IN THE ARMED FORCES TRIBUNAL

(REGIONAL BENCH) KOLKATA

APPLICATION NO : T A 07 OF 2012 (CWJC No.1475/2009 Patna HC)

THIS 10TH DAY OF MAY, 2013

CORAM : Hon'ble Mr. Justice Raghunath Ray, Member(Judicial)
Hon'ble Lt. Gen. K.P.D. Samanta, Member(Administrative)

Ritu Raj Pandey Army No. 1077271B Ex LD
Son of Kedar Nath Pandey, C/o Hari Nandan
Pandey, resident of Village/ Mohalla
Maheshnagar, PO Keshari Nagar,
PS : Patliputra, Dist. Patna, Bihar

…… Petitioner

-VS –

1. Union of India through the Defence Secretary,
Army HQ. Defence HQ, New Delhi

2. The Chief of Army Staff, Army HQ.
Defence HQ. New Delhi

3. The Senior Record Officer, Armoured Corps
Records, Pin : 900 476, C/O 56 APO

4. The Officer-in-Charge, PCDA (P),
Allahabad (U.P.)

…… Respondents

For the petitioner : Mr. Barun Kr. Chowdhury, Advocate
Mr. Dibanath Dey, Advocate

For the respondents : Mr. S.K.Bhattacharyya, Advocate

O R D E R

Per Justice Raghunath Ray, Member (Judicial) :

A Writ Petition (CWJC No.1475 of 2009) under Article 226 of the Constitution of India was filed on 19-1-2009 before the Hon'ble Patna High Court. The said case was transferred to this Regional Bench of Armed Forces Tribunal, Kolkata vide Order No.2 dated 20-12-2011 passed by the Single Bench of the Hon'ble Patna High Court in view of Section 34 of the Armed Forces Tribunal Act, 2007. The

said Writ Petition, which relates to the claim of disability pension and other consequential benefits like Exgratia and Army Group Insurance etc. as admissible to the applicant, was renumbered as TA No.7/2012.

Brief facts :

2. Shri Ritu Raj Pandey, the Petitioner (Army No.1077271 IN EXLD) was enrolled on 04-07-1983 in the Army in Armoured Corps after being found mentally and physically fit at the time of enrolment. After rendering 18 years 8 months and 28 days service, he was discharged from service on 31-03-2002 on medical ground in E3(P) category as per recommendation of the Release Medical Board. Such discharge was precipitated due to principal disability arising out of Traumatic Cataract (RT) Eye (OPTD) since he sustained severe injuries on 13-01-1989 while on annual leave with effect from 10-01-1989 to 26-01-1989. On the fateful day at about 7:30 p.m. having heard someone shouting for help he rushed out of his home to the p.o. and found three armed robbers attempting to snatch VCR from his neighbour, Sanjay Kumar. He quickly moved forward to render assistance to his neighbour. The miscreants, however, fired at him causing serious injuries on his shoulder and right eye. He was immediately evacuated to Military Hospital, Danapur where he was admitted and, thereafter, referred to Military Hospital, Namkun (Ranchi) for further treatment on 15th January, 1989. He underwent medical treatment therein for two months and was discharged from the Hospital and placed under medical category CEE(T). Subsequently on his production before the Release Medical Board he was placed in Low Medical Category E3(P) and was discharged w.e.f. 31-03-2002 (A/N) with 11-14% disability. It was opined by the RMB that such disability was not connected with military service although he was found fit for suitable employment in civil. He was thus discharged from Military Service before completion of his service tenure on medical ground in the low medical category.

3. On 7-01-2009 he submitted a representation (Annexure-7) claiming the benefit of rounding off disability pension to 50% w.e.f. 01-04-2002 and other consequential benefits like Army Group Insurance & Ex-gratia etc. before the Senior Record Officer, Armoured Corps Records. In response to his representation the applicant was informed by the Senior Record Officer vide letter dated 19th March 2009 (Annexure-RII) that his claim for disability pension was rejected by the P.C.D.A(P) Allahabad, vide their letter dated 31st July 2002 since his disability "Traumatic Cataract RT Eye" was not related to Military Service. The rounding off benefit of disability Pension cannot, be extended to him as per existing rules. Since the percentage of disablement is 11-14%, he is not eligible for the benefits of Army Group Insurance. Against such rejection of claim of disability pension, he approached the Hon'ble Patna High Court for redressal of his grievance by filing a Writ Petition.

Contention of the Parties :

4. It is pleaded in TA that the petitioner sustained more than 20% disability during service period and as such he is legally entitled for disability pension and consequential benefits as per the relevant provisions of the Army Rules and Regulations. Further , he was discharged from service without completion of the stipulated tenure. Since he sustained disability during leave period for no fault of his own such disability should be considered to be attributable to military service. In fact, disability was sustained by him during annual leave when he made an honest endeavour to prevent a robbery by defending the life and property of his neighbour within the vicinity of his dwelling house. The FIR (Annexure 2) was, however, lodged by his neighbour, the victim of the robbery and Digha Patuliputra P.S.Case No.7/89 dated 13-1-89 u/s 394 of P.C. was registered accordingly. As a saviour he sustained serious bullet injuries on his shoulder and right eye. Consequent upon such an act of valour he was awarded Sourya Chakra by the Hon'ble President of India on

26th January, 1990. He was also awarded Rs3500/- with a letter of appreciation by the Hon'ble Governor of Bihar in recognition to his indomitable spirit of courage and extreme degree of valour and dutifulness which are in keeping with the highest tradition of Indian Army (Annexure-6). The Medical Board has, however, refused to take all these aspects into account and opined that the disability is not attributable to and aggravated by military service. His discharge was recommended for being in the Low Medical Category by the RMB. It is submitted by him that he is legally entitled to 50% rounding of disability pension and other consequential benefits along with the compound interest @ 18% p.a. and penal interest till the date of payment as he is unable to maintain his family with the meager amount of service pension.

5. The respondents have sought to resist such claim of disability pension by controverting all material allegations of the petition in their affidavit-in-opposition contending inter-alia that the petitioner sustained severe injuries with "Traumatic Cataract RT Eye (OPD) – 366" on 13-1-89 while on annual leave with effect from 10th January 1989 to 13th January 1989. He was initially down graded to Low Medical Category BEE(Temporary) for six months with effect from 23rd November 1989 to 23rd May 1990. Thereafter on subsequent medical review the petitioner was placed in the Low Medical Category. Although the petitioner rendered his willingness to serve further, the Commandant 81 Armoured Regiment had not recommended his retention in service due to non availability of sheltered employment to commensurate his disability in terms of Army Order 46/80 and integrated Headquarters of Ministry of Defence (Army) letter No.B/10122/LMC/MP-3(PBOR) dated 15-3-2000. Further, as per provisions of the Army Order 3/89 it is mandatory for every individual to undergo the Release Medical Board before retirement/discharge from service. Accordingly he was examined by the Release Medical Board, Jodhpur on 21st December 2001 and his degree of disability was assessed at less than 20% (11-14%) for two years and such disability was regarded neither attributable to and nor

aggravated by the military service. It is, therefore, contended on behalf of the respondents that the petitioner is not entitled for grant of disability pension as also rounding off the same and the consequent benefits of Army Group Insurance Fund.

6. In his affidavit-in-reply the petitioner has reiterated his claim for disability pension and other allied benefits since Casual Leave and Earned Leave are counted as on duty as per rules and regulations of the Army. The injuries caused to the petitioner occurred during the leave period have casual nexus to his disability and as such he is entitled to the disability pension. It is further reiterated that the purported recommendation of the RMB in the year 2001 was never viewed or scrutinized by the competent authority and as such no reliance should be placed upon the same. By filing additional rejoinder he has referred to several judicial pronouncements of the Hon'ble Apex Court and different High Courts in support of his contention that in view of forcible discharge from service prior to completion of his service tenure despite his willingness to serve further, he is entitled to all the reliefs as prayed for.

Arguments

7. Appearing on behalf of the applicant it is argued by Mr. Choudhury that even though the applicant was on annual leave while he sustained severe injuries on his person causing disablement he is entitled to get disability pension since there was a casual connection between his disablement and military service. According to him, when an Army Personnel is on casual leave/annual leave and suffers serious casualities, such injuries should be treated attributable to Army Service. In such a situation he is entitled to get disability pension since casual leave/annual leave are incidence of service and these types of leave are permissible to the Government employees. The logic behind this is that while on annual leave he has not severed his relation with his employer who granted him annual leave in accordance with the

relevant provisions of leave rules. In this context he has referred to Gurmit Singh Butter's case reported in **2000(5)SLR 596 (Gurmit Singh Butter vs. Union of India (PB & Hary).** Relying upon the principles of law laid down by the Hon'ble Apex Court in Kunal Singh's Case **reported in (2003) 4 S.C.C. 524 (Kunal Singh Vs Union of India and another)** it is further argued by him that the applicant acquired disability during service and became unfit for military service and as such he is entitled to the benefit of disability pension under Section 47 of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (in short, 'Disabilities Act', 1995). The same principles have been reiterated in a subsequent ruling reported in **A.I.S.L.J. 2008 Vol III (Bhagwan Dass & another Vs Punjab State Electricity Board)** In the case of Bhagwan Dass & another it is clearly held by the Hon'ble Apex Court that the person acquiring disability has to be kept in job till the date of retirement as per Section 47 of the 'Disabilities Act 1995'. It is, therefore, forcefully argued by him that Section 47 of the 'Disabilities Act, 1995' provides protection mandatorily for the applicant. In such view of the matter disability during his service enables him to get the benefit of disability pension and the same cannot be denied to him on any pretext.

8. He has, thereafter, proceeded to challenge the legality and/or validity of the Release Medical Board as also its medical opinion to the effect that injuries sustained by the victim are not connected to military service. He has vehemently assailed the rejection of his prayer for disability Pension on the ground that such discharge/invalidment order ought to have been preceeded by the Invalidating Medical Board and not by Release Medical Board since Army Personnel was found medically unfit for further service for being downgraded to lower medical category E3. In this context he has referred to a decision of the Hon'ble Apex Court reported in **(2009) 1 S.C.C. 216 (Union of India and Others -Vs- Rajpal Singh)** wherein it is ruled that if a person is to be discharged on the ground of medical unfitness and

within his service tenure or extended service within the meaning of Army Order 46 of 1980, he has to be discharged as per the procedure laid down in Column 4 of the Table under Rule 13(3) III(iii) read in conjunction with sub rule (2A) of the Army Rule 1954. Such discharge in respect of the applicant is, therefore, to be carried out only on the recommendation of an invaliding Board. Referring to Nazir Ahmed's case reported in **L.R 63 I.A.372 (Nazir Ahmed –vs- King Emperor)** it is argued by him that where power is given to do certain thing in certain manner the things elucidated must be done in that way and other methods of performance are necessarily forbidden. Accordingly, he has, assailed the Medical opinion of the RMB since it was not a legally constituted Medical Board. That apart, RMB has also not taken into consideration all the relevant circumstances which caused the applicant's disablement while on annual leave in his native village. He suffered bullet injuries since he rushed out of his home to prevent a robbery of a VCR from his neighbour. According to him, the RMB has also committed a serious irregularity in ignoring the Commanding Officer's opinion arrived at on conclusion of the proceeding of a Court of Inquiry. The Commanding Officer was of the opinion that injuries sustained by the victim during annual leave are attributable to military service. His further argument is that the percentage of such disability has been assessed arbitrarily as below 20% even though he was downgraded in Low Medical Category E3(P) and was found to be totally unfit for further service by the Release Medical Board.

9. Mr. Choudhury, therefore, forcefully submits that since the applicant was found medically unfit for further employment in the military service before completion of his tenure because of his disablement and he was also not given any shelter appointment because of non availability of such employment within the unit commensurable with his lower Medical Category, he is legally entitled to disability element as well as rounding off disability Pension and the consequent medical benefits of Army Group Insurance Fund etc.

10. **Per contra**, it is vehemently contended by Mr. Bhattacharjee on behalf of the Respondents that the Release Medical Board has categorically recommended him to be invalided out of service in medical category E3(P) w.e.f. 14th December 2000 to 14th December 2002 arising out of injuries sustained by him . He further opined that his disability was not attributable to the military service nor it has been aggravated thereby and not connected with service. The percentage of disability was assessed as 11-14% only. Relying upon a ruling of the **Hon'ble Apex Court reported in (2009) SCC 140 (Secretary, Ministry of Defence – Appellant –Vs- Damodaran A.V. through LRS Qrs – Respondent),** it is submitted by him that since the Medical Board is an expert body due weight, value and credence should be given to its medical opinion and it is not open to the Tribunal to interfere with the medical opinion of the Board. Therefore, the prayer of the petitioner who was on annual leave and not on duty at the material point of time when the alleged incident occurred is liable to be rejected.

Discussion & views

11. We have meticulously taken into consideration rival submission of the Ld Counsels for the parties with reference to the relevant documents and other connected materials and circumstances on record.

Non-applicability of Section 47 of Disabilities Act, 1995

12. At the outset it is to be made clear that section 47 of the 'said Act, 1995' has no applicability in respect of the Personnel of the Armed Forces who belong to the exempted category in terms of Proviso to Section 47 of the said Act 1995 vide Government of India, Ministry of Social Justice & Empowerment's Gazette Notification No.16-27/2001-NI.I dated 28-03-2002 and as such the applicant is not entitled to the benefit of the Section 47. In that view of the matter the cases of Kunal Singh (supra) as also Bhagwan Dass (supra) relied upon on behalf of the applicant are neither relevant nor applicable to the facts and circumstances of the present case. Mr. Chowdhury's argument on that score thus stands overruled.

13. Therefore, the important points which now arise for consideration is whether the severe injuries sustained by the applicant while on annual leave is attributable to military service and further the applicant's production before the RMB by the authority in contemplation of his discharge is permissible in accordance with Column 4 of the Table of Rule 13(3) of the Army Rule 1954.

Attributability to Military Service on notional extension of duty

14. Before taking up these two issues which are inextricably related with each other let us examine the backdrop of telling circumstances under which injuries were caused on the person of the applicant which ultimately resulted in his unfortunate discharge from the military service for no fault or negligence on his part but only for his anxiety to serve others when they are in dire need of the courageous service during critical hours.

15. It is an admitted position that while the petitioner was on annual leave on and from 10-1-89 to 26-1-89, on 13th January, 1989 at about 7-30 p.m. he ran out of his house in response to a shouting for help and sustained bullet wounds on his shoulder and right eye since one of the three miscreants shot at him to resist his timely intervenion to prevent an attempted robbery of a VCR owned by his close neighbour Sanjay Kumar. He was, thereafter, immediately evacuated to Military Hospital Danapur for medical treatment . Military Hospital Danapur sent a signal to the Regiment regarding his precarious condition and treatment as per medical requirements. He was referred to the Military Hospital Namken, Ranchi on 15th January 1989. He was medically treated there. On 15th March 1989 he was given 8 weeks sick leave, thereafter, he reported back to Danapur Military Hospital on 10th May 1989 for check up. He was discharged from Danapur Military Hospital finally on 14th May, 1989 and reported to his Unit on 27th May 1989. The afore-narrated

circumstances under which such severe injuries were caused tend to show that as a NCO of the disciplined military service he was prompted by appreciable sense of dedication and concern for his neighbour and displayed the Samaritan spirit which is befitting for an Army Personnel and it is in keeping with the glorious tradition of the Armed Forces of this Country.

16. It is also not disputed that such an act of valour in rescuing the distressed neighbor and its valuables from the clutches of miscreants, even though involved risk of his own life, got due recognition from the Highest Constitutional Authority of the country as also other constitutional dignitaries. He was amply rewarded with different awards, citations, medals and cash etc. since it is the part and parcel of the solemn duty of the military personnel in its extended form as and when it is urgently required by the fellow citizens of the country.

17. Turning to the military authorities we find that they have also responded to the cause of the applicant positively. In this context it is apt to reproduce the opinion of the Commandant, 81 Armoured Regiment as under :

> "1. I agree with the findings of the Court. No.1077271N Swr Ritu Raj Pandey sustained GSW RIGHT EYE injury of Severe nature on 13 Jan 89.
>
> **2.** The injury sustained by the individual while on leave is attributable to military service in peace area and the individual is not to be blamed for the same.
>
> 81 Armoured Regiment — Sd/-
>
> C/o 56 APO — (A. TREOHA*N*)
>
> Col
>
> 26 Aug 89 — Comdt"

It is also evinced from the Roll of the Applicant proposed to be invalided (Part-IV) as produced in original before the Tribunal for perusal that on 8th December, 2001 the Commandant, 81 Armoured Regiment recommended for disability Pension and sanctioned service gratuities in terms of provisions of SAI 8/3/70 and Clause (a) of Government of India, Ministry of Defence letter No.1(4)115/D/Pension/Services dated 11 August, 87. It has also been clearly mentioned therein that the petitioner is the recipient of the Gallantry Award 'Sourya Chakra'. Be that as it may, the fact remains that the RMB, the constitution of which is under challenge has refused to concur with the recommendations of the Commandant based on the result of the Court of Enquiry.

18. Against the backdrop of such factual scenario the justification of the Commandant's recommendation is required to be viewed in the light of Regulation 4 & 9 read with 12 k and 13 of the Entitlement Rules for Casualty Pensionary Awards, 1982 (hereinafter referred as Entitlement Rules). Section 4 of the Entitlement Rules reads as under :

"4. Invaliding from service is a necessary condition for grant of a disability pension. An individual who, at the time of his release under the Release Regulations, is in a lower medical category than that in which he was recruited will be treated as invalidated from service. JCO/ORs & equivalents in other services who are placed permanently in a medical category other than 'A' and are discharged because no alternative employment suitable to their low medical category can be provided, as well as those who having been retained in alternative employment but are discharged before the completion of their engagement will be deemed to have been invalidated out of service".

"Onus of Proof

9. The claimant shall not be called upon to prove the conditions of entitlement. He/she will receive the benefit of the reasonable doubt. This benefit will be given more liberally to the claimants ……"

"Duty

****
****
****

12 (k) **An accident which occurs when a person is not strictly 'on duty' as defined may also be attributable to service, provided that it involved risk which was definitely enhanced in kind or degree by the nature, conditions, obligations or incidents of his service** and that the same was not a risk common to human existence in modern conditions in India. Thus, for instance, where a person is killed or injured by another party by reason of belonging to the Armed Forces, he shall be deemed 'on duty' at the relevant time. **This benefit will be given more liberally to the claimant in cases occurring on active service as defined in the Army/Navy Air Force Act.**

(Emphasis supplied)

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13. In respect of accidents or injuries the following rules shall be observed:

a)**Injuries sustained when the man is "On duty" as defined, shall be deemed to have resulted from military service,** but in cases of injuries due to serious negligence/misconduct the question of reducing the disability pension will be considered.

(Emphasis supplied)

b)In cases of self inflicted injuries whilst on duty, attributability shall not be conceded unless it is established that service factors were responsible for such action; in cases where attributability is conceded, the question of grant of disability pension at full or at reduced rate will be considered."

19. A close analysis of the afore-quoted regulations of the Entitlement Rules which are laid down as Appendix II to the Pension Regulations for Army, 1961 reveals that as per 12 (k) of the Entitlement Rules the disability sustained during the course of an accident which occurs when the personnel of the Armed Forces is not strictly on duty may also be attributable to service on fulfilment of certain conditions which include involvement of risk enhanced in kind by natural condition, obligations or incidence of his service enumerated therein. In such a situation injured Army Personnel shall be on deemed duty at the relevant time. It is further clarified in unequivocal term that such benefit will be given more liberally to the claimant in cases occurring on active service as defined in the Army, Navy/Air Force Act. The aspect of duty has thus been defined and discussed in detail in Entitlement Rules to dispel all sorts of ambiguities. It can also contextually be noted that as per Regulation

9 of the Entitlement Rules the claimant of the disability Pension shall not be called upon to prove the conditions of entitlement and further the benefit of any reasonable doubt shall be received by the incumbent. Such benefit without reasonable doubt will be given more liberally to the claimants. Further, Regulation 13(a) & (b) speaks about observance of certain rules in respect of accidents and injuries, when the personnel of the Armed Forces is 'on duty' as defined and sustained injuries. Such injuries shall be deemed to have resulted from military service but in case of injuries due to serious negligence/misconduct, the question of reducing the disability pension will be considered. In case of self-inflicted injuries whilst on duty, attributability shall not be conceded. Thus injury related disability which does not occur due to the negligence/or misconduct of concerned Army Personnel or on account of self infliction shall be considered to have casual connection with the military service, even though on leave.

20. In consonance with the relevant provisions of Entitlement Rules, as also recommendations of the Fifth Central Pay Commission, the Central Government issued Policy letter No.1(2)/97/1/D(Pen C) dated 31-01-2001 for determining the pensionary benefits for death/disability under defferent circumstances due to attributable/aggravated causes. The cases have been broadly categorized under five categories. Category D reads as under :

"Death or disabilities due to acts of violence/attack by terrorists, anti social elements, etc. whether on duty other than operational duty or even when not on duty. Bomb blasts in public places or transport indiscriminate shooting incidents in public, etc. would be covered under the category, besides death/disability occurring while employed in the aid of civil power in dealing with natural calamities".

21. The spirit of the afore-quoted Policy letter is easily discernable and such Government decision facilitates the grant of appropriate reliefs in favour of the Armed Forces Officers and Personnel to meet the exigencies of circumstances leading to disability due to acts of violence/attack by anti-social elements etc. whether on duty other than operational duty or even when not on duty. The applicant's case is thus covered by both the aforementioned policy letter dated 31-1-2001 as also the relevant provisions of the Entitlement Rules which are having statutory force since Pension regulations for Army, 1961 was framed in exercise of powers conferred under the provisions of Army Act, 1950.

22. It appears from the Policy Letter No.F.14(3)/98/D(AG) dated 03-09-1998 of Government of India, Ministry of Defence that the tenure of service of the petitioner who was in the rank of Lance Dafadar was 22 years and extendable by 2 years by screening or 49 years of age whichever is earlier. In this context we may also refer to the Circular No.30.No Gts/Toch/0110-V Office of the PCDA(P) Allahabad dated 27-05-2002 which relates to the grant of benefits of rounding of disabilities element in respect of PBOR discharged/released from military service before completion of service tenure on medical ground being in low medical category(LMC category). In the first paragraph of the Policy letter under reference it is recited as under :

" As per regn. 173A PRA-I (1961), PBOR who are placed permanently in lower medical category (other than E) and who are discharged because no alternative employment in their own trade/category suitable to their low medical category could be provided or who are unwilling to accept the alternative employment or having been retained in alternative appointment are discharged before completion of their engagement shall be deemed to have been invalided out of service. This fact was also been emphasized by Ministry of Defence vide their letter No.3/57/2001/D(Pen A&AC) dated 11.04.2002 (copy enclosed) while giving clarifications on two individual cases."

Accordingly the said Policy Circular confers the benefits of rounding off disability elements as per provisions contained in para 7(II)(a) of Ministry of Defence letter No.1(2)/97/D(Pen C) dated 21-01-2001 in post 96 cases to whose PBOR who are discharged from military service before completion of service tenure on medical

ground in low medical category and such cases are to be considered as invalided out of military service. Such rounding off is to be implemented in the manner as indicated below :

Less than 50% disability to	50%
Between 50% to 75% disability	75%
Above 75% disability	100%

By this circular the appropriate authorities have been asked to review the affected cases of the PBOR discharged for being in low medical category before completion of service tenure. The case of the present petitioner is squarely covered by this circular provided suitable recommendations in this regard on the question of attributability of injuries to military service even when on annual leave is available and the percentage of such disability is correctly assessed by the properly constituted Invalidment Medical Board.

23. Turning again to the issue of attributability of the petitioner's disablement to military service during annual leave, we may refer to an identical case of Gurmit Singh Butter (Ex-Sepoy) reported in **2000(5) SLR (Gurmit Singh Butter vs. Union of India (Pb, & Hry)** wherein it is opined by the Single Bench of the Hon'ble Punjab & Haryana High Court that Casual Leave, Annual Leave, Furlough or Medical Leave all being the incidence of service are permissible to the Government employees and further while on leave, the petitioner never severed his relationship with his employer who granted the annual leave to the petitioner. It was, therefore, held when an Army Personnel while on long leave suffered disability , such disability is attributable to the Army Service. The petitioner's claim for disability pension in view of his sufferance of injuries while on annual leave was allowed by the Hon'ble High Court in the afore-mentioned case.

24. That apart, fortified with the recent ruling of the Hon'ble Full Bench of the Punjab and Haryana High Court reported in **2011(1)ESC(P&H)33 (Union of India through M/O Defence vs. Khushbagh Singh Ex Naib Subedar etc.)** it can safely be concluded that the disabilities arising out of non-combatant situation may also be regarded as a disability which was connected to military services. It is accordingly held in para 15 of the Judgement by the Hon'ble Full Bench as under :-

"…….According to us, a person on casual leave or annual leave does not cease to be on military duty and the injury that he sustains in an accident could only be examined from the context of whether it was inconsistent with a person in Military Service or not".

Relying upon a catena of decisions of the Hon'ble Apex Court and also taking note of the relevant provisions of Army Pension Regulations 1961 and Entitlement Rules, the Full Bench of the Hon'ble Punjab & Haryana High Court arrived at a finding that the Army Personnel, although not actually on duty but by a fiction, would be treated on duty and a disability arising during such time should be taken attributable to army duty.

25. Having regard to the ratio as laid down in the ruling of the Hon'ble Full Bench of the Punjab & Haryana High Court coupled with the afore-quoted provisions of the Entitlement Rules and the Central Government Policy letter dated 31st January, 2001, we feel convinced to hold that the applicant, although was on annual leave at the material point of time and sustained severe bullet injuries on his shoulder and right eye while endeavouring to defend the life and property of his neighbour and displaying the act of valour befitting to the Army Personnel, should invariably be considered to be on duty of military service and his injury related disability should be considered as attributable to military service for the simple reason that such heroic

deeds are not inconsistent with Military Service. It is, therefore, to be noted that in a case of disability during 'duty' of army personnel even on any kind of leave, attributability is required to be carefully examined and considered in the context of whether the act leading to accident is incompatible with military duty. The hazards of army service cannot, therefore, be stretched to the extent of unlawfully and unconnected activities when he was on leave. On the contrary, if we stretch the notion of duty in military service a little further, it would lead us to opine that the Army Personnel in the present case sustained disability out of accident injuries which were caused because he responded to a noble duty of defending human lives and properties and the same is similar to military duties which are assigned to them during natural calamities faced by the nation. The appropriate Medical Board is, therefore, duty bound to consider recommendations of the Commandant based on the result of the Court of Enquiry which was held in the present case as mandated in para 520(a)(b)(c)&(d) under Chapter XII of Defence Service Regulations Vol.I. We are afraid, the R.M.B. has failed to take into consideration all these legal and factual aspects including the telling circumstances which caused severe injuries to the right eye of the applicant for which he cannot be blamed as opined by the Commandant in its recommendations for grant of disability pension since such disability arose out of bullet injuries sustained by the applicant in his native village while on deemed military duty.

26. We are, therefore, of the considered view that recommendation of the Commandant for grant of disability pension does not suffer from any legal infirmity and such recommendation based on proper evaluation of evidence and circumstances on record should be given due weight by the appropriate Medical Board while expressing their medical opinion regarding invalidment of the applicant and also assessment of percentage of his disabilities.

Constitution of RMB contravening Rule 13(3)III(iii) of Army Rules, 1954

27. Now adverting to the question of legality/validity of the R.M.B. which recorded its medical opinion for invaliding out the applicant from military service, we find that the respondents have acted contrary to the provisions of Section 13 of the Army Rules which specify the authorities competent to discharge, the grounds of discharge as also the manner of discharge. To be more specific, it is mandated in Column 4 of Table appended to Rule 13(3) that only on the recommendation of an Invalidating Board, discharge of persons enrolled under the Act who have been attested as stipulated in Column 2 of the Table, can be carried out on the ground specified in Rule 13(3)III(iii) of the said Rules, But the contemplated discharge on the ground of being medically unfit for further service was carried out on the recommendation of the R.M.B. It has rightly been pointed out by Mr. Chowdhury that such a procedural lapse has, in fact, vitiated the process of formation of medical opinion ab initio and as such the recommendation of the RMB should not be acted upon. In this context reliance can be placed upon a land mark Judgement of the Hon'ble Apex Court reported in **(2009) 1 S.C.C. 216 (Union of India –Vs- Rajpal Singh)** cited on behalf of the applicant. On the strength of this Judgement, a huge number of JCOs whose statutory tenure was arbitrarily curtailed on the recommendation of illegally constituted RMB on the plea of being placed in LMC were mostly reinstated after an order of discharge being quashed. It is ruled therein as under :-

'…….if a JCO is to be discharged from the service on the ground of "medically unfit for further service", irrespective of the fact whether he is or was in a low medical category, his order of discharge can be made only on the recommendation of an

Invalidating Board. The said rule being clear and unambiguous is capable of only this interpretation and no other."

The afore-quoted principles of law as enunciated is equally applicable to the case of the NCO, the present applicant. Mr. Choudhury has also referred to one unreported decision of the Hon'ble Principal Bench dated 02-08-2010 passed in TA No.418/2010 in support of his contention that the medical examination of the applicant, Lance Dafadar by Invalidment Board is required mandatorily for discharging him on the ground of medical unfitness and his production before the R.M. Board is in contravention of Rule 13(3) of the Army Rule.. We have gone through the said decision of the Hon'ble Principal Bench and it appears that relying upon Rajpal Singh's case, the Principal Bench has been pleased to set aside the discharge order dated 8th June 1998 passed by the Commander in respect of a Havilder on the recommendation of the Release Medical Board since properly constituted. Invalidating Board alone was the only competent authority to recommend discharge on the ground of medical unfitness for further service.

28. Keeping in view the crux of the matter that legality/validity of formation of the RMB is under serious challenge we have paid anxious consideration to Mr. Bhattacharjee's arguments that it has been held consistently by the Hon'ble Apex Court that the weightage and primacy should be given to the Medical Board in the matter of ascertainment of attributability of injuries sustained by the Army Personnel to Military Service . On this important aspect of the matter we have also very carefully gone through the decision of the Hon'ble Apex Court reported in **2009(9) SCC 140 (Supra)** cited by Mr. Bhattacharjee. It is evident from para 32 of the judgement in Damodaran's case that the petitioner respondent did not assail the validity of the opinion or ultimate recommendation of the Medical Board in the case before the Hon'ble Apex Court. On the contrary, he placed much reliance on the

findings of the Board on the aspect of the respondent's disability being 60%. Further, it is available from para 27 of the judgement under reference that the Invalidating Medical Board forms its opinion/recommendation on the basis of the medical report, injury report, Court of enquiry proceedings, charter of duties relating to peace or field area and of course, the physical examination of the individual.

29. On the contrary in the instant case, as already pointed out elaborately in the preceding paragraphs that the recommendation of the Commandant based on the Court of enquiry proceedings to the effect that the injury sustained by the applicant are attributable to military service, and therefore, he is entitled to disability pension, was not taken into consideration by the Release Medical Board. Furthermore, the legality/validity of the RMB itself is under serious challenge because of non-adherence to the prescribed rules and procedures, as laid down under Section 13(3)(III)(iii) of the Army Rules 1954 in the present case. But the constitution of Medical Board was not assailed at any point of time in Damodaran's case. Considering all these, we are to opine that the afore-sited judgement of Hon'ble Apex Court is quite distinguishable on facts and circumstances as unfolded in this case.

30. It is, therefore, now settled position of law that when a person is discharged with low medical category, he is to be treated as discharged on invalidment as per the Entitlement Rules laid down in Appendix II of the Pension Regulation for the Army, 1961. Further, an Army Personnel cannot be discharged without holding the Invaliding Medical Board. Rather it is a condition precedent for discharge of a J.C.O. as per the decision in Nb. Subedar in Rajpal Singh's case. Applying the ratio of the said ruling it is held accordingly that this principle would actually apply not only to the JCOs alone but also to all the personnel below Officers Rank (PBOR in short) as per the Rule 13(3)III(iii) of Army Rules, 1954.

31. The present petitioner holding the rank of Lance Dafadar has admittedly been discharged without recommendation of the IMB and as such the validity of RMB proceedings and its medical opinion in respect of the petitioner can be naturally called in question. In our considered opinion the Release Medical Board cannot replace the requirement of Invaliding Board as per the mandate of Rule 13(3)III(iii) of Army Rules 1954. Therefore, the Invaliding Board has to precede the decision of the discharge but in the petitioner's case such mandatory rule has not been adhered to. In such a situation the RMB's opinion to the effect that the petitioner's disability is not attributable to Military Service is also not acceptable. It is, however astonishing to note that even though the RMB found that the eye injury suffered by the petitioner is quite severe in nature, the percentage of his disability was recorded as 11 to 14% only without assigning the reasons and/or appropriate grounds. In our considered view, the percentage of disability has not been correctly assessed by the Medical Board in its proper perspective.

32. As a matter of fact, on the face of the materials on record as have been made available to us we feel constrained to opine that such assessment of percentage of disability has not been made as per the principles laid down in Guide to Medical Officers (Military Persons) 2002, (in short Guide 2002) issued by the Ministry of Defence. Even though in the Foreward of the said Manual it is categorically advised that manual should be carefully studied by the members of the medical boards and all others concerned so as to apply the guidelines in an unbiased manner, we are afraid, that the guidelines on assessment of the percentage of disablement as incorporated in Chapter VII of the Guide 2002 have not strictly been followed in the present injury case.

33. On the question of grant of an award for a disability claimed to be related in service it is laid down inter alia in Rule 9 in Chapter I of the said Guide 2002 that a casual connection between disability and military service is to be established by evidence. The principles as to under what circumstances an Army Personnel could be regarded as medically unfit and disabled and is to be boarded out from service having been clearly spelt out therein, the provisions of the said Guide 2002 are to be consulted and considered conjointly with the set of rules envisaged in Entitlement Rules as Guiding principles for determining the attributability of injuries to military service as also the percentage of such injury oriented disability. It is pertinent to mention here that the entitlement to the disability pension flows from Regulation 173 of the Pension Regulations for the Army 1961 – Part-I (hereinafter referred to as 'the Regulation'). The relevant portion of the Regulation 173 of the Regulation reads as under :

" Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non-bottle casualty and is assessed 20 per cent or over.

The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II"

It is, therefore, an accepted legal position as per the afore-quoted Regulation 173 of the Regulations that whether the disability is attributable to or aggravated by military service has to be determined under the Entitlement Rules which have to be applied to the facts and circumstances of each case to determine the attributability of injuries sustained by an individual. It cannot also be disputed that Entitlement Rules are beneficial provision and, therefore, to be interpreted liberally since those are framed

with the object of granting disability pension and not denying the same in appropriate cases. In such view of the matter in deciding the issue of entitlement all the evidence, both direct and circumstantial, should be taken into account and the benefit of reasonable doubt should also be given to the claimant.

34 A duty is, therefore, cast upon the Medical Board to take into consideration all available evidence including the materials collected and statements of the incumbent and other witnesses recorded at the time of holding of Court of Enquiry to ascertain the casual connection between disability due to severe injuries sustained by the victim applicant. It is, therefore, obligatory on the part of the appropriate Medical Board to take into account the relevant circumstances leading to the infliction of injuries on the person of the applicant coupled with the ascertainment of dimension and nature of injuries medically. All these things taken together shall constitute evidence to form a sound medical opinion about attributability of injuries to military service. The Release Medical Board has, however, failed to satisfy such legal requirement. In our ultimate analysis we are of the tentative view that injuries sustained by the applicant during annual leave are attributable to military service as correctly opined and recommended for the disability pension by the Commandant 81 Armoured Regiment.

35. We have also no hesitation in opining that the applicant's tenure of service was curtailed since he was placed in low medical category and perhaps for the selfsame ground he would have been found ineligible for extension of service. In such a situation as per Policy letter No.F.14(3)/98/D(AG) dated 03-09-1998 of Government of India, Ministry of Defence read with Circular No.30/No Gts/Toch/0110-V dated 27-05-2002 the applicant's claim for rounding off his disability pension need to be considered favourably.

Decision :

36. For foregoing discussions and findings it is held that since the applicant was put through a release medical Board prior to completion of his normal tenure and without offering any shelter appointment despite his willingness to serve further, and not through Invalidment Board which was the absolute legal requirement in present case, the Rejection Order (Annexure R2) disallowing disability pension and other consequential benefits is not legally sustainable. Consequently the purported opinion as also recommendation of the RMB suffers from serious legal infirmities and is liable to be quashed in view of reasons recorded in preceding paragraphs.

37. In the result, the impugned order of rejection of the disability pension and other consequential benefits vide communication dated 19th April 2009 (Annexure-R2) in response to his representation dated 7th January 2009 (Annexure 7) is hereby set aside. The Proceedings of the RMB(Annexure R1) also stands quashed accordingly. TA No.7/2012 thus stands allowed in part on contest without costs with the following directions :

i) The Respondent 2 is directed to constitute Invalidment Medical Board in Command Hospital (EC) in order to get the applicant medically examined near his native village for ascertainment of attributability of injuries sustained by him to Military Service and assessment of the percentage of disability within eight weeks from the date of receipt of the order.

ii) After the formation of IMB the petitioner shall be directed to appear before the Medical Board on the date fixed and he should be served with such notice in his home address as mentioned in the cause title of the petition by Registered with A.D. post.

iii) The IMB so constituted shall record its formal opinion on physical examination of the applicant on attributability of injuries sustained by the applicant to Military Service and also proceed to assess the percentage of such disability in the light of observations made in paragraphs 18 to 26 and 31 to 35 of this Judgement and Order as expeditiously as possible preferably within four weeks from the date of appearance of the applicant before the IMB.

iv) On receipt of suitable recommendation from the IMB, the respondent No.4 shall proceed to sanction the disability pension together with the benefit of its rounding off with effect from 01-04-2002 within four weeks from the date of receipt of such recommendation, if any.

v) The appropriate authority shall also take positive steps for payment of Army Group Insurance and other consequential benefits, if any, as admissible, within a reasonable period of time.

vi) All arrears payable to the applicant shall be worked out with utmost expedition and paid to him within sixteen weeks from the date of sanction of such disability pension by the appropriate Sanctioning Authority in default whereof the amount of arrears shall carry annual interest @12% per annum.

38. Let a plain copy of the Judgement and order duly countersigned by the Tribunal Officer be furnished to the parties on observance of usual formalities.

(LT. GEN. K.P.D. SAMANTA)
ADMINISTRATIVE MEMBER

(JUSTICE RAGHUNATH RAY)
JUDICIAL MEMBER