

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

A..

OA 897/2017 with MA 1556/2023 & 501/2022

Cdr Prabir Singha (Retd)

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : Mr. I S Singh & Shakti Jaidwal, Advocate

For Respondents : Mr. V Pattabhi Ram, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)

HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

10.01.2024

Vide our detailed order of even date, we have allowed the OA 897/2017. 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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Cdr Prabir Singha(Retd)

... Applicant

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**For Applicant : Mr. I.S. Singh, Advocate and
Mr. Shakti Jaidwal, Advocate**

For Respondents : Mr. V. Pattabhi Ram, Advocate

CORAM :

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER(J)

HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

1. The applicant vide the present O.A 897/2017 has made the following prayers:-

“(a) Set aside the impugned order dated 28.03.2017 passed by the Respondents.

(b) Direct the Respondents to treat the disabilities with which the Applicant is suffering as Attributable to or Aggravated by Naval Service;

(c) Direct the Respondents to grant disability pension to the Applicant w.e.f. 01.01.2012.

(d) Direct the Respondents to pay disability pension to the Applicant @ of 75% w.e.f. 01.01.2012 by rounding off the Applicant's disability to 75%;

(e) Direct the Respondents to pay 10% interest on the arrears of disability pension w.e.f. 01.01.2012; and

(f) Issue such other order/direction as may be deemed appropriate in the facts and circumstances of the case.”

2. Vide the impugned order dated 28.03.2017 the respondents had stated that the Post Discharge Claim for disability pension made by the applicant for his disabilities referred to in his letter dated 11.09.2015 (i.e. the disabilities of Coronary Artery disease assessed @ 30% and Sudden Sensorineural Hearing Loss assessed @ 40% for the purpose of assessment of disablement with the composite assessment of 60% disability) could not be accepted as per the rules and that the claim of the applicant was not thus tenable.

3. The applicant was recruited in the Indian Navy on 18.06.1977 after a thorough medical examination and was found fit and free from any disease or medical disability to undergo the rigorous military training. He was commissioned in the rank of Sub Lieutenant on 01.04.1988 after a rigorous military training and underwent the pre-commission training. He was posted during the period 2007-2011 at the INHS Asvini at Mumbai where during the Annual Medical Examination of 2009, an ECG abnormality of the applicant was detected, but the applicant submits that despite the same as appropriate diagnostic tests and special investigations such as Tread Mill Test(TMT) or Coronary Angiography(CAG) were not conducted, which would have brought forth his actual ailment i.e. Coronary Artery Disease which would have resulted in lowering of his medical category

and making him unavailable for multiple tasking, the applicant was shown declared to be fit. The applicant submits that further the RMB held on 12.07.2011 declared the applicant fit for release from service in Medical Category S1A1 despite he having an ECG abnormality and thus denied the applicant of the disability pension claim for the Coronary Artery Disease which had manifested in 2009 whilst he was in active service, though it had been detected later during his re-employment.

4. The applicant retired from the Indian Navy on 31.12.2011 after reaching the age of superannuation but submits that in view of the shortage of officers in the cadre he was re-employed in the Indian Navy from the very next day of his retirement i.e. 01.01.2012. The applicant was granted service pension in relation to his previous service by the PCDA(Navy), Mumbai vide PPO bearing No. 09/97/A/S 000001/2012 dated 05.01.2012. Whilst posted at the Headquarters Southern Naval Command, Kochi, the applicant suffered from the disability of Sudden Sensorineural hearing Loss(Right) ICD No. H. 90.3(RT) and his medical category was lowered to S2A2(H) by the Medical Board held at the Indian Naval Hospital Ship Sanjivani. The applicant submits that he was thereafter again posted to the INHS Asvini at Mumbai, and given multiple duties due to continued shortage of officers in the cadre and whilst carrying

out multiple duties at the INHS Asvini, he suffered from another permanent disability of Coronary Artery Disease-CSA-TMT +VE, DVD, PTCA TO LAD/RCA, ICD: 125.9 and his medical category was further lowered to S2A2(P) by the Re-categorisation medical board held at INHS Asvini.

5. The applicant submits that during his service, he rose to the rank of Commander and being in a medical trade was posted from 2007-2011 at INHS Asvini, Mumbai and was entrusted with multiple duties due to the shortage of officers in the same cadre as reflected vide letter dated 27.09.2014 of Surgeon Rear Admiral John D'Souza, the Commanding Officer of the applicant who had stated therein to the effect:-

"The situation in INHS Asvini is grim, to say the least. Only 07 officers are borne against Govt. sanctioned strength of 12 officers. It may be pertinent to mention that post modernization (2004) the inpatient strength of INHS Asvini has increased by more 50% (500 in 2004 to 800 in 2014) The OPD attendance has almost quadrupled during this period Obviously this has led to exponential increase in professional/ administrative work load. The Govt. sanction/ borne strength of MO's, NO's and MA's have been increased by an average of 40%, which is more or less adequate to tackle the professional demand. However, there has been no increase in Govt. sanction of SDM officers which has stagnated at 12 despite the tremendous increase in the administrative work load. Even more ironic is the fact that the borne strength has been reduced to 07 against 12 in early 2000's. Such a situation has put undue pressure/ stress on the SDM officers borne in the INHS Asvini. It may not be out of place to say that 05 officers who have served Asvini in the recent past have been

detected with stress related Hypertension /CAD's /Diabetes."

6. It was further stated in this letter by the Commanding Officer Surgeon Rear Admiral John D'Souza to the effect:-

" Under such a back ground, Cdr, Prabir Singha (89763-F) the senior most SDM officer in Asvini (Navy) is due to retire on 31 Dec 2014 on completion of 57 yrs. The officer has been carrying out the duties of First Lt, Gunnery Officer, Dept Officer of Topass/ Gunnery Staff, Data Entry Operators, Environment Officer and Divisional Officer, to name a few. As First Lt, the officer's primary responsibility is manpower management and ensuring smooth functioning of day to day administration of the Hospital. In addition, the officer is coordinating all the major activities of the Medical Services viz. BMC, MMC and all CMEs. That the officer carries out the duties in an exemplary manner is borne by the fact that he has been First Lt of this hospital from Nov 2008 to Jul 2011 and again from Oct 2012 till date. This period coincides with the critical shortage of SDM officers in Asvini and amplifies his qualities even more.

In addition, the officer works as a 'well of information' and 'guiding force' to the cadre in the Hospital which goes a long way in ensuring smooth running of the Administration by eliciting the maximum output from the truncated team of SDM officers."

7. Though the Commanding Officer of the applicant had sought the further extension of the applicant for a year, the applicant was discharged on 31.12.2014 with the disabilities qua which the RMB dated 16.09.2014 opined to be neither attributable to nor aggravated by military service.

8. The applicant was released from re-employment with the two disabilities of Coronary Artery Disease-CSA-TMT +VE, DVD, PTCA TO LAD/RCA, ICD: 125.9 @30% for life and Sudden Sensorineural Hearing Loss @40%, compositely assessed @60%. Vide letter dated

11.09.2015, the applicant sought the grant of disability element of pension for his disabilities assessed with a composite disablement percentage of 60% for life, which disabilities the applicant submits had originated in 2009 whilst he was in active service.

9. The said RMB dated 16.09.2014 placed the applicant in Low medical Category S2A2(H) PMT for the disability (1) Coronary Artery Disease which had its onset on 21.02.2014 at Mumbai and placed the applicant in category S2A2(H) PMT for the disability (2) Sudden Sensorineural Hearing Loss (RT) w.e.f. 16.09.2014, subject to approval of the higher medical authority.

10. The applicant had submitted that his disabilities are wholly attributable to and aggravated by military service and placed reliance on the verdict of the Hon'ble Supreme Court in *Dharamvir Singh Vs. UOI & Ors* in CA No. 4949/2013 and in *UOI & Ors. Vs. Rajbir Singh*, (2015) 12 SCC 264 to contend to the effect that in as much as there is no note or record made by the respondents at the time of the induction of the applicant into the Indian Navy, the applicant's suffering from any physical or mental disability, and any subsequent deterioration in his health has to be presumed to be due to military service. Reliance was also placed on behalf of the applicant on the observations in Para-28 of the verdict of the Hon'ble Supreme

which reads 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."

11. Inter alia, the applicant prayed for the rounding off of the disability element of pension from 60% to 75% in terms of verdict of the Hon'ble Supreme Court in *UOI & Ors. vs Ramavtar* in Civil Appeal No. 418/2012 and in terms of the Govt. of India, MoD letter dated 31.01.2001.

12. The respondents vide their Counter Affidavit dated 24.11.2017 submitted to the effect that the applicant had been released/retired from the Indian Navy on 31.12.2011 and the RMB held on 12.07.2011 had found him fit for release in medical category S1A1. The respondents further submitted that the representation dated 11.09.2015 was made by the applicant that post retirement he was re-employed and posted at HQ SNC and suffered from Sudden Sensorineural Hearing Loss (SNHL) in September 2012 and also suffered from chest discomfort in February 2014 as a consequence of which angiography was conducted which showed blockage in his artery and thus the angioplasty was conducted. The respondents submit that the discharge claim of the applicant was rejected vide letter dated 28.03.2017 and it was reiterated that at the time of retirement on 31.12.2011, the applicant was placed in fit medical category S1A1 and he was not suffering from any disability and as a consequence he was granted re-employment into service for 3 years till 31.12.2014 and it was thereafter that he was found to be suffering from CAD in February

2014 and Sensorineural Hearing Loss in September 2012. The respondents further submit that these disabilities occurred after retirement of the applicant. The respondents further submit that as per rules, the officers who are re-employed in service give an undertaking stating that they will not be entitled to any disability pension for disabilities arising during re-employment period and that the Govt. does not accept the responsibility for any aggravation of a disability from which the officer may be suffering at the time of re-employment. The respondents thus submit that in these circumstances the grant of disability pension is not admissible to the applicant.

13. The respondents have submitted to the effect that the applicant was from non-medical background and he was involved in the administration of the hospital and as a consequence the number of patients treated by the hospital is of no relevance. The respondents further submit that as per medical records there was no medical abnormality noticed in the Annual Medical Examination of 2009 and the disability that he suffers from occurred during re-employment period and was not attributable to nor aggravated by Military service.

14. The applicant vide rejoinder dated 03.10.2018 reiterated that the onset of the manifestation of his disabilities was detected in 2009 when his ECG was found to be abnormal during routine Annual

medical examination and that it was due to the faulty protocol or the shortage of officers in the SDM Cadre to ensure the availability of the applicant to carry out various duties, he was declared medically fit without conducting specific medical tests such as Tread Mill test, and Angiography etc., to find out the root cause of the ECG abnormality at that time. The applicant further submits that the culmination of his heart ailment in the form of Coronary Artery Disease was pursuant to a long drawn process which started and set in motion and precipitated with the stress and strain of service duties faced by him for more than five years before the blockage of arteries which were detected through the investigations such as ECG, TMT, Angiography etc in 2014. The applicant also submitted that his main arteries are blocked to the extent of 90% RCA and 90% LAD and that this was a clear indication that his disability had commenced from 2007 onwards, if not before, at least. The applicant further submits that CAD is not a short term phenomenon but takes years to manifest due to prolonged stress and strain, which an individual undergone over a period of time.

15. Inter alia, the applicant submits that he had been re-employed in the Indian Navy from the very next day of his retirement from active service with no gap in between and there is no difference in the duties which the applicant carried out in active service when the onset of manifestation of his ECG abnormality was detected in 2009 and

when the said disability was diagnosed as CAD in 2014 during his re-employment. Inter alia, the applicant submits that his duties during his re-employment from 2012-2014 were more stressful compared to his active service from 2007-2011 as he was given the additional task of Officer-in-Charge Sankalp which looks after mentally/physically challenged children.

16. The applicant placed reliance on Regulation-34 of the Navy(Pension) Regulations 1964 which reads to the effect:-

"34. Disability manifesting after retirement.-An officer who had retired (otherwise than at his own request or in any of the circumstances specified in regulation 15) on a service pension or gratuity, but who, within a period of seven years from the date of retirement, is found to be suffering from a disease which is attributable to his service may, at the discretion of the Central Government, be granted in addition to his service pension or gratuity, a disability element at the appropriate rate with effect from such date as the Central Government may determine."

17. The applicant thus contended that in terms of the said Regulation-34 of the Navy(Pension) Regulations 1964, he is entitled to the grant of disability element of pension in relation to the disabilities that he suffers from which had their onset whilst he was in service with the Indian Navy prior to his discharge on 31.12.2011. The applicant further submits to the effect that as per Rule-6 detailed in the Appendix-V to the Navy(Pension) Regulations, 1964, it is provided to the effect:-

"6. Post-discharge claims-Cases in which a disease did not actually lead to the member's discharge from service but arose within seven years thereafter, may be recognised as attributable to service if it can be established medically that the disability is a delayed manifestation of a pathological process set in motion by service conditions obtaining prior to discharge and that if the disability had been manifest at the time of discharge the individual would have been invalided out of service on this account. In cases where an individual in receipt of a disability pension dies at home and it cannot, from a strictly medical point of view, be definitely established that the death was solely due to the disablement in respect of which the disability pension was granted :-

(a) the benefit of the doubt in determining attributability would go to the family of the deceased if death occurs within seven years from the date of his invalidment from service, unless there are other factors adversely affecting the claim; and

(b) if death takes place more than seven years after the date of man's invalidment from service, the benefit of doubt will go to the State.

In cases where an individual outlives a normal span of life, that is, where death takes place at the age of sixty or above, the death should be held to be due to normal causes and not to naval service.

[Note.-Death of disability pensioner whose disablement has been accepted on the basis of aggravation may also be accepted as due to Naval service under Rule 3(b) (ii) above if the last assessment of disablement was 50 percent or above. If the last accepted assessment of disablement was less than 50 per cent, death should not be regarded as due to service.

The above procedure will apply when death is established as due to the disability respect of which disability pension was granted. If this is not the case, the identification of the cause of death with the invaliding disability will first be determined in accordance with the provisions of this rule. If the identity can be conceded thereunder, the procedure in the proceeding subparagraph will be followed for determining the further point whether entitlement to special family pension can be conceded in a case where an invaliding disability was aggravated by service."

18. The applicant further placed reliance on Rule-2 of the Appendix-V to the Navy(Pension) Regulations, 1964, which reads as under:-

“2. Invalidment from service is a necessary condition for the grant of 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 invalided from service. Sailors 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 invalided out of service.”

19. Inter alia, the applicant placed reliance on Govt. Notification no. 1(2)/97/D(Pen-C) dated 07.02.2001 in terms of which service personnel who suffered from any disability post-retirement/discharge from service within 10 years of his retirement /discharge from service can demand a Re-Survey/ Re-Assessment Medical Board to be held, to ascertain the current disabilities. The applicant has thus submitted to the effect that the RMB has not taken into account the factum that the onset/origin of manifestation of his disabilities was detected in 2009 and has failed to take into consideration that the ECG abnormality was constant during AMEs of 2009, 2010 and 2011 and before retirement of the applicant. Inter alia, the applicant submits that the RMB has erroneously opined that the disability that the applicant suffers from of Sudden Sensorineural Hearing Loss (SNHL) which he suffered from was in 2011 during re-employment and submits that the same also caused as a cascading effect of his prolonged heart ailment

which culminated in Coronary Artery Disease in the year 2014. Qua the contention of the respondents that the applicant had given an undertaking that he will not be entitled to disability pension if a disability occurred during re-employment, the applicant claimed that his entitlement to disability element of pension for the disabilities contracted/manifested whilst he was in active service, in terms of Regulation-34 of the Entitlement Rule-6 of the Navy(Pension) Regulations 1964 which are applicable to Post Discharge cases.

20. Vide order dated 10.05.2022, a Special/ Review/ Re-survey Medical board was directed to be convened by the respondents at the Base Hospital, Guwahati to assess the medical condition of the applicant within three months from the date of the said order with adequate notice to the applicant. A Special/ Review/ Re-survey Medical board was directed to give its opinion on the present medical condition of the applicant and to assess the degree of disability with duration of degree of disablement. The respondents were also directed to place the said Special/ Review/ Resurvey Medical Board proceedings before this Tribunal within one month thereafter. Vide order dated 27.09.2022 in view of the submissions made on behalf of the applicant that the respondents had not conducted the Special/ Review/ Resurvey Medical Board stating that they had not received

any communication, coupled with the submissions made on behalf of the respondents that the application for conducting the medical board were sent to the Base Hospital, Guwahati on 26.08.2022 after the expiry of three months from the date of passing the order, the respondents vide order dated 27.09.2022 were directed to send the fresh letter within ten days so that medical board of the applicant was conducted in terms of order dated 10.05.2022 with the matter having been re- listed for 22.12.2022. It was submitted on 22.12.2022 on behalf of the respondents that the Special Medical Board was held on 06.10.2022. The respondents were directed vide order dated 22.12.2022 to place the medical proceedings by way of an affidavit along with all connected documents within a period of four weeks. The respondents vide compliance affidavit dated 13.04.2023 submitted the copy of the Special medical board proceedings dated 06.10.2022. The said medical board proceedings dated 06.10.2022 in Part-IV of the Statement of Case are to the effect:-

“

PART-IV
STATEMENT OF CASE

1. Chronological list of the disease/disabilities:

Disabilities	Date of Origin	Rank of the Indl	Place and Unit where serving at the time	Date of initial AFMSF-15 for each disease/disability

BILATERAL SENSORINEURAL HEARING LOSS	21 Sep 2012	Cdr	INHS Asvini	04 Oct 2012
CAD-CSA- NORMAL LV FUNCTION-TVD- PTCA TO LAD & RCA DONE-NYHA CLASS I	21 Feb 2014	Cdr	INHS Asvini	19 Mar 2014

”

21. Vide Para-3 of the Part-VII of the said Special Board proceedings, it was stated as under:-

“

6. What is present degree of disease/disablement as compared with a healthy person of the same age and sex?(Percentage will be expressed as Nil or as follows) 5%,10%,15% and thereafter in multiples of ten from 20% to 100%					
Disease/ Disability (As numbered in Para 1 Part VI)	Percentag e of disableme nt	Corresponding para of GMO- 2002 amendments 2008	Composite assessment for all disabilities (Max 100%) with duration	Disability Percentage Qualifying for Disability Pension with duration	Net Assessm ent Qualifyi ng for disability Pension (Max 100%) with duration
BILATERAL SENSORINEUR AL HEARING LOSS	40% (Forty Percent)	Para 20 Chapter VII of GMO(MP)-2008 (Revised)	58%(Fifty Eight Percent) for life	As per Court Order	As per Court Order
CAD-CSA- NORMAL LV FUNCTION- TVD-PTCA TO LAD & RCA DONE-NYHA CLASS I	30% (Thirty Percent)	Para 21 Chapter VII of GMO(MP)-2008 (Revised)			
Note: Assessment of disabilities not mentioned in the Guide to Medical Officers (Mil Pens) is to be done on the basis of best available medical evidence.					

”

22. Though the percentage of disablement for the disability of Bilateral Sensorineural Hearing Loss was put forth as being @40% in terms of Para-20 of the Chapter-VII of GMO(MP), 2008(Revised) and the disability of CAD-CSA-NORMAL LV FUNCTION-TVD-PTCA TO LAD & RCA DONE-NYHA CLASS I was assessed with percentage of disablement @30% in terms of Para-21 of the Chapter-VII of GMO(MP), 2008(Revised) with the composite assessment of 58% for life with the date of origin of the disabilities being reflected as detailed herein above in Para-IV of the Statement of the Case, the disability percentage qualifying for the disability pension with the duration with the net maximum assessment of 100% with duration as stated as being as per Court order.

23. Apparently, thus through the Special medical board conducted on 10.05.2022, the onset of the disabilities of the applicant were detailed in Para- 20 herein above. The applicant in the instant case was discharged initially from the Indian Navy on 31.12.2011. On the said date, the relevant Entitlement Rules applicable to the applicant were the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008. In terms of Para-8(a) thereof, it is prescribed to the effect:-

"8. Post discharge claims:

(a) Cases in which a disease was not present at the time of the member's retirement/discharge from service but

arose within 7 years thereafter, may be recognized as attributable to service if it can be established by the competent medical authority that the disability is a delayed manifestation of a pathological process set in motion by service conditions obtaining prior to discharge."

Apparently in the instant case in as much as the disabilities that the applicant suffers from are indicated to have their onset in relation to the Bilateral Sensorineural Hearing Loss wef 21.09.2012 and Coronary Artery Disease on 21.02.2014, both the said disabilities are indicated to have had their onset according to the Special medical board on 06.10.2012 with percentages of disablement for life, within a period of 7 years from the date of discharge of the applicant from the Indian Navy on 31.12.2011.

24. Significantly, the medical board proceedings vide AFMSF-15 indicate that the only reasons for opining the disability of Sensorineural Hearing Loss ICD No. H. 90.3 to be not attributable to military service was because he was a re-appointed officer as indicated vide Para-17 thereof to the effect:-

"17. Is the disability attributable to service?(Y/N) If so, please explain?

NO, NA (RE-EMPLOYED OFFICER VIDE NO 31/2004 Para 30"

25. The advice given to the applicant was further to the effect:-

"22. Instructions given to the individual by the president of the board You are placed in Low Medical Category S2A2(H) T-12 Weeks w.e.f. 04

Oct 2012. Subject to approval by higher Medical Authorities.

"Advice: (i) Tapering dose of Tab Prednisolone as advised till 12 Oct 12, then Stop.(2) Tab Vertin 08 mg TDS x 30 days.(3) Avoid severe physical exertion/Straining/any action causing rise in ICT.(4) Unfit for duties requiring activity of hearing/ binaural hearing. (5) Not to be exposed to loud noise/ototoxic drugs. (6) Review in nearest ENT OPD after one month. (7) Avoid use of Alcohol/Tobacco in any form."

26. The applicant in relation to his disability has placed reliance on the Ministry of Defence letter no. 16036/RMB/IMB /DGAFMS/MA(Pens)/02 dated 14.06.2019 wherein it has been stated to the effect:-

" 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 noises in the form of small arms gunfire and any 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 service. Worsening of hearing may take place progressively over many years rather than always being an acute event following noise 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."

to thus submit to the effect that the said disability of Sensorineural hearing Loss is always to be conceded as being aggravated by military

service in terms of Para-23, Chapter-VI of the GMO,2002 amended in 2008, unless it is attributable due to trauma or infection like fractural temporal bone or infection. There is nothing in the instant case to indicate that the exceptions to the aggravation of the disability of Sensorineural Hearing Loss have been brought forth by the respondents. The applicant is shown as per his duties by the Commanding Officers Temporary Memorandum no. 297/2008 to have the duties as under:-

“ (a) *Cdr Prabir Singha* - (i) *First Lieutenant*
(89763-F) (ii) *Gunnery Officer*
(iii) *Environment Officer*
(iv) *Oi/C Creche* ”

which included his duties as a Gunnery Officer. Likewise, the duties assigned to him vide the Commanding Officer's Temporary Memorandum No. 113/2010 dated 24.05.2010 were to the effect:-

“ (a) *Cdr Prabir Singha* - (i) *First Lieutenant*
(89763-F) (ii) *Gunnery Officer*
(iii) *Garden/Environment Officer*
(iv) *Oi/C Sankalp*
(v) *Oi/C Creche*
(v) *Divisional Officer- Jawahar& Kanhoji Div.* ”

which also included the applicant being deputed to work as a Gunnery Officer. The Commanding Officer Temporary Memorandum no. 298/2012 dated 19.10.2012, reflected the duties of the applicant as under:-

“ (a) *Cdr Prabir Singha* - (i) *First Lieutenant*
(89763-F) (ii) *Gunnery Officer*
(iii) *Environment Officer*
(iv) *Oi/C Sankalp, Creche* ”

In terms of the entitlement for cases of Sensorineural Hearing Loss put forth vide Ministry of Defence letter no. 16036/RMB/IMB /DGAFMS/MA(Pens)/02 dated 14.06.2019 it is indicated specifically that aggravation is caused for the said disability due to service personnel being exposed intermittently to loud noise in the form of small arms ,gunfire and any firing which results in chronic noise induced hearing damage which presents and progresses insidiously and which also cause worsening of the hearing to take place progressively over many years. In the circumstances of the instant case, thus the disability of Sensorineural Hearing Loss has to be held due to military service.

27. As regards the disability of Coronary Artery Disease for which the Special Medical Board has opined that it had its onset on 21.02.2014 which too also falls within the ambit of admissibility in terms of Para-8(a) of the Post Discharge Claim in terms of the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008, it is essential to observe that the said disability is shown to have had its onset within a period of 2½ years of the posting of the employment of the applicant with the Indian Navy with

functional stress and strain as brought forth through the letter dated 27.09.2014 of DO 242/JD of the applicant's Commanding Officer Surgeon Rear Admiral John D'Souza the same has to be held to be due to stress and strain of service in the Indian Navy, taking into account the factum that there was a shortage of strength in the INHS Asvini on which the applicant was posted in view of the in-patient strength of INHS Asvini having increased by more than 50% and OPD attendance of 50% during the period 2004-2014 with that having also resulted into increase of OPD attendance four times and resulted into exponential increase in professional/administrative work load with there being no increase in Govt. Sanction of SDM officers resulting into undue pressure pressure/ stress on the SDM officers posted at the INHS Asvini, with it having been stated further by the Commanding Officer that 05 officers who had served INHS Asvini in the recent past detected with stress related Hypertension/CAD's/Diabetes.

28. On behalf of the applicant reliance was also placed in relation thereto on the order dated 18.12.2019 of the AFT(RB), Mumbai in OA 134/2016 in the case of *Rajinder Kumar Sonkhla Vs. UOI & Ors.* who was the predecessor of the applicant on the same post and to contend to effect that the applicant was entitled to the disability element of pension in relation to disability of Coronary Artery Disease which was due to stress and strain of military service.

29. 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 or 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*.

30. 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 farailly 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) *Injuries:*

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) Disease:

(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.

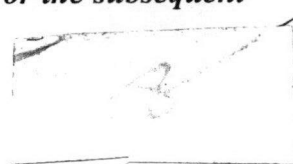
(ii) Disease due to infection arising in service other than that transmitted through sexual contact shall merit an entitlement of attributability and where the disease may have been contacted prior to enrolment or during leave, the incubation period of the disease will be taken into consideration on 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. Thus in the facts and circumstances of the instant case, it is held that the disability of Coronary Artery Disease is attributable to military service and that the disability of Sensorineural Hearing Loss is aggravated by military service.

CONCLUSION

31. The OA 897/2017 is allowed. The applicant is thus entitled to the grant of disability element of pension @40% for life for the disability of Bilateral Sensorineural Hearing Loss and Coronary Artery Disease @30% for life with composite assessment @58% for life, which in terms of the verdict of the Hon'ble Supreme Court in *UOI & Ors. vs Ramavtar* in Civil Appeal No. 418/2012 and the letter

dated 07.02.2001, is directed to be broadbanded to 75% for life. In as much as, both the disabilities are permanent in nature, in terms of the verdict of the Hon'ble Supreme Court in **Commander Rakesh Pande Vs. UOI & Ors.** Civil Appeal no. 5970/2019, the disabilities have to be assessed as having a duration for life each. However, in terms of the verdict of the Hon'ble Supreme Court in **UoI & Ors Vs Tarsem Singh 2009(1)AISLJ 371**, the arrears are directed to be confined to commence from three years prior to the institution of the present OA.

32. The respondents are directed to calculate, sanction and issue the necessary Corrigendum PPO to the applicant within three months from the date of receipt of the copy of this order and in the event of default, the applicant shall be entitled to the interest @6% per annum till the date of payment.

33. MA 1556/2023 and MA 501/2022 need no further adjudication, and are thus disposed of accordingly.

Pronounced in the open Court on the 12 day of January, 2024.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER(J)

/TS/