverse life event or abuse of hallucinogens or heavy consumption of cannabis. Similarly according to the Siddharth N. Shah''s text book referred earlier in the Aetiology and Pathophysiology of the disease, it is observed that the recent work has emphasized the importance of the interaction of both genetic and nongenetic factors in disease expression. Individuals may carry a genetic predisposition, but this vulnerability is not released unless other factors also intervene. The current studies of neurobiology of Schezophrenia examine a multiplicity of factors including genetics, anatomy (through structural neuroimaging), functional, circuitry (Primarily through neuroimaging) neuropathology, electrophysiology, neurochemistry, neuropharmacology and neurodevelopment.

28. Thus in view of the aforesaid discussion I have no hesitation to hold that onset of Paranoid disease which is a form of Schizophrenia depends upon an interaction between predisposing and precipitating factors. The predisposing factors determines individuals vulnerability to development psychiatric disorder and precipitating factors appear to have induced its onset as the recent work in

medical science has emphasized the importance of interaction of both genetic and nongenetic factors in disease expression. The current study of neurobiology of Schezophrenia examine a multiplicity of factors. Individuals may carry a genetic predisposition but its vulnerability is not released unless other factors also intervene and the first psychotic breakdown often follows adverse life events. Therefore, the opinion of Medical Board that the disease in question is constitutional in nature hence unrelated to service condition of petitioner without examining the precipitating factors i.e. like stress factors on account of adverse life events occurred before onset of disease is wholly erroneous being contrary to aforesaid Medical Authorities and relevant instructions of Defence Ministry issued in this regard as such cannot be countenanced and has to be rejected.

29. Now the question in controversy can be examined by putting it differently as to whether the condition of military service determined or contributed the onset of disease and that the conditions were due to circumstances of duty in military service. In this connection a reference can be made to the Appendix to Ministry of Defence Letter No. 1(1)/81/PenC, dated 22111983 circulated by Sri K. Sriniwasan Joint Secretary to the Government of India to the Chief of Army Staff, Chief of the Naval Staff and Chief of the Air Staff in respect of entitlement Rules for Casualty Pensionary Awards, 1982 to Armed Forces Personnel, 1982 which were supplied by Sri S. K. Rai, learned Counsel for Union of India alongwith some reported decisions. According to which rules contained therein has to be read in conjunction with the Guide to Medical Officers (Military Pensions), 1980. Para 12 of which deals with the content and import of expression ?duty? for the purpose of the aforesaid Rules which inter alia provides that a person subject to the disciplinary code of the Armed Force is ?on duty? when performing an official task or a task failure to do which would constitute an offence triable under the Disciplinary Code applicable to him, thus there can be no scope for doubt to hold that while the petitioner was in imprisonment on account of disciplinary action taken against him in connection of offence relating to Army Act, he was ?on duty? for the purpose of application of the aforesaid rules. Otherwise also it cannot be held that while serving the aforesaid sentence he was out of employment of Military service.

30. Para 18 of the aforesaid Rules provides that ?Pre disposition? of inherent ? constitutional tendency? in itself is not a disease and if there is a precipitating or causative factor in service, which produces the disease, then it is attributable to service, notwithstanding the inherent disposition. Thus there remains no scope for doubt to hold that while recording the opinion the Medical Board has completely ignored the instructions of Defence Ministry issued in this regard and misdirected itself while wrongly holding that the disease is constitutional in nature, hence unrelated to service conditions without examining the precipitating or causative factors of disability disease whereas according to the aforesaid instructions predisposition of ?inherent constitutional tendency? in itself is not regarded as ?disability disease? and in this way utterly failed to examine the precipitating factors or causative factors in service which produces the disease as

required by the aforesaid instructions and Rule 7(d) of rules referred earlier which requires examination of Aetiology of disease for ascertaining its cause.

31. In this connection a further question arises to be considered that as to whether the onset of the disease in question was result of stress factor, which is precipitating factors or causative factor is attributable to Military service or it was on account of some other stress unrelated to Military service as alleged by the respondents in their counteraffidavit filed in the writ petition ? To find out complete and accurate answer to this question, the test laid down in the para 35 of the guide to Medical Officers Military Pension, 1980 referred herein before is require to be examined. The test laid down therein is as to whether the individual in question would or would not have been subjected to similar stress if he had not joined the service.

32. At this juncture it is necessary to point out that, as revealed from averments made in para 3(d) and other paragraphs of the counteraffidavit, which cannot be disputed by the respondent that Appellate Medical Authority found that the petitioner came under Medical supervision on 30 November, 1990, because of abnormal behaviour, when he was sentenced to 28 days R.I. and 14 days detention in Military Custody for an offence under Section 53 of the Army Act by the Commanding Officer. These attending circumstances clearly go to show that abnormal behaviour of the petitioner on account of onset of disease was detected first time when he was under going 28 days R.I. and 14 day detention in Military Custody in connection of offence under Army Act. This imprisonment of petitioner most probably could have been a precipitating or causative factor of immediate cause of close time relationship, as such would have stimulated and induced the onset of paranoia disability disease. This schizophrenic disease oftenly expressed on occurrence or happenings of adverse life events. Therefore the aforesaid imprisonment of petitioner was certainly an adverse life event to him and have caused stress and strain in the mind of petitioner, which have correlation and nexus with the military service accordingly onset of disease can be safely held as effect of cause furnished by military service and have causal connection with it. Thus there can be no scope for doubt to hold that even if the disease in question was constitutional in nature even then it was only predisposition of disease which cannot be said to be disease in itself in view of para 18 of the instructions dated 22111983, referred herein before and it was only causative stress factor of undergoing imprisonment of petitioner as disciplinary measure that have induced the onset of disability disease, which in my considered opinion is fortified by Aetiology of the disease in question as expressed by the medical authorities. Such stress and strain in the mind of petitioner was most probably due to his imprisonment as a measure of disciplinary action taken against him in his Military service. Certainly the petitioner would not have been subjected to similar stress at that moment if he had not joined the service. Therefore, the same is clearly attributable to the Military service or conditions of such service on that count the petitioner was subjected to such disciplinary code. The view contrary taken by Respondents is wholly erroneous and cannot be sustained.

33. However, in case there appears any scope for little doubt to arrive at aforesaid conclusion on account of facts stated in the counteraffidavit to the effect that the petitioner got married in year 1985, but find no issue and his wife had two miscarriages and he had some family and domestic friction, could have caused stress and strain under mind of petitioner, besides disciplinary actions taken against him, in that eventuality also the issue can be examined from another and different angles. Even if for the sake of arguments the aforesaid assertions of the counter affidavit are assumed to be correct that stress and strain in the mind of petitioner was caused on account of the adverse life events, which may be on account of family and domestic friction and disciplinary action taken against him, in absence of actual dates of two miscarriages of his wife in close proximity of time of onset of disease, the same cannot be said to be immediate real and actual cause of onset of disability disease. At any view of the matter assuming that both family and domestic frictions and disciplinary actions have equally caused the stress and strain in the mind of the petitioner. Thus on evenly balanced situation, the petitioner is entitled for benefit of reasonable doubt according to the general rules of evidence in as much as the instructions of Defence Ministry as referred in para 9 of the decision of Hon''ble Apex Court rendered in Balchandran Nair''s case (supra). The view contrary taken by the respondentsauthorities in this regard is wholly erroneous and not sustainable in the eye of law and liable to be struck down by this Court. Accordingly the impugned order dated 1641993/75 1993 and 2191994 passed by respondent Nos. 3 and 1 respectively are hereby quashed.

34. Now only question remains to be answered that in given facts and circumstances of the case as to what relief the petitioner is entitled ? In this connection, it is necessary to point out that normally in the process of judicial review of administrative actions this Court does not assume the role of administrative functionaries. If the administrative actions are found faulty according to well recognised parameters of judicial review, the Court strikes down such action leaving it open to the authorities to pass fresh and appropriate order according to the directions of the Court in accordance with the provisions of law but in some appropriate cases in order to shorten the time and further litigations, the Court can issue necessary directions for observance and compliance to the authorities concerned without leaving it to such authorities for fresh decision. Since from the date of discharge of petitioner from Military service a period of about 15 years have passed and petitioner was not given Disability Pension for which he was entitled immediately on his discharge from service, therefore, in given facts and circumstances of the case, I do not find any justification to remit the matter before Invaliding Medical Board or Appellate Medical Authority for fresh consideration, rather it would be appropriate to issue necessary directions forthwith.

35. Thus in view of observations made herein before the respondents are directed to grant Disability Pension admissible to the petitioner forthwith and make regular payment of the same according to the relevant rules but so far as

arrears of such pension is concerned, the same shall be decided within two months and payment of which shall be made within further period of two months alongwith 9% simple interest per annum thereon from the date of production of certified copy of the order passed by this Court before appropriate authority.

In the result writ petition succeeds and allowed.

