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

A.

OA 1261/2016

Col A G Joshi (Retd.) ... Applicant
Versus
Union of India & Ors. ... Respondents

For Applicant : Mr. I S Singh, Advocate
For Respondents : Mr. Neeraj, 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

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ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant filed this OA praying to direct the respondents to accept the disabilities of the applicant as attributable to/aggravated by military service and grant disability pension.

2. The applicant was commissioned in the Indian Army on 13.06.1971 and superannuated from service on 31.10.2003 after completion of 32 years 04 months and 18 days of qualifying service. The Release Medical Board dated 05.05.2003 found that the applicant suffered from the disabilities of (i) "SENSORINEURAL HEARING LOSS

BILATERAL (ICD-H90.93)" 11-15% and (ii) "OBESITY H-90, E-66" NIL, compositely assessed @15% for life, as neither attributed nor aggravated by service.

3. The applicant on superannuation was granted service pension w.e.f 31.10.2006 vide PPO No.M/003757/2003 dated 09.09.2003.

4. The applicant filed an application for 1st Appeal against rejection of initial claim for disability pension vide letter dated 06.06.2016 which was rejected vide letter No.12681/ IC-25131/T-6/MP 5 (b), dated 01.08.2016, on the ground that the disability had been assessed to be less than 15% for life. Aggrieved by the aforesaid rejection, the applicant approached this Tribunal.

5. Placing reliance on the judgment of the Hon'ble Supreme Court in the case of ***Dharamvir Singh*** Vs. ***Union of India & Ors*** [2013 (7) SCC 36], learned counsel for the applicant argued that no note of any disability was recorded in the service documents of the applicant at the time of the entry into the service, and that he served in the Army at various places in different environmental and service conditions in his prolonged service, thereby, any disability during of his service is deemed to be attributable to or aggravated by military service.

6. Learned counsel for the applicant submitted that the Medical Board dated 30.03.2000 assessed the applicant's disability of "SENSORINEURAL HEARING LOSS BILATERAL (ICD-H90.93)" @ 15% for life and held it attributable to military service which was subsequently changed by a RMB dated 05.05.2003 to 11-15% as neither attributed nor aggravated by service, thereby, downgrading the claim of the applicant without assigning any reasons. It is further submitted that the disease suffered by the applicant was hearing loss and as per table at Para 20 of Chapter VII - Assessment of Guide to Medical Officers (GMO) - 2002 (Military Pensions) the degree of disablement in case of hearing loss cannot be assessed less than 20%, thereby, making the rejection of applicant's claim as invalid and arbitrary.

7. Per contra, learned counsel for the respondents submitted that under the provisions of Regulation 53 of the Pension Regulations for the Army, 1961 (Part-I), the primary condition for the grant of disability pension is that the disability must be attributable to or aggravated by military service and should be assessed @ 20% or more.

8. Relying on the aforesaid provision, learned counsel for the respondents further submitted that the aforesaid disabilities of the applicant were assessed as less than 20%, NANA by the RMB and as such, his claim was rejected; thus, the applicant is not entitled for grant of disability pension. He also elaborated that the Medical Board proceedings at Annexure A-2 was a normal categorization board proceeding and what was relevant for deciding the admissibility of Disability Pension is the RMB proceeding at Annexure A-3.

9. On the careful perusal of the materials available on record and the submissions made on behalf of the parties, we are of the opinion that it is not in dispute that the extent of disability was assessed to be 11-15% which is less than the bare minimum for grant of disability pension in terms of Regulation 53 of the Pension Regulations for the Army, 1961 (Part-I).

10. At this point it is relevant to refer to Para 20 of Amendment to Chapter VII - Assessment of Guide to Medical Officers (GMO) - 2002 (Military Pensions), which is reproduced as under:

> *20. Where some useful hearing is present, the assessment of disablement should be related to the best use that can be made of both ears used together.*

Unilateral total deafness gives rise to loss of direction of sound and also overall loss of discrimination of speech. Therefore, even if the other ear is normal, cases of unilateral total deafness should be assessed at twenty per cent (20%).

Broadly speaking, the disability due to deafness is directly related to the capacity for hearing the "conversational voice" or "shout".

Assessment of hearing loss :

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

Grade	Degree of hearing attained	Assessment for both ears used together
1.	Total deafness	100%
2.	Should not beyond 3 feet	80%
3.	Conversational voice not over 1 Foot	60%
4.	Conversational voice not over 3 Feet	40%
6.	Conversational voice not over 9 Feet	20%
	(a) Unilateral total deafness	20%
	(b) Otherwise	LESS THAN 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%
Total mean disability 60%	=	(40 + 80)/2 =

11. However, due to a wide 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 Boards, the office of the DGAFMS, vide its letter No.16036/RMB/IMB/DGAFMS/MA(Pens)/02 dated 14.06.2019 has issued clarification to the provisions laid down in Guide to Medical Officers, which is reproduced below for the sake of convenience:

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

14th June, 2019

TEMPLATE FOR DETAILED JUSTIFICATION REGARDING THE BOARD'S RECOMMENDATIONS ON THE ENTITLEMENT/ASSSESSMENT IN SENSORY NEURAL HEARING LOSS (SNHL) CASES DURING CONDUCT OF RMD/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:

Grade	*Degree for Hearing attained*	*Assessment*
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 (indl 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.

12. In view of the aforesaid clarification to the GMO issued by 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, we are of the view that the dispute regarding the question whether the disability of sensorineural hearing loss can be assessed below 20% or not has been settled in affirmative, clarifying that the aforesaid disability can be assessed below 20%, though it has to be assessed in round figures like 5%, 10% or 15%, unlike earlier cases where the disability has been assessed in approximate figures as 11-14% or 15-19%. Relevant Para of the aforesaid letter is specified herein:

> *"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."*

13. We observe that the guidelines for the percentage assessment of hearing loss provided for in the GMO 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.

14. In the case of ***Secretary, MoD and others*** Vs. ***A.V Damodaran and others*** [(2009) 9 SCC 140], the Hon'ble Supreme Court has brought out 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/invaliding 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.

15. In the case of ***Bachan Prasad*** Vs. ***Union of India*** (C.A No.2259 of 2012 dated 04.09.2019), the Hon'ble Supreme Court has held that an individual is not entitled to the disability element of pension if the disability is less than 20%. The relevant paragraph of the said decision is reproduced as under:

After examining the material on record and appreciating the submissions made on behalf of the parties, we are unable to agree with the submissions made by the learned Additional Solicitor General that the disability of the appellant is not attributable to Air Force Service. The appellant worked in the Air Force for a period of 30 years. He was working as a flight Engineer and was travelling on non pressurised aircrafts. Therefore, it cannot be said that his health problem is not attributable to Air Force service. However, we cannot find fault with the opinion of the Medical Board that the disability is less than 20%. The appellant is not entitled for disability, as his disability is less than 20%.

16. In the case of ***Union of India and others*** Vs. ***Wing Commander S.P Rathore*** (C.A No.10870 of 2018 decided on 11.12.2019), the Hon'ble Supreme Court has held that that

disability element is not admissible if the disability is less than 20%, and that the question of rounding off would not apply if the disability is less than 20%.

17. In view of the above consideration, we don't find any infirmity in the opinion of the RMB and are of the view that the disabilities of the applicant cannot be held to be qualified for grant of disability pension, in view of the fact that it is not fulfilling the mandatory criteria, therefore, the relief asked for by the applicant is unsustainable.

18. Consequently, the O.A. 1261/2016 is dismissed.

19. No order as to costs.

20. Pending miscellaneous application(s), if any, stands closed.

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

(RAJENDRA MENON)
CHAIRPERSON

(P.M. HARIZ)
MEMBER (A)

Neha