

COURT NO. 1, ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

E.

OA 1066/2018

Col Sudhir Singh (Retd)

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant

:

Mr. Shakti Chand Jaidwal, Advocate

For Respondents

:

Mr. Anil Gautam, Sr. CGSC

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

HON'BLE LT GEN P.M. HARIZ, MEMBER (A)

ORDER  
26.09.2023

Vide our orders of even date, we have dismissed the OA. Faced with the situation, learned counsel for the applicant makes an oral prayer for grant of leave to appeal under Section 31 of the Armed Forces Tribunal Act, 2007, to the Hon'ble Supreme Court. We find no question of law much less any question of law of general public importance involved in the matter to grant leave to appeal. Hence, the prayer for grant of leave to appeal is declined.

[RAJENDRA MENON]  
CHAIRPERSON

[P.M. HARIZ]  
MEMBER (A)

Neha

**COURT NO. 1, ARMED FORCES TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**O.A. No. 1066 of 2018**

**In the matter of :**

**Col Sudhir Singh (Retd.)**

**... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant : Shri Shakti Chand Jaidwal, Advocate**

**For Respondents : Shri Anil Gautam, Sr. CGSC**

**CORAM :**

**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON**  
**HON'BLE LT GEN P.M. HARIZ, MEMBER (A)**

**ORDER**

The applicant, having been found medically and physically fit, was enrolled in the Indian Army on 27.07.1971 and was subsequently commissioned in the SIKHLI Regiment on 16.12.1978. He retired from service on 31.03.2007 in low medical category S1H3A1P1E1. The Release Medical Board (RMB) was conducted before his retirement, which assessed the applicant's disability 'BILATERAL SENSORINEURAL HEARING LOSS' @ 20% for life and accepted the same as 'aggravated by military service', which was duly approved by the approving authority on 08.01.12007. However, the

confirming authority reduced the percentage of the disability to 11-14%.

2. The initial claim of the applicant for grant of disability pension was rejected by the respondents vide the impugned order dated 14.01.2008. The applicant preferred first appeal on 17.05.2008, which was rejected by the respondents vide letter dated 23.12.2008. The second appeal of the applicant dated 28.04.2017 was also rejected by the respondents vide letter dated 09.04.2019, impugned herein (Annexure A-1).

3. Learned counsel for the applicant submitted that the applicant, at the time of joining the Army, was declared mentally and physically fully fit and no note was made that he was suffering from any disease at that time. It is submitted by the learned counsel that while the RMB has assessed the disability @ 20% for life and conceded the same as 'aggravated by service' due to 'Auditory trauma sustained in service', the confirming authority arbitrarily reduced the percentage of disablement to 11-14% and hence the applicant was denied the benefit of disability pension, which is arbitrary and unlawful. He further submitted that the applicant was deprived of the re-employment for four years

upto the age of 58 years for which he was eligible having retired at the age of 54 years and was discharged from service due to the low medical category. Learned counsel contended that the applicant's disability was rightly conceded as 'aggravated by the military service'. He referred to Rule 4 of the Entitlement Rules for Casualty Pensionary Awards, 1982 which provides that an individual who at the time of release, is in lower medical category than in which he was recruited, he will be treated as invalidated out of service and thus the applicant is deemed to have been invalidated out of service. Learned counsel relied on various orders of the Tribunal and mainly on the judgment of Hon'ble Supreme Court in **Sukhvinder Singh Vs. Union of India & Ors.** (Civil Appeal No. 5605 of 2010) decided on 25.06.2014, wherein the individual was granted disability pension at 50% with arrears with the disability at less than 20%. He further submitted that as the disability of the applicant has been conceded as 'aggravated by military service' and as per the Govt. letter dated 31.01.2001, the applicant is entitled to grant of disability pension rounded off to 50%.

4. *Per contra*, learned counsel for the respondents contended that the applicant is not entitled to the relief claimed since the pension sanctioning authority found the applicant ineligible for grant of disability pension as the disability of the applicant was assessed by the confirming authority i.e. DDMS, HQ Western Command @ 11-14% and as per the existing rules/provisions, the applicant is not entitled to grant of disability pension. Learned counsel further submitted that while rejecting the second appeal preferred by the applicant, respondents have given the detailed reasons for not granting the disability pension to the applicant stating that there is no evidence of service related trauma or infection, the disability is not found attributable to service; that the conversational voice distance as recorded by the specialist in his opinion dated 27.12.2006 at RMB was 500 cm and 550 cm in the right and left ears respectively, normal being 600 cm and hence the officer was suffering from a minimal to mild hearing loss and the confirming authority assessed the same @ 11-14% as per Para 20 Chapter VII, Guide to Medical Officers (Military Pensions), 2002, but the disability was conceded as aggravated by

service as per Para 23, Chapter VI GMO amendment 2008. Learned counsel, therefore, prayed that the OA has no merit and the same be dismissed.

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

6. It is undisputed that the disability suffered by the applicant has been conceded as 'aggravated by the military service' due to 'Auditory trauma sustained in service' by the RMB. It is also not in dispute that the disability of the applicant was initially assessed @ 20% for life as is evident from the RMB proceedings, however, subsequently, the percentage of the disability was reduced by the Confirming Authority of the medical board @ 11-14% stating therein that the conversational voice distance was 500 cm and 550 cm in the right and left ears respectively, the normal being 600 cm and hence the officer was suffering from a minimal to mild hearing loss.

7. In the instant case, it would be pertinent to refer to Para 20 Chapter VII of the GMO (MP) amendment 2008 in which the basis of assessment of hearing loss has been provided and the same reads as under :

**"20. Hearing Loss. Hearing loss refers to impairment of hearing, the degree of which may vary from mild to total hearing loss.**

**Assessment of hearing loss :**

(a) Screening for hearing loss should be carried out with free field hearing tests, namely Conversational Voice Tests, (CV) and Forced Whisper Test (FW) using Phonetically Word List. If any subject scores less than 610 cms in CV/FW Test, he should be subjected to assessment for a hearing loss using pure tone audiometry.

Assessment should be based on the grade attained using both ears together, the percentage assessment appropriate to the grade thus attained is given below:

<b>Grade</b>	<b>Degree of hearing attained</b>	<b>Assessment for both Ears used together</b>
1.	Total deafness	100%
2.	Shout not beyond 3 feet	80%
3.	Conversational voice not over 1 Foot	60%
4.	Conversational voice not over 3 Feet	40%
5.	Conversational voice not over 10 Feet	
	(a) Unilateral total deafness	40%
	(b) Otherwise	20%

A case in which the right ear attained grade 4, the left ear grade 2 should be assessed as follows :

Disability for grade 4	40%
Disability for grade 2	80%

$$\text{Total mean disability} = (40 + 80)/2 = 60\%$$

8. However, in light of variation and disparity in the recommendations of the medical board on the entitlement as well as assessment of sensory neural hearing loss during the release medical board/invaliding medical



boards, the office of the DGAFMS, Ministry of Defence,  
New Delhi, vide its letter  
No.16036/RMB/IMB/DGAFMS/MA(Pens)/02 dated  
14.06.2019 issued clarification on the provisions laid  
down in the Guide to Medical Officers. The letter is  
reproduced below:

**Tele: 23093442**

**Regd/ SDS**  
**Office of the DGAFMS**  
**Ministry of Defence**  
**'M' Block, DHQ PO,**  
**New Delhi- 110001**

**16036/RMB/IMB/DGAFMS/MA (Pens)/02 14<sup>th</sup> June, 2019**

**DGMS (Army)/ DG-5A**  
**DGMS (Navy)/ Capt (MS)-H**  
**DGMS (Air)/DMS (MB)**

**TEMPLATE FOR DETAILED JUSTIFICATION REGARDING**  
**THE BOARD'S RECOMMENDATIONS ON THE ENTITLEMENT/**  
**ASSESSMENT IN SENSORY NEURAL HEARING LOSS (SNHL)**  
**CASES DURING CONDUCT OF RMB/IMB**

1. Ref revised AFMSF- 16 (Ver 2019) issued by this Dte Gen.
2. It has been observed that there is a wide variation and disparity in the recommendations of the medical board on the entitlement as well as assessment of cases of Sensory Neural Hearing Loss (SNHL) during the Release Medical Board (RMB)/ Invaliding Medical Boards (IMB).
3. Since these boards are quasi legal in nature a template (Annexure 'A') for the medical officers conducting the RMB/IMB is issued herewith to bring uniformity in detailed justification regarding board's recommendations on the entitlement in SNHL cases.
4. This has the approval of the DGAFMS.

**Sd/-**  
**(Poonam Raj)**  
**Col**  
**Col AFMS (Pens)**  
**For Brig**

**AFMS(Pens)**

**Encl: As above**



**ENTITLEMENT FOR CASES OF SENSORINEURAL  
HEARING LOSS**

SNHL is conceded as attributable to service in cases of service related trauma (including acoustic trauma due to blasts or physical trauma like fracture temporal bone) or infection. Aggravation is conceded in individuals exposed to loud noises like gunfire (arty/ small arms) , bomb and missile blasts, aircraft engines and engine rooms onboard ships etc. Service personnel are exposed intermittently to loud noise in the form of small arms gunfire and arty firing. This results in chronic noise induced hearing damage which presents and progresses insidiously. Long term occupational exposure to loud noises cannot be ruled out as all service personnel irrespective of trade/ Regt/Corps are exposed to loud noises of small arms firing during services. Worsening of hearing may take place progressively over many years rather than always being an acute event following exposure. The disability is therefore always to be conceded as being aggravated by service. In terms of Para 23, Chapter VI, GMO 2002 amendment 2008 unless is attributable following trauma or infection as specified above.

**ASSESSMENT FOR CASES OF SENSORINEURAL HEARING  
LOSS**

Reference Para 20, Chap VII, GMO 2002 amendment 2008 which is currently in vogue, assessment is still decided based on the Conversational Voice (CV) (unaided) as recorded during free field testing . If the CV is found to be less than 600 cm, a Pure Tone Audiometry should be carried out, however the assessment is still based on the CV. Hearing should be tested individually in both ears and assessed separately, however final assessment of disablement is an average of the separate assessment of the individual years.

Grades of assessment for individual ears are as follows:

<u>Grade</u>	<u>Degree for Hearing attained</u>	<u>Assessment</u>
1	Shout not beyond 3 feet (indl can hear only a loud sound upto 3 feet/100 cm and nothing beyond)	80%
2	Conversational voice not over 1 foot (indl can hear CV upto 1 foot/30 cm and not beyond)	60%
3	Conversational voice not over 3 feet (indl can hear CV upto 3 feet/100 cm and not beyond)	40%

4	Conversational voice not over 10 feet (incl can hear CV upto 10 feet/300 cm and not beyond)	20%
5	Unilateral total deafness	40%

**Examples of calculation of final assessment of disablement are:**

1. Lt ear assessed at Grade 2 (60%) and Rt ear assessed at Grade 4 (20%)

Final assessment would be =  $(60\% + 20\%) / 2 = 40\%$

2. Lt ear assessed at Grade 5 (40%) and Rt ear has normal hearing.

Final assessment would be =  $(40\% + 0\%) / 2 = 20\%$ .

**All cases of bilateral total deafness should be assessed at 100%.**

**If the mean assessment of the two ears is less than 20% (CV better than 300 cm in both ears) then the assessment should be given as 5%, 10% or 15% depending on the degree of hearing loss.**

10. On a careful reading of the above, we observe that the guidelines for the assessment of the percentage of hearing loss provided for in the GMO, 2008 as well as in the aforesaid letter, is provided in respect of assessment of individual ears, followed by calculation of the hearing loss computing the disability of both the ears. Therefore, it is a clear fact that an assessment of hearing loss in one ear, if 20%, with the assessment in other ear being 0% or 10%, the assessment as per the mean calculation would result in total disablement of 10% or 15%, which is well below the requisite of 20% and at this point, we are of the clear opinion that the claim of the

applicant that the assessment of hearing loss cannot be less than 20% is wholly misconceived. In the present case, the disability of the applicant was initially assessed @ 20% by the RMB, however, as the applicant's CV is found as 500 cm for the right ear and 550 cm for left ear, the Confirming Authority had reduced the percentage of disablement from 20% to 11-14%. In view of the above reproduced guidelines laid down by the GMO for correct assessment of the disability of Bilateral Sensori Neural Hearing Loss, we find that the assessment made by the Confirming Authority has no infirmity and it was correctly assessed @ 11- 14%.

11. In its judgement in the case of **Secretary, Ministry of Defence & Others Vs. Damodaran A.V. (dead) through LRs. & Others** [(2009) 9 SCC 140], Hon'ble Apex Court clearly laid down the following principles with regard to primacy of medical opinion:-

***"8. When an individual is found suffering from any disease or has sustained injury, he is examined by the medical experts who would not only examine him but also ascertain the nature of disease/injury and also record a decision as to whether the said personnel is to be placed in a medical category which is lower than 'AYE' (fit category) and whether temporarily or permanently. They also give a medical assessment and advice as to whether the individual is to be brought before the release/invalidating medical board. The said release/invalidating medical board generally consists of three doctors and they, keeping in view the clinical profile, the date and place of onset of invaliding disease/disability and service conditions, draws a conclusion as to whether the disease/injury has a causal connection with military service or not. On the basis of the***

same they recommend (a) attributability, or (b) aggravation, or (c) whether connection with service. The second aspect which is also examined is the extent to which the functional capacity of the individual is impaired. The same is adjudged and an assessment is made of the percentage of the disability suffered by the said personnel which is recorded so that the case of the personnel could be considered for grant of disability element of pension. Another aspect which is taken notice of at this stage is the duration for which the disability is likely to continue. The same is assessed/ recommended in view of the disease being capable of being improved. All the aforesaid aspects are recorded and recommended in the form of AFMSF-16. The Invalidating Medical Board forms its opinion/ recommendation on the basis of the medical report, injury report, court of enquiry proceedings, if any, charter of duties relating to peace or field area and of course, the physical examination of the individual.

9. The aforesaid provisions came to be interpreted by the various decisions rendered by this Court in which it has been consistently held that the opinion given by the doctors or the medical board shall be given weightage and primacy in the matter for ascertainment as to whether or not the injuries/illness sustained was due to or was aggravated by the military service which contributed to invalidation from the military service."

12. In view of the above analysis, we do not find any infirmity in the final decision of the Medical Board, therefore, the relief asked for by the applicant is unsustainable. Consequently, the OA is dismissed.

13. There is no order as to costs.

Pronounced in open Court on this 26 day of September, 2023.

**[JUSTICE RAJENDRA MENON]**  
**CHAIRPERSON**

**[LT GEN P.M. HARIZ]**  
**MEMBER (A)**

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