

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

OA 725/ 2019

Ex PO ELR Dheer Singh

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Virender Singh Kadian, Advocate

For Respondents : Mr. Anil Gautam, Sr. CGSC with
Mr. Anshuman Kumar, DPA Legal

CORAM :

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

HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER

1. The applicant vide the present O.A 725/2019 dated 23.04.2019 has made the following prayers:-

"(a) Direct the respondent to grant disability element of pension to the applicant by assessing disabilities BILATERAL CENSORINEURAL HEARING LOSS (ICD NO 90.3) @40% and ID (ii) FRACTURE TIBIA SPINE RT KNEE (ICD NO S 82.1) @20% and composite assessment @52% with benefits of rounding off/broad banding of the disability element to 75%. And/or

(b) Direct respondents to pay the due arrears of disability element of pension with interest @12% p.a. from the date of retirement with all the consequential benefits.

(c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost of the application in favour of the applicant and against the respondents."

2. The applicant was enrolled in the Indian Navy on 30.07.2003 and discharged from service on 31.07.2018 after completion of 15 years and 02 days of service in low medical category S3A2 (H&A) PMT. He was brought before the duly constituted Release Medical Board on 01.02.2018, and as per the RMB proceedings, the disabilities of the applicant were assessed as under:-

PART-V

Medical board having examined the individual and after perusing all available documents is of the consensus opinion as under:-

1.Casual 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)	Reasons/ cause/specific conditions and period in service.
(i)BILATERAL SENSORI NEURAL HEARING LOSS (ICD NO H 90.3)	NO	YES	NO	AGGRAVATED BY MILITARY SERVICE VIDE PARA 23 CH VII OF GMO 2008 (HISTORY OF EXPOSURE TO LOUD NOISE BY FIRING)
(ii) FRACTURE TIBIA SPINE RT KNEE (KCD NO S 82.1)	YES	NO	NO	ATTRIBUTABLE BY MILITARY SERVICE APPROVED COPY OF INJURY REPORT (IAFY 2006) DATED 28 OCT 2016

Note: A disability "Not connected with service" would be neither Attributable nor aggravated by service.(This is in accordance with instructions contained in Guide to Medical Officers(Mil Pension)-2002

6. What is present degree of disablement as compared with a healthy person of the same age and sex?(Percentage will be expressed as Nil or as follows) 1.5%, 6-10%,11-14%,15-19% and thereafter in multiples of ten from 20% to 100%.				
Disabilities (as numbered in Para 1 Part IV)	Percentage of disabilities with duration	Composite assessment for all disabilities with duration(Ma x 100)% with duration	Disability qualifying for disability pension with duration	Net assessment qualifying for disability pension(Max 100%) with duration

1	2	3	4	5
(i) BILATERAL SENSORI- NEURAL HEARING LOSS (ICD NO- H90.3)	20% (TWENTY PERCENT)	20% (TWENTY PERCENT)	30% (THIRTY PERCENT FOR BOTH DISABILITY)	30% (THIRTY PERCENT FOR BOTH DISABILITY)
(ii) FRACTURE TIBIA SPINE RT KNEE (KCD NO S 82.1)	11-15% (ELEVEN TO FIFTEEN PERCENT)	12% (TWELVE PERCENT)		

TOTAL -32%
R/O -30% (THIRTY PERCENT)

2. The initial disability claim of the applicant was adjudicated by the competent authority and the applicant was granted disability element with composite disability @30% rounded off to 50% for disability (i) Bilateral Sensorineural Hearing Loss @20% and (ii) Fracture Tibia Spine RT Knee @11-15%.

CONTENTIONS OF THE PARTIES

3. The learned counsel of the applicant submits that initially the Medical Board had assessed the disability (i) BILATERAL SENSORINEURAL HEARING LOSS @40% and Id (ii) FRACTURE TIBIA SPINE RT KNEE @20% with composite assessment @52% but later the degree of assessment was illegally reduced to 32% for the said disabilities.

4. The learned counsel of the applicant further submits that he was deprived of his rightful compensation with correct assessment for

both the IDs which were compositely assessed @52% and required to be compensated for both the disabilities by rounding off from 50% to 75% as the disabilities are attributable to/aggravated by military service.

5. The learned counsel of the applicant argues that at the time of discharge from service, on 02.06.2018, a MRI of Right Knee Joint was done at Vijaya Diagnostic Centre, Visakhapatnam and as per the MRI Report, it diagnosed as 'Minimal Joint Effusion with Extension into Retropatellar Location.' and that the applicant was also diagnosed at INHS Kalyani with Chronic Partial Thickness Tear ACL- Multiple Non-Union Fracture Spine of Tibia (Right.)

6. The learned counsel submits that the applicant suffered the disability due to heavy stress and strain in the job and performed duties in a very hectic and different type of climate for prolonged time hence the disability at the time of his service was deemed to be attributable to or aggravated to military service.

7. The learned counsel for the respondents submit that the applicant was sanctioned service pension vide PPO No 248201802862 dated 31.08.2018 for completed qualifying service and at the time of discharge from service, the applicant was placed in low medical category S3A2(H&A) PMT for two disabilities (i) Bilateral

Sensorineural Hearing Loss (ICD No H90.3) (Aggravated but Not Attributable) and (ii) Fracture Tibia spine RT Knee (ICD No S 82.1) (Attributable but Not Aggravated by Naval Service) @30% for life.

8. The learned counsel for the respondents also submits that the competent authority vide letter No PEN 600/D/LRDOI:07/2018m7475W dated 02.07.2018 granted disability pension @30% for life rounded off to 50% w.e.f. 01.08.2018 and granted disability element of disability pension vide PPO No 248201802862 dated 31.07.2018. A corrigendum PPO No CORR/09/97/B/S/26033/2019 dated 26.02.2019 with amendment of disability pension period from 01.08.018 was also issued as the earlier PPO did not mention the period of disability pension.

9. The learned counsel for the respondents submits that the applicant sent a legal notice for enhancement of his disability percentage which was forwarded to the competent authority vide letter No PEN600/D/1st Appeal/137475 dated 28.06.2019 but the decision is awaited.

ANALYSIS

10. On a perusal of the medical documents on record, we find that the issue under consideration pertains to discrepancy in percentage

of assessment of both the disabilities suffered by the applicant i.e. Bilateral Sensorineural Hearing Loss @20% and Fracture Tibia Spine RT Knee @11-15%.

11. As far as disability (i) Bilateral Sensorineural Hearing Loss is concerned, we find it pertinent to refer to Para 20 of Amendment to Chapter VII - Assessment of Guide to Medical Officers (GMO) - 2008 (Military Pensions), which is reproduced as under:

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

Assessment of hearing loss :

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

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

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 10 Feet	
	(a) Unilateral total deafness	40%
	(b) Otherwise	20%

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

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

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

12. However, there was 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 Board/Invaliding Medical Board. Realising this difficulty, the office of the DGAFMS, Ministry of Defence, New Delhi vide its letter no 16036/RMB/IMB/DGAFMS/MA(Pens)/02 dated 14 June 2019 has issued clarification in aid 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

14th June, 2019

16036/RMB/IMB/DGAFMS/MA (Pens)/02
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 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.

(Poonam Raj)
Col
Col AFMS (Pens)
For Brig AFMS(Pens)

Encl: As above

ENTITLEMENT FOR CASES OF SENSORINEURAL HEARING LOSS

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

ASSESSMENT FOR CASES OF SENSORINEURAL HEARING LOSS

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

Grades of assessment for individual ears are as follows:

<u>Grade</u>	<u>Degree for Hearing attained</u>	<u>Assessment</u>
1	Shout not beyond 3 feet (indl can hear only a loud sound upto 3 feet/100 cm and nothing beyond)	80%

2	Conversational voice not over 1 foot (indl can hear CV upto 1 foot/30 cm and not beyond)	60%
3	Conversational voice not over 3 feet (indl can hear CV upto 3 feet/100 cm and not beyond)	40%
4	Conversational voice not over 10 feet (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. "

13. In view of the aforesaid clarification to the GMO, 2008, 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 June 2019, we are of the view that it is imperative to refer to the relevant portion of the Opinion of the Specialist in the Part-II 'Clinical Assessment' with respect to ENT Examination of the ear of the applicant, reproduced as under:

"ENT EXAMINATION		RT	LT
EXTERNAL EAR		NAD	NAD
TYMPANIC MEMBRANE		Intact & Mobile	Intact & Mobile
TUNING FORK TESTS -			
	RINNE		
	WEBER -	T 256+	
	ABC	Diminished	Diminished
FREE FIELD HEARING -			
	CV	250 cm	250 cm
	FW	100 cm	100 cm
		Both Ears 250 cm"	

14. A bare perusal of the aforesaid Specialist Opinion which was produced pursuant to order dated 02.08.2023 by the Respondents clarifies that the applicant can hear Conversational Voice (CV) up to 250 cm, which puts his disability in Grade 4 as per the letter no 16036/RMB/IMB/DGAFMS/MA(Pens)/02 dated 14 June 2019, thereby warranting an assessment of 20%, which is well clear in assessment made by the Release Medical Board, and the apprehensions of the applicant with respect to assessment of disability (i) are not sustainable in view of the aforesaid observations.

15. Proceeding to examine the assessment with respect to disability (ii) Fracture Tibia Spine RT Knee, it would be important to refer to Para 31 of Amendment to Chapter VII - Assessment of Guide to Medical Officers (GMO) – 2008 (Military Pensions), which is reproduced as under:

“Assessment in Fracture (limb bones).

31. Fracture may be intra articular or extra articular. Damage is maximum in intra articular fracture and fracture with faulty alignment as it may cause restriction of movement and associated osteo-arthritic changes.

Category	Assessment
<i>(a) Intra articular with osteoarthritic changes</i>	<i>30-40% for life</i>
<i>(b) Long bone fracture, union with alignment</i>	<i>20%</i>
<i>(c) Long bone fracture with neurovascular bundle involvement</i>	<i>40-50%</i>
<i>(d) Shortening of the limbs</i>	<i>20-30%</i>
<i>(e) Functional loss equivalent to loss of limbs at different levels due to non-union, delayed union, malunion and chronic infection</i>	<i>scale as laid down in the text</i>

- (f) *Use of joint prosthesis, intramedullary nail plating 30-40%*
 (g) *Osteomyelitis as complication to comminuted fracture or systemic infection-*
 Weight bearing bone 30%
 Non-weight bearing bone 20%
 Osteomyelitis associated with pathological fracture 40%”

16. At this point, we find it relevant to refer to the opinion of the specialist in the Release Medical Board with respect to the disability (ii) suffered by the applicant, reproduced as under:

“

Part-II

CLINICAL ASSESSMENT

1. History ✓

(a) *Location of onset: Peace/Field/High-Altitude/CI Ops*

(b) *Date & Time of Onset: sustained injury to rt knee on 03 Aug 16 due to fall from ladder*

(c) *Relevant history: sustained injury to rt knee and rt wrist on 03 Aug 16 due to fall from ladder onboard ship and sustained fracture tibial spine rt knee which was treated conservatively.*

At present persistent pain rt knee on prolonged walking, running and exertion . No instability or locking.

2. Physical examination findings: Rt Knee and Rt wrist

O/E: (Rt) Knee: *Mild wasting of quadriceps present, no effusion present, tenderness - present, Lchman - neg, Ant Drawer test - neg. Pivot shift-ve, ROM - terminally painful and restricted, no neurodeficit.*

3. Investigation reports: X-Ray (Rt) Knee dated 04/01/18: non union fracture spine of tibia Rt

4. Diagnosis: Fracture Tibial Spine Rt Knee”

17. An analysis of aforesaid clinical assessment makes it clear that the 'Range of Movement' (ROM) was restricted and terminally painful, along with the presence of tenderness, while a similar observation was made by the Specialist, wherein it has been observed that at the time of Release Medical Board, persistent pain

was experienced in right knee on prolonged walking, running and exertion, which shows that the disability has not healed till that time.

18. Para 31 of Amendment to Chapter VII - Assessment of Guide to Medical Officers (GMO) - 2008 (Military Pensions), states to the effect that in case of Long bone fracture, union with alignment the assessment has to be 20%, which in this case has been assessed @11-14% without any reasonable justification to that effect, in view of which, we find it pertinent to observe that the assessment of the aforesaid disability (ii) Fracture Tibia Spine RT Knee could not have been assessed at less than 20%.

CONCLUSION

19. In view of the aforesaid observations, we are of the view that while the assessment for the disability (i) Bilateral Sensorineural Hearing Loss @20% warrants no interference, the disability (ii) Fracture Tibia Spine RT Knee @11-15% has to be assessed @20%, which in turn would lead to composite disability @40%, rounded off to 50%, with both disabilities distinct from each other in their nature and onset.

20. However, noting the fact that the applicant is already in receipt of the disability element of pension rounded off to 50%, there shall



not be any change in his entitlement with respect to the grant of disability element of pension.

21. The instant OA 725/2019 is disposed of thus in view of the observations hereinabove in paragraphs 19 and 20.

22. No order as to costs.

Pronounced in the open Court on the 8th day of April, 2024.

[LT GEN C.P MOHANTY]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

akc/