A UNION OF INDIA & ORS.

v.

MANJEET SINGH

(Civil Appeal Nos. 4357- 4358 of 2015)

B MAY 12, 2015

[M.Y. EQBAL AND AMITAVA ROY, JJ.]

Pension Regulations for the Army, 1961: Regulation
C *173; Army Rules, 1954: rr.5, 9 and 14 – Disability pension – Entitlement for – Held: There is a statutory presumption, that the disease/disability for which a member of Army service is boarded out, had been contracted by him during his tenure,*
D *unless the same is displaced by cogent and persuasive reasons recorded by the Medical Board – Burden to disprove the correlation of disability with the Army service has been cast on the authorities – In the instant case, the Medical Board computed the composite disability of the respondent to be*
E *20% – No reason was cited by Board in support of this conclusion – On the contrary, its deduction that the disabilities were unrelated to the Army service, was founded only on the fact that those were constitutional in nature and no other reason whatsoever – There was no reason assigned in the*
F *proceedings of the Medical Board, as to why his disabilities eventually adjudged to be constitutional or genetic in nature, had escaped the notice of the authorities concerned at the time of his acceptance for Army service – Comprehensive*
G *consideration of the Regulation, Rules and the General Principles as applicable, the service profile of the respondent and the proceedings of the Medical Board showed that the respondent had been wrongly denied the benefit of disability pension.*

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Dismissing the appeals, the Court A

HELD: 1. It is undisputed, that soon after the respondent had joined the service on 6.4.1999 having been adjudged to be fully fit therefor, following a rigorous medical test, he fell ill and had to be hospitalized where B **he was diagnosed in due course, to be afflicted by (1) "Generalised Tonic Clonic Seizure" and (2) "Neurotic Depression". The respondent was hospitalized on more than one occasion during his short tenure ranging from 8.4.1999 to 1.1.2002 when he was invalided from service.** C **He had actively served in all, for a period of about one year. He was thus mostly under treatment, for the above two disabilities during his stint with the appellants. [Para 15] [204-E-G]**

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Secretary, Ministry of Defence & Others vs. A.V. Damodaran (Dead) through LRs. & Others **2009 (13) SCR 416: (2009) 9 SCC 140 – referred to.**

2. A conjoint reading of Regulation 173, Rule 5, 9 and 14 of the Rules as well as paras 7, 8 and 9 of the "General Principles" brings to the fore, a statutory presumption, that a member of the service governed thereby, is presumed to have been in sound medical condition at the entry, except as to the physical disability F **as recorded at that point of time and that if he is subsequently discharged from service on the ground of disability, any deterioration in his health has to be construed to be attachable to his service. The exception to this deduction is, only in the event of a medical** G **opinion, supported by reasons to the effect that the disease could not have been detected on medical examination prior to acceptance for service, whereupon it would be deemed that the disease had not arisen during service. The incident of invaliding a member of** H

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A **the Army service, entails curtailment of the normal tenure, for his recorded disability to the extent of 20% or more and thus the disentitling requisites would have to be stringently construed. The burden to disprove the correlation of the disability with the Army service has**
B **been cast on the authorities by the Regulation, Rules and the General Principles and thus, any inchoate, casual, perfunctory or vague approach of the authorities would tantamount to non-conformance of the letter and spirit thereof, consequently invalidating the decision of**
C **denial. The bearing of the Army service as an aggravating factor qua even a dormant and elusive constitutional or genetic disability in all fact situations, thus cannot be readily ruled out. Hence the predominant**
D **significance of the requirement of the reasons to be recorded by the Medical Board and the recommendations based thereon for boarding out a member from service. As a corollary, in absence of reasons to reinforce the opinion, that the disability is not**
E **attributable to the Army service or is not aggravated thereby, denial of the benefit of disability pension would be illegal and indefensible. The medical opinion in the instant case, as the precursor of the invalidment of the respondent therefore needs to be assayed in this**
F **presiding statutory backdrop. [Paras 16, 17] [209-G-H; 210-A, D-E; 211-A-B, D-E, G-H; 212-A-B, C-D]**

Dharamvir Singh vs. Union of India & Others **(2013) 7 SCC 316 – relied on.**

G *Union of India & Others vs. Jujhar Singh* **2011 (8) SCR 258: (2011) 7 SCC 735 – referred to.**

4. The Board on the basis of the disabilities (1) "Generalised Tonic Clonic Seizure-345" and (2) "Neurotic
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Depression-300" did compute the composite disability of the respondent to be 20%. The respondent had on being queried during his examination, denied to have been suffering from any of the disabilities at the time of joining the Army service. Though as per Clause 2(a) of Part III, the Medical Board was required to express its views on the aspects as to whether the disabilities were; (1) attributable to service during peace or under field service conditions; (2) aggravated thereby and remained to be so; (3) not connected with service; and was required to state reasons with regard to each of the disabilities on which its opinion was based, it merely recorded in the negative *vis-a-vis* the first two and in the affirmative qua the third and abruptly concluded that both the disabilities were constitutional in nature and hence unconnected with Army service. No reason whatsoever was cited by the Medical Board in support of this conclusion. On the contrary, its deduction, that the disabilities were unrelated to the Army service was founded only on the fact that those were constitutional in nature and no other consideration or reason whatsoever. There is no reason forthcoming in the proceedings of the Medical Board, as to why his disabilities, eventually adjudged to be constitutional or genetic in nature, had escaped the notice of the authorities concerned, at the time of his acceptance for Army service. On a comprehensive consideration of the Regulation, Rules and the General Principles as applicable, the service profile of the respondent and the proceedings of the Medical Board, he had been wrongly denied the benefit of disability pension. His tenure, albeit short, during which he had to be frequently hospitalized, does not irrefutably rule out the possibility, in absence of any reason recorded by the Medical Board, that the disabilities even assumed to be constitutional or genetic,

had not been induced or aggravated by the arduous military conditions. The requirement of recording reasons, is not contingent on the duration of the Army service of the member thereof and is instead of peremptory nature, failing which the decision to board him out would be vitiated by an inexcusable infraction of the relevant statutory provisions. Having regard to the letter and spirit of the Regulation, Rules and the General Principles, the prevailing presumption in favour of a member of the Army service boarded out on account of disability and the onus cast on the authorities to displace the same, the denial of disability pension to the respondent in the facts and circumstances of the case, have been repugnant to the relevant statutory provisions and thus cannot be sustained in law. [Paras 19 to 22] [215-A-H; 216-B-H]

Dharamvir Singh vs. Union of India **2013 (7) SCC 316 – relied on.**

Veer Pal Singh vs. Secretary, Ministry of Defence **2013 (10) SCR 579: (2013) 8 SCC 83 – referred to.**

Case Law Reference

2009 (13) SCR 416	**Referred to.**	**Para 13**
2011 (8) SCR 258	**Referred to.**	**Para 13**
2013 (10) SCR 579	**Referred to.**	**Para 13**
2013 (7) SCC 316	**Relied on.**	**Paras 13, 25**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4357-4358 of 2015

From the Judgment and Order dated 22.05.2012 of the High Court of Jammu & Kashmir, at Jammu in LPASW No. 157 of 2009 and CMA No. 211 of 2009

P. S. Patwalia, ASG, R. Balasubramanian, Kiran

Bhardwaj, R. S. Nagar, R. S. Jena, B. V. Balaram Das for the Appellants.

Vivek Chib, Gautam Narayan, Joby Verghese, Ankit Prakash for the Respondent.

The Judgment of the Court was delivered by

AMITAVA ROY, J. - 1. Leave granted.

2. The instant appeals witness a challenge to the judgment and order dated 22nd May, 2012 rendered in LPA(SW) No. 157/2009 and CMA No. 211/2009 affirming the determination made in SWP No. 1439/2004 thereby sustaining the claim of the respondent herein to disability pension on being boarded out of the Army service on the ground of disabilities identified as "Generalised Tonic Clonic Seizure" and "Neurotic Depression".

3. The Union of India being aggrieved by the concurrent verdicts requiring it to grant disability pension to the respondent herein from the date of his discharge from service, seeks redress in the instant appeals.

4. We have heard the learned counsel for the parties and have perused the records.

5. The foundational facts as offered by the rival pleadings would provide the back-drop of the lingering debate. The respondent had joined the Army service under the Union of India on 06.4.1999 being awarded medical category of "AYE" and according to him after undergoing rigorous medical examinations as prescribed. He, thereafter, underwent initial military training at JAK Rifles Centre, Jabalpur whereafter he was posted at No. 5 JAK Rifles at Amritsar on 5.3.2000. One day he fell unconscious in the course of cross country practice in the unit premises and

had to be shifted to Military Hospital, Amritsar where he was treated for his ailment. The Medical Board that was set up for his examination lowered his category from "AYE" to "CEE" temporary w.e.f. April, 2000. The respondent has pleaded that subsequent to his discharge from the hospital he was detained for duties at Kargil. He availed leave as was granted thereafter, to join later at his transit Camp at Chandigarh. As admitted by him, while on duty, he again fell to the same illness and had to be hospitalized. The Review Medical Board, after examining him, placed him in category "BEE" permanent for the first disability and category "CEE" temporary for the second disability as mentioned therein. On his discharge from the hospital, the respondent was sent to JAK Rifles, Jabalpur. Though he applied for sheltered appointment, the same was not entertained. It was soon thereafter that he was invalided from service on being adjudged unsuitable, by the invaliding Medical Board which assessed his disability percentage as 20% qua the first disability; and 20% for the second disability; summing upto 40% for both the diseases. The Board thus recommended that he be invalided out of Army service which, in fact, was given effect to on 01.1.2002. He unsuccessfully appealed against this decision before the higher authorities. His claim for disability pension was also rejected on the ground that the disabilities detected in him were neither attributable to the Army service nor could get aggravated therefrom. Contending that the decision to board him out of service and the denial of disability pension otherwise payable to him under the relevant rules, was illegal and arbitrary, the respondent invoked the writ jurisdiction of the High Court of Jammu and Kashmir at Jammu for its remedial intervention.

6. The appellants in their reply apart from the preliminary objection to the maintainability of the assailment, in essence pleaded that having regard to the respondent's short service profile which demonstrated that for a major part thereof he had

remained hospitalized during the training and thereafter, the diseases diagnosed could neither to be attributable to the Army service nor comprehended to be aggravated thereby. While admitting that the respondent had joined the Army service on 06.04.1999 and that on the completion of the basic military training he was posted at 5, JAK Riffles on 04.03.2000, the Union of India set out in details, the particulars of the periods during which the respondent had remained hospitalized for treatment. According to it, the official record did reveal that he remained under medical treatment being hospitalized for the periods as hereunder:

S. No.	Period of Hospitalization	Name of the Hospital	Diagnosed disease
a.	24.03.2000 to 29.03.2000	Military Hospital, Amritsar	Generalised Tonic-Clonic Seizure
b.	30.03.2000 to 12.04.2000	Command Hospital (Western Command) Chandimandir Military Hospital, Amritsar	Generalised Tonic-Clonic Seizure
c.	12.12.2001 to5.02.2001	Military Hospital, Amritsar	Neurotic Depression Generalised Tonic-Clonic Seizure(old)
d.	20.3.2001 to 29.3.2001	Military Hospital, Jabalpur	Generalised Tonic-Clonic Seizure Neurotic Depression (ICD) 300 (Relapse)
e.	30.7.2001 to 31.8.2001	Military Hospital, Jabalpur	Generalised Tonic-Clonic Seizure Neurotic Depression (ICD) 300

That based on such state of health of the respondent, he was placed in low medical category "CEE" (temporary) w.e.f. 11.4.2000 to 10.10.2000 and thereafter in the low medical category "BEE" (permanent) w.e.f. 11.10.2000, was mentioned as well. It was stated further that the respondent was eventually lowered to the medical category S-3(T-24)

A "CEE" (temporary) w.e.f. 3.02.2001.

7. The Union authorities reiterated that this down grading of the medical category was in view of the diagnosed disease i.e. Generalised Tonic Clonic Seizure-345 and B Neurotic Depression (ICD)300. It was admitted that though the respondent was willing to continue in sheltered appointment, the same being not available qua his medical category, he was discharged from Army service on medical grounds under the relevant provisions of the Army Rules 1954 w.e.f. C 31.12.2001 and was finally struck off from the strength of the Army service w.e.f.1.1.2002.

8. Prior thereto, the Release Medical Board held on 30.8.2001 at Military Hospital, Jabalpur assessed the D disability Generalised Tonic Clonic Seizure-345 at 20% for 2 years, disability Neurotic Depression (ICD)300 at 11-14% for 2 years and the composite assessment of disability at 20%. The Union of India in its reply did categorically state that the Medical Board was of the opinion that the disabilities of the E respondent were neither attributable to nor aggravated by the Army service and were instead constitutional in nature. According to it, though monetary benefits as allowable under the relevant rules were released to the respondent, his claim for disability pension was rejected being impermissible.

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9. That the departmental appeals filed by the respondent had been rightly rejected as his constitutional disorder was neither attributable to nor aggravated by Army service, disentitling him thereto as per para 173 of the G Pension Regulations for the Army, 1961 (part-1) (for short hereinafter also referred to as "Regulations") was emphatically underlined. It was clarified as well that at the time of entry in service, it was not possible to conduct complete medical examination in order to detect dormant H diseases and that the tests undertaken were factually clinical

in nature to ascertain physical fitness. Thus according to the Union, any disease of genetic or hereditary origin was likely to go undetected at the time of recruitment. A

10. The learned Single Judge on an appraisal of the contemporaneous facts and the documents available on record alongwith Regulation 173 of the Regulations and paragraphs 2, 3, 4 and 7(b) of Appendix 11 thereto returned a finding that the invaliding Medical Board having failed to record reasons that the disease could not be detected on medical examination at the time of entry in service and that the same could not have aggravated during the course of his employment, its bare conclusion that those were constitutional in nature, was not in compliance of the Regulations. The learned Single Judge held that as the disability of the respondent was assessed at 20%, he was entitled to disability pension and as a consequence, quashed the orders to the contrary and directed the Union of India and its authorities to grant disability pension to him from the date he was discharged from service. Time limit of four months was also outlined for the completion of the exercise, failing which it was ordered that the respondent would be entitled to interest @ 7.5% p.a. B C D E

11. The Intra-Court appeal did also meet the same fate, the Division Bench having wholly endorsed the determination made by the learned Single Judge. It did further base its eventual decision on the judgment of that Court in LPA (SW) 212/2006, Union of India and Others vs. Ravinder Kumar. F

12. Mr. Patwalia, learned Addl. Solicitor General appearing on behalf of Union of India has insistently argued that the conclusions recorded by the High Court at both the levels are patently erroneous being dehors the recorded facts and the supporting documents, besides being incompatible with the relevant rules and regulations governing the issue G H

of disability pension payable to a member of the Army service on being boarded out therefrom on the ground of disability. Apart from contending that the decision in Union of India & Others vs Ravinder Kumar (Supra), on which the Division Bench of the High Court had placed reliance had been overturned, the learned Addl. Solicitor General maintained that as the respondent during his short tenure was mostly lodged in the hospital for his treatment for the disease for which he was invalided from service, it is patent that the same could not either be attributable to Army service or construed to have been aggravated thereby.

13. Mr. Patwalia has urged that the essential pre-requisites for grant of disability pension i.e. attributability of the respondent's disease to the Army service or aggravation thereof being non-existent in the case in hand, he was not entitled thereto and therefore, the finding to the contrary is repugnant to the relevant rules and regulations. Drawing the attention of this Court, inter alia, to paragraph 7(b) of Appendix II to the Regulations, the learned Addl. Solicitor General has maintained that the Medical Board having unequivocally opined that the respondent's diseases "Gerenalised Tonic Clonic Seizure and Neurotic Depression" were constitutional in nature and thus he was disentitled to disability pension, the impugned decision is clearly not sustainable in law and on facts. Without prejudice to this plea, Mr. Patwalia has urged that in case this finding of the Medical Board does not find favour with this Court for want of adequate reasons. It is a fit case for remand to it (Medical Board) for an appropriate speaking opinion. To buttress his contentions, he placed reliance on the following decisions of this Court:

(1) Secretary, Ministry of Defence & Others vs. A.V. Damodaran(Dead) through LRs. & Others -reported in

(2009)9 SCC 140 A

(2) Union of India & Others vs. Jujhar Singh -reported in (2011)7 SCC 735

(3) Dharamvir Singh vs. Union of India & Others -reported in (2013) 7 SCC 316 B

(4) Veer Pal Singh vs. Secretary, Ministry of Defence - reported in (2013) 8 SCC 83 and

(5) Civil Appeal No. 1837/2009 (d/o/d 23.5.2012). Union of India & Anr. Vs Ravinder Kumar C

14. Per Contra, Mr. Chib has assiduously asserted that as the concurrent determinations made successively by the High Court are based on a threadbare scrutiny of the D relevant facts and the provisions of the law involved, no interference therewith is warranted. Emphatically contending that the diseases diagnosed on the eve of the respondent's discharge from Army service had been acquired by him in the course of his tenure, short though, and was thus clearly E attributable thereto, the denial of disability pension to him was clearly illegal, high handed, arbitrary and discriminatory. According to Mr. Chib on a combined consideration of the relevant provisions of the Regulations and the Appendix II, containing "Entitlement Rules for Casualty Pensioners F Awards 1982" (hereinafter referred to as the "Rules") and the "Guide to Medical Officers (Military Pension), 2002", (hereinafter referred to as the "General Principles"), it being irrefutable that the respondent was entitled to disability pension thereunder, the High Court was perfectly justified G in affirming the same. Pleading in particular that the Medical Board had failed to record any reason whatsoever in support of its conclusion that either the disease detected or the disability consequent thereupon was neither attributable to H Army service nor aggravated thereby, he urged that the

A respondent could not have been denied disability pension on the vague remark that the said diseases were constitutional in nature. According to Mr. Chib, the Medical Board having failed, without any justification to record the reasons in support of its conclusion that the diseases were constitutional in nature, the B very basis of denial of disability pension to the respondent had been rendered non est. According to learned counsel, the relevant rules and regulations are to be essentially construed and interpreted liberally and in the realistic perspectives and not pedantically to facilitate effectuation of the purpose thereof. C Mr. Chib has drawn sustenance for his pleas from the decision of this Court in Civil Appeal No: 2904 of 2011 Union of India & Anr. Vs. Rajbir Singh & Ors. disposed of on 13.2.2015.

15. The pleaded assertions and the arguments based D thereon have received our due consideration. It is undisputed that soon after the respondent had joined the service on 6.4.1999 having been adjudged to be fully fit therefor, following a rigorous medical test, he fell ill and had to be hospitalized where he was diagnosed in due course, to E be afflicted by (1) "Generalised Tonic Clonic Seizure" and (2) "Neurotic Depression". It is a matter of record that the respondent had to be hospitalized on more than one occasion during his short tenure ranging from 8.4.1999 to 1.1.2002 F when he was invalided from service. Intermittently, as the chart of his medical treatment as set out in the reply of the appellants reveals, he had actively served in all, for a period of about one year. That he was thus mostly under treatment for the above two disabilities during his stint with the G appellants, is undeniable. Be that as it may, the sustainability of the denial of disability pension to him has to be essentially tested on the touch-stone of the compliance of the relevant Rules and Regulations. Apt, it would thus be to advert to the relevant provisions thereof at the threshold. Undoubtedly the H guiding course in this regard have been outlined in Regulation

173, Rule 5, 9 and 14 in particular of the Rules as well as paras 7,8 and 9 of the "General Principles". Expedient it would be thus to set out these provisions for ready reference. A

Regulation 173 which deals with primary conditions for the grant of pension reads as under: B

*"**173**. Primary conditions for the grant of disability pension; Unless otherwise specifically provided a disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by Army service and is assessed at 20 per cent or over. The question whether a disability is attributable to or aggravated by Army service shall be determined under the rule in Appendix II."* C D

Rule 5, 9 and 14 of the Entitlement Rules for Casualty Pensionary Awards, 1982 reads as under:

"5. The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions: E

Prior to and during service

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(a) 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.

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(b) In the event of his subsequently being discharged from service on medical grounds any determination in his health, which has taken place is due to service."

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A *"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."*

B *"14. Diseases.- In respect of diseases, the following rule will be observed -*

(a) Cases in which it is established that
C *conditions of Army 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
D *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 Army service. However, if medical opinion holds, for reasons to be stated, that*
E *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
F *service, it must also be established that the conditions of Army service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in Army service."*

(emphasis supplied)

G Chapter – II of the Guide to Medical Officers (Military Pension), 2002 which sets out the "Entitlement: General Principles", Paras, 7, 8 and 9 of the guidelines read as under:

H *"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 Army 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 categorisation 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 investigation e.g.

Congential defect of Spine, Spina bifida, Sacralistaion,

(b) Certain familial and hereditary diseases e.g. Haemophilia, Congential Syphilis, Haemoglobinopathy.

A *(c) Certain diseases of the heart and blood vessels e.g. Coronary Atherosclerosis, Rheumatic Fever.*

(d) Diseases which may be undetectable by physical examination on enrolment, unless adequate history is
B *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
C *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*
D *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.*
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In addition to any documentary evidence relative to the member's condition to entering the service and during service, the member must be carefully and closely questioned on the circumstances which led to the
F *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,*
G *aggravation or otherwise are supported by cogent reasons; the approving authority should also be satisfied that this question has been dealt with in such a way as to leave no reasonable doubt.*

H ***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 realised 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."

The Regulation, Rules and General Principles concededly are statutory in nature and thus uncompromisingly binding on the parties.

16. A conjoint reading of these provisions, unassailably brings to the fore, a statutory presumption that a member of the service governed thereby is presumed to have been in sound medical condition at the entry, except as to the physical disability as recorded at that point of time and that if he is subsequently discharged from service on the ground of disability, any deterioration in his health has to be construed to be attachable to his service. Not only the member

A in such an eventuality, could not be called upon to prove the conditions of his entitlements, he would instead be entitled to the any reasonable doubt with regard thereto. Regulation 173 in clear terms not only mandates that disability pension may be granted to an individual invalided from service on account
B of disability which is attributable to and aggravated by Army service and is assessed as 20%, it specifically provides as well that the question as to whether such disability is attributable to or aggravated by Army service is to be determined by the Rules. Rule 14(b) in specific terms enjoins that a disease which
C 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 his acceptance for Army service. The exception to this deduction is, only in the event of a medical opinion,
D supported by reasons to the effect that the disease could not have been detected on medical examination prior to acceptance for service whereupon it would be deemed that the disease had not arisen during service. The underlying ordainment of these salutary provisions is patently supportive
E of the inference that the disease/disability for which a member of a Army service is boarded out had been contracted by him during his tenure unless the same is displaced by cogent, coherent and persuasive reasons to be recorded by the Medical Board as contemplated. Absence of such a
F presumption in favour of attributability to the Army service or aggravation thereby, displaceable though, cannot be readily assumed unless endorsed by contemporaneous records and overwhelming reasons recorded by the invaliding Medical Board to the contrary. The acknowledged primacy extended
G to the opinion of the Medical Board, and its views and recommendations thus assuredly would have to be subject to the hallowed objectives of the relevant provisions of the Rules, Regulations and the General Principles laden with the affirmative presumption in favour of the member of the service.
H Not only the manifest statutory intendment and the avowed

purpose of these provisions cannot be disregarded, a realistic approach in deciphering the same has to be adopted. The incident of invaliding a member of the Army service entails curtailment of the normal tenure for his recorded disability to the extent of 20% or more and thus in our own comprehension, the disentitling requisites would have to be stringently construed. The decisive determinant as per the relevant provisions of the Regulations, Rules and the General Principles, is the attributability of the disability involved or aggravation thereof to Army service. It cannot be gainsaid, however, that there ought to be at least a casual and perceptible nexus between the two, but denial of disability pension would be approvable, only if the disability by no means can be related to the Army service. The burden to disprove the correlation of the disability with the Army service has been cast on the authorities by the Regulation, Rules and the General Principles and thus, any inchoate, casual, perfunctory or vague approach of the authorities would tantamount to non-conformance of the letter and spirit thereof, consequently invalidating the decision of denial. Though the causative factors for the disability have to be the rigor of the military conditions, no insensitive and unpragmatic analysis of the relevant facts is envisaged so as to render any of the imperatives in the Regulations, Rules and General Principles otiose or nugatory. To the contrary, a realistic, logical, rational and purposive scrutiny of the service and medical profile of the member concerned is peremptory to sub-serve the true purport and purpose of these provisions. To reiterate, invaliding a member from the service presupposes truncation of his normal service tenure thus adjudging him to be unsuitable therefor. The disability as well has to exceed a particular percentage. The bearing of the Army service as an aggravating factor qua even a dormant and elusive constitutional or genetic disability in all fact situations thus cannot be readily ruled out. Hence the predominant significance of the requirement of the reasons

A to be recorded by the Medical Board and the recommendations based thereon for boarding out a member from service. As a corollary, in absence of reasons to reinforce the opinion that the disability is not attributable to the Army service or is not aggravated thereby, denial of the B benefit of disability pension would be illegal and indefensible.

17. The medical opinion in the instant case, as the precursor of the invalidment of the respondent therefore C needs to be assayed in this presiding statutory backdrop.

18. The opinion of the attending doctor on 09.08.2001 prior to the assessment made by the Medical Board discloses that his was an old case of Neurotic Depression which came D to be noticed first in December, 2000 when he complained of tension, weakness and inability to do work. It recorded further that his psychiatric evaluation revealed depression, somatic preoccupation and depressive cognition. Though it noted that he was keen to serve further, his release was due to low E medical category. It was mentioned as well that there was no clear features of psychosis and sensorium as he ate and slept well. He was recommended to be fit to be released from service. A few excerpts of the proceedings of the Medical Board would be of some advantage and are extracted F hereinbelow.

"PART I

PERSONAL STATEMENT

G .....

2. Give particulars of any diseases, wounds or injuries from which you are suffering

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Illness, Wound, Injury	First Started		Where treated	Approximate dates and period treated
	Date	Place		
GENERALISED TONIC CLONIC SEIZURE-345	22.03.2000	AMRITSAR	MH AMRITSAR	22.03.2000 to 27.03.2000
NEUROTIC DEPRESSION-300	18.12.2000	CHANDIMANDIR	CH(WC) CHANDIMANDIR	12.12.2001

3. Did you suffer from any disability mentioned in question 2 or anything like it before joining the Armed Forces? If so give details and dates. -No"

Part III which deals with opinion of the Medical Board reads as under:

"PART III

OPINOIN OF THE MEDICAL BOARD

1. Did the disability/ies exist before entering serviced? – No.

2. (a) In respect of each disability the Medical Board on the evidence before it will express its views as to whether:-

(i) it is attributable to service during peace or under filed service conditions; or

(ii) It has been aggravated thereby and remains so: or

(iii) It is not connected with service.

The board should state fully the reasons in regard to each disability on which its opinion is based.

Disability	A	B	C
GENERALISED TONIC CLONIC SEIZURE - 345	NO	NO	YES
NEUROTIC DEPRESSION - 300	NO	NO	YES

(b) In respect of each disability shown as attributable under 'A', the Board should state fully, the specific condition and period in service which caused the disability 182 = NA

(c) In respect of each disability shown as aggravated under B the Board should state fully:-

(i) The specific condition and period in service which aggravated the disability.

182 = NA

(ii) Whether the effects of such aggravation still persist.

182 = NA

(iii) If the answer to (ii) is in the affirmative, whether effect of aggravation will persist for a material period.

182 = NA

(d) In the case of a disability under C, the Board should state what exactly in their opinion is the caused thereof.

182 = Both disabilities are constitutional in nature hence unconnected with Army service."

19. Eventually, the Board on the basis of the disabilities (1) "Generalised Tonic Clonic Seizure-345" and (2) "Neurotic

Depression-300" did compute the composite disability of the respondent to be 20%. A

20. Significantly, as would be evident from the above quoted extracts, the respondent had on being queried during his examination, denied to have been suffering from any of the disabilities at the time of joining the Army service. B

21. Though as per Clause 2(a) of Part III, the Medical Board was required to express its views on the aspects as to whether the disabilities; C

(1) were attributable to service during peace or under field service conditions;

(2) were aggravated thereby and remained to be so; D

(3) were not connected with service;

and was required to state reasons with regard to each of the disabilities of which its opinion was based, it merely recorded in the negative vis-a-vis the first two and in the affirmative qua the third and abruptly concluded that both the disabilities were constitutional in nature and hence unconnected with Army service. No reason whatsoever was cited by the Medical Board in support of this conclusion. On the contrary, its deduction that the disabilities were unrelated to the Army service was founded only on the fact that those were constitutional in nature and no other consideration or reason whatsoever. That the opinion of the Medical Board lacks in reasons, has been conceded too by the learned counsel for the appellants. E F G

22. Be that as it may, adverting inter alia to Rule 14(b) of the Rules, we are of the unhesitant opinion that reasons, that the diseases could not be detected on medical H

A examination prior to acceptance in service, ought to have been obligatorily recorded by the Medical Board sans whereof, the respondent would be entitled to the benefit of the statutory inference that the same had been contracted during service or have been aggravated thereby. There is no reason B forthcoming in the proceedings of the Medical Board, as to why his disabilities eventually adjudged to be constitutional or genetic in nature had escaped the notice of the authorities concerned at the time of his acceptance for Army service. On a comprehensive consideration of the Regulation, Rules and C the General Principles as applicable, the service profile of the respondent and the proceedings of the Medical Board, we are constrained to hold that he had been wrongly denied the benefit of disability pension. His tenure albeit short, during which he had to be frequently hospitalized does not irrefutably D rule out the possibility, in absence of any reason recorded by the Medical Board that the disability even assumed to be constitutional or genetic, had not been induced or aggravated by the arduous military conditions. The requirement of recording reasons is not contingent on the duration of the Army E service of the member thereof and is instead of peremptory nature, failing which the decision to board him out would be vitiated by an inexcusable infraction of the relevant statutory provisions. Having regard to the letter and spirit of the F Regulation, Rules and the General Principles, the prevailing presumption in favour of a member of the Army service boarded out on account of disability and the onus cast on the authorities to displace the same, we are of the unhesitant opinion that the denial of disability pension to the respondent in the facts and G circumstances of the case, have been repugnant to the relevant statutory provisions and thus cannot be sustained in law. The determination made by the High Court of Jammu and Kashmir at Jammu is thus upheld on its own merit.

H 23. The authorities cited at the Bar though underline

the primacy of the opinion of the Medical Board on the issue, however, do not relieve it of its statutory obligation to record reasons as required. Necessarily, the decisions turn on their own facts. With the provisions involved being common in view of the uniformity in the exposition thereof, a dilation of the adjudications is considered inessential.

24. Though noticeably, the decision rendered in LPA(SW) 212/2006; Union of India and Others vs. Ravinder Kumar, as referred to in the impugned judgment, was reversed by this Court in Civil Appeal No.1837/2009, we are of the respectful view that the same cannot be construed to be a ruling relating to the essentiality of recording of reasons by the Medical Board as mandated by the Regulations, Rules and the Guiding Principles. This decision thus is of no determinative relevance vis-a-vis the issues involved in the present appeal.

25. The last in the line of the rulings qua the dissensus has been pronounced in a batch of Civil Appeals led by Civil Appeal No. 2904 of 2011; Union of India & Others vs. Rajbir Singh in which this Court on an exhaustive and insightful exposition of the aforementioned statutory provisions had observed with reference as well to the enunciations in Dharamvir Singh vs. Union of India 2013(7) SCC 316, that the provision for payment of disability pension is a beneficial one and ought to be interpreted liberally so as to benefit those who have been boarded out from service, even if they have not completed their tenure. It was observed that there may indeed be cases where the disease is wholly unrelated to Army service but to deny disability pension, it must affirmatively be proved that the same had nothing to do with such service. It was underlined that the burden to establish disability would lie heavily upon the employer, for otherwise the Rules raise a presumption that the deterioration in the health of the member of the service was on account of Army

A service or had been aggravated by it. True to the import of the provisions, it was held that a soldier cannot be asked to prove that the disease was contracted by him on account of Army service or had been aggravated by the same and the presumption continues in his favour till it is proved by the B employer that the disease is neither attributable to nor aggravated by Army service. That to discharge this burden, a statement of reasons supporting the view of the employer is the essence of the rules which would continue to be the guiding canon in dealing with cases of disability pension was C emphatically stated. As we respectfully, subscribe to the views proclaimed on the issues involved in Dharamvir Singh (supra) and Rajbir Singh(supra) as alluded hereinabove, for the sake of brevity, we refrain from referring to the details. Suffice it to state that these decisions do authoritatively address the issues D seeking adjudication in the present appeals and endorse the view taken by us.

26. In the wake of the above, we hereby sustain the impugned judgment and order. The appeals are dismissed. E No costs.

Devika Gujral Appeals dismissed.