

(2006) 07 DEL CK 0032

In the Delhi High Court

Case No : Writ Petition (C) No. 5720 of 2006

Sh. Navin Chandra

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-07-2006

Acts Referred:

Army Rules, 1954 — Rule 7

Defence Service Army Regulations, 1987 — Regulation 173

Entitlement Rules for Casualty Pensionary Awards, 1982 — Rule 14

Citation : (2006) 07 DEL CK 0032

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

Bench : Division Bench

Advocate : S.K. Anand, in W.P. C No. 5720/2006, S.R. Kalkal, in W.P. C No. 11049/2005 and D.S. Kauntae, in W.P.C No. 7167/200, for the Appellant; T. Parshad, Dy. JAG. in W.P. (C) Nos. 11049/2005 and 7167 and 5720/2006 and Hemant Gupta, Advocate, for respondent Nos. 1 to 5 in W.P.(C) No. 7167/2006, for the Respondent

Judgement

Swatanter Kumar, J.—Common questions of law arise for consideration of the Court in all the three writ petitions and as such it will be appropriate to dispose of these petitions by a common judgment.

W.P.(C) No. 5720/2006

2. Sh. Navin Chandra was enrolled in Indian Army as a sepoy on 21.12.1994. He was subjected to thorough medical examination conducted by the Board of doctors and was declared medically fit. Despite the rigorous physical training and strenuous army duty, the petitioner never showed any signs of any sickness. No signs of any disease were detected by the Medical Officers at any point of time. The petitioner successfully completed his initial training and was posted to 21st Kumaon Regiment, Palampur from where he was again sent to a higher altitude posting at Dimapur, Nagaland. The petitioner remained there for three years where after the petitioner was posted to Banbara, Khatima, Bareilly (U.P.). During his posting at that place on 21.6.2000 at 0800 hrs. when he was

attending the briefing of the unit commanding officer at 21 Kumaon Regiment, he felt giddy and started vomiting .The petitioner was sent out of the assembly to avoid any inconvenience to others and was referred to Military Hospital, Bareilly, U.P., where the doctors detected his illness as "affective psychosis (depression)". The petitioner was not provided any rehabilitation measures to cure his illness and according to the petitioner, in violation to the settled guidelines and instructions contained in various Regulations and Manuals of the Army, he was invalidated out of the Army Service on 6.10.2000 on the plea of "Affective Psychosis (depression)". According to the petitioner he was not given any prior notice nor was he treated so as to remove his disability. On 1.10.2001 the petitioner submitted his claim for disability pension which was rejected, again wrongly and arbitrarily. Against this order of rejection, the petitioner preferred an appeal which was also rejected by the competent authority on 27.11.2004. While rejecting the claim of the petitioner the appellate authority had passed the following order:

APPEAL AGAINST REJECTION OF DISABILITY PENSION IN RESPECT OF NO 4187562 EX. SEP NAVIN CHANDRA

1. Your appeal dated 01 Nov 2001 on the above subject has been carefully considered by the Appellate Committee on First Appeals (ACFA).
2. On perusal of your service/medical documents, the committee has found that your invaliding disability "Affecting Psychosis (Depression)" is a constitutional disorder which is neither attributable to nor aggravated by service. Therefore you are not entitled to disability pension as per Regulation 173 of pension Regulation for Army Part-I, 1961. accordingly, the ACFA has not accepted your appeal.
3. It is also averred by the petitioner that the invalidation of the petitioner from service is contrary to the Rules and the laid down procedure has not been followed.
4. Despite the fact that the case was pending before the Court for a considerable time, no counter affidavit has been filed on behalf of the respondents. However, during the course of hearing the records were produced before the Court and photocopy of the same was placed on record as per the directions of the Court. From the medical record produced before the Court it is clear that the Invaliding Board of the petitioner was held on 19.9.2000 and in the opinion of the Medical Board, the petitioner had served the Army for a period of 6 years before he started having symptoms of sadness or headache. This was diagnosed to be a case of "generalised anxiety disorder". It was also recorded by the classified specialist Lt. Col. F.A. Sattar that the case of the petitioner was of "Affective Psychosis" and he had shown satisfactory response to therapy and it was also recorded in the report as under:

In view of having a severe relapsing type of illness with just 6 yrs of service he is considered unfit for further military service. His unit CO also recommends invalidment in AFMSF-16 dt 05.7.2000.

Recommended:

- 1.to be upgraded for Generalised Anxiety Disorder to "AYE" (Psychological).
- 2.To be invalided out of service for AFFECTIVE PSYCHOSIS-296 in Medical Cat "EEE" psychological.
5. The disability of the petitioner was assessed at 50% for two years but was said to be neither attributable to nor aggravated by military service. It was said that the disease of the petitioner was a "Constitutional disorder not connected with service."

W.P.(C) No. 11049/2005

6. Petitioner, Gopal Singh Dadwal, had been enrolled in regular Army on 2.6.1992 as a combatant soldier. In accordance with the Army instructions and Regulations he had passed the physical and medical tests and was not even doubted as showing any signs of sickness or to be suffering from any disease. The petitioner was posted to different "field" and "peace" areas at different intervals and he successfully and to the satisfaction of all, performed his duties. In June 1997 the petitioner started having health problems as a result of postings at mountainous terrains, harsh climatic conditions and high altitudes. The petitioner was treated but could not be cured and he was placed in low medical category "CEE" for 24 weeks and subsequently in "CEE" permanent. He was diagnosed to be a case of "Somato Form Disorder". The petitioner thereafter was brought before the Medical Board which recommended that the petitioner be invalidated out of Army Service as a case of medical category "EEE" (P) with 50% disability. The Commanding Officer of the petitioner was unable to provide any shelter appointment to the petitioner and Therefore he had sanctioned his disability pension on AFMSF-16 and the petitioner was discharged on 1.1.1998. The disability pension claim of the petitioner which was submitted to the CDA (P) Allahabad for allotment of PPO number and release of disability funds in favor of the petitioner was rejected in a most arbitrary manner on 2.12.1998. The petitioner preferred an appeal against the rejection of the disability pension. The appeal was also rejected vide order dated 20.6.2000. A second appeal was preferred by the petitioner which was forwarded to the Ministry of defense vide order dated 1.8.2000 but the same was not disposed of compelling the petitioner to file a writ petition before this Court bearing No. 6061/2003 which was disposed of by the Court vide its order dated 27.11.2003. In furtherance to this, the appeal of the petitioner was considered and the respondents vide order dated 7.7.2004 rejected that appeal stating that the petitioner was not entitled to disability pension as his disability was "neither attributable to nor aggravated by military service". This has resulted in filing of the present writ petition.

7. A counter affidavit has been filed on behalf of the respondents wherein the facts as averred by the petitioner are hardly disputed but it has been stated that the petitioner has been invalidated by the Medical Board held at M.H. Jodhpur on account of "Somato Form Disorder (300-C)" and the Invalidating Medical Board

assessed disability to the extent of 30% which was neither attributable to nor aggravated by military service. It is stated that the appeal and petition to the Central Government, Ministry of defense, has rightly been rejected. It is also stated that the judgment of this Court in the case of Ex. Const. Jasbir Singh and Ors. v. Union of India and Ors. 2003 (104) DLT 5 in terms of which the writ petition of the petitioner was disposed of, does not in any way grant the prayed relief to the petitioner, but the respondents were only subjected to consider the same as per law and after duly considering the case of the petitioner, the same was rejected. The respondents have also taken the stand that the petitioner was downgraded to low medical category with effect from 4.4.1997 for six months on account of disability "Neurosis (0300) which manifested with multiple somatic symptoms over the preceding two years, which finally resulted in the invalidating of the petitioner from Army Service.

8. The Medical record of the petitioner was also produced before the Court wherein it is stated that the opinion of the Medical Authority was recommendatory in nature and the competent authority is required to take its own decision.

9. In the opinion of the Medical Board, the disability of the petitioner was "neither attributable to nor aggravated by service" though it was 30% at the time of his discharge. In the Medical Board Proceedings, a stamp has been put to say "disability not connected with military services". In the opinion of the Senior Advisor (Psychiatry), forming part of the report of the Medical Board, it has been specifically stated that the petitioner had been placed in low medical category since 4.4.1997 which had manifested with multiple Somato Form Disorder symptoms over the preceding two years and as the petitioner had not really improved he was recommended for invalidation from Army Service. In the entire Medical record nothing has been indicated to show that the disease from which the petitioner suffered could be co-related by scientific diagnosis process as a "constitutional disease" or as a disease which could relate back to a period prior to induction of the petitioner into Army Service. In fact, no investigations were carried out to co-relate these two factors as had been shown by the Medical Board in the case of Ex. Hav. Maman Singh v. Union of India W.P.(C) No. 3843/1994 decided on 20.7.2006, though the same was dismissed as withdrawn. Putting of a rubber stamp without any reasoning, stating that the disease is not attributable to or aggravated by service, per se, would not be in conformity with the different medical rules and regulations of the Army.

W.P.(C) No. 7167/2006

10. Ex. SWR Shiv Kumar, petitioner, was enrolled in Army as a SWR/GD in the Armed Corps/Armed Regiment on 24.5.1994. He too was subjected to all medical tests at the time of his entry and even periodically thereafter. He was never doubted of having any mental illness. On the contrary, he was found fit in all respects. He went through military training at Armed Corps and School Ahmednagar, where he successfully completed his rigorous training and was

attested as a full fledged Soldier in Group D of the Pay Groups on 9.10.1997. The petitioner served at various places and on 10.5.1999 he fell sick and was hospitalized. Thereafter, he was diagnosed to be a case of "Affected Psychosis - MDP (Bipolar)" and after some treatment the petitioner was downgraded to Low Medical category "EEE". According to the petitioner the disability was stated to be aggravated by the conditions connected with military service.

11. On 18.9.1999 the petitioner was medically boarded out of Army Service by a duly constituted Medical Board at Base Hospital, Delhi Cantt. with 30% disability for five years. According to the petitioner his Department had recommended and sanctioned the disability pension to the petitioner. The claim of the petitioner for grant of disability pension was rejected by the PCDA (All.) on 20.11.2000 against which the petitioner filed an appeal, which was rejected despite the fact that the Medical Board had held the disability as aggravated by Military Service. The petitioner filed a Second appeal which was not disposed of resulting in filing of the writ petition bearing No. W.P.(C) No. 10447/2004 which was disposed of by the High Court vide its order dated 6.8.2004 with directions to the respondents to supply copy of Medical Board proceedings to the petitioner and on receipt of the same to prefer the Second Appeal to defense Minister's Appellate Committee, Ministry of defense. On 23.8.2004, the said appeal was rejected by the Army Headquarters and the petitioner was not even subjected to Re Survey Medical Board. It is stated that rejection of the appeal filed by the petitioner was most arbitrary and contrary to the settled procedure. Despite grant of opportunities, the respondents have failed to file a counter affidavit in the present writ petition. The records, including the medical records were produced by the respondents during the course of hearing and were perused by the Court.

The opinion of the Medical Specialist reads as under:

1. This 23 years old soldier with 51/4 years of service is a case of Affective Psychosis-MDP (Bipolar) - (296.C) who had been hospitalised during Jul 99 on an acutely disturbed condition, along with an unfavorable AFMSF-16 report dt 14 Jul 99. Psychiatric evaluation revealed marked psychomotor over activity ,grandiosity, citation ,paranoid ideation, negativistic outlook and impaired insight. There was no evidence of organicity. He has improved practically with intensive therapy but is likely to relapse again. Earlier the indl had remained in low med cat since Nov 98 with the diagnosis of Unspecified Psychosis.

2. In view of the foregoing X consider the indl unfit for further military service and recommend his invalidment in med cat EEE (Psych)

12. The disability of the petitioner was declared to be 30%. In the Column-1 against the question "Did the disability exist before entering service" the answer recorded is "No".

13. The above narrated facts of all the three cases clearly show that the petitioners had served for a considerably long time in the Indian Army and were posted to different locations at varied heights. They discharged their duties and

stood to the rigours of Army discipline without any health problems and to the satisfaction of all concerned. Admittedly, the petitioners were subjected to physical and medical examinations at the time of their entry into service where after they were subjected to periodical medical check-ups and at no point of time they were found to be suffering from any physical or mental disease, much less any disease relatable to the period prior to their joining the Army.

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

15. In furtherance to direction of the Court, medical specialists have appeared during the course of hearing of these petitions. In response to query by the Court, the medical specialists have expressed their opinion that "Constitutional disorder" or "Constitutional disease" would relate to a situation where the Medical Board is unable to find a cause for the disease which a person is suffering from. In those circumstances, it is recorded that the disease is neither attributable nor aggravated by army service. In other words, if the medical authorities failed to determine cause, onset or arrive at a definite diagnostic opinion in relation to disease of a member of the force, it is bound to adversely affect the interest of the member in relation to grant of disability pension. According to these experts, the constitutional disorder would normally result in recording of remark "not attributable to nor aggravated by military service" without any further or proper diagnosis. Butterworths Medical Dictionary defines "Constitutional" as:- "Relating to the state of constitution, inherent in the Constitution of mind or body, relating to the bodily system as a whole". The

expression Constitutional Disorder or disease would thus have to be understood even in its common parlance as something which is relatable to human mind and/or body. Its existence in either of them could be specifically diagnosed both in relation to cause, time of its existence as well as onset of the disease. This can hardly be termed as just and fair approach in consonance with rules and regulations. The diseases like Schizophrenia, Neurosis and other Psychiatric related diseases can be aggravated if not attributable to Army service. If they are constitutional diseases or disorders, then they must be relatable to human body and/or mind and can be detected by proper diagnose including the time i.e pre or post joining the Army. It would be required of the authorities concerned to reasonably show on record that such diseases or their basic symptoms existed prior, though the disease manifested later or even co-relate the onset of the diseases to a period prior to the joining of service by the petitioner. It is reasonably expected that the medical experts would be able to even trace the cause, origin of the disease as was done in the case of JC 264149M Ex. Naib Sub Marut Sharan Tiwari v. Union of India and Ors. being CWP No. 23320/2005 decided on 13.7.06

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

17. Now, we may refer to a detailed judgment of the same date titled as Sugna Ram Ranoliya v. Union of India and Ors. being CWP No. 3699/04 where after reference to various rules and regulations and judgments on the subject, the Court held as under:

Various Benches of this Court as well as all other High Courts have taken the view that the diseases like Schizophrenia, Neurosis and Epilepsy etc. are the diseases which are normally attributable to and/or aggravated by Army Service unless there was definite medical evidence on record to show that the onset of such diseases were prior to the joining of Army and was constitutional in the sense that their cause was not known and in all probable possibilities they could relate back to the period prior to the enrollment of the individual in the Armed Forces. A Division Bench of this Court in the case of Satpal Singh (Mr.) v. Union of India and Ors. 1999 IV AD (Delhi) 321 held as under:

What sort of Schizophrenia from which the petitioner suffered has also not been indicated by the Medical Board. Hallucination from which such patient suffers are of three types namely; (i) Auditory, (ii) Visual or (iii) Somatosensory. Auditory Schizophrenia occurs when a person imagines that somebody is talking against him. Visual Schizophrenia is when he imagines something like seeking ghosts etc. Nothing has been said by the respondent as to from which category of schizophrenia the petitioner suffered. From whatever category of "Schizophrenia" the petitioner suffered it would have been apparent when he was medically

examined in June, 1982 or at any time thereafter. But none of the Medical Boards prior to October, 1990 declared that the petitioner was suffering from "Schizophrenia" or any mental disorder. Therefore, it would not be correct on the part of respondent to say that petitioner suffered from constitutional disorder. Constitutional disorder would have in some form or the other must have manifested itself. But it did not till October, 1990. Therefore, the rejection on the ground of constitutional disorder cannot be appreciated.

Mr. S.M. Hooda's contention has a force when he urged that in the year 1990 there was insurgency in the State of Jammu & Kashmir. The petitioner being posted in the forward area of that State due to anxiety might have suffered from "Schizophrenia". Since he had already suffered from Neurosis earlier and being posted in the forward area anxiety got aggravated and became a case of schizophrenic. For this argument of Mr. Hooda, counsel for the respondent had no answer. He could not deny the fact that the petitioner was posted during the relevant time in the forwarding area of the State of Jammu & Kashmir. He also could not contradict the fact that it was while posted in the field area that the petitioner suffered from Neurosis. Therefore, it cannot be ruled out that schizophrenia from which the petitioner suffered was a consequence of Neurosis. As per respondent's own showing petitioner developed psychiatric break down in June, 1990 when he started feeling of sadness, fear from unknown, lack of concentration, loss of interest in work etc. He showed depressive features while posted in the field area of the State of Jammu & Kashmir. This ultimately led him to schizophrenic. Therefore, it would not be correct to say that the disease on account of which petitioner was invalided out of service was not attributable to service nor aggravated because of his service. In fact the presumption ought to have been drawn as per Sub-rule (b) of Rule 7 by the respondent. On account of his service presumption can be drawn that the petitioner suffered from this disease on account of his military service and it aggravated by military service. Instead of raising the presumption as is required to be raised under Sub-rule (b) of Rule 7, the Controller of defense Accounts rejected the disability pension without any reason and without appreciating the facts of this case. Admittedly, the onset of the disease was during the course of service. There was no reason for Controller of defense Accounts not to accept the recommendation of the Commanding Officer, which in this case was made to enable the petitioner to get the disability pension. The Commanding Officer of the petitioner sanctioned the disability pension w.e.f. 6th July, 1991. Duly sanctioned case was forwarded to the respondent No. 2 i.e. Controller of defense Accounts (Pension) Dropdi Ghaat, Allahabad which was in consonance with the presumption which is to be raised under Sub-rule (b) of Rule 7, which the respondent No. 2 failed to do without any reason.

Still in another case titled as Ex. Sub. Major Ram Kishan v. UOI and Ors. being CWP No. 2221/2005 decided on 14.3.06 where the petitioner suffering from Achalasia Cardiac (Optd) and Essential Hypertension disease was invalided from military service by the Medical Board. Though the Court partially allowed the writ

petition directing the respondents to hold Review Medical Board for the petitioner but after discussing case law and relevant rules held as under:

When an individual is found suffering from any disease or has sustained injury, he is examined by the medical experts who would not only examine him but also ascertain the nature of disease/injury and also record a decision as to whether the said personnel is to be placed in a medical category which is lower than 'AYE' (fit category) and whether temporarily or permanently. They also give a medical assessment and advice as to whether the individual is to be brought before the release/invaliding medical board. The said release/invaliding medical board generally consists of three doctors and they, keeping in view the clinical profile, the date and place of onset of invaliding disease/disability and service conditions, draws a conclusion as to whether the disease/injury has a causal connection with military service or not. On the basis of the same they recommend (a) attributability, or (b) aggravation, or (c) whether connected with service. The second aspect which is also examined is the extent to which the functional capacity of the individual is impaired. The same is adjudged and an assessment is made of the percentage of the disability suffered by the said personnel which is recorded so that the case of the personnel could be considered for grant of disability element of pension. Another aspect which is taken notice of at this stage is the duration for which the disability is likely to continue. The same is assessed/recommended in view of the disease being capable of being improved. All the aforesaid aspects are recorded and recommended in the form AFMSF-16. The Invaliding Medical Board forms its opinion/recommendation on the basis of the medical report, injury report, court of enquiry proceedings, if any, charter of duties relating to peace or field area and of course, the physical examination of the individual.

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It was also held that the opinion given by the doctors of the Medical Board shall be given due weightage and primacy in the matter for ascertaining as to whether or not the injury/illness sustained was due to or was aggravated by the military service which contributed to invalidation from the military service.

At this stage we may also take up the plea raised by the petitioner that the disease from which the petitioner had suffered cannot be said to be constitutional in nature. This submission is sought to be supported by this Court in *Satpal Singh v. Union of India & Ors.* (supra). In that regard suffice is to say that the ratio of the decision in *Satpal Singh's* case (supra) is now stood impliedly repealed by the decision of the Supreme Court in the case of *Controller of Defence Accounts (Pension) and Others Vs. S. Balachandran Nair*, . In the said decision, the Supreme Court after considering the various provisions and the decisions on the subject including the case of *Union of India (UOI)* and *Another Vs. Baljit Singh*, held that Medical Board's opinion to the effect that illness and disability suffered by the respondent therein was not attributable to military service cannot be substituted by the court in order to arrive at a contrary finding.

It was also held that where a 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. The Supreme Court also dealt with the contention that the fact that the employee was posted at sensitive border area and, Therefore, his illness is fully attributable to military service was negated by the Supreme Court in the said decision. We may also refer to the decision of the Division Bench of this Court in *Md. Tanwir Alam v. Union of India and Ors.* (supra). In the said case also the petitioner was enrolled as Nursing Assistant and while undergoing training he developed the said disease within a short period when the aforesaid disease was diagnosed. Despite the said fact the Division Bench has held that the decision of the appropriate medical authority coming to the conclusion that the disease of the employee was not related to the military service cannot be interfered with.

We may also refer to the decision of *Shri Bhagwan* (supra). In paragraphs 185, 186 and 187 reference was made to other decisions of the Single Judges of this Court. The Division Bench of this Court overruled the Single Judge's decision holding that when the medical board has given a categorical opinion that the petitioner's ailment was constitutional and even the CCDA had opined that the petitioner was not suffering from any ailment which could be attributed to or aggravated by military service and that it did not exist before or during military service, such opinion could not be set aside merely because it was felt that that the word "constitutional" is not an adequate reason for denying disability pension. In our considered opinion, the law is, Therefore, crystal clear on the subject needs no further reiteration.

In the backdrop of the aforesaid legal position which is made clear by several decisions of this Court as also by the Supreme Court the facts of the present case are required to be considered. Here is also a case where the Release Medical Board has given its definite opinion that the disease from which the petitioner is suffering is constitutional in nature and that the said disease and disability is neither attributable to nor aggravated by the military service. The said report of the medical board will have definite primacy, but in the facts of the present case we also find that there was a medical board earlier constituted which examined the petitioner medically and found that there was HYPERTENSION from which the petitioner was suffering. It was held by the said Medical Board that the disease was aggravated by military service. Therefore, there is a conflict of opinion between the two medical boards, one gave its opinion in 1974 whereas the other medical board has given its opinion in 1983. It is true that despite the opinion given by the medical board in 1974 the petitioner worked with the respondents for 10 more years and he stood discharged from service after completing his tenure. But it is apparent on the records of the case that the petitioner was still suffering in 1983 from the same disease i.e. HYPERTENSION and there was an additional disease, namely, ACHALASIA Cardiac (Optd) from which he was found to be suffering from.

The Madhya Pradesh High Court in the case of Sub-Lieutenant Chaman Azhar v. Union of India and Ors. (2003) 4 SLR 183 held in favor of the petitioner that Psychiatric disorder was attributable or aggravated by military service. In this case the Court held as under:

In Price's Text Book of the Practice of Medicine, learned author Price has discussed the etiological of "Schizophrenia" as under:

The role of genetics is undoubtedly important, but recent observations suggested that although genetic factors may be necessary they are not always sufficient for the occurrence of schizophrenic illness; environmental influences can also pay their part in the casual chain. Recent mental stress may sometimes be the starting point of an attack, but in a considerable proportion of these cases the reported overwork, disappointment in love or other painful experience, is found to have been a product of the already existing illness, or the last of a long series of disturbing events. No recent or remote experience is ever sufficient to account for the illness without regard to intrinsic causes. No matter how searchingly the patient's life be resurrected and analysed, it is scarcely ever possible to discover that anything happened to him with which would have led to his adopting a schizophrenic way of shunning daily life unless he had been somehow disposed to it from the beginning; although, of course, much may have happened to him that has strengthened and fostered the disposition.

In Text Book of Medicine by Rustom Jal Vakil disease "Schizophrenia" has been discussed as under:

etiological; heredity is considered and important factor in the etiological of the disease. Specialist in genetics have discovered significant difference in the incidence of the illness in monozygotic and dizygotic twins. The nature of genetic transmission is however not clear. Individuals with asthenia builds, thin, tall and wiry frames and with a tendency to be shy, reserved and withdrawn are particularly prone schizophrenia. The vast majority of individuals with such constitutions are usually well adjusted, but if they prove incapable of standing up; to the stresses and strains of life, they tend to develop a schizophrenic type of psychosis. A tendency to withdraw from social and emotional contacts with people and an increasing tendency to withdraw from one's environment are often present long before the actual onset of the illness.

18. Similar view in regard to Schizophrenia was taken by the Punjab and Haryana High Court in the case of Ram Niwas Goswami v. Union of India (1999) 7 SLR 458.

19. In the case of Ex-Signalman Shri Bhagwan v. Union of India and Ors. 103 (2003) DLT 269 (DB) the Court had discussed the entire law in detail with reference to various provisions of the Army Act, Rules, Regulations etc. The proposition of Law stated therein are not a matter of dispute before us. But we must notice that certain provisions, instructions and judgments of different courts were not brought to the notice of the Division Bench. We have to look into

the stated principles, keeping in view the amended Regulations as well as the various other judgments of this Court and other Courts, which have been pronounced subsequent to the judgment. The Division Bench after detailed discussion remanded the connected matters to the CDA (P)/ CCDA(P) Allahabad, to reconsider them in light of the conclusions and directions given in the said judgment. The primacy of medical opinion expressed by the Medical Board constituted in light of the above principles can hardly be disputed. The respondents have heavily relied upon the judgment of the Supreme Court in the case of Controller of Defence Accounts (Pension) and Others Vs. S. Balachandran Nair, to contend that the opinion of the Medical Board is final and cannot be questioned before the Court. The principle of law enunciated by the Supreme court in this case is not a matter of controversy and in any case is binding on the Courts. Their Lordships have clearly indicated that the view expressed by the Medical Board has primacy and would be respected by the Courts. There can be no doubt to the proposition that for the opinion of the Medical Board to attain its primacy as afore-referred, it must be in conformity with the statutory provisions framed by the competent authorities. If a report is ex-facie not in conformity with the various regulations is not supported by any investigative or diagnostic evidence and is arbitrary or ex-facie perverse then it cannot be permitted to have the same value as indicated in the various judgments of the High Courts as well as the Supreme Court. Intensive biochemical studies have revealed numerous abnormalities, including disturbances of protein carbohydrate metabolisms, enzyme reactions, abnormalities of urine and cerebrospinal fluid and the presence of so-called serum toxins (toxins). The exact etiological significance of such charges has however not been elucidated so far. Some consider schizophrenia as an auto immune disorder. This too remains unproved.

20. We have already discussed at great length that the rules and regulations postulate proper application of mind by the Medical Board to arrive at conclusions which would be supported by proper reason or documentation. It is so, primarily for the reason that a member of the force could be invalided from service and there should exist a cause and such cause must have nexus to his discharge in conformity with rules and regulations. It is a settled principle of law that when rules require something to be done then that thing must be done in that manner alone or not. Compliance to the rules would be necessary as far as possible so as to avoid any prejudice to the effective party.

18. The Government of India, Ministry of defense had issued a Corrigendum making amendments to Rule 14 of Entitlement Rules for Casualty Pensionary Awards, 1982 issued vide Appendix dated 22.11.83 and modified vide Corrigendum dated 4.8.92. In terms of this amended rule the disease should have arisen during the military service and the disease should be caused by condition of employment in military service. Exception to the rule is that if at the time of enrollment the disease could not have been detected on medical examination, then it will not be deemed to have arisen during the course of service. The language of the rule itself indicates that clearly and subject to the

exception stated, the disease should have arisen during service. Rule 14(c) and (d) reads as under:

(c) 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.

(d) In case of congenital, hereditary, degenerative and constitutional diseases which are detected after the individual has joined service, entitlement to disability pension shall not be conceded unless it is clearly established that the course of such disease was adversely affected due to factors related to conditions of military service.

19. The above rule clearly states noticeable feature that where the conditions of service influenced the subsequent course of the disease it will fall in the category of aggravation. The cumulative effect of these provisions show that implementation of rules is more favorably tilted in favor of the petitioners. The purpose appears to be that a member of the Armed Forces should not suffer and these rules should be liberally applied but in the correct perspective.

20. In light of the above principles, now we may examine the case of each of the petitioner. In CWP 5720/06, the petitioner was enrolled in the Indian Army on 21.12.94 and was found medically fit in all respects. Indisputably, he performed his duties and withstood the conditions of service of Army at various places of posting including high altitude. He fell sick of the disease psychosis (Depression) and was invalided out of Army service on 6.10.2000, nearly six years after the date of his enrollment and his claim for disability was rejected as not attributable or aggravated being a constitutional disorder. The disability of the petitioner was assessed at 50%. No record has been produced before the Court to show that the petitioner suffered from the disease of Affective Psychosis or any other related disease prior to his joining the Army in the year 1994. It is also not the case of the respondents that upon proper investigations it could even be reasonably said that the onset of the disease or related symptoms existed in the body or mind of the petitioner prior to March, 2002 when he had already served for a period of more than six years. If Affective Psychosis was a constitutional disorder, as understood in its correct perspective, then by proper investigations the cause and onset of the disease can safely be stated. The petitioner had served the Army till onset of the disease in March, 2000 without any complaint from any quarters. In the absence of any plausible reasoning from the side of the respondents they cannot be permitted to cause prejudice to the petitioner. The postings of the petitioner to various places including high altitude had worsened his medical condition even though he had responded well to the treatment at its initial stages. The aggravation of the disease, thus, would certainly be attributable to Army service. The various judgments of different High Courts relied upon by the petitioner do support the plea of the petitioner that the disease of the petitioner, even if not attributable but in the facts and

circumstances of the case, was certainly aggravated by Army service. The Appellate Authorities are not expected to reject the appeals preferred by the appellant in a mechanical manner. The appellant should be put to medical examination if in their opinion it is so needed. In the present case, the appellate authority has disposed of the appeal without really examining the real issue and by using a stereotype language.

21. Similarly, Gopal Singh in CW 11049/05 had joined the Army in June, 1992 and served the Army without any problems at all heights and altitudes and all climates for a period of five years when for the first time in 1997 his sickness was noticed and later he was discharged from Army with 50% disability on 1.1.98. The disability of the petitioner was under the disease "Somatoform Disorder". The petitioner was put to low medical category for the first time on 4.4.97. The disability pension was denied by putting a rubber stamp carrying the expression "disability not connected with military service". Nothing is on record to show that the disease was constitutional and/or could be related to a period in terms of cause, onset or progression prior to the petitioner joining the Army. The appeal of this petitioner was also dismissed by one line order and in any case the PCDA(P) ought to have considered the matter with the help of the Medical Specialist attached to it and in accordance with law. Both these authorities have failed to exercise their powers judiciously.

22. In the case of Shiv Kumar (CW 7167/06), detailed facts have already been stated. At the cost of repetition, it may be noticed that he had served the Army from 1994 till 1999. When he fell sick and was hospitalised later, he was diagnosed as a case of Affective Psychosis (Bipolar). The medical specialist had specifically recorded that there was no evidence of organicity. In his opinion, he had also stated that the patient had improved partially with intensive therapy and was put to low medical category in November, 1998. In response to question "Did the disability existed before entering into service" in Column I of the medical report answer was recorded "No". In these circumstances, to term the disease of the petitioner as constitutional and, Therefore, not attributable to or aggravated by military service can hardly be just and fair. It is a settled principle that once the medical report is prepared and contains the requisites of the rules and regulations, then alone it enjoys the primacy in terms of the law laid down by the Supreme Court in the case of Controller of Defence Accounts (Pension) and Others Vs. S. Balachandran Nair, .

23. In all the above cases, the orders of the respondents denying disability pension to the petitioners suffers from the element of arbitrariness and passing orders contrary to their own rules, regulations and instructions.

24. For the reasons afore-recorded as well as in view of the principles laid down in the judgment of this Court in Ex.Cfn Sugna Ram Ranoliya case (supra), all these writ petitions are partially allowed. The respondents are divaricated to consider the case of the petitioners for grant of disability pension in accordance with rules and pay the same to them within six months from the date of

pronouncement of this judgment. However, in the facts and circumstances of the case, we leave the parties to bear their own costs.