Dharamvir Singn vs Union Of India & Ors on 2 July, 2013

Equivalent citations: AIR 2013 SUPREME COURT 2840, 2013 (7) SCC 316, 2013 AIR SCW 4236, 2013 LAB. I. C. 3218, 2013 (8) SCALE 58, (2013) 5 ALL WC 5308, 2013 (3) KER LT 35 CN, (2013) 7 SERVLR 376, (2013) 3 SCT 778, (2013) 8 SCALE 58, (2013) 3 LAB LN 57

Bench: Sudhansu Jyoti Mukhopadhaya, A.K. Patnaik

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4949 OF 2013
(arising out of SLP(C)No. 6940 of 2010)

DHARAMVIR SINGH …. APPELLANT

VERSUS

UNION OF INDIA & ORS. ….RESPONDENTS

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

Leave granted.

2. This appeal has been preferred by the appellant against the judgment dated 31st July, 2009 in LPA No.26 of 2004 passed by the Division Bench of the High Court of Himachanl Pradesh, Shimla whereby the Division Bench allowed the appeal preferred by the Union of India and set aside the judgment dated 20th May, 2004 passed by the learned Single Judge in Civil Writ Petition No.660 of 2004.

3. The questions involved in this case are:

> (i) Whether a member of Armed Forces can be presumed to have been in sound physical and mental condition upon entering service in absence of disabilities or disease noted or recorded at the time of entrance.
>
> (ii) Whether the appellant is entitled for disability pension.

4. The factual matrix of the case is as follows:

> The appellant was enrolled as Sepoy in the Corps of Signals of the Indian Army on 15th June, 1985. Having rendered about 9 years of service in Indian Army he was boarded out of the service with effect from Ist April, 1994 on the ground of 20% permanent disability as he was found suffering from “Genrealised seizure (Epilepsy)". The Medical Board of Army opined that the "disability is not related to military service". On the basis of disability report, no disability pension was granted to him and when the appellant preferred representation the respondents rejected such prayer by an order dated 12th December, 1995 on the ground that the disability suffered by the appellant was neither attributable to nor aggravated by the military service.

5. The appellant approached the High Court of Himachal Pradesh in Civil Writ Petition No.660 of 2004 seeking a direction to respondents to grant disability pension with effect from 1st April, 1994. Learned Single Judge by judgment dated 20th May, 2004 on observing that there was nothing on record to show that the appellant was suffering from any disease at the time of his initial recruitment in the Indian Army held that the disease would be deemed to be attributable to or aggravated by the Army services. Therefore, in terms of Regulation 173 of Pension Regulations for the Army, 1961 the appellant is eligible for disability pension. Learned Single Judge allowed the writ petition and directed the respondents to grant disability pension to the appellant as per rules with effect from the date he was invalidated out of service and to pay the entire arrears of pension within three months else they shall be liable to pay interest on such arrears at the rate of 9% per annum.

6. The Union of India challenged the decision of the learned Single Judge before the Division Bench of the High Court of Himachal Pradesh in LPA No.26 of 2004. On behalf of the Union of India it was contended that disease“generalized seizure" was constitutional in nature and the same has not been found by the Re-Survey Medical Board attributable or aggravated by military service. It was also contended that the learned Single Judge had not taken into consideration the relevant law while allowing the petition. The Division Bench referring to a judgment of this Court in Union of India and others vs. Keshar Singh, (2007) 12 SCC 675, and Rule 7 as noticed in the said judgment held as follows and set aside the order passed by the learned Single Judge:

> “The respondent was discharged from the military after being placed in Low Medical Category (CEE). The Re-survey Medical Board had opined the disability of the respondent neither attributable nor aggravated military service. He was found suffering from ‘generalised seizure’. The learned Single Judge has purportedly referred to paragraph 7(b) of Appendix-IIas referred to in Regulation 48, 173 and 185 while coming to the conclusion that the respondent was not suffering from the disease on account of which he was invalidated out of the service at the time of his initial recruitment in the Indian Army. However, the learned Single Judge has omitted to take note of paragraph 7(c) of Appendix-II as referred to in Regulation 48, 173 and 185 of the Pension Regulations for the Army, 1961(Part-I).
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> The legal position raised in this Letters Patent Appeal is no more res integra in view of law laid down by their Lordships of the Hon'ble Supreme Court in Union of India

& Ors. Versus Keshar Singh, 2007 (4) SLR 100. Their Lordships of the Hon'ble Supreme Court were also seized of the matter wherein the Medical Board had given a clear opinion that the illness was not attributable to military service. In this case also the soldier has developed schizophrenia. Their Lordships of the Hon'ble Supreme Court have held as under:

"In support of the appeal learned Additional Solicitor General submitted that both learned Single Judge and the Division Bench have lost sight of para 7(c). Both 7(b) and 7(c) have to be read together. They read as follows:

"7(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 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.

7(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." A bare reading of the aforesaid provision makes it clear that ordinarily if a disease has led to the discharge of individual it shall ordinarily be deemed to have arisen in service if no note of it was made at the time of individual's acceptance for military service. An exception, however, is carvd out, i.e. if medical opinion holds for reasons to be stated that the disease could not have been detected by Medical Examination Board prior to acceptance for service, the disease would not be deemed to have arisen during service. Similarly, clause (c) of Rule 7 makes the position clear that if a disease is accepted as having arisen in service it must also be established that the condition of military service determined or contributed to the onset of the disease and that the conditions are due to the circumstances of duty in military service. There is no material placed by the respondent in this regard.

In view of the legal position referred to above and the fact that the Medical Board's opinion was clearly to the effect that the illness suffered by the respondent was not attributable to the military service, both the learned Single Judge and the Division Bench were not justified in their respective conclusion. The respondent is not entitled to disability pension. However, on the facts and circumstances of the case, payment already made to the respondent by way of disability pension shall not be recovered from him. The appeal is allowed but in the circumstances without any order as to costs." The disease developed by the petitioner i.e. 'generalised seizore' is constitutional in nature and the Re-survey Medical Board had specifically opined, as noticed above, that the disability was neither attributable nor aggravated by the military service. The opinion of the Re-survey Medical Board has to be given primacy.

> Accordingly, the learned Single Judge has erred in law by allowing the writ petition only on the basis of plain reading of paragraph 7(b) of Appendix-IIas referred to in Regulation 48, 173 and 185 of the Pension Regulation for the Army, 1961 (Part-

I). He has omitted to see clauses 7(c) of Appendix-IIof the Pension Regulations for the Army, 1961 (Pat-I).

Consequently, in view of the observation made hereinabove, the Letters Patent Appeal is allowed. The judgment of learned Single Judge is set aside. No costs."

7. Learned counsel for the appellant contended that the Entitlement Rules for Casualty Pensionary Awards, 1982 have been made effective w.e.f. Ist January, 1982 and the set of rules is required to be read in conjunction with the Guide to Medical Officers (Military Pension), 1980. Referring to Rule 423(c) it was submitted that the cause of 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. 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'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.

8. Reliance was placed on Rules 5,6,9 and 14 to show that the appellant was entitled to the benefit and the respondents ought to have given the same in consideration of the said rules. It was further contended that it will be for the service authorities to make all practical investigation to establish the alleged fact, calling upon the claimant, if necessary to assist and to show that the employee was suffering from disability or disease at the time of appointment and such disease is not attributable to or aggravated by service.

9. Per contra, according to the respondents, the question is no more res integra having settled by this Court in Keshar Singh (supra).

10. Learned counsel appearing on behalf of the Union of India submitted that in each case when disability pension is sought for and claim is made it must be affirmatively established as a matter of fact as to whether the disease is due to military service or that it was aggravated by military service which contributed to invalidation from service. According to him, in the present case, the Medical Board has clearly opined that the invalidating disease'left partial motor seizure with secondary generalisation' is not related to military service. The Medical Board having examined the appellant and having taken into consideration all evidence before it once submitted its opinion, it is binding on the parties. It was contended that the opinion of the Board has been given by the medical experts approved by a superior Medical Officer, Brigadier. Unless the primary condition in Regulation 173 is satisfied the appellant cannot derive advantage. He also placed reliance on Rules 6,8 14(c) and 17 of "Entitlement Rules for Casualty Pensionary Awards, 1982" and referred to decisions of this Court to suggest that the appellant is not entitled to disability pension in view of the opinion of the Medical

Board comprised of experts in the field.

11. In the impugned judgment dated 31st July, 2009, the Division Bench of the High Court placed reliance on Rules 7(a), 7(b) and 7(c) which was noticed by this Court in Keshar Singh (supra). In Keshar Singh(supra), a judgment of the Division Bench of the Allahabad High Court granting disability pension was challenged before this Court. In the said matter paragraph 7(b) of Appendix-II referred to in Regulations 48, 173 and 185 of the 'Pension Regulations for the Army, 1961'. In support of the appeal before this Court in Keshar Singh(supra) learned Additional Solicitor General contended that the Division Bench of the High Court has lost sight of Para 7(c) and both the paragraphs 7(b) and 7(c) have to be read together. The relevant portion of the judgment of this Court in Keshar Singh (supra) is quoted hereunder:

> "2. Background facts giving rise to the present dispute is as follows:
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> The respondent was enrolled as Rifleman on 15.11.1976 and was discharged from Army on 18.10.1986. It was found that he was suffering from Schizophrenia and the Medical Board's report indicated his non-suitability for continuance in army. Medical Board opined that the disability did not exist before entering service and it was not connected with service. An appeal was preferred before prescribed appellate authority which was dismissed on 16.4.1989. Respondent filed a writ petition which was allowed by learned Single Judge and as noted above by the impugned judgment the special appeal was dismissed. Both learned Single Judge and the Division Bench held that it was not mentioned at the time of entering to army service that the respondent suffered from Schizophrenia and therefore it was attributable to army service. Both learned Single Judge and the Division Bench referred to para 7(b) of the Appendix II referred to in Regulations 48, 173 and 185 of the Pension Regulations, 1961 to hold that if any disease has led to the individuals discharge it shall be ordinarily deemed to have arisen in the service if no note of it was made at the time of individual's acceptance for military service. Accordingly, it was held that the respondent was entitled to disability pension.
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> 3. In support of the appeal learned Additional Solicitor General submitted that both learned Single Judge and the Division Bench have lost sight of para 7(c). Both 7(b) and 7(c) have to be read together. They read as follows"

"7 (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.

7(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.""

12. In their counter-affidavit filed by the respondents before this Court in the present case, it is accepted that old Rules 7(a), (b) and 7(c) of the erstwhile Rules/Regulations were taken into consideration by this Court in Keshar Singh (supra) which has since been revised by Rule 14 of revised 'Entitlement Rules for Casualty Pensionary Awards, 1982'. For the said reason, we are not relying on or referring to Rule 7(b) and 7(c) of the erstwhile Rules. According to the respondents, Rule 14(a), 14(b), 14(c) and 14(d) of the "Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 1982" as amended vide Government of India, Ministry of Defence letter No.1(1)/81/D(Pen-C) dated 20th June, 1996 needs to be taken into consideration along with the other provisions of Entitlement Rules, 1982.

13. Per contra, according to the learned counsel for the appellant, the "Entitlement Rules for Casualty Pensionary Awards, 1982" contained in Appendix-II of the Pension Regulations for the Army, 1961 is applicable and not the Rules referred to and quoted in the counter-affidavit by the respondents.

14. There being difference in the two sets of the Entitlement Rules for Casualty Pensionary Awards referred to by the counsel for the respondents and the appellant, on the direction of the Court photostat copy of the 'Pension Regulations for the Army, 1961(Part-I)' along with Appendix (ii), (referred to in Regulations 1948, 1973 and 1985), 'Guide to Medical Officers (Military Pensions) 2002' published by the Ministry of Defence, Government of India, New Delhi has been produced. We also called for the Pension Regulations for the Army, 1961 from Library which contains Appendix- II- 'Entitlement Rules for Casualty Pensionary Awards, 1982' for our perusal, and we find that it is similar to the photostat copy of the Pension Regulations for the Army, 1961(Part-I) published by the Ministry of Defence, Government of India, New Delhi. The respondents in their counter- affidavit has not made clear as to when the Government of India, Ministry of Defence letter No.1(1)/81/D(Pen-C) dated 20th June, 1996 was notified in Gazette amending the Rules and why no such amendment has been shown in the published Entitlement Rules for Casualty Pensionary Awards, 1982. In their counter-affidavit they have not mentioned that the rules extracted in their counter-affidavit is true copy of its original.

15. For the said reason, we will rely on the "Pension Regulations for the Army, 1961" and Appendix-II- 'Entitlement Rules for Casualty Pensionary Awards, 1982' published by the Government of India, we will also discuss the Rules 14(a), 14(b), 14 (c) and 14(d) as quoted and relied on by the respondents.

16. Regulation 173 of Pension Regulations for the Army, 1961 relates to the primary conditions for the grant of disability pension and reads as follows:

> "Regulation 173. Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalidated out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed 20 per cent or over The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II."

17. From a bare perusal of the Regulation aforesaid, it is clear that disability pension in normal course is to be granted to an individual (i) who is invalidated out of service on account of a disability which is attributable to or aggravated by military service and (ii) who is assessed at 20% or over disability unless otherwise it is specifically provided.

18. A disability is 'attributable to or aggravated by military service' to be determined under the "Entitlement Rules for Casualty Pensionary Awards, 1982', as shown in Appendix-II. Rule 5 relates to approach to the Entitlement Rules for Casualty Pensionary Awards, 1982 based on presumption as shown hereunder:

> "Rule5 . The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions:
>
> PRIOR TO AND DURING SERVICE
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> a) member is presumed to have been in sound physical and mental condition upon entering except as to physical disabilities noted or recorded at the time of entrance.
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> b) In the event of his subsequently being discharged from service on medical grounds any deterioration in his health which has taken place is due to service." From Rule 5 we find that a general presumption is to be drawn that a member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance. If a person is discharged from service on medical ground for deterioration in his health it is to be presumed that the deterioration in the health has taken place due to service.

19. "Onus of proof" is not on claimant as apparent from Rule 9, which reads as follows:

> "Rule 9. ONUS OF PROOF- The claimant shall not be called upon to prove the conditions of entitlements. 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." From a bare perusal of Rule 9 it is clear that a member, who is declared disabled from service, is not required to prove his entitlement of pension and such pensionary benefits to be given more liberally to the claimants.

20. With respect to disability due to diseases Rule 14 shall be applicable which as per the Government of India publication reads as follows:

> "Rule 14. DISEASE- In respect of diseases, the following rule will be observed:-
>
> (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." As per clause (b) of Rule 14 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.

As per clause(c) of Rule 14 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.

21. If we notice Rule 14(a), 14(b), 14(c) and 14(d) as quoted by the respondents in their counter-affidavit, it makes no much difference for determination of issue. According to the respondents, Rule 14(a), 14(b), 14(c) and 14(d) as amended vide Government of India, Ministry of Defence letter No.1(1)/81/D(Pen-C) dated 20th June, 1996 reads as follows:

"Rule 14(a)- For acceptance of a disease as attributable to military service, the following two conditions must be satisfied simultaneously:

i) That the disease has arisen during the period of military service, and

ii) That the disease has been caused by the conditions of employment in military service.

Rule 14(b)- If medical authority holds, for reasons to be stated, that the disease although present at the time of enrolment could not have been detected on medical examination prior to acceptance for service, the disease, will not be deemed to have arisen during service. In case where it is established that the military service did not contribute to the onset or adversely affect the course disease, entitlement for casualty pensionary award will not be conceded even if the disease has arisen during service.

Rule 14(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.

Rule 14(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 services."

22. As per Rule 14(a) we notice that for acceptance of a disease as attributable to military service, conditions are to be satisfied that the disease has been arisen during the military service, and caused by the conditions of employment in military service which is similar to Rule 14(c) of the printed version as relied on by the appellant. Rule 14(b) cited by the respondents is also similar to published Rule 14.

Rule 14(c) cited by the respondents relates to the 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.

Rule 14(d) cited by the respondents relates to diseases which are detected after the individual has joined the service, which entails disability pension but it is to be established that the course of such disease was adversely affected due to factors related to conditions of military service.

23. If the amended version of Rule 14 as cited by the respondents is accepted to be the Rule applicable in the present case, even then the onus of proof shall lie on the employer-respondents in terms of Rule 9 and not the claimant and in case of any reasonable doubt the benefit will go more liberally to the claimants.

24. The Rules to be followed by Medical Board in disposal of special cases have been shown under Chapter VIII of the"General Rules of Guide to Medical Officers (Military Pensions) 2002. Rule 423 deals with "Attributability to service" relevant of which reads as follows:

> "423(a)For the purpose of determining whether the cause of a disability or death resulting from disease 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 FieldService/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 carries a 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/her 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 the doubt could be given more liberally to the individual, in cases occurring in Field Service/Active Service areas.

> (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 tobe 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 resulting from disease 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 Officers,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 accepted as attributable to/aggravated by service for the purpose of pensionary benefits will, however, be decided by the pension sanctioning authority."

25. Therefore, as per Rule 423 following procedures to be followed by the Medical Board:

> (i) Evidence both direct and circumstantial to be taken into account by the Board and benefit of reasonable doubt, if any would go to the individual;
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> (ii) a disease which has led to an individual's discharge or death will ordinarily be treated to have been arisen in service, if no note of it was made at the time of individual's acceptance for service in Armed Forces.
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> (iii) If the medical opinion holds that the disease could not have been detected on medical examination prior to acceptance for service and the disease will not be deemed to have been arisen during military service the Board is required to state the reason for the same.

26. 'Chapter II'of the Guide to Medical Officers (Military Pensions) 2002 relates to "Entitlement : General Principles". In the opening paragraph 1, it is made clear that the Medical Board should examine cases in the light of the etiology of the particular disease and after considering all the relevant particulars of a case, record their conclusions with reasons in support, in clear terms and in a language which the Pension Sanctioning Authority would be able to appreciate fully in determining the question of entitlement according to the rules. Medical officers should comment on the evidence both for and against the concession of entitlement; the aforesaid paragraph reads as

follows:

> "1. Although the certificate of a properly constituted medical authority vis-a-vis the invaliding disability, or death, forms the basis of compensation payable by the government, the decision to admit or refuse entitlement is not solely a matter which can be determined finally by the medical authorities alone. It may require also the consideration of other circumstances e.g. service conditions, pre-and post-service history, verification of wound or injury, corroboration of statements, collecting and weighing the value of evidence, and in some instances, matters of military law and discipline. Accordingly, Medical Boards should examine cases in the light of the etiology of the particular disease and after considering all the relevant particulars of a case, record their conclusions with reasons in support, in clear terms and in a language which the Pension Sanctioning Authority, a lay body, would be able to appreciate fully in determining the question of entitlement according to the rules. In expressing their opinion Medical Officers should comment on the evidence both for and against the concession of entitlement. In this connection, it is as well to remember that a bare medical opinion without reasons in support will be of no value to the Pension Sanctioning Authority." Paragraph 6 suggests the procedure to be followed by service authorities if there is no note, or adequate note, in the service records on which the claim is based.
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> Paragraph 7 talks of evidentiary value attached to the record of a member's condition at the commencement of service, .e.g. pre-enrolment history of an injury, or disease like epilepsy, mental disorder etc. Further, guidelines have been laid down at paragraphs 8 and 9, as quoted below:
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> 7. Evidentiary value is attached to the record of a member's condition at the commencement of service, and such record has, therefore, to be accepted unless any different conclusion has been reached due to the inaccuracy of the record in a particular case or otherwise. Accordingly, if the disease leading to member's invalidation out of service or death while in service, was not noted in a medical report at the commencement of service, the inference would be that the disease arose during the period of member's military service. It may be that the inaccuracy or incompleteness of service record on entry in service was due to a non-disclosure of the essential facts by the member, e.g., pre-enrolment history of an injury or disease like epilepsy, mental disorder etc. It may also be that owing to latency or obscurity of the symptoms, a disability escaped detection on enrolment. Such lack of recognition may affect the medical categorization of the member on enrolment and/or cause him to perform duties harmful to his condition. Again, there may occasionally be direct evidence of the contraction of a disability, otherwise than by service. In all such cases, though the disease cannot be considered to have been caused by service, the question of aggravation by subsequent service conditions will need examination.

The following are some of the diseases which ordinarily escape detection on enrolment:-

(a)Certain congenital abnormalities which are latent and only discoverable on full investigations, e.g. CONGENITAL DEFECT OF SPINE, SPINA BIFIDA, SACRALIZATION,

(b)Certain familial and hereditary diseases, e.g., HAEMOPHILIA, CONGENTIAL SYPHILIS, HAEMOGIOBINOPATHY.

(C)Certain diseases of the heart and blood vessels, e.g., CORONORY ATHEROSCLEROSIS, RHEUMATIC FEVER.

(d)Diseases which may be undetectable by physical examination on enrolment, unless adequate history is given at the time by the member, e.g., GASTRIC AND DUODENAL ULCERS, EPILEPSY, MENTAL DISORDERS, HIV INFECTIONS.

(e) Relapsing forms of mental disorders which have intervals of normality.

(f) Diseases which have periodic attacks e.g., BRONCHIAL ASTHMA, EPILEPSY, CSOM ETC.

8. The question whether the invalidation or death of a member has resulted from service conditions, has to be judged in the light of the record of the member's condition on enrolment as noted in service documents and of all other available evidence both direct and indirect.

In addition to any documentary evidence relative to the member's condition to entering the service and during service, the member must carefully and closely questioned on the circumstances which led to the advent of his disease, the duration, the family history, his pre-service history, etc. so that all evidence in support or against the claim is elucidated. Presidents of Medical Boards should make this their personal responsibility and ensure that opinions on attributability, aggravation or otherwise are supported by cogent reasons; the approving authority should also be satisfied that this question has been death with in such a way as to leave no reasonable doubt.

9. On the question whether any persisting deterioration has occurred, it is to be remembered that invalidation from service does not necessarily imply that the member's health has deteriorated during service. The disability may have been discovered soon after joining and the member discharged in his own interest in order to prevent deterioration. In such cases, there may even have been a temporary worsening during service, but if the treatment given before discharge was on grounds of expediency to prevent a recurrence, no lasting damage was inflicted by service and there would be no ground for admitting entitlement. Again a member may have been invalided from service because he is found so weak mentally that it is impossible to make him an efficient soldier. This would not mean that his condition has worsened during service, but only that it is worse than was realized on enrolment in the army. To sum up, in each case the question whether any persisting deterioration on the available evidence which will vary according to the type of the disability, the consensus of medical opinion relating to the particular condition and the clinical history."

27. Learned counsel for the respondent-Union of India relied on decisions of this Court in Om Prakash Singh vs. Union of India and others,(2010) 12 SCC 667;(2009) 9 SCC 140; (2010) 11 SCC 220, etc. and submitted that this Court has already considered the effect of Rule 5, 14a and 14(a) and 14(b) and held that the same cannot be read in isolation. After perusal of the aforesaid decision we find that Rule 14(a), 14(b) and 14(c) as noticed and quoted therein are similar to Rule 14 as published by the Government of India and not Rule 14 as quoted by the respondents in their counter- affidavit. Further, we find that the question as raised in the present case that in case no note of disease or disability was made at the time of individual's acceptance for military service, the Medical Board is required to give reasons in writing for coming to the finding that the disease could not have been detected on a medical examination prior to the acceptance for service was neither raised nor answered by this Court in those cases. Those were the cases which were decided on the facts of the individual case based on the opinion of the Medical Board.

28. A conjoint reading of various provisions, reproduced above, makes it clear that:

(i) Disability pension to be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable or aggravated by military service to be determined under “Entitlement Rules for Casualty Pensionary Awards, 1982" of Appendix-II (Regulation 173).

(ii) A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service. [Rule 5 r/w Rule 14(b)].

(iii) Onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally. (Rule 9).

(iv) If a disease is accepted to have been 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. [Rule 14(c)].

(v) If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service. [14(b)].

(vi) If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons. [14(b)]; and

(vii) It is mandatory for the Medical Board to follow the guidelines laid down in Chapter-II of the "Guide to Medical (Military Pension), 2002 – "Entitledment : General Principles", including paragraph 7,8 and 9 as referred to above.

29. We, accordingly, answer both the questions in affirmative in favour of the appellant and against the respondents.

30. In the present case it is undisputed that no note of any disease has been recorded at the time of appellant's acceptance for military service. The respondents have failed to bring on record any document to suggest that the appellant was under treatment for such a disease or by hereditary he is suffering from such disease. In absence of any note in the service record at the time of acceptance of joining of appellant it was incumbent on the part of the Medical Board to call for records and look into the same before coming to an opinion that the disease could not have been detected on medical examination prior to the acceptance for military service, but nothing is on the record to suggest that any such record was called for by the Medical Board or looked into it and no reasons have been recorded in writing to come to the conclusion that the disability is not due to military service. In fact, non-application of mind of Medical Board is apparent from Clause (d) of paragraph 2 of the opinion of the Medical Board, which is as follows:

_____ " (d) In the case of a disability under C the board should state what exactly in their opinion is the cause thereof. YES Disability is not related to mil service" _____

31. Paragraph 1 of 'Chapter II' – "Entitlement : General Principles" specifically stipulates that certificate of a constituted medical authority vis-à-vis invalidating disability, or death, forms the basis of compensation payable by the Government, the decision to admit or refuse entitlement is not solely a matter which can be determined finally by the medical authorities alone. It may require also the consideration of other circumstances e.g. service conditions, pre-and post-service history, verification of wound or injury, corroboration of statements, collecting and weighing the value of evidence, and in some instances, matters of military law and dispute. For the said reasons the Medical Board was required to examine the cases in the light of etiology of the particular disease and after considering all the relevant particulars of a case, it was required to record its conclusion with reasons in support, in clear terms and language which the Pension Sanctioning Authority would be able to appreciate.

32. In spite of the aforesaid provisions, the Pension Sanctioning Authority failed to notice that the Medical Board had not given any reason in support of its opinion, particularly when there is no note of such disease or disability available in the service record of the appellant at the time of acceptance for military service. Without going through the aforesaid facts the Pension Sanctioning Authority mechanically passed the impugned order of rejection based on the report of the Medical Board. As per Rules 5 and 9 of 'Entitlement Rules for Casualty Pensionary Awards, 1982', the appellant is entitled for presumption and benefit of presumption in his favour. In absence of any evidence on record to show that the appellant was suffering from "Genrealised seizure (Epilepsy)" at the time of

acceptance of his service, it will be presumed that the appellant was in sound physical and mental condition at the time of entering the service and deterioration in his health has taken place due to service.

33. As per Rule 423(a) of General Rules for the purpose of determining a question whether the cause of a disability or death resulting from disease 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.

> "Classification of diseases" have been prescribed at Chapter IV of Annexure I; under paragraph 4 post traumatic epilepsy and other mental changes resulting from head injuries have been shown as one of the diseases affected by training, marching, prolonged standing etc. Therefore, the presumption would be that the disability of the appellant bore a casual connection with the service conditions.

34. In view of the finding as recorded above, we have no option but to set aside the impugned order passed by the Division Bench dated 31st July, 2009 in LPA No.26 of 2004 and uphold the decision of the learned Single Judge dated 20th May, 2004. The impugned order is set aside and accordingly the appeal is allowed. The respondents are directed to pay the appellant the benefit in terms of the order passed by the learned Single Judge in accordance with law within three months if not yet paid, else they shall be liable to pay interest as per order passed by the learned Single Judge. No costs.

.....J. (A.K. PATNAIK) .....J. (SUDHANSU JYOTI MUKHOPADHAYA) NEW DELHI, JULY 2, 2013.