

**Court No. 1**  
**Reserved Judgment**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW  
ORIGINAL APPLICATION NO. 626 of 2017**

Tuesday, this the 08<sup>th</sup> day of May, 2018

**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)  
Hon’ble Air Marshal BBP Sinha, Member (A)”**

Rajbir Singh Bhadouria (No 13696307-X Ex Naik), Son of Shri Ranbir Singh Bhadouria, Resident of Village : Parsona, Post : Kachong Ra, District - Bhind (MP)- 477001. At present residing C/o Prem Singh Yadav (Retired Fauji), Vill-Nagala Bhara (Umer Sesha) District - Etawa (U.P.)

**....Applicant**

Ld. Counsel for the Applicant : **Shri R.Chandra, Advocate.**

Verses

1. Union of India, through, the Secretary, Ministry of Defence, Government of India, New Delhi - 11.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army) DHQ Post Office New Delhi - 11
3. The Officer-in-Charge Records, The Brigade of Guards, Kamptee (MP).
4. The Chief Controller Defence Accounts, Draupadi Ghat, Allahabad-14 (UP).

**.....Respondents**

Ld. Counsel for the Respondents : **Dr. Shailendra Sharma Atal, Advocate, Sr. Central Govt Standing Counsel.**

Assisted by : Maj Salen Xaxa, OIC Legal Cell.

**ORDER****“Per Hon’ble Air Marshal BBP Sinha, Member (A)”**

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs.

*“(I) The Hon’ble Tribunal may be pleased to direct the respondents to grant disability pension with effect from 01.11.2015 alongwith its arrears and interest thereon at the rate of 18% per annum. Further disability pension be rounded off @ 50%.”*

2. The facts of the case in nutshell are that the Applicant was enrolled in the Indian Army on 05.12.1995. In the course of service, the Applicant was granted Annual Leave for the period from 14 Jan 2014 to 13 Feb 2014. While the applicant was on leave, he suffered accident on 05.02.2014 and sustained injury in his knee. He was admitted to Military Hospital Gwalior and thereafter was transferred to Base Hospital Delhi Cantt. A court of inquiry was convened by Commanding officer, 3 Guards and the injury sustained by the applicant was adjudged as not attributable to military service. The injury sustained by the applicant was diagnosed as “OPEN FRACTURE DISCLOATION (RT) KNEE (OPTD) WITH MULTI LIGAMENT INJURY (RT) KNEE”. As a result of injury,

he was placed in low medical category with effect from 19.12.2014. On account of being in low medical category, the Applicant was ultimately discharged on 31.10.2015 under Rule 13 (3) III (iii) (a) (i) of Army Rules, 1954 on the recommendation of Release medical Board which was held at Military Hospital Kamptee. He was struck off the strength of the Army with effect from 01.11.2015. The case of the Applicant with regard to disability was adjudicated by the competent authority which opined the disability as neither attributable to nor aggravated by military service as the injury sustained by the Applicant had occurred when he was on annual leave. Be that as it may, the case of the Applicant was processed for onward transmission to PCDA (P) Allahabad for grant of disability pension which rejected the claim for disability element of disability pension vide communication dated 11.12.2015. The appeal was preferred by the Applicant against the decision of the PCDA (P) Allahabad. The applicant served a legal notice dated 25.09.2017 demanding to apprise about the fate of the appeal preferred by him. It is in this backdrop that the present O.A has come to be filed.

3. We have heard learned counsel for the Applicant as also learned counsel for the respondents. We have also gone through the material facts on record.

4. The learned counsel for the Applicant drew our attention to Annexure IV to the counter affidavit which is the proceedings of the Release Medical Board. The learned counsel has drawn our pointed attention to the cutting and overwriting over the opinion of the RSMB which mentions that the injury sustained by the applicant was aggravated due to stress and strain of military service.

5. On being confronted, the learned counsel for the respondents tried to explain that the higher forum dissented from the opinion of the RMB and the opinion of the RMB was substituted by the opinion of the higher forum which mentioned that the disability was not aggravated by military service. It was noticed that after scoring the opinion of RMB on aggravation, a line was annotated justifying the same on grounds of CoI recommending the disability to be not attributable to military service.

6. On the other hand learned counsel for the Applicant submitted that after sustaining the injury in an accident on 05.02.2014 the applicant has served the Army for more than one year and 08 months. Hence in the circumstances, the Release Medical Board was fully justified in opining the injury as aggravated by military service.

7. The only ground that appears on record in inking out the opinion of the Release Medical Board is that the Court of

Inquiry held in the matter on 18.02.2015 had found the injury as not attributable to military service. No doubt, in the instant case, court of inquiry has held that the accident of 05.02.2014 is not attributable being on Annual Leave. However the CoI has not commented at all on aggravation factor. In any case CoI is not competent to comment on aggravation because this being a medical related issue has to be adjudicated by the medical faternity & not the CoI. The Court of inquiry rightly converged to the opinion that the injury sustained was not attributable to military service as it had occurred during annual leave. It is on record that the applicant had served the Army for more than a year and 08 months and in the circumstances, the Release Medical Board had rightly opined that the injury was aggravated by military service due to stress and strain of military service.

8. It is not comprehensible how the higher forum came to such an opinion on the basis of the proceedings of Court of Inquiry whose mandate is limited only to the aspect of attributability of injury. The fact that the injury of the applicant could have been aggravated in the subsequent period of 01 yr 08 months during which the applicant has served in the Army cannot be ruled out and only RMB can rightly comment on it. Before discharge of the Applicant on 31.10.2015, the Release Medical Board was held at Military Hospital Kamptee on 06.08.2015 and on 01.11.2015 the

applicant was struck off the strength of the Army. The court of inquiry was held to enquire & assign attributability, if any for an accident which occurred on 05.02.2014. Thus the inference by the so-called higher forum was not justified in sitting over the opinion of the Release Medical Board. That too only on the basis of report of Court of enquiry which was held only for a limited purpose. If the applicant would have been invalided out of service immediately after returning from his annual leave than the position would have been different.

9. In the instant case, the disability was assessed as 30% for life. In the facts and circumstances discussed above, we are of the considered opinion that which ever higher agency or appointment which overruled the original recommendation of the RMB has not been able to give a convincing & logical reason to do so. The reference of recommendation of CoI for original injury is not relevant to determine aggravation. Thus considering all issues we give the benefit of doubt to the Applicant and consider his disability as aggravated by military service.

10. In so far as the relief of rounding off is concerned, it is no more res integra. On the issue of rounding off of disability pension, we are of the opinion that the case is squarely covered by the decision of ***K.J.S. Buttar vs. Union of India***

**and Others**, reported in (2011) 11 SCC 429 and Review Petition (C) No. 2688 of 2013 in Civil appeal No. 5591/2006, **U.O.I. & Anr vs. K.J.S. Buttar** and **Union of India vs. Ram Avtar & Others**, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014.

11. As a result of foregoing discussion, the O.A is allowed. The disability of the Applicant is held to be aggravated by military service and he is held entitled to disability pension with effect from the date of discharge from the service which is 31.10.2015. The disability of the Applicant which was initially assessed as 30% for life is rounded off to 50% for life. The Applicant shall be paid arrears of disability pension from the date of discharge within four months. For default, the applicant shall be entitled to interest at the rate of 9% on the arrears aforesaid.

12. No order as to costs.

**(Air Marshal BBP Sinha) (Justice S.V.S. Rathore)**  
**Member (A) Member (J)**

Dated: May, 08 , 2018  
MH/-