COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

B..

OA 1485/2019 with MA 2405/2019

Ex Nb Sub Kuldip Singh (Retd) ..... Applicant
VERSUS
Union of India and Ors. ..... Respondents

For Applicant : Mr. AK Chaudhary & Mr. Manoj Gupta, Advocates
For Respondents : Mr. Prabodh Kumar, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
16.01.2024

Vide our detailed order of even date, we have allowed the OA 1485/2019. Learned counsel for the respondents makes an oral prayer for grant of leave to appeal in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007 to assail the order before the Hon'ble Supreme Court. After hearing learned counsel for the respondents and on perusal of our order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order to grant leave to appeal. Therefore, prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

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**COURT NO. 2, ARMED FORCES TRIBUNAL**
**PRINCIPAL BENCH, NEW DELHI**

## OA No. 1485 of 2019 with MA 2405/2019

**Ex Nb Sub Kuldip Singh(Retd)** ... **Applicant**

**Versus**

**Union of India & Ors.** ... **Respondents**

**For Applicant** : Mr. A.K. Chaudhary, Advocate

**For Respondents** : Mr. Prabodh Kumar, Advocate

**CORAM :**
**HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER(J)**
**HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)**

## O R D E R

**MA 2405/2019**

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 540 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of **UoI & Ors** Vs **Tarsem Singh 2009(1)AISLJ 371** and in **Ex Sep Chain Singh Vs Union of India & Ors (Civil Appeal No. 30073/2017** and the reasons mentioned, the MA 2405/2019 is allowed despite opposition on behalf of the respondents and the delay of 540 days in filing the OA 1485/2019 is thus condoned. The MA is disposed of accordingly.

1. The applicant vide the present O.A 1485/2019 has made the following prayers:-

> ***"(a) Quash and set aside the RMB proceedings to the extent this order deny the grant the Disability Pension to the applicant;***
> ***(b) To direct the respondents to grant the disability pension@20% broadbanded to 50% alongwith interest @10% p.a. from date of discharge, by treating disease as attributable to and aggravated by military service.***
> ***(c) To pass such further order or orders/Directions as this Hon'ble Tribunal may deem fit and proper in accordance with law."***

2. The applicant JC-805086P Ex Nb Sub/ Instr Kuldip Singh was enrolled in the Army Educational Corps on 01.03.1996 as Havildar Education instructor and was discharged from service on 31.08.2017 (AN), under the provisions of Army Rule 13(3) I (ii) (a) (i), as no sheltered appointment was available in the Corps though he was willing to continue in service and he was granted service pension vide PCDA(Pensions) Allahabad PPO No. S/38353/2017(Army) dated 03.08.2017, vide AEC Records letter No. CA1/MRO/07/2016 dated 20.12.2016. The applicant, while serving with College of Military Engineer(CME), Pune(Maharashtra) in peace station was initially placed in low medical category H3(T-24) (Temp) for 'BILATERAL SENSORINEURAL HEARING LOSS' for a period of six months w.e.f. 29 Oct, 2001 to 14 Apr 2016 vide AFMSF-15(Ver 2006) dated 29 Oct, 2015. On further review, the applicant was upgraded to

medical category H(Permanent) for 'BILATERAL SENSORINEURAL HEARING LOSS' for two years wef 15 Apr 2016 vide AFMSF-15 (Ver 2006) dated 16 Apr 2016. At the time of discharge from service, he was brought before the Release Medical Board(RMB), who after physical and clinical examination, opined his disability 'BILATERAL SENSORINEURAL HEARING LOSS' as neither attributable to nor aggravated by military service and assessed the percentage of his disability for the purpose of disability pension as Nil for life with reason "*Disability Conceded Neither Attributable to Nor Aggravated by Military Service, there is no evidence of injury or outcome of infection and working in close proximity of gun fire in terms of Para 23 of Chapter VI of GMO(MP) 2008*".

3. The said RMB was approved on 14.03.2017 in as much as the applicant was in Permanent Low Medical Category and though he was willing to continue in service but no sheltered appointment was available in the Corps, the applicant was discharged from service w.e.f 31.08.2017(AN).

4. The applicant was informed vide AEC Records letter no. PEN/GP/JC805086/DP/69 dated 16.11.2017 that he was not entitled to the grant of the disability element of pension and was advised to

prefer an appeal to Appellate Committee for First Appeal(ACFA) within six months if he was not satisfied.

5. The First appeal dated 02.07.2019 filed by the applicant after a lapse of 01 year and 08 months was returned by the AEC Records vide Letter No. PEN GP/JC-805086P/DP(App)/83 dated 22.07.2019 apprising him that the said first appeal had remain unactioned due to it having been filed beyond the stipulated time frame of six months from the date of receipt of the rejection letter. The avowed contention of the respondents put forth through the Counter Affidavit dated 22.11.2019 filed on their behalf is to the effect that the applicant in terms of Para-173 of Pension Regulations for the Army, 1961 does not fulfill the requisite criteria of the disability of the applicant being attributable to or aggravated by military service though it has been assessed at 20% or over and that thus he was not entitled to the disability element of pension nor to the broadbanded benefits thereof. In the interest of justice, we consider it appropriate to take up the present OA for consideration in terms of Section-21(1) of the AFT Act, 2007 in view of the submissions of the applicant that the applicant's first appeal was rejected by the respondents mechanically on account of delay though the first appeal had been made within the period of five years of the

discharge in terms of Govt. of India/Mod Policy issued by the MoD letter no. 1(3)/2008/D(Pen/Pol) dated 17.05.2016.

6. The applicant submits that he has been denied the benefit of the disability pension erroneously on the grounds of declaring the disability of the applicant of Bilateral Sensorineural Hearing Loss as neither attributable to nor aggravated by military service despite the composite assessment of the disabilities being assessed by the RMB @20% for life dated 25.02.2017. The applicant submits that he was enrolled in the Indian Army on 01.03.1996 in a hale and hearty condition without any pre-existing disease after full fledged physical and medical tests conducted by the Recruiting Medical Board, and that there was no note regarding any pre-existing disease recorded by the Recruiting Medical officer and that the applicant was also sent for military training and subsequently served in the various units with 05 field postings with a duration of 12 years of field service.

7. The applicant has further submitted that after induction into the Indian Army on 01.03.1996, he had no issue qua any disease and that the disability of Bilateral Sensorineural Hearing Loss(BSHL) was detected for the first time in October, 2015 whilst he was posted at Pune. Inter alia, the applicant submits that in spite of regular treatment his condition did not improve and he had been referred for RMB in

February 2017 as his request for extension was denied due to non-availability of the sheltered appointment vide letter dated 20.12.2016 and that the applicant was thus unable to complete his color service in his rank of Nb Sub and was discharged pre-maturely.

8. The applicant further submits to the effect that his disability of Bilateral Sensorineural Hearing Loss(BSHL) is attributable to military service and is a result of different terrain postings during his service career in field and as also in high altitude areas. The applicant submits that he participated repeatedly in the field firings on the Line of Control (LOC) and was involved in IB duty and during his field tenure of 12 years and he took active part in various types of operations assigned to his unit. The applicant submits that he was initially not aware about his disability and reported the same in the year 2015 when he felt some sort of hearing difficulty which was aggravated due to continuous stress and strain of military service when he was finally placed in Low Medical Category(LMC), i.e. Cat-C(Permanent) in October, 2015 and remained in LMC till discharge from service on 31.08.2017 after rendering around 21 years of active service. The applicant further submits that whilst working continuously in LMC, his condition worsened and he used to discharge fatigue duty, shift duty, JCO in-charge duty and was detailed to supervise Parade/PT,

Temporary Duty etc which needs physical and mental involvement during odd hours. The applicant submits that the opinion of the Medical Board in Part-V of the RMB dated 25.02.2017 which is to the effect:-

"

**PART-V**

**OPINION OF THE MEDICAL BOARD**

| 1. Causal relationship of the disability with Service conditions or otherwise. | | | | |
|---|---|---|---|---|
| Disability | Attributable to service(Y/N) | Aggravated by Service(Y/N) | Not Connected with Service(Y/N) | Reason/Cause/Specific Condition & period in Service |
| **(a)BILATERAL SENSORINEURAL HEARING LOSS** | **NO** | **NO** | **YES** | **Disability conceded neither attributable nor aggravated by mil service. There is no injury or outcome of infection and working in close proximity of Gun Fire(Ref Para 23, Chapter VI of GMO MP, 2008.)** |
| Note: A Disability "Not Connected with Service" would be neither Attributable nor aggravated by Service.<br>[This is in accordance with instruction contained in 'Guide to Medical Officers(Mil Pension)-2008'] | | | | |

"

is wholly unsustainable and erroneous, as it has not ascertained the evaluation of the disability appropriately. The applicant further submits that the RMB had failed to appreciate that his disability bore causal connection with military service as he remained in A4G1 or SHAPE-I till October, 2015 and all of a sudden was detected with the disability while serving in Pune and thus the view taken by the RMB that the disability was not connected with service is wholly unjustified

and illogical. The applicant has further submitted that the reason given by the RMB that 'there was no evidence of injury or outcome of infection and working in close proximity of Gun fire', is contradictory in nature and submits that his disease was attributable to high degree of stress and strain of service in his trade wherein he had to work physically as well as mentally with lot of fatigue during various exercises and **was also involved in routine firing practice during his 12 years stay at field units** and that thus the disability detected after 17 years of service cannot be held to be not attributable to service.

9. The applicant further submits that he had also shouldered the responsibilities of an additional task during his tenure at 1 Vikas/Hq 22 Est from Mar 2010 to Jun 2013 along the LOC. Before this he served 4 Ladakh Scouts from July 2004 to February 2006 and 26 Maratha Light Infantry from November 2000 to March 2004 and 11 Engr Regt from July 1997 to February 2000 and the applicant submits that all these postings were field postings wherein he often took active part in different operations including regular firing practice. The applicant submits that he had through his appeal dated 02.07.2019 submitted that his disability was detected during active service and since October 2015, he was continuously under treatment by service

doctors till discharge in August, 2017 and thus the aggravation factor cannot be ruled out. The applicant has further submitted that his last posting was in the field area which was from March 2010 to June 2013 and as submitted by him he had been deployed in the field area for 12 years. Inter alia, the applicant has submitted to the effect that the respondents had failed to appreciate that continuous exposure to various type of ammunition firing has worsened his condition and due to his disease he lost the chance of further promotion and even a sheltered appointment was denied to him due to non-availability of vacancy and despite the same he continued to serve the nation to the best of his abilities.

10. The applicant has further submitted to the effect that he is entitled to the liberal interpretation of the existing provisions which have been promulgated to aid the armed forces personnel who suffer aggravation of disabilities due to stress and strain of military service. The applicant further submits that the RMB had failed to give any detailed justification supported by any diagnostic evidence as to why the disease was not attributable to service.

11. Reliance was placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in CA No. 4949/2013 in Para-28 in

***Dharamvir Singh Vs. UOI & Ors.***, thereof which lays down the guiding canons to the effect:

> ***"28. A conjoint reading of various provisions, reproduced above, makes it clear that:***
> ***(i) Disability pension to be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable or aggravated by military service to be determined under "Entitlement Rules for Casualty Pensionary Awards, 1982" of Appendix-II (Regulation 173).***
> ***(ii) A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service. [Rule 5 r/w Rule 14(b)].***
> ***(iii) Onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally. (Rule 9).***
> ***(iv) If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service. [Rule 14(c)].***
> ***(v) If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service. [14(b)].***
> ***(vi) If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons. [14(b)]; and***
> ***(vii) It is mandatory for the Medical Board to follow the guidelines laid down in Chapter-II of the "Guide to Medical (Military Pension), 2002 – "Entitlement :***

***General Principles", including paragraph 7,8 and 9 as referred to above."***

12. It was thus contended on behalf of the applicant that in as much as the applicant suffered from no disability at the time of induction into military service and there being no note recorded on the records of the respondents of any disability that the applicant suffered from before induction into military service, nor there being any assessment put forth by the respondents that the disability that the applicant suffered from could not be detected prior to induction into military service, it has to be held that the disability that the applicant suffered from in the year 2015 after induction into military service on 01.03.1996 was attributable to military service. Reliance was also placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in ***UOI &Ors. Vs. Rajbir Singh*** (2015) 12 SCC 264 to contend to similar effect.

13. Reliance was also placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in ***UOI Vs. Angad Singh Titaria*** in Civil Appeal No. 11208/2011 to contend to the effect that the denial of the disability pension on the ground that the disability that the military personnel suffered from was only related to military service, it must be affirmatively proved by the respondents that the

disease had nothing to do with such service and the burden to establish such a disconnect would lie heavily upon the employer for otherwise the rules raise a presumption that the deterioration in the health of the member of the service is on account of military service or aggravated by the same and the soldier cannot be asked to prove that the disease was contracted by him on account of military service or was aggravated by the same.

14. Reliance was also likewise placed on behalf of the applicant on verdict of the Hon'ble Supreme Court in ***Sukhvinder Singh Vs UOI & Ors.***, Civil Appeal no. 5605/2010 to submit to the effect that it has been laid down therein that

> ***"any disability not recorded at the time of recruitment must be presumed to have been caused subsequently; and unless proved to the contrary to be a consequence of military service".***

15. Reliance was also placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in ***Veerpal Singh Vs Secretary Mod*** (2013) 8 SCC 83 and on the verdict of the Hon'ble Supreme Court in ***UOI & Ors. Vs Manjit Singh***, AIR 2015 SC 2114 to contend to similar effect. Reliance was also placed on behalf of the applicant on the Ministry of Defence Letter dated 29.06.2017 sent to the Chief

of the Army/Navy/Air Force for implementation of the order of the Hon'ble Supreme Court in ***Dharamvir Singh***(Supra).

16. Reliance was also placed on behalf of the applicant on his posting profile put forth in Part-I in the Personal Statement in the RMB dated 25.02.2017 which is to the effect:-

"

**PART I**
**PERSONAL STATEMENT**

1. Give details of the service (P=Pease OR F= Field/Operational/Sea Service)

| SL. NO | FROM | TO | PLACE/SHIP | P/F | SL. NO | FROM | TO | PLACE/SHIP | P/F |
|---|---|---|---|---|---|---|---|---|---|
| (a) | Mar 96 | Jun 97 | GRC Jabalpur/ AEC Pachmarchi | P | (g) | Mar 06 | May 08 | HQ RTG Zone Kolkata | P |
| **(b)** | **Jul 97** | **Feb 00** | **111 Engr Regt** | **F** | (h) | Jun 08 | Feb 10 | HQ 64 Mtn Bde | P |
| (c) | Mar 00 | Oct 00 | 2 MAHAR Regt | P | **(i)** | **Mar 10** | **Jun 13** | **1 Vikas/HQ 22 Fst** | **F** |
| **(d)** | **Nov 00** | **Mar 04** | **26 MARATHA LI** | **F** | (j) | Jul 13 | Jun 15 | HQ 20 Inf Bde | P |
| **(e)** | **Apr 04** | **Jun 04** | **3 Assam Regt** | **F** | (k) | Jul 15 | Till date | CME Pune | P |
| **(f)** | **Jul 04** | **Feb 06** | **4 Ladakh Scouts** | **F** | | | | | |

"

as also on the question no. 3 in the RMB and the response thereto which is as under:-

> ***"3. Did you suffer from any disability before joining the Armed Forces? If so, give details and dates. No "***

17. Reliance was also placed on behalf of the applicant on the questions and responses in Paras 2, 3, 5(a), (b) in Part-V of the RMB dated 25.02.2017 which read as under:-

> ***"2. Did the the disability exist before entering service? (Y/N/could be): NO***
> ***3. In case the disability existed at the time of entry, is it possible that it could not be detected during the routine medical examination carried out at the time of the entry? NO***
> ***5.(a) Was the disability attributable to the officer's own negligence or misconduct? If Yes, in what way? NO***
> ***(b) If not attributable, was it aggravated by negligence or misconduct? If so, in what way and to what percentage of the total disablement? NO."***

18. Reliance was also placed on behalf of the applicant on the factum of the onset of the disability on 29.10.2015 in his 11th posting as reflected in Part-IV of Statement of the Case in the RMB as under:-

"

**PART-IV**
**STATEMENT OF CASE**

1. Chronological list of the disabilities

| Disabilities | Date of origin | Place and unit where serving at the time |
|---|---|---|
| BILATERAL SENSORINEURAL HEARING LOSS | 29 Oct 2015 | CME, PUNE-31 |

"

19. On behalf of the respondents, it was reiterated that there was no infirmity whatsoever in the RMB having opined that the disability of the applicant was neither attributable to nor aggravated by military service and it was further submitted on behalf of the respondents that the opinion given by the medical board is liable to be given due weight, value and credence with reliance placed on behalf of the respondents in relation thereto on the verdicts of the Hon'ble Supreme Court in:

> ***"(a) Union of India & Ors Vs Keshar Singh (2007) 12 SCC 675.***
> ***(b) Union of India & Ors Vs Surinder Singh (2008) 5 SCC 747.***
> ***(c) Secretary, Ministry of Defence and Ors Vs AV Damodaran (Dead) (2009) 9 SCC 1.***
> ***(d) Union of India & Ors Vs Jujhar Singh (2011) 7 SCC 735.***
> ***(e) Union of India & Ors Vs Talvinder Singh (2012) 5 SCC 48."***

20. The respondents have further submitted to the effect that the applicant was misleading the Court that he had participated/was involved repeatedly in the field firing on Line of Control(LOC), involved in IB duty and took active part in various type of operations assigned to his unit and the respondents submit that rather the applicant was an Education Instructor and held no field duty. The respondents further submit that as per applicant's designation/charter,

he was required to impart training in classes and had no field job and there is nothing to indicate that his conditions of service were responsible for the origination of the disability or for the aggravation of the same.

21. The applicant through his Rejoinder placed reliance on Regulation-423 of the Regulations for Medical Services to the Armed Forces Personnel, 2010 in relation to the aspect of the attributability to service which reads as under:-

> ***"423(a). For the purpose of determining whether the cause of a disability or death resulting from disease is or not attributable to Service. It is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a Field Area/Active Service area or under normal peace conditions. It is however, essential to establish whether the disability or death bore a causal connection with the service conditions. All evidences both direct and circumstantial will be taken into account and benefit of reasonable doubt, if any, will be given to the individual. The evidence to be accepted as reasonable doubt for the purpose of these instructions should be of a degree of cogency, which though not reaching certainty, nevertheless carries a high degree of probability. In this connection, it will be remembered that proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. If the evidence is so strong against an individual as to leave only a remote possibility in his/her favor, which can be dismissed with the sentence "of course it is possible but not in the least***

***probable" the case is proved beyond reasonable doubt. If on the other hand, the evidence be so evenly balanced as to render impracticable a determinate conclusion one way or the other, then the case would be one in which the benefit of the doubt could be given more liberally to the individual, in case occurring in Field Service/Active Service areas.***

***(b). Decision regarding attributability of a disability or death resulting from wound or injury will be taken by the authority next to the Commanding officer which in no case shall be lower than a Brigadier/Sub Area Commander or equivalent. In case of injuries which were self-inflicted or due to an individual's own serious negligence or misconduct, the Board will also comment how far the disablement resulted from self-infliction, negligence or misconduct.***

***(c). The cause of a disability or death resulting from a disease will be regarded as attributable to Service when it is established that the disease arose during Service and the conditions and circumstances of duty in the Armed Forces determined and contributed to the onset of the disease. Cases, in which it is established that Service conditions did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease, will be regarded as aggravated by the service. A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in Service if no note of it was made at the time of the individual's acceptance for Service in the Armed Forces. However, if medical opinion holds, for reasons to be stated that the disease could not have been detected on medical examination prior to acceptance for service, the disease***

***will not be deemed to have arisen during service.***

***(d). The question, whether a disability or death resulting from disease is attributable to or aggravated by service or not, will be decided as regards its medical aspects by a Medical Board or by the medical officer who signs the Death Certificate. The Medical Board/Medical Officer will specify reasons for their/his opinion. The opinion of the Medical Board/Medical Officer, in so far as it relates to the actual causes of the disability or death and the circumstances in which it originated will be regarded as final. The question whether the cause and the attendant circumstances can be accepted as attributable to/aggravated by service for the purpose of pensionary benefits will, however, be decided by the pension sanctioning authority.***

***(e). To assist the medical officer who signs the Death certificate or the Medical Board in the case of an invalid, the CO unit will furnish a report on :***

***(i) AFMSF – 16 (Version – 2002) in all cases***
***(ii) IAFY – 2006 in all cases of injuries.***

***(f). In cases where award of disability pension or reassessment of disabilities is concerned, a Medical Board is always necessary and the certificate of a single medical officer will not be accepted except in case of stations where it is not possible or feasible to assemble a regular Medical Board for such purposes. The certificate of a single medical officer in the latter case will be furnished on a Medical Board form and countersigned by the Col (Med) Div/MG (Med) Area/Corps/Comd (Army) and equivalent in Navy and Air Force."***

***(emphasis supplied),***

22. The applicant thus reiterates that he is entitled to the grant of disability pension in accordance with the law laid down by the Hon'ble Supreme Court in ***UOI & Dharamvir Singh*** in Civil appeal No. 4949/2013 and that the applicant is also entitled to the broadbanding of the disability element of pension in terms of the verdict of the Hon'ble Supreme Court in ***UOI & Ors. vs Ramavtar*** in Civil Appeal No. 418/2012.

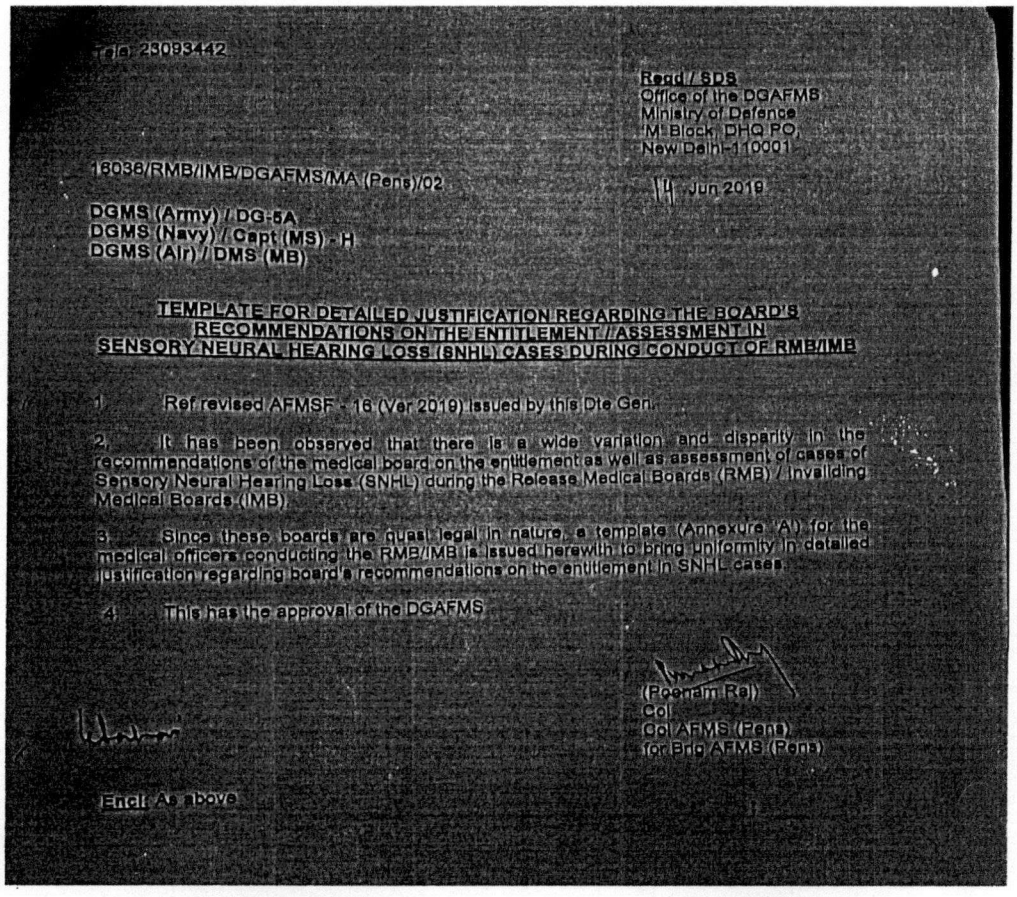
23. On behalf of the applicant, reliance was also specifically placed through the Rejoinder filed on the observations in Para-15 of the verdict of the Hon'ble Supreme Court in ***Rajbir Singh*** (supra) to the effect:-

> *15. The legal position as stated in Dharamvir Singh's case (supra) is, in our opinion, in tune with the Pension Regulations, the Entitlement Rules and the Guidelines issued to the Medical Officers. The essence of the rules, as seen earlier, is that a member of the armed forces is presumed to be in sound physical and mental condition at the time of his entry into service if there is no note or record to the contrary made at the time of such entry. More importantly, in the event of his subsequent discharge from service on medical ground, any deterioration in his health is presumed to be due to military service. This necessarily implies that no sooner a member of the force is discharged on medical ground his entitlement to claim disability pension will arise unless of course the employer is in a position to rebut the presumption that the disability which he suffered was neither attributable to nor aggravated by military service. From Rule 14(b) of the Entitlement Rules it is further clear that if the medical opinion were to hold that the disease suffered by the member of the armed forces could not have been detected prior to acceptance for service, the Medical Board must state the reasons*

*for saying so. Last but not the least is the fact that the provision for payment of disability pension is a beneficial provision which ought to be interpreted liberally so as to benefit those who have been sent home with a disability at times even before they completed their tenure in the armed forces.* ***There may indeed be cases, where the disease was wholly unrelated to military service, but, in order that denial of disability pension can be justified on that ground, it must be affirmatively proved that the disease had nothing to do with such service. The burden to establish such a disconnect would lie heavily upon the employer for otherwise the rules raise a presumption that the deterioration in the health of the member of the service is on account of military service or aggravated by it. A soldier cannot be asked to prove that the disease was contracted by him on account of military service or was aggravated by the same. The very fact that he was upon proper physical and other tests found fit to serve in the army should rise as indeed the rules do provide for a presumption that he was disease-free at the time of his entry into service. That presumption continues till it is proved by the employer that the disease was neither attributable to nor aggravated by military service. For the employer to say so, the least that is required is a statement of reasons supporting that view. That we feel is the true essence of the rules which ought to be kept in view all the time while dealing with cases of disability pension."***

*(emphasis supplied)*

24. Furthermore, on behalf of the applicant reliance was placed on 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 by the Ministry of Defence which reads to the effect:-



Tele: 23093442

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

18036/RMB/IMB/DGAFMS/MA (Pens)/02

14 Jun 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 Boards (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.

(Poonam Rai)
Col
Col AFMS (Pens)
for Brig AFMS (Pens)

Encl: As above

25. The Annexure-A attached to this letter reads to the effect:-

"***<u>ENTITLEMENT FOR CASES OF SENSORINEURAL HEARING LOSS</u>***

***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 individuals exposed to loud noises like gunfire (arty/ in 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 specified above.*

*ASSESSMENT FOR CASES OF SENSORINEURAL HEARING LOSS*

*Reference Para 20, Chap VII, GMO 2002 amendment 2008 which is currently in vogue, decided based on the assessment is still 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 assessment is still based on the CV. Hearing should be tested individually in both ears the and assessed separately, however final assessment of disablement is an average of the separate individual years. 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 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 assessed at Grade 4 (20%) 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."***

It is thus submitted on behalf of the applicant that in terms of the said policy letter of the respondents themselves, the disability of Sensorineural Hearing Loss is always to be conceded as being Aggravated by service in terms of Para-23 of Chapter-VI of GMO, 2002 amended in 2008 unless it is attributable to trauma and infection as has been specified in the said letter.

***ANALYSIS***

26. On a consideration of the submissions made on behalf of either side, it is essential to observe that the factum that as laid down by the Hon'ble Supreme Court in ***Dharamvir Singh(Supra)*** ,a personnel of the Armed forces has to be presumed to have been inducted into military service in a fit condition ,if there is no note of record at the time of entrance in relation to any disability in the event of his subsequently being discharged from service on medical grounds the disability has to be presumed to be due to service unless the contrary is established, - is no more ***res integra.***

27. Furthermore, the 'Entitlement Rules for Casualty Pensionary Awards, to the Armed Forces Personnel 2008, which take effect from 01.01.2008 provide vide Paras 6, 7, 10, 11 to the effect:-

*"6. Causal connection:*
*For award of disability pension/special faraily pension,*
*a causal connection between disability or death and military service has to be established by appropriate authorities.*

*7. Onus of proof.*
*Ordinarily the claimant will not be called upon to prove the condition of entitlement. However, where the claim is preferred after 15 years of discharge/retirement/ invalidment/release by which time the service documents of the claimant are destroyed after the prescribed retention period, the onus to prove the entitlement would lie on the claimant.*

*10. Attributability:*

*(a) <u>Injuries:</u>*
*In respect of accidents or injuries, the following rules shall be observed:*
*(i) Injuries sustained when the individual is 'on duty', as defined, shall be treated as attributable to military service, (provided a nexus between injury and military service is established).*
*(ii) In cases of self-inflicted injuries while *on duty', attributability shall not be conceded unless it is established that service factors were responsible for such action.*

*(b) <u>Disease:</u>*
*(i) For acceptance of a disease as attributable to military service, the following two conditions must be satisfied simultaneously:-*

*(a) that the disease has arisen during the period of military service, and*
*(b) that the disease has been caused by the conditions of employment in military service.*

*(ii) Disease due to infection arising in service other than that transmitted through sexual contact shall merit an entitlement of attributability and where the disease may have*

*been contacted prior to enrolment or during leave, the incubation period of the disease will be taken into consideration on the basis of clinical course as determined by the competent medical authority.*

*(iii) If nothing at all is known about the cause of disease and the presumption of the entitlement in favour of the claimant is not rebutted, attributability 'should be conceded on the basis of the clinical picture and current scientific medical application.*

*(iv) When the diagnosis and/or treatment of a disease was faulty, unsatisfactory or delayed due to exigencies of service, disability caused due to any adverse effects arising as a complication shall be conceded as attributable.*

*11. Aggravation:*
*A disability shall be conceded aggravated by service if its onset is hastened or the subsequent course is worsened by specific conditions of military service, such as posted in places of extreme climatic conditions, environmental factors related to service conditions e.g. Fields, Operations, High. Altitudes etc."*

*(emphasis supplied),*

Thus, the ratio of the verdicts in ***Dharamvir Singh Vs. Union Of India &Ors*** (Civil Appeal No. 4949/2013); (2013 7 SCC 316, ***Sukhvinder Singh Vs. Union Of India &Ors***, dated 25.06.2014 reported in 2014 STPL (Web) 468 SC, ***UOI &Ors. Vs. Rajbir Singh*** (2015) 12 SCC 264 and ***UOI & Ors. Vs. Manjeet Singh*** dated 12.05.2015, Civil Appeal no. 4357-4358 of 2015, as laid down by the Hon'ble Supreme Court are the fulcrum of these rules as well.

28. Furthermore, it is further essential to advert to Para-423(c) of the Regulations for the Medical Services of the Armed Forces 2010 already referred to herein above in Para-21 which specifically stipulates to the effect that the cause of a disability or death resulting from a disease will be regarded as attributable to service when it is established that the disease arose during service and the conditions and circumstances of duty in the Armed Forces determined and contributed to the onset of the disease and that ***in cases in which it is established that service conditions did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease, will be regarded as aggravated by service***, which cannot be overlooked.

29. As has been laid down by the Hon'ble Supreme Court in Para-25(b) of its verdict in ***Dharamvir Singh***(Supra), if the medical opinion holds that the disease could not have been detected on medical examination prior to acceptance for service and the disease was not deemed to have arisen during service, it is for the Board to state the reasons for the same and that the in terms of Para-25(2) of the verdict in ***Dharamvir Singh***(Supra), it has been categorically laid down that the disease which has led to an individual's discharge or death be ordinarily be treated to have arisen in service, if no note of it

was made at the time of individual's acceptance for service in Armed Forces. Likewise, it is essential to observe that in terms of Para-7 of the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel 2008, it has been categorically stated therein to the effect:-

> ***"7. Onus of proof. Ordinarily the claimant will not be called upon to prove the condition of entitlement. However, where the claim is preferred after 15 years of discharge/retirement/ invalidment/release by which time the service documents of the claimant are destroyed after the prescribed retention period, the onus to prove the entitlement would lie on the claimant."***

which itself *ipso facto* raises an initial presumption in favour of the applicant qua the disability in question having arisen due to military service in as much as there was no disability that the applicant suffered from at the time of induction into the Indian Army. Furthermore, the respondents in terms of Para- 10(b)(iii) which relates to **'attributability'** in the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel 2008 already adverted to herein above in Para- 6, stipulates that in the event that no cause for the disability is spelt out and the initial presumption in terms of Para-7 of the said Entitlement Rules of 2008 is not dislodged and not repelled by the respondents, the disability has to be held to be Attributable to military service.

30. In the facts of the instant case where the applicant was admittedly a Educational instructor and that the applicant was deployed in field postings for 12 years as per his posting profile is also not refuted on behalf of the respondents, though the respondents submit that the applicant was not deployed on the Line of Control (LOC), and was not involved in gun firing apparently during such deployment, in relation to the said submission, it is essential to advert to the document dated 14.06.2019 of the respondents themselves referred to herein above which categorically brings forth that service personnel are exposed intermittently to loud noises in the form of small arms, gun fire and RT firing which results in chronic noise induced hearing damage which prevents and progresses insidiously and that long term occupational exposure to loud noise cannot be ruled out, as all service personnel irrespective of trade/ Regt Co are exposed to loud noises of small arms firing during service and as per the said policy letter itself, the disability of SNHL in the said cases is always to be conceded as being aggravated by service in terms of Para-23 of Chapter-VI of the GMO,2008 unless attributable to trauma or infection.

31. Para-23 of Chapter-VI of GMO(MP),2008 reads as under:-

*"23. Deafness. In the great majority cases of ear disease it is necessary to investigate the condition of hearing and to ascertain whether the deafness if present is due to involvement of sensory neural apparatus or conduction apparatus. The common causes of conductive deafness are wax, Otitis media and Otosclerosis.*

*Sensory neural deafness is either due to disease of cochlea or auditory fibres in the 8th nerve and its connection in the brain stem. Here both air and bone conduction is affected and is frequently associated with tinnitus.*

*The common causes are:*

*(a) Infection.*

*Viral infection e.g. mumps, influenza.*

*Cerebrospinal fever.*

*TB meningitis.*

*Labrynthitis complicating otitis.*

*media (commonest cause of SN deafness).*

*Ramsay Hunt Syndrome (Herpes-Zoster Oticus).*

*(b)Toxic Drugs and Chemicals Tobacco, alcohol(rarely).*

*Quinine, streptomycin, kanamycin, neomycin, vancomycin, Lead, arsenic.*

*(c) Degenerative diseases e.g. Multiple sclerosis.*

*(d) Injury*

*(e) Tumours e.g. Acoustic neuroma*

*(f) Meniere's diease. (affecting cochlear apparatus).*

*(g) Senile deafness due to involvement of cochlear apparatus*

*Caisson workers, divers, airmen and mountaineers and persons posted in HAA are liable to develop deafness due to labrynthine injury (hemorrhage, thrombosis or embolism) resulting from sudden compression/decompression and hypercoagulable state.*

*Medical opinion would hold that nerve deafness could be due to service only when it is as a result of an attributable service injury or outcome of infection contracted during service.*

***However, those working in close proximity of gun fire (small arms, grenade, arty guns, bomb blast, and tanks) and in constant exposure to blast of loud noises such as working with aero engines, riveters, factory workers run the risk of labrynthine deafness. In these cases intensity of continuity, duration and distance of sound nuisance should be considered before conceding aggravation."***

***(emphasis supplied)***

32. It is apparent thus that in terms of Para-23 of Chapter-VI of said GMO(MP),2008 itself that those working in close proximity of gun fire(small arms, grenade, arty guns, bomb blast and tanks) run the risk of labyrynthine deafness. In these circumstances where the disability as observed hereinabove had its onset after 19 years of military service with the deployment of the applicant in the category of an educational instructor even though not deployed on the Line of Control(LOC), that the applicant would have been exposed to small arms firing during service in terms of the policy letter dated 14.06.2019 would have to be necessarily conceded by the respondents.

33. In these circumstances, in as much as the applicant suffered from no disability prior to induction into military service, there is nothing on the record to indicate that the said disability could not have been detected before induction into military service with there being nothing on the record brings forth any contributory factors from the

side of the applicant, coupled with the factum that the disability arose after 19 years of military service, the applicant having been deployed in 5 field postings for 12 years, in terms of the settled law laid down by the Hon'ble Supreme Court in CA No. 4949/2013 in ***Dharamvir Singh Vs. UOI & Ors*** in Civil appeal no. 4949/2013, ***UOI & Ors. vs Ramavtar*** in Civil Appeal No. 418/2012, ***UOI Vs. Angad Singh Titaria*** in Civil Appeal No. 11208/2011, ***UOI & Ors. Vs. Manjeet Singh*** in Civil Appeal no. 4357-4358 of 2015, the disability in terms of the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008 and the MoD letter dated 29.06.2017 and the policy letter dated 14.06.2019 of the MOD, it is held that the disability of the applicant of Sensorineural Hearing Loss(SNHL) assessed with a disablement percentage of 20% for life is aggravated by military service.

## *CONCLUSION*

34. The OA 1485/2019 is allowed. The applicant is held entitled to the grant of disability element of pension in relation to the disability of BILATERAL SENSORINEURAL HEARING LOSS @20% for life, from the date of discharge, which in terms of the verdict of the Hon'ble Supreme Court in ***UOI & Ors. vs Ramavtar*** in Civil Appeal No. 418/2012 is directed to be broadbanded to 50% for life.

35. The respondents are thus directed to calculate, sanction and issue the necessary PPO to the applicant within a period of three months from the date of receipt of copy of this order and the amount of arrears shall be paid by the respondents, failing which the applicant will be entitled for interest @6% p.a. from the date of receipt of copy of the order by the respondents.

Pronounced in the open Court on the 16 day of January, 2024.

**[REAR ADMIRAL DHIREN VIG]**
**MEMBER (A)**

**[JUSTICE ANU MALHOTRA]**
**MEMBER (J)**

/TS/