

(2005) 02 AHC CK 0202
In the Allahabad High Court
Case No : C.M.W.P. No. 45894 of 1993

Ram Baran

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-02-2005

Acts Referred:

Army Rules, 1954 — Rule 13(3), 14, 15, 15A, 19
Entitlement Rules for Casualty Pensionary Awards, 1982 — Rule 17, 27, 27C
Pension Regulations for Army, 1961 — Regulation 173

Citation : (2005) 5 AWC 4605 : (2005) 2 ESC 864

Hon'ble Judges : V.C. Misra, J

Bench : Single Bench

Advocate : T.N. Govil and Ram Chandra, for the Appellant; U.N. Sharma and S.K. Rai and S.C., for the Respondent

Final Decision : Allowed

Judgement

V.C. Misra, J.—Sri Ram Chandra, learned Counsel for the petitioner and Sri S.K. Rai, learned Counsel for the respondents are present.

2. This writ petition has been filed challenging the Order refusing disability pension to the petitioner by the respondents after he was invalidated out of service w.e.f. 21.2.1985 on the ground of suffering from the disease "Schizophrenia-295*" under Rule 13 (3) (iii) of the Army Rules, 1954 (hereinafter referred to as "the Army Rules").

3. The case of the petitioner in brief is that he was enrolled in the Regiment of Artillery in the Army on 21.12.1979. At the time of recruitment in the Indian Army, he had to go through strenuous test for physical standard as per the Army Rules and was found completely fit. Thereafter he was subjected to thorough medical examination by the competent Board of Medical Officers by means of various medical tests and in their technical expression, the petitioner was placed as "SHAPE" i.e. I-class in every parameter for test. Subsequently, the petitioner was recruited as Gunner (G.D.) at Kanpur. After successful training in the

prescribed trades, he was posted from time to time at many places including High Altitude at Kargil (Jammu and Kashmir) in June, 1981 in the Field Regiment-262. The petitioner served in Army with utmost efficiency and loyalty and in acknowledgment of the same he was awarded "Sanya Sewa Medal" and was ranked "G-III". The Field Regiment No. 262 returned for relaxation on 11.3.1983 from critical to rear at Meerut. While serving the Army in rear at Meerut, the petitioner was informed about his father's serious illness by his family members through telegram. He applied for leave, which was refused by respondent No. 2 on misconception for avoiding Army duty. However, as per the Army Rules, he was granted regular relaxation leave for two months w.e.f. 1st July, 1984. The petitioner reported on duty after expiry of the leave and soon thereafter his father died. He again applied for leave which was granted for two months and after expiry of the aforesaid leave period he joined his duty. Two-three months thereafter the Field Regiment No. 262 marched to Sikkim but the petitioner was stopped by the Order of the respondent No. 2 and he was admitted to Military Hospital under depression due to grief and agony on account of untimely death of his father and the heavy burden that had fallen on him. A misdirected treatment was administered to the petitioner in Military Hospital, Meerut and he was asked to sign on some printed forms without disclosing the contents and purpose thereof. From there he was transferred to Military Hospital at Bareilly and he remained there for some time. Ultimately he was sent back to his village on 22.2.1985 by an Escort from Bareilly Military Hospital with clear verbal assurance that he will be subjected to medical examination by full Medical Board and he will be called for the same. While leaving the petitioner at his home, the Military Escort left a document and when it was got read then he came to know that he was discharged from the service on the basis of alleged disease of "Schizophrenia-295". On coming to know the contents of the said discharge letter, the petitioner got himself medically examined by one reputed Dr. A.K. Tandon, M.D. In the department of Psychiatry of Motilal Nehru Medical College, Allahabad. After thorough examination, the petitioner was found fit and a certificate was issued by the said Dr. A.K. Tandon.

4. The petitioner moved representation to the respondents but he received no response and ultimately the first petition was filed before the Ministry of Defence for being reinstated and allowed to continue to service in Army. The request was turned down by the Chief Record Officer. On the request of the petitioner, he was provided a duplicate discharge certificate and was ultimately advised that since his reinstatement in service was not possible, he should claim "Disability Pension" and "financial assistance". He moved a petition in the Ministry of Defence for the same. After waiting for a long time, he received reply dated 5.4.1990 from the Assistant Record Officer, for and on behalf of the respondent No. 2, informing that disability pension could not be granted to him as the same was disallowed by the respondent No. 3-the Controller of Defence Accounts, Allahabad, who was competent authority on behalf of the respondent No. 1, on the ground that the disability was not incurred during the service. In the said

reply, it was also incorrectly added that the petitioner's appeal against the said rejection of claim of the disability pension was also rejected on 13.11.1986 by the Government of India. The petitioner had never submitted any appeal to the Ministry of Defence, Government of India for disability pension against the Order of the respondent No. 3. On the basis of the medical certificate issued by Dr. A.K. Tandon, he had been pressing his application since 1986 only for reinstatement challenging the discharge on the basis of disability. The petitioner asked for the copy of the alleged Order of the respondent No. 3 which was never supplied. Meanwhile, the petitioner moved a representation dated 23.4.1990 against the reply dated 5.4.1990 received from the Assistant Record Officer.

5. The petitioner never fell sick nor was ever sent to the Hospital prior to 1984, when he was admitted to Military Hospital at Meerut, Even if the alleged disability of "Schizophrenia-295" was incurred, it was due to hard Military duty at High Altitudes during his posting at Kargil. The Government had insured the petitioner under Group Insurance for disability in service. The Government subsequently claimed the grant-insurance from the Insurance Company and paid the sum to him.

6. The petitioner, being aggrieved due to unlawful discharge from service on the basis of falsely created and manufactured fictitious disability and ultimately withholding his disability pension by the respondent Nos. 2 and 3 and other officers, preferred the present writ petition on the grounds, inter alia, that since he had been discharged from service due to the alleged incurable disability disease of "Schizophrenia-295", he had a fundamental as well as legal right to receive "disability pension" under the Army Rules; that the petitioner had not been afforded any opportunity of hearing to controvert/disprove the allegations of alleged incurable disability disease of "Schizophrenia-295" prior to passing of the impugned discharge Order, as required under the principles of natural justice which are fundamental to all the departmental or administrative proceedings, or decision making process, and that since the decision of the respondent No. 3 had civil consequences affecting crucially the life of the petitioner, the respondent No. 3 was thus bound to make an open inquiry for arriving at a decision of incurring a disability "Schizophrenia-295" and the principle of natural justice requires that the petitioner should have been afforded complete Information about the entire proceedings, failure of which has caused miscarriage of justice.

7. Learned Counsel for the petitioner has relied upon various decisions of this Court as well as other High Courts and Hon"ble Supreme Court rendered in the cases of Jagdamba Prasad Dubey v. Union of India and Ors., Writ Petition No. 22139 of 1990, decided on 26.9.1995; Shyam Babu v. Union of India and Ors.. Writ Petition No. 663 of 1989, decided on 13.9.1996; Keshar Singh v. Union of India and Ors., Writ Petition No. 12240 of 1990, decided on 30.7.1998 ; [All decisions of this Court], P.V. Suvarnan v. Union of India and Ors., Writ Petition No. 2535 of 1995, decided on 11.9.1995 {P. & H., HC}; Belfit Singh v. Union of India and Anr., Writ Petition No. 738 of 1995, decided on 31.10.1995 (High Court

of H.P.) and Mohinder Singh v. Union of India, Civil Appeal No. 164 of 1993 arising out of SLP No. 4233 of 1993, decided on 14.1.1993.

8. The case of the respondents is that the petitioner was invalidated out of service w.e.f. 21.2.1985 due to an invalidating disease "Schizophrenia-295" under Rule 13 (3) of the Army Rules, 1954 and the Invalidating Medical Board vide its report dated 28.1.1985 viewed that disability was neither attributable to nor aggravated by military service and opined it to be a constitutional illness and assessed the percentage of disablement at 50 per cent for two years. The disability pension claimed by the petitioner submitted to Controller of Defence Accounts (Pension) [for short C.D.A. (P)] Allahabad was rejected on 10.10.1985 and the decision of the Chief Controller of Defence Accounts (Pension) [for short C.C.D.A. (P)], Allahabad given on 18.11.1985 was communicated to the petitioner with an advice to the petitioner that if he was not satisfied with the decision of the C.C.D.A. (P) may prefer an appeal to the Ministry of Defence (Pension), New Delhi within a period of six months. The Government of India rejected petitioner's appeal vide its Order dated 13.11.1986 on the plea that it found no ground for reconsideration to alter the decision already taken by the C.C.D.A. (P), Allahabad. The disability pension was sanctioned under Regulation 173 of the Army Pension Regulations, 1961 Part I (hereinafter referred to as "the Regulations") and no deviation from the Regulations is permissible without prior sanction of the Government of India and the disability pension claimed in the instant case was regulated in the spirit of the said Regulations. The question whether disability is attributable to or aggravated by military service shall be determined by the pension sanctioning authority, i.e. C.C.D.A. (P), Allahabad under the regulations contained in Appendix-II to the Regulation 173 of the Regulations.

9. Learned Counsel for the respondents has relied upon the Entitlement Rules For Casualty Pensionary Awards, 1982 (hereinafter referred to as "the Entitlement Rules") to the Armed Forces issued by the Ministry of Defence, Government of India, New Delhi vide its letter No. 1 (I)/81/Pen-C, dated 22.11.1983 w.e.f. 1st January, 1982 in supersession of all previous Orders on the subject as directed by H.E. President of India, to the respective Chiefs of the Army Staff, the Naval Staff and the Air Staff, copy of which was forwarded to the Financial Adviser, Ministry of Defence (Finance Division), the Controller of Defence Accounts (Pens), Allahabad, the Director of Audit, Defence Services, New Delhi, the Director General Armed Forces Medical Services, New Delhi etc. Learned Counsel for the respondents further relied upon the Rules 6, 9, 14, 15, 17, 19, 22, 23 and 27 of the Entitlement Rules which are quoted for ready reference, as under :

"6. Disablement or death shall be accepted as due to military service provided it is certified by appropriate medical authority that:

- (a) the disablement is due to a wound, injury or disease which--
- (i) is attributable to military service, or

(ii) existed before or arose during military service and has been and remains aggravated thereby. This will also include the precipitating/ hastening of the onset of a disability.

(iii)

9. The claimant shall not be called upon to prove the conditions of entitlement. He/she will receive the benefit of any reasonable doubt. This benefit will be given more liberally to the claimants in field/afloat service cases.

14. In respect of diseases, the following Rule will be reserved--

(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 courses of the disease, will fall for acceptance on the basis of aggravation.

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

(C) If 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.

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

17. Medical opinion.--At initial claim stage, medical views on entitlement and assessment are given by the IMB/RMB. Normally, these views shall prevail for decisions in accepting or rejecting the claim. In cases of doubt the Ministry/CDA (Pensions) may refer such cases for second medical opinion to MA (Pensions) Sections in the office of the DGAFMS/Office of CDA (P). Allahabad, respectively. At appeal stage, appropriate appellate medical authorities can review and revise the opinion of the medical boards on entitlement and assessment.

19. Aggravation.--If it is established that the disability was not caused by service,

attributability shall not be conceded. However, aggravation by service is to be accepted unless any worsening in his condition was not due to his service or worsening did not persist on the date of discharge/claim,

22. Assessment of degree of disability is entirely a matter of medical judgment and is the responsibility of the medical authorities.....

Appeals:

23. Right of appeal.--Where entitlement is denied by the Pension Sanctioning Authority on initial consideration of the claim, the claimant has a right of appeal against decision on entitlement and assessment. Whereas for decisions on entitlement all concerned authorities have to give opinions, assessment of degree of disablement is entirely a matter of medical judgment and is the responsibility of appropriate medical authority.

Functions and Responsibilities:

27. (C) Medical Authority.--Assessment of disablement and entitlement in case of disabilities other than injuries are purely medical issues. Views on such medical issues shall be given by the appropriate medical authorities as under--

(i) Medical Boards shall give findings and recommendations on entitlement and assessment in case of all disabilities. They are, however, not statutory bodies and their recommendations can be reviewed and reutsed by the medical authorities viz. DGAFMS.

(ii) DDG (Pensions), Office of the DGAFMS shall be the medical authority dealing with medical issues at first appeal stage of the claim.

(iii) DGAFMS will be the final medical authority for giving views on medical issues at final stage to the DMACP.

10. Learned Counsel for the respondents has also referred to Corrigendum issued on 21st June, 1996 by the Ministry of Defence, Government of India amending Rules 17 and 27 (C) of the Entitlement Rules effective from the date of promulgation" of the Entitlement Rules 1982 and the pending cases were to be decided as per the provisions in the Corrigendum. The relevant portions of the said Corrigendum are quoted herein below for ready reference:

Medical Opinion and Competent Medical Authorities

17 (a). For the purpose of these Rules the following authorities shall be the appropriate /competent medical authorities for giving medical opinion on the aspects of assessment of disability and acceptance of death/disablement due to causes attributable to/aggravated by military service :

(i) In respect of initial claims of Medical Advisor (Pension) Jt. Dir. commissioned officers AFMS (Pension) in the office of the Director General, Armed Forces Medical Services (DGAFMS)

(ii) In respect of initial claims of Medical Advisor (Pension)/Jt. Dir. personnel below officers rank AFMS (Pension) attached to the office of Chief CDA (Pensions)

(iii) At the First Appeal stage Dy. DGAFMS (Pension) in the office of DGAFMS

(iv) At the second appeal stage Director General of Armed Forces Medical Services (DGAFMS). (b) At the time of invalidment/release of a service personnel medical views on attributability/aggravation and degree of disability shall be given by the Invalidating Medical Board (IMB)/Release Medical Board (RMB). The findings Of the IMB/RMB which are recommendatory in nature, shall be reviewed by the competent Medical Authority at the time of consideration of initial claim/appeal for grant of disability pension. The competent Medical Authority may for reasons to be recorded in writing, alter or modify the recommendations of IMB / RMB/RSMB/Lower Medical Authorities.

(c) Competent Medical Authorities after review of the IMB/RMB/RSMB proceedings/ findings of the lower medical authorities, study of related medical/ service documents, the clinical profile recorded and keeping in mind the etiology and cause of disease, shall evaluate the roll played by service factors in the onset/progress of the disability. The recommendations of the competent medical authority as accepted by the pension sanction authorities i.e. Chief CDA (Pensions)/Ministry of Defence shall be final with regard to the entitlement and assessment of disability for the purpose of grant of disability pension.

Rule 27 (C)

Medical Authority.--Assessment of disablement and acceptance of attributability/aggravation in cases of disabilities other than injuries are medical issues. Views on such medical issue shall be given by the competent medical authorities defined under Rule 17.

11. Learned Counsel for the respondents has relied upon the decisions rendered in Lt. Col, (T.S.) Panch Nand Raiv. Union of India and Anr., (2002) 1 UPLBEC 381; Smt. Kanchan Mala Srivastava and Ors. v. Union of India and Ors., 2000 (4) ESC 2774 (All) and Union of India (UOI) and Others Vs. No. 664950 IM Havildar/ Clerk SC Bagari, and submitted that in view of the above said decisions, the writ petition filed by the petitioner is liable to be set aside.

12. Learned Counsel for the respondents has, however, admitted to the fact that no opportunity of hearing or show cause notice was given to the petitioner either by the Medical Board before or even after arriving at the assessment/view that the petitioner was suffering from the disease of "Schizophrenia-295" or to produce a counter medical report in support of his case nor the matter was referred to the Director General of Armed Forces Medical Services DGAFMS who is the final medical authority for giving view of medical issues at final stage to the D.M.A. C.P. as per Entitlement Rules. He has also admitted that no show cause notice was given or any opportunity of hearing was given to the petitioner in response to the action taken by the authorities concerned empowered to

authorise discharge as mentioned in column 3 of Rule 13 (3) of the Army Rules, 1954 since there is no such provision in the Rules to provide opportunity of hearing to the petitioner who is not an officer. The Rule 15 of the Army Rules deals with termination of service by the Central Government on grounds other than misconduct provides that when the Chief of the Army Staff is satisfied that an officer is unfit to be retained in the service due to inefficiency, or physical disability, the officer shall be so informed and shall be furnished with the particulars of all matters adverse to him, and shall be called upon to urge any reasons he may wish to put forward in favour of his retention in the service. Further Rule 15-A of the Army Rules provides release on medical grounds of an officer who is found by a Medical Board to be permanently unfit for any form of military service he may be released from the service in accordance with the procedure laid down thereunder and the President of the Medical Board shall issue a notice specifying the nature of the disease or disability he is suffering from and the finding of the Medical Board and also intimate him that in view of the finding he may be released from the service and every such notice shall also specify that the officer may, within fifteen days of the date of receipt of the notice, prefer a petition against the finding of the Medical Board to the Chief of the Army Staff through the President of the Medical Board. The relevant portions of Rules 13, 15 and 15-A of the Army Rules are quoted herein below, for ready reference :

13. Authorities empowered to authorise discharge.--(1) Each of the authorities specified in column 3 of the Table below shall be the competent authority to discharge from service persons subject to the Act specified in column 1 thereof on the grounds specified in column 2.

(2).....,.....

(3).....

TABLE

Category	Grounds of discharge	Competent authority to Authorise discharge	Manner of discharge
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1 2 3. 4.

Commissioned Officers. (i) (a).....

[b] (11) Having been found medically unfit for further service (111)
All other classes of discharge

(a) In the case of junior commissioned officers granted direct Commissions during the first 12 months service. Area/Divisional Commander To be carried out only on the recommendation of an Invalidating Board. If the discharge is not at the request of the junior commissioned officer the competent authority before sanctioning the discharge shall, if the circumstances of the case permit, give the officer concerned an opportunity to show cause against the order of discharge.

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Persons enrolled under the Act who have been attested III. (i)
(ill.....

(iii) Having been found medically unfit for further service Commanding Officer To be carried out only on the recommendation of Invalidating Board.

(iv) As his own request before fulfilling the conditions of his enrolment, Commanding Officer The Commanding Officer will exercise this power only when he Is satisfied. As to the desirability of sanction and that the strength of the unit will not thereby be unduly reduced.

(v) All other classes of discharge. Brigade /Sub-area Commander The Brigade or Sub-area Commander o before ordering the discharge shall, if the circumstances of the case permit give to the person whose discharge is contemplated, an opportunity to show cause against the contemplated discharge.

15. Termination of service by the Central Government on grounds other than misconduct.--(1) When the Chief of the Army Staff is satisfied that an officer is . unfit to be retained in the service due to inefficiency, or physical disability, the officer--

(a) shall be so informed,

(b) shall be furnished with the particulars of all matters adverse to him, and

(c) shall be called upon the urge any reasons he may wish to put forward in favour of his retention in the service.

15-A. Release on medical grounds.--(1) An officer who is found by a Medical Board to be permanently unfit for any form of military service may be released from the service in accordance with the procedure laid down in this rule.

(2) The President of the Medical Board shall, Immediately after the Medical Board has come to the conclusion that the officer is permanently unfit for any form of military service, issue a notice specifying the nature of the disease or disability he is suffering from and the finding of the Medical Board and also intimating him that in view of the finding he may be released from the service, every such notice shall also specify that the officer may, within fifteen days of the date of receipt of the notice, prefer a petition against the finding of the Medical Board to the Chief of the Army Staff through the President of the Medical Board :

Provided that where in the opinion of the Medical Board the officer is suffering from a mental disease and it is either unsafe to communicate the nature of the

disease or disability to the officer or the officer is unfit to look after his interests, the nature of the disease or disability shall be communicated to the officer's next-of-kin who shall have the like right to petition.....

13. I have looked into the history, definition, symptoms and diagnosis of the disease called Schizophrenia. This disease was first identified and classified as a discrete and distinct mental disorder or illness by one Dr. Emile Kraepelin in 1887 and used the term "dementia praecox" for individuals who had symptoms that now associate with the disease. Later a Swiss psychiatrist, Eugen Bleuler coined the term "Schizophrenia" in 1911 and described its symptoms as positive (those that appear to reflect an excess or distortion of normal functions) or negative (those that appear to reflect a diminution or loss of normal functions). The word "Schizophrenia" comes from the Greek roots Schizo (split) and phrene (mind) i.e. to describe the fragmented thinking of the people with the disorder. This term was not meant to convey the idea of split or multiple personality, a common misunderstanding by the public at large. Since Bleuler's time the definition has continued to change, and attempts have been and are being made to more accurately delineate the different types of other mental diseases.

Schizophrenia is characterized by profound disruption in cognition and emotion, affecting the most fundamental human attributes, such as language, thought, perception, affect and sense of self. The array of symptoms, while wide ranging, frequently includes psychotic manifestations, such as hearing internal voices or experiencing other sensations not connected to an obvious source (hallucinations) and assigning unusual significance or meaning to normal events or holding fixed false personal beliefs (delusions). No single symptom is definitive for diagnosis; rather, the diagnosis encompasses a pattern of signs and symptoms, in conjunction with impaired occupational or social functioning (Source : DSM-IV available on Amazon.com Diagnostic and Statistical Manual of Mental Disorders DSM-IV-TR).

People with Schizophrenia can have a variety of symptoms. There are five recognized types of Schizophrenia; Catatonic, paranoid, disorganized, undifferentiated and residual.

There exists a difference between psychosis and schizophrenia. Psychosis is a general term used to describe psychotic symptoms. Schizophrenia is a kind of psychosis. Several different brain disorders can lead to psychotic symptoms, including lesions in the brain resulting from head traumas, strokes, tumors, infections or the use of illegal drugs. If a serious depression goes untreated for a long time psychotic symptoms may develop. These examples demonstrate that not all psychosis is schizophrenia, it is for this reason that doctors may take quite some time about 6 months or more to diagnose someone.

While making a diagnosis it is important to Rule out other illnesses, as sometimes people suffer severe mental symptoms or even psychosis due to undetected underlying medical conditions. At times, it is difficult to tell one

mental disorder from another. For instance, some people with symptoms of schizophrenia exhibit prolonged extremes of elated or depressed mood, and it is important to determine whether such a patient has schizophrenia or actually has a manic-depressive (or bipolar) disorder or major depressive disorder frequently misdiagnosed as Schizophrenia (and vice versa). Persons whose symptoms cannot be clearly categorized are sometimes diagnosed as having a "schizoaffective disorder."

14. As per the Clinical summary attached to the Medical Board Proceedings invalidating all ranks dated 28.1.1985, a copy of which has been annexed with the supplementary counter-affidavit dated 13.11.2000, it is disclosed that the patient was received as transfer from Meerut with history of aggressive and violent behaviour of 15 days duration, regarding past history it has been mentioned as "Nil Significant", with the opinion that the petitioner was a case of Schizophrenia admitted with acute Psychiatric features, and that the illness was precipitated by his father's death, and improvement was not satisfactory. In the opinion of the Medical Board the cause of disease was constitutional illness with disability of 50% with probable duration of two years. However, there is nothing on record to show that while making a diagnosis regarding disease of schizophrenia the other illness mental or psychosis has not been Ruled out.

15. After going through the record of the case and hearing the learned Counsel for the parties at length, I find that the petitioner was found completely fit after thorough medical examination as per Army Rules by Board of Medical Officers and was placed as SHAPE Le., I-Class in every parameter for test and no sign of any mental illness including schizophrenia was found in him during" his entire service period till 1984 and he had never been hospitalized due to any illness and was admitted to Military Hospital at Meerut for the first time after his return from hard duty at high altitudes during his posting at Kargil. He was then suddenly alleged to be found to be suffering from incurable disease of Schizophrenia-295 leading to withholding of his disability pension, admittedly without affording any opportunity of hearing whatsoever, at any stage, i.e. after the concerned medical authority had arrived at the conclusion that the petitioner was suffering from the disease of Schizophrenia-295, neither prior to his discharge from service, nor before passing of Orders of withholding of his disability pension on the ground that Rules 13, 15 and 15-A do not provide so except for the Officers or Junior Commissioned Officers. This smacks of total arbitrariness and discrimination. Even the other Entitlements Rules have not been complied with, such as Rule 9 under which the claimant shall receive the benefit of reasonable doubt given more liberally to those in filed; Rule 14 (b) under which a disease which has led to an individual's discharge will ordinarily be deemed to have arisen in service, if no note of it was made at the time of the Individual's acceptance of . military service. However, if medical opinion holds otherwise then reasons have to be stated that the disease could not have been detected On prior medical examination, then only the disease would not be deemed to have arisen during service. In the present case no such note was made at the time of petitioner's

joining of military service nor valid and cogent reasons have been disclosed that the disease could not have been detected on the medical examination prior to petitioner's joining of service. As per Rule 19 it has also not been established beyond doubt that the disability was not caused by service. Merely by mentioning that the petitioner suffered from Schizophrenia and is a constitutional disease would not disentitle him of his disability pension. It should have been held that he had withheld the information of having the disease at the time of entry in service whereas it has been held that he showed the frenzy symptoms on return after his father's death. In compliance of Rule 23 also in respect of the decision on entitlement the concerned authorities had to give their respective opinions and assessment of degree of disablement and the petitioner has not been afforded an opportunity to confront the same. As per Rule 27 (c) the Medical Authority referred to thereunder is to be the Medical Board which shall give its findings and recommendations on entitlement and assessment in case of disability which could be reviewed and revised by the medical authorities viz. DGAfMS (Director General of Arms Force Medical Services) as also referred to under Rule 17 (a), (b) and (c). It was also incumbent on all the aforesaid medical authorities to have gone through the entire procedure as required under the aforesaid relevant Rules and should have convinced themselves as per the symptoms mentioned hereinbefore of the presence of the recognized type of the disease of Schizophrenia before arriving at any conclusion. There is nothing on record to show that this complete procedure as required was followed, and also, that the petitioner was suffering from the disease of Schizophrenia only and not from any other brain disorder, mental symptoms or even psychosis etc.

16. The decisions cited by the learned Counsel for the respondents do not apply to the facts and circumstances of the case in hand.

17. In view of the above said facts and circumstances of the case and observations made hereinabove, I hold that the petitioner had been discharged from service wrongly and illegally by flouting the provisions of the Rules applicable and also the principles of natural justice as aforesaid, the Order dated 10.10.1985 refusing the disability pension to the petitioner is hereby quashed and the respondents are directed to calculate the entire amount of the disability pension from 22.2.1985 the date of his discharge with interest @ 10% per annum and pay the same to the petitioner within one month from the date the certified copy of this Order is produced before them.

18. The writ petition is allowed. No Order as to costs.