

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**COURT NO. 1**
(List A)**Original Application No. 17 of 2015****Wednesday, this the 28th day of June, 2017****“Hon’ble Mr. Justice D.P.Singh, Judicial Member**
Hon’ble Air Marshal Anil Chopra, Administrative Member”

Ex-Sepoy Shevendra Kumar Chauhan (Army No. 10406360-X),
114 Infantry Battalion (TA) JAT, son of Shri Sukhpal Singh,
resident of village Shajpura, post Shajpura, district Aligarh, U.P-
202141

... Applicant**Versus**

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi, 110011.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi, 110011
3. Additional Directorate General, Territorial Army, General Staff Branch, Integrated Headquarter of Ministry of Defence (Army), ‘L’ Block, Church Road, New Delhi – 110001.
4. Officer-in-Charge, JAT Regiment Records, JAT Regimental Centre, Bareilly.
5. Commanding Officer, 114 Infantry Battalion (TA) JAT, C/o 56 APO.

... Respondents**Ld. Counsel
for the Applicant****- Shri P.N. Chaturvedi,
Advocate****Ld. Counsel
for the Respondents****- Dr. Shailendra Sharma Atal
Assisted by Maj Soma John
OIC, Legal Cell.**

Order (Oral)

1. Heard Shri P.N. Chaturvedi, Ld. Counsel for the applicant and Dr. Shailendra Sharma Atal, Ld. Counsel for the respondents assisted by Maj Soma John, OIC Legal Cell.
2. This petition under Section 14 of the Armed Forces Tribunal Act, 2007 has been preferred being aggrieved with the impugned order of discharge dated 13.11.2005.
3. Admittedly, the applicant was enrolled as soldier in the Territorial Army on 13.03.2003. After successful training he was posted to 114 Inf Bn (TA) JAT. While on annual leave the applicant sustained POSTERIOR DISLOCATION RT KNEE WITH TEAR OF JPCL UNDISPLACED TIBIAL PLATE A4 FRACTURE (RT) on 03.08.2004 and admitted to Military Hospital, Mathura. Thereafter he was subjected to medical Initially he was placed in low medical category A3 for a period of 24 weeks and later on he was placed in low medical category A2 (permanent) for a period of two years. The applicant was discharged from service by impugned order dated 13.11.2005. Being aggrieved the application preferred O.A. No. 3 of 2009 and raised the pleading that he was discharged before the re-scheduled re-categorization medical board on 10.04.2007. The relief claimed by the applicant in O.A. No. 3 of 2009 is reproduced as under:-

“(a) To direct the respondents to constitute fresh Medical Board for subjecting the applicant to medical re-categorization and consider the applicant for re-induction into service. And/or

(b) To provide any other relief as this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case.”

4. It appears that later on the applicant again filed O.A. No. 62 being aggrieved with the impugned order dated 07.04.2010 passed by respondents. In the subsequent O.A. filed by the applicant with regard to same controversy a Bench of this Tribunal by order dated 01.09.2010 while deciding the controversy in question directed to convene fresh medical board with rider that in case the Invaliding Medical Board recommends for invaliding the applicant, then it shall be open to the respondents to discharge the applicant. Relevant portion of the order dated 01.09.2010 is reproduced as under:-

“4. Shri K.D. Nag submitted that disability of the petitioner may be continuing and this should not come in the way of respondents in holding and Invaliding Medical Board, we make it clear that in case the petitioner is subjected to an Invaliding Medical Board and recommendation for invaliding the petitioner is made this order will not come in the way of the Respondents in discharging the petitioner. However such discharge will not affect benefits under this order.”

5. It appears that later on the applicant again preferred O.A. No. 62 of 2010 being aggrieved with the impugned order dated 07.10.2010 which was decided by the Tribunal vide order dated 13.03.2013. A Review Application was also preferred by the Union of India against order dated 13.03.2013 (Supra). While deciding OA. No. 62 of 2010, the Tribunal made the following observation, to quote:-

“Applicant was discharged before scheduled re-categorization which was to be held on 10.04.2007. We have already observed that the applicant could not have been discharged merely because the applicant had given willingness for his release based on Release Medical Board opinion and it could not be said that he has no case to challenge his discharge. He has simply sought relief that after quashing order dated 7-4-2010

(Annexure A1 to OA) the respondent no. 2 may be directed to constitute fresh Medical Board subjecting the applicant to re-categorization and to consider him for re-enrollment into service of the Territory Army based upon the finding and recommendation of said Medical Board. He has sought no other relief.

Considering relief claimed by the applicant and entire back ground as pleaded we quash the impugned order dated 7-4-2010 (Annexure A1 to O.A.) and direct the respondent no. 2 to constitute fresh Medical Board for subjecting the applicant to medical re-categorization under intimation to the applicant to appear before the Medical Board on schedule date and further direct that the applicant may be considered for re-enrollment into services of Territory Army based on the finding and recommendation of said Medical Board. O.A. is allowed and disposed of accordingly. No order as to costs. We hope the exercise shall be done as soon as possible preferably within 4 months from the date certified copy of this order is made available to the learned counsel for the respondents.”

6. A perusal of the aforesaid order indicate that the applicant could not have been discharged merely on the willingness for release based on Release Medical Board and that is why he simply sought relief for quashing the order dated 07.04.2010 with the prayer that the respondents may be directed to constitute fresh medical board subjecting the applicant to medical re-categorization and to consider him for re-enrolment into service of the Territorial Army. Considering the pleading and material on record the Tribunal quashed order dated 07.04.2010 and directed to constitute fresh medical board for subjecting the applicant to medical re-categorization under intimation to the applicant to appear before the medical board on scheduled date.

6. In pursuance of order passed by Tribunal medical re-categorization board was constituted which expressed opinion vide its report dated 08.10.2013 that the applicant is invalid for re-

enrolment observing that the applicant is suffering from POSTERIOR DISLOCATION RT KNEE WITH TEAR OF JPCL UNDISPLACED TIBIAL PLATE A4 FRACTURE (RT).

7. It appears that on account of delay on the part of the respondents and for compliance of the order of the Tribunal, the applicant preferred Execution Application No. 100 of 2013 which was disposed of with following observation, to quote:-

“The case has been called out in the revised list. Learned counsel for the applicant is not present. Rather, learned counsel for the respondents, Ms. Deepti Prasad Bajpai, has filed an application, which is on record, stating therein that the judgment and order dated 13.03.2013 has been complied with. As such, no further order shall be needed on this application.

Accordingly, this Execution Application No. 100 of 2013 stands disposed of.”

8. Thus, on the face of record, the order passed by the Tribunal has been complied with and the applicant has been held to be suffering from medical ailment on account of which he was discharged from service. We fail to understand why and under what circumstances the applicant has preferred the present third O.A. claiming same relief without taking note of the medical opinion dated 08.9.2013. Once there is no change in applicant's medical condition, which was taken note in earlier order of the Tribunal on the basis of original medical report, there appears no good ground or justification to interfere with the matter. Moreover, the subsequent medical opinion expressed by the Medical Board in pursuance to order of the Tribunal has not been impugned while preferring the present O.A. There is no change of situation. Even on the ground of subsequent cause of action i.e. the medical

opinion expressed by the Medical Board in pursuance of order of the Tribunal, the applicant has not preferred the present O.A. For the same cause of action, for the third time, litigation seems to be not permissible and is barred by the principles of constructive res judicata. The applicant has wasted time of the Tribunal in the teeth of medical opinion dated 08.10.2013.

9. One of the other arguments advanced by Ld. Counsel for the applicant is that he had made prayer for quashing order of discharge dated 13.11.2005 and reinstatement in service. Assuming that the applicant had made some new prayer by changing language in the relief claim, this could not have been done being barred by Order 2 Rule 2, Code of Civil Procedure. The applicant has approached the Tribunal, but has not pressed for setting aside the order of discharge through appropriate relief. It is well settled proposition of law that what cannot be done directly, it cannot be done indirectly. If applicant's counsel has abused process of Court by giving incorrect advice to the applicant to prefer the present petition, that too under the teeth of medical opinion dated 08.10.2013, it is serious misconduct on the part of applicant's counsel befooling the litigant to prefer petition for the third time without taking note of the Medical Board opinion. In such circumstances, the matter also deserves to be referred to the Bar Council of Uttar Pradesh for action under Section 35 of the Advocates Act.

10. In view of our observations made hereinabove, we are of the view that the O.A. deserves to be dismissed with costs which we quantify to Rs. 5,000 (Rupees five thousand) to be recovered

from the counsel Shri P.N. Chaturvedi. Ld. Counsel appearing for the applicant shall deposit the costs within two months from today in this Tribunal. In case cost is not deposited, the same shall be recovered by the Collector/District Magistrate, Lucknow as arrears of land revenue and remit to this Tribunal.

12. A copy of this order shall be sent to the Secretary, Bar Council of Uttar Pradesh to proceed against Shri P.N. Chaturvedi, Advocate under Section 35 of the Advocates Act for professional misconduct and pass appropriate order after due trial in accordance with law expeditiously, say, within two years from today with due communication to the Tribunal.

13. At this stage, Shri P.N. Chaturvedi, Ld. Counsel for the applicant submitted that he does not intend to press the O.A.

14. Accordingly the O.A. is **dismissed** as not pressed.

No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

Date: 28 June, 2017
anb

(Justice D.P. Singh)
Member (J)