% 30.04.2008

Present: Mr. M.K. Gaur, Advocate for the Petitioners in WP(C) Nos.678/2008 & 16808/2006.
Mr. S.M. Dalal, Advocate for the Petitioners in WP(C) Nos.838/2008, 420/2008 & 15306/2004.
Col. S.R. Kalakal with Mr. K.P.S. Chauhan, Advocates for the petitioner in WP(C)Nos.824/2007, 13270/2006 and 2989/1997. Mr. Arvind Singh, Advocate for the Petitioner in WP(C) No.7838/2003.
Mr. A.K. Trivedi, Advocate for the Petitioner in WP(C) No.12581/2005.

Maj S.S. Pandey for the Respondents.
Mr. Akash Pratap, Advocate for the Respondents in WP(C) No.16808/2006 & 1263/2008.
Mr. Nitin Khare, Advocate for the Respondents in WP(C) No.487/2008.
Mr. Manoj Ohri, Advocate for the Respondents in WP(C) No.9457/2004.
Mr. Pankaj Batra, Advocate for the Respondents in WP(C) No.719/2008.
Ms. Saroj Bidawat, Advocate for the Respondents in WP(C) No.420/2008 & 7838/2003.
Ms. Sonia Mathur, Advocate for the Respondents in WP(C) No.15097/2004 & 18061/2006.
Mr. Ashwani Bhardwaj, Advocate for the Respondents in WP(C) No.12581/2005.
Mr. S. Bhagwan Sharma, Advocate for the Respondents in WP(C) No.1266/2006 & 3994/2006.
Mr. Hemant Gupta, Advocate for the Respondents in WP(C) No.16087/2006.
Mr. Mohan Kumar, Advocate for the Respondents in WP(C) No.838/2008, 425/2008 & 6467/2007.
Mr. Ankur Chhibber, Advocate for the Respondents in WP(C) No.1262/2008.
Mr. Gaurav Duggal, Advocate for the Respondents in WP(C) No.2898/1997.

+ WP(C) Nos.678/2008, 838/2008, 16808/2006, 824/2007, 420/2008, 425/2008, 487/2008, 6684/2004, 9457/2004, 15097/2004, 15306/2004, 12581/2005, 19957/2005, 16087/2006, 2249/2007, 6467/2007, 1262/2008, 1263/2008, 2898/1997, 18061/2006, 719/2008, 1266/2006, 3994/2006, 7838/2003 &

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The common issue which arises for consideration in these writ petitions is the grievance of the petitioners that the Medical Board has wrongly concluded that their disability is not attributable to or aggravated by military service. It is not in issue that the concerned authority to determine this question is the Medical Board in view of the various pronouncements of this Court.

Learned counsel for the petitioners contend that the parameters as enunciated in various judgments of this Court have apparently not been kept in mind including in **Ex. Sepoy Gopal Singh Dadwal** Vs. **Union of India & others**; reported in 2006 (4) SCT 342 and **Ex. CFN. Sugna Ram Ranoliya** Vs. **Union of India & Ors.**; reported in 132 (2006) DLT 544.

Learned counsel have drawn our attention specifically to the observations made in paragraphs 14 and 15 of the judgment in **Ex. Sepoy Gopal Singh Dadwal (supra)** which are as under:-

> 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 Forde 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 obligator 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 word `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 adversly 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 to 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. An 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 cases 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 shown 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 264149-M Ex. Naib Sub Marul Sharan Tiwari v. Union of India and others, being CWP No.23320 of 2005 decided on 13.7.2006.***"

Learned counsel have also drawn our attention to paragraphs 12 and 13 of the judgment in **Ex. CFN. Sugna Ram Ranoliya (supra)** which reads as under:-

"12. After the individual suffers from any injury and/or disease and is required to be invalided out of service as per same Regulation 421, a Medical Board will be arranged and held at once. The Medical Board is required to expeditiously conclude and more particularly in cases of Pulmonary Tuberculosis, Epilepsy, Amputation and Psychosis. Regulation 422 further casts an obligation on the Medical Board to answer the various question in the prescribed form upon due application of mind while taking note of the detailed directions contained in Regulations 422 and 423 in that regard.

The Specialist's report should be reproduced in the statement of the case. As per Regulation 422(d) the Invalidating Medical Board is expected to take its own assessment, reasoning and conclusions without being influenced by the proceedings of the previous Medical Boards. This obviously indicates the intent of functions and duties with clear independence and in a manner which would be acceptable to the prescribed medical standards. Mere `Yes' and `No' may not serve the object of such intent. It is in the modern times where means of investigations amply and possibly tend to touch perfection. Mere impression of doctors would not serve the purpose and discharge the obligations placed upon the authorities under these provisions. Under Regulation 423(a), the Board is expected to take into consideration the evidence both direct and circumstantial. The authorities medical and administrative are required to weigh the evidence while deciding the question of attributability or aggravation. The opinion of the Medical Board under Clause 423(d) DSR-Medical is final unless it is questioned before the Medical Board or is patently perverse.

13. The cumulative effect of the above enunciated principles of law and various rules, regulations and instructions is that the authorities are expected to act with great caution while invaliding a person from military service. A person who has been indicted into military service after rigorous medical examination and has been found consistently fit in all respects, suddenly suffers from a sickness as a result of his sufficiently long service in the Army at different places of high altitude with difficult duties of the Army, it may not be fair for the authorities to say that the disease is neither attributable to nor aggravated by military service particularly in absence of any medical diagnosis or data being discussed or place on record. It would be unjust and unfair to permit writing of `No' and/or `Yes' simplicitor, despite the medical records showing that the patient/Army personnel, was not suffering from any disease earlier or the same was not organically attributable or his constitution."

The aforesaid succinctly sets out the parameters which have to be kept in mind by a Medical Board while determining the question of the disability being attributable to or aggravated by military service.

It is also not in issue that on such report by the Medical Board, the same is forwarded to the concerned authority which may either agree with opinion of the Medical Board of recommending disability pension or even where there is an adverse report of the Medical Board, grant the disability pension. It is also open for the concerned authorities to refer the same to the Appeal Medical Board in case there is a disagreement. It is stated that the Appeal Medical Board consists of specialists and experts who thereafter give their opinion.

It is further pleaded that it is on the request of an aggrieved party also that a reference is made to the Appeal Medical Board.

In order to put an end to the controversy in question, it has been agreed as under:-

(i) The cases of these petitioners will be referred to the Appeal Medical Board.

(ii) The aforesaid two judgments as also other judgments laying down the parameters to be followed by a Medical

Board would be circulated well in advance to the Appeal Medical Board for purposes of information and guidance.

(iii) The petitioners will be provided to and fro transport allowance as per norms for purposes of visiting the place where the Appeal Medical Board would be held.

(iv) The aforesaid judgments be also circulated to the Medical Board which are examining the cases of persons determining the percentage of disability or the question of the disease being attributable or aggravated by military service.

(v) In case the Appeal Medical Board comes to an adverse conclusion against any of the petitioners, a photocopy of the complete set of the material before the Appeal Medical Board be forwarded to the petitioners along with the adverse decision.

(vi) In case of a favourable decision in favour of the petitioners, the decision be communicated and the arrears be cleared within a maximum period of three months of the decision being so taken. The arrears would be restricted to a period of three years prior to the date of filing of the petition.

(vii) There is a classification of diseases made by the respondents and in some of the cases, the petitioners have pleaded that the disease with which they are detected falls under the said classification of diseases. The Appeal Medical Board would thus examine these cases specially taking into consideration the list of classification of diseases and the service record of such personnel will be produced before the Appeal Medical Board in order to come to an appropriate conclusion in the light of the observations made by the Supreme Court in Civil Appeal No.762/2001 (**Union of India & Ors.** Vs. **Keshar Singh**) decided on 20.4.2007.

The exercise would be carried out within a maximum period of six months from today.

We are also of the view that it may be appropriate for the respondents to examine the creation of a suitable policy to deal with all such similarly situated persons without such aggrieved persons being compelled to approach the Court. This would not only provide an in-house remedial mechanism but prevent the unnecessary burden being created on the Court. It is trite to say that where an expert body like the Medical Board examines the question of the nature of the disease and its connection with the

service of the personnel, the appeal scrutiny should take place by an expert body of medical practitioners rather than any officials of the Army. It is towards this objective that we deem it appropriate to direct the respondents to examine the creation of a suitable policy or norms in the existing policy.

The petitions stand disposed of in the aforesaid terms.

CM No.11091/2004 in WP(C) No.6684/2004 &
CM No.4189/2007 in WP(C) No.2249/2007

In view of the order passed in the writ petitions, these applications have become infructuous and are disposed of accordingly.

SANJAY KISHAN KAUL, J.

MOOL CHAND GARG, J.

APRIL 30, 2008
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