REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5922 OF 2012

Veer Pal Singh …Appellant

versus

Secretary, Ministry of Defence …Respondent

J U D G M E N T

G. S. Singhvi, J.

1. This appeal is directed against order dated 19.12.2011 of the Armed Forces Tribunal, Lucknow Bench (for short, 'the Tribunal') dismissing the application filed by the appellant for grant of leave to file appeal against orders dated 14.7.2011 and 16.9.2011 passed in Transferred Application No.1431/2010 and Review Application No.22/2011 respectively.

2. The appellant was enrolled in the Army (Corps of Signals) on 20.6.1972 in Medical Category "AYE". Before his enrolment, the appellant

was subjected to medical examination, the report (Annexure R-II) of which is reproduced below:

"PRIMARY MEDICAL EXAMINATION REPORT

1.	Service No.		14289930
2.	Name		VEER PAL SINGH
3.	Father's Name		SUKHBIR SINGH
4.	Date of birth		01.10.53
5.	Appellant Age		MA
6.	Service/Corps/Air Force		SIGNALS
7.	Permanent address		Village – Dhanor Tikkri Teh. & Dist. Sardhana, Meerut.
8.	Identification Marks		
	1.	A mole over middle of forehead	
	2.	A mole 3 cm from Lt angle of mouth	
9.	Relevant family history		NIL
10.	Past medical history, Specially of fits.		NIL
11.	EYES		
	a.	Distance Vision without Glass	R-6/9
		Without Glass	L-6/6
	Near Vision		NIL
	Any evidence of trachoma or its Complications		
12.	Hearing		
	a.	R Ear 600 cms L Ear	
	b.	Any evidence of otitls media	NAD
13.	Upper Limbs and	(a) Upper Limbs	NAD
	Locomoter System	(b) Locomotion	NAD
14.	Physical		

	Developments:		
	Height:	174 cm	
	Weight:	54 Kgs.	
15.	Chest Measurements		
	(a)	Full expiration	81 cms
	(b)	Range of expiration	5 cms
16.	Urine		
	(a)	Albumen	--
	(b)	Sugar	--
	(c)	Other abnormalities	
17.	Any evidence of skin Venereal disease(s)		NIL
18.	Cardio-vascular system		
	(a) Pulse		76 pm NAD
19.	Central Nervous system		NAD
20.	Abdomen:		NAD
21.	Liver:		NP
22.	Spleen:		NP
23.	Hernia:		NIL
24.	Teeth:		
	(a) No dental points		16/16 Healthy
25.	**Mental capacity and Emotional Stability**		
	(a) Speech		**NORMAL**
	i. Mental backwardness		**NIL**
	ii. Emotional Instability		**NIL**
26.	Slight Defects not sufficient of cause Rejection		NIL
27.	**Found fit in category**		**A (AYE)**

PLACE: MEERUT
Date: 22/5/72

Sd/-
[RK Gupta]
Captain AMC
Recruiting Medical
Officer"

3. After completion of training, the appellant was posted in 54 Infantry

Division Signals Regiment and his regular service commenced with effect from 21.2.1974. After about two years, he was admitted in Military Hospital, Secunderabad for the treatment of "INTESTINAL-COLIC". He was discharged from the hospital on 18.2.1976. Between March, 1976 to October, 1977 he was treated in different Army Hospitals at Pune, Secunderabad and Meerut. He was downgraded to Medical Category "CEE" (Temporary) for a period of six months with effect from 3.1.1977. His case was considered on 14.11.1977 by the Invaliding Medical Board held at Military Hospital, Meerut and on its recommendations, he was discharged from service. His claim for disability pension was rejected by Principal Controller of Defence Accounts (Pension), Allahabad on the ground that the disease, i.e., Schizophrenic Reaction, which was the cause of his discharge was not attributable to the military service.

4. The appellant challenged his discharge from military service and rejection of his claim for disability pension in Civil Misc. Writ Petition No.42946/1997 filed before the Allahabad High Court. He prayed that a fresh Medical Board be constituted to assess his disease and disability. The same was disposed of by the Allahabad High Court vide order dated 26.3.1998 and a direction was given to the competent authority to decide the appellant's representation. Thereafter, the Government of India, Ministry of Defence rejected the appellant's representation vide order dated 16.9.1998, paragraph 9 of which reads thus:

> "You have been diagnosed as a case of SCHIZOPHRENIC REACTION and not LUNATIC. As such your request to produce you before a medical board to examine you whether you are Lunatic or free from LUNACY does not arise. Therefore no resurvey medical board can be held in your case."

5. The appellant challenged the aforesaid order in Writ Petition No.40430/1999 and prayed that the respondents be directed to constitute a Review Medical Board to re-evaluate his disease.

6. The second writ petition filed by the appellant remained pending before the High Court for 13 years. On the establishment of Lucknow Bench of the Tribunal under the Armed Forces Tribunal Act, 2007 (for short, 'the Act'), the same was transferred to the Tribunal and was registered as Transferred Application No.1431/2010. The Tribunal examined the record of the Medical Board, referred to the judgment of this Court in Secretary, Ministry of Defence v. A.V. Damodaran (2009) 9 SCC 140 and dismissed the application by making the following observations:

> "In view of the aforesaid the Medical Board's opinion is to be accorded supremacy. We in exercise of our jurisdiction can not sit over the opinion expressed by the Medical Board which is an expert body. The disease that the applicant was suffering from has been found to be constitutional and not aggravated by military service. We can not hold anything contrary to the medical opinion."

7. The review application and the application filed by the appellant for grant of leave to appeal were dismissed by the Tribunal with a cryptic observation that the recommendations made by the Medical Board are binding

and the same cannot be subjected to judicial review.

8. The appellant, who appeared in person, referred to report dated 22.5.1972 of the Recruiting Medical Officer as also report dated 14.11.1977 of the Invaliding Medical Board and argued that in the absence of evidence about his disease, i.e., Schizophrenic Reaction at the time of enrolment, the opinion of the Psychiatrist, who examined him, could not be relied upon for recording a finding that his disease is constitutional and is not attributable to military service. The appellant submitted that mere irritability or quarrelsome nature cannot lead to an inference that he was suffering from Schizophrenic Reaction and the Tribunal committed grave error by declining his prayer for making a reference to the Review Medical Board. He also invited the Court's attention to the averments contained in paragraph 5 of the counter affidavit filed before this Court to show that the disease had developed after entering the service and argued that it should be treated as directly attributable to the military service.

9. Learned counsel for the respondent fairly stated that except the opinion of the Psychiatrist-Major (Mrs.) N. Lalitha Rao, no other evidence is available to support the opinion of the Medical Board that the appellant was suffering from Schizophrenic Reaction. He also conceded that at the time of enrolment, the appellant was not suffering from any disease but argued that the Court cannot sit in appeal over the opinion formed by the experts who constituted Invaliding Medical Board.

10. We have considered the respective arguments. For the sake of convenience, the relevant portions of the proceedings of the Invaliding Medical Board which constituted the foundation of the appellant's discharge from Army and denial of disability pension read as under:

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MEDICAL BOARD PROCEEDING INVALIDING ALL RANKS

Authority for Board AO 537/72	Place M.H. Meerut	Date 14 Nov. 77		
Name Veerpal Singh	Service No. 14289930	Rank/Rate SIG/MAN	Unit/Ship 676SIG (04 C1056 APO	Date birth 01.10. 53
Service	Army/Corps/Branch/Trade	Total Service	Total flying hours/Service afloat	
Permanent address: ViQ Dhanaura (Tikri) P.O. Dhanaura The. Sardhana Dist. Meerut, U.P.		Identification marks: - i Mole over middle, of forehead. ii. Mole over the It. cheek		

Field/Operational/Overseas Service: Giving dates and place

From	To	Place	From	To	Place
		NIL			

PART – I

PERSONAL STATEMENT

(The questions should be answered in the individual's own words. This statement will be checked from official records as

far as possible)

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1. Give particulars of previous service in ARMY/NAVY/AIR/FORCE and state whether you were invalided out of Service.
2. Give particulars of any diseases, wounds or injuries from which you are suffering:-

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Illness, wound, injury	First Stated			
	Date	Place		
Shizoph Renic Reactio n (295)	Mar 76	Secunderbad	MH Secunde -rabad	25.3.76 to 12.5.76
			CHSE Pune	13.5.76 to 5.9.76
				23.11.7 6 to 5.1.77
			MH Secunde rabad	5.7.77 to 30.8.77
			MH Meerut	14.10.7 7 to DATE

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.

NIL

4. Give details of any incidents during your service which you think caused or made your disability worse?

NIL

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5. In case of wound or injury, state now they happened and

whether or not (a) Medical Board or Court of Inquiry was held, (b) Injury Report was submitted.

N.A.

6. Any other information you wish to give about your health.

NIL

I certify that I have answered as fully as possible all the questions about my service and personal history and that the information give is true to the best of my knowledge.

Witness : Signature

Sd/- Sd/-

14289930

(In case of illiterate persons thumb and fingers impressions of left hand will be taken here)

PART - II

STATEMENT OF CASE

(Not to be communicated to the Individual)

Disabilities	Date of origin	Place and unit where serving at the time
SCHIZOPHRENIC Reaction - 295	Mar. 76	676 SIG Coy C/056APO

2. Clinical details

a. Give the salient facts of:-
   i. Personal and relevant family history.
   ii. Specialist report; and
   iii. Treatment
b. State present condition in details.
c. In this statement and in answering questions in Part-Ill the Board will differentiae carefully between the Individuals statement and the evidence recorded in the medical documents.

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Sd/- Lt. Col.
Chief Record Officer
Signals Records

SUMMARY OF THE CASE

NO. 14289930	Rank:	Sigman:
Name: Veer Pal Singh	Time:	24 years
Unit:	676 Signal Coy C/o 56 APO	
Diagnosis:	SCHIZOPHRENIC reaction (295)	

==========

A case of Schizophrenic Reaction admitted for review after sick leave from MH Secunderabad. At present he has no complaints.

Perusal of the documents show that this patient was treated earlier at the following hospitals for the same illness:-

1. MH Secunderabad - 25.3.76 to 12.5.76
2. From to CH (SC) Pune - 13.5.76 to 5.9.76 sent on sick leave
3. CH (SC) Pune - Nov. 76 Cat CEE Temp w.e.f. 3.1.77.
4. MH Secunderabad - 05.7.77 to 30.8.77 sick leave.

Observation in the Ward:-
Showed him to be irritable, impulsive quarrel some with a tendency to suspect the staff and other patients.

Past Illness:
Nil significant

Family History
Belong to U.P. Father - farmer - healthy. Mother healthy. He has three brothers. No history of mental illness to the family.
Personal History:
Youngest, Studied up to BA. Unmarried Gives history of heterosexual experience. Smokes but does not rink.
Service:
6 years, Nil Punishment

On Exam:
GC fair, TPR - Normal, Lungs, Heart and Abdomen
-NAD ,

Treatment:
Antipaychotic drugs-
-Improvement - Not maintained.

OPINION OF MAJOR (MRS) N LALITHA RAO, CLASSIFIED SPECIAL BT (PSYCHIATRY) MH MEERUT DATED 09. NOV. 77.

A case of Schizophrenic Reaction (ICD 295) in cat 'CEE' Temp w.e.f. 3.1.77 was admitted and treated at MH Secunderabad with self inflicted.

Injuries, in Jul 77, while in the hospital there, he had become quarrels irritable and impulsive with treatment he improved when he was sent in six weeks sick leave. Review as admission, now shows him to be still irritable and argumentative with persecutory delusions and suspicious. Residual features of psychosis persist

- Therefore he is recommended invalidment from service.

Recommended Cat 'CEE'

Sd/- x x x x
[N LALITHA RAO]
MAJOR, AMC
PSYCHIATRIST

I view of the above, the individual is brought before Invaliding Medical Board.

[N LALITHA RAO]
MAJOR, AMC

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PART – III
OPINION OF THE MEDICAL BOARD
(Not to be communicated to the Individual)

Note: Clear and decisive answers should be filed in by the Board, Expressions such as 'night', 'may', probably', should be avoided.

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1. Did the disability/ies exist before entering service.

NO

2. 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 field 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
SCHIZOP-HRENIC REACTION	NO	NO	NO

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.

N.A.

c. In respect of each disability shown as attributable under A, the Board should state fully:-

N.A.

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

N.A.

ii. Whether the effects of such aggravation still persist.

N.A.

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

N.A.

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

The disease is constitutional and is unconnected with service.

3. a. Was the disability, attributable to the individual's own negligence or misconduct? If so, in what way?

NO

b. If not attributable, was it aggravated by negligence or misconduct? If so, in what way

and to what percentage of the total disablement?

N.A.

c. Has the individual refused to undergo operation/treatment? If so, individual's reasons will be recorded.

N.A.

NOTE: In case of refusal of operation/treatment a certificate from the individual will be attached.

d. Has the effect of refusal been explained to and fully understood by him/her, viz., a reduction in, or the entire withholding of, any disability pension to which he/she might otherwise be entitled?

N.A.

e. Do the Medical Board consider it probable that the operation/treatment would have cured the disability or reduced its percentage?

N.A.

f. If the reply to (e) is in affirmative, what is the probable percentage to which the disablement could be reduced .by operation/treatment?

N.A.

g. Do the Medical Board consider the operation to be server and dangerous to life?

N.A.

h. Do the Medical Board consider the individual's refusal to submit to operation/treatment reasonable? Give reasons in support of the opinion specifying he operation/treatment recommended.

N.A.

4. What is present degree of disablement as compared with a healthy person of the same age and sex? (Percentage will be expressed as Nil or as follows:-

1-5%, 6-19%, 11-14%, 15-90% and thereafter in multiples of ten from 10% to 100%.

Disability (as numbered in question I, part II)	Percentage of disablement	Probable duration of this degree of disablement	Composite assessment (all disabilities)

SCHIZOPHR-ENIC REACTION (295)	30% THIRTY PERCENT	2 YEARS	30% THIRTY PERCENT

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CERTIFICATE

No.14289930 Rank Sigman Name VEER PAL SINGH

The disability will not interfere with the performance of normal/sabentuary suitable civil employment.

Disability SCHIZOPHERNIC REACTION

Sd/-
[OM PRAKASH]
Lt. Col. AMC
President Medical Board

Dated: 14 Nov. 77"

11. Although, the Courts are extremely loath to interfere with the opinion of the experts, there is nothing like exclusion of judicial review of the decision taken on the basis of such opinion. What needs to be emphasized is that the opinion of the experts deserves respect and not worship and the Courts and other judicial / quasi-judicial forums entrusted with the task of deciding the disputes relating to premature release / discharge from the Army cannot, in each and every case, refuse to examine the record of the Medical Board for determining whether or not the conclusion reached by it is legally sustainable.

12. A recapitulation of the facts shows that at the time of enrolment in the Army, the appellant was subjected to medical examination and Recruiting Medical Officer found that he was fit in all respects. Item 25 of the certificate

issued by the Recruiting Medical Officer is quite significant. Therein it is mentioned that speech of the appellant is normal and there is no evidence of mental backwardness or emotional instability. It is, thus, evident that the doctor who examined the appellant on 22.5.1972 did not find any disease or abnormality in the behaviour of the appellant. When the Psychiatrist - Dr. (Mrs.) Lalitha Rao examined the appellant, she noted he was quarrelsome, irritable and impulsive but he had improved with the treatment. The Invaliding Medical Board simply endorsed the observation made by Dr. Rao that it was a case of "Schizophrenic Reaction".

13. In Merriam-Webster Dictionary "Schizophrenia" has been described as a psychotic disorder characterized by loss of contact with the environment, by noticeable deterioration in the level of functioning in everyday life, and by disintegration of personality expressed as disorder of feeling, thought (as in delusions), perception (as in hallucinations), and behavior – called also dementia praecox; Schizophrenia is a chronic, severe, and disabling brain disorder that has affected people throughout history.

14. National Institute of Mental Health, USA has described "Schizophrenia" in the following words:

> "Schizophrenia is a chronic, severe, and disabling brain disorder that has affected people throughout history. People with the disorder may hear voices other people don't hear. They may believe other people are reading their minds, controlling their thoughts, or plotting to harm them. This can terrify people with the illness and make them withdrawn or extremely agitated.

> People with schizophrenia may not make sense when they talk. They may sit for hours without moving or talking. Sometimes people with schizophrenia seem perfectly fine until they talk about what they are really thinking. Families and society are affected by schizophrenia too. Many people with schizophrenia have difficulty holding a job or caring for themselves, so they rely on others for help. Treatment helps relieve many symptoms of schizophrenia, but most people who have the disorder cope with symptoms throughout their lives. However, many people with schizophrenia can lead rewarding and meaningful lives in their communities."

Some of the symptoms of schizophrenia are:

Positive symptoms

Positive symptoms are psychotic behaviors not seen in healthy people. People with positive symptoms often "lose touch" with reality. These symptoms can come and go. Sometimes they are severe and at other times hardly noticeable, depending on whether the individual is receiving treatment. They include the following:

Hallucinations – "Voices" are the most common type of hallucination in schizophrenia. Hallucinations include seeing people or objects that are not there, smelling odors that no one else detects, and feeling things like invisible fingers touching their bodies when no one is near.

Delusions - The person believes delusions even after other people prove that the beliefs are not true or logical. They may also believe that people on television are directing special messages to them, or that radio stations are

broadcasting their thoughts aloud to others. Sometimes they believe they are someone else, such as a famous historical figure. They may have paranoid delusions and believe that others are trying to harm them.

Thought disorders - are unusual or dysfunctional ways of thinking. One form of thought disorder is called "disorganized thinking". This is when a person has trouble organizing his or her thoughts or connecting them logically, a person with a thought disorder might make up meaningless words, or "neologisms".

Movement disorders - may appear as agitated body movements. A person with a movement disorder may repeat certain motions over and over. In the other extreme, a person may become catatonic. Catatonia is a state in which a person does not move and does not respond to others. Catatonia is rare today, but it was more common when treatment for schizophrenia was not available.

Negative symptoms

Negative symptoms are associated with disruptions to normal emotions and behaviors. These symptoms are harder to recognize as part of the disorder and can be mistaken for depression or other conditions. These symptoms include the following:

- "Flat affect" (a person's face does not move or he or she talks in a dull or monotonous voice)
- Lack of pleasure in everyday life

- Lack of ability to begin and sustain planned activities
- Speaking little, even when forced to interact.

15. In Modi's Medical Jurisprudence and Toxicology (24th Edn. 2011) the following varieties of Schizophrenia have been noticed:

Simple Schizophrenia – the illness begins in early adolescence. There is a gradual loss of interest in the outside world, from which the person withdraws. There is an all round impairment of mental faculties and he emotionally becomes flat and apathetic. He loses interest in his best friends who are few in number and gives up his hobbies. He has conflicts about sex, particularly masturbation. He loses all ambition and drifts along in life, swelling the rank of chronically unemployed. Complete disintegration of personality does not occur, but when it does, it occurs after a number of years.

Hebephrenia- hebephrenia occurs at an earlier age than either the katatonic or the paranoid variety. Disordered thinking is the outstanding characteristic of this kind of schizophrenia. There is great incoherence of thought, periods of wild excitement occur and there are illusions and hallucinations. Delusions which are bizarre in nature, are frequently present. Often, there is impulsive and senseless conduct as though in response to their hallucination or delusions. Ultimately the whole personality may completely disintegrate.

Katatonia - katatonia is the condition in which the period of excitement

alternates with that of katatonic stupor. The patient is in a state of wild excitement, is destructive, violent and abusive. He may impulsively assault anyone without the slightest provocation. Homicidal or suicidal attempts may be made. Auditory hallucinations frequently occur, which may be responsible for their violent behaviour. Sometimes, they destroy themselves because they hear God' voice commanding them to destroy themselves. This phase may last from a few hours to a few days or weeks, followed by stage of stupor.

The katatonic stupor begins with a lack of interest, lack of concentration and general apathy. He is negative, refuses to take food or medicines and to carry out his daily routine activities like brushing his teeth, taking bath or change his clothes…. The activities are so very limited that he may confine himself in one place and assume one posture however uncomfortable, for hours together without getting fatigued. His face is expressionless and his gaze vacant…. They may understand clearly everything that is going on around them, and sometime without warning and without any apparent cause, they suddenly attack any person standing nearby.

Paranoid Schizophrenia, Paranoia and Paraphrenia - Paranoia is now regarded as a mild form of paranoid schizophrenia. The main characteristic of this illness is a well elaborated delusional system in a personality that is otherwise well preserved. The delusions are of a persecutory type. The true nature of the illness may go unrecognized for a long time because the personality is well preserved, and some of these paranoiacs may pass off as

social reformers or founders of queer pseudo-religious sects. The classical picture is rare and generally takes a chronic course.

Paranoid schizophrenia, in the vast majority of cases, starts in the fourth decade and develops insidiously. Suspiciousness is the characteristic symptom of the early stage. Ideas of reference occur, which gradually develop into delusions of persecution. Auditory hallucinations follow which in the beginning, start as sounds or noises in the ears, but become fixed and definite, to lead the patient to believe that he is persecuted by some unknown person or some superhuman agency. He believes that his food is being poisoned, some noxious gases are blown into his room and people are plotting against him to ruin him. Disturbances of general sensation give rise to hallucinations, which are attributed to the effects of hypnotism, electricity, wireless telegraphy or atomic agencies. The patient gets very irritated and excited owing to these painful and disagreeable hallucinations and delusions.

Since so many people are against him and are interested in his ruin, he comes to believe that he must be a very important man. The nature of delusions thus, may change from persecutory to grandiose type. He entertains delusions of grandeur, power and wealth, and generally conducts himself in a haughty and overbearing manner. The patient usually retains his money and orientation and does not show signs of insanity, until the conversation is directed to the particular type of delusion from which he is suffering. When delusions affect his behaviour, he is often a source of danger to himself and others.

The name paraphrenia has been given to those suffering from paranoid psychosis who, in spite of various hallucinations and more or less systemized delusions, retain their personality in a relatively intact state. Generally, paraphrenia begins later in life than the other paranoid psychosis.

Schizo Affective Psychosis - Schizo affective psychosis is an atypical type of schizophrenia, in which there are moods or affect disturbances unlike other varieties of schizophrenia, where there is blunting or flattening of affect. Attacks of elation or depression, unmotivated rage, anxiety and panic occur in this form of schizophrenic illness.

Pseudo-Neurotic Schizophrenia - schizophrenia may start with overwhelmingly neurotic symptoms, which are so prominent that in the early stages, it may be diagnosed as neurosis. When schizophrenia begins in an obsessional personality, it may for a long time remain disguised as an apparently obsessional illness.

16. In F.C.Redlich and Daniel X. Freedman in their book titled "The Theory and Practice of Psychiatry" (1966 Edn.) observed:

> "*Some schizophrenic reactions, which we call psychoses, may be relatively mild and transient; others may not interfere too seriously with many aspects of everyday living...*"(p. 252)
>
> Are the characteristic remissions and relapses expressions of endogenous processes, or are they responses to psychosocial variables, or both? *Some patients recover, apparently completely, when such recovery occurs without treatment we speak of spontaneous remission*. The term need not imply an

> independent endogenous process; it is just as likely that the spontaneous remission is a response to non-deliberate but nonetheless favourable psychosocial stimuli other than specific therapeutic activity . . . . (p. 465)
>
> (emphasis supplied)

17. Unfortunately, the Tribunal did not even bother to look into the contents of the certificate issued by the Invalidating Medical Board and mechanically observed that it cannot sit in appeal over the opinion of the Medical Board. If the learned members of the Tribunal had taken pains to study the standard medical dictionaries and medical literature like "The Theory and Practice of Psychiatry" by F.C. Redlich and Daniel X. Freedman, and Modi's Medical Jurisprudence and Toxicology, then they would have definitely found that the observation made by Dr. Lalitha Rao was substantially incompatible with the existing literature on the subject and the conclusion recorded by the Invaliding Medical Board that it was a case of Schizophrenic Reaction was not well founded and required a review in the context of the observation made by Dr. Lalitha Rao herself that with the treatment the appellant had improved. In our considered view, having regard to the peculiar facts of this case, the Tribunal should have ordered constitution of Review Medical Board for re-examination of the appellant.

18. In Controller of Defence Accounts (Pension) v. S. Balachandran Nair (2005) 13 SCC 128 on which reliance has been placed by the Tribunal, this Court referred to Regulations 173 and 423 of the Pension Regulations and

held that the definite opinion formed by the Medical Board that the disease suffered by the respondent was constitutional and was not attributable to Military Service was binding and the High Court was not justified in directing payment of disability pension to the respondent. The same view was reiterated in Ministry of Defence v. A.V. Damodaran (2009) 9 SCC 140. However, in neither of those cases, this Court was called upon to consider a situation where the Medical Board had entirely relied upon an inchoate opinion expressed by the Psychiatrist and no effort was made to consider the improvement made in the degree of illness after the treatment.

19. As a corollary to the above discussion, we hold that the impugned order as also orders dated 14.7.2011 and 16.9.2011 passed by the Tribunal are legally unsustainable.

20. In the result, the appeal is allowed. The orders passed by the Tribunal are set aside and the respondents are directed to refer the case to Review Medical Board for reassessing the medical condition of the appellant and find out whether at the time of discharge from service he was suffering from a disease which made him unfit to continue in service and whether he would be entitled to disability pension.

.....J.
(G.S. SINGHVI)

.....J
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(RANJANA PRAKASH DESAI)

.....J

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(SHARAD ARVIND BOBDE)

New Delhi
July 02, 2013.