



## **RA 61/2023**

The present RA has been filed under Rule 18 of the Armed Forces Tribunal (Procedure) Rules, by the applicant in the OA 2008 seeking review of the Order dated 25.07.2023 in OA 832/2015. The applicant was commissioned in the Army on 09.06.1979 and superannuated on 31.03.2012. Prior to his retirement he was brought before a RMB, which assessed his first disability of 'Primary Hypertension' at 30% and as aggravated by military service, and his second disability of 'SNHL Bilateral' at 15-19% as neither attributable nor aggravated by military service. The applicant was granted only 30% for life for his first disability. The applicant was brought before an Appeal Medical Board, which now assessed his second disability 'SNHL Bilateral' at 20% as aggravated by military service. The composite degree of disability was assessed at 40% for life. Since his claim for the second disability was rejected, based on this Tribunal's Order dated 10.07.2017, he was brought before a Reassessment Medical Board held from 16 to 19 Feb 2018, which reconfirmed the findings of the Appeal Medical Board. The applicant had filed MA 1378/2020 for placing additional documents on record and with the prayer that the composite assessment

of the disabilities be declared as 50% based on judicial scrutiny and interpretation of Para 17 of GMO 2002 as amended in 2008, which is to be then rounded of to 75%. This MA was disposed of vide Order dated 22.09.2020, where in the additional documents were taken on record. It was the prayer of the applicant in OA 832/2015 that the composite assessment be held as 50%, and disability pension be then rounded off to 75%.

3. This Tribunal vide its order dated 25.07.2023 held that the composite assessment of disability was 44% for life, rounded of to 50% and that the broad banding benefits were made applicable from the date of retirement i.e. 31.03.2012 and was to be implemented within a period of three months from the date of the order, failing which the applicant was held entitled to interest @ 6% per annum. Para11, 12, 13 &14 of the Order dated 25.07.2023 of the Tribunal reads as under:

*" 11. Therefore, the correct calculation of composite disability in this case as per rules will be as follows:*

<i>Disability</i>	<i>Assessment</i>	<i>Net Assessment</i>	<i>Remarks</i>
<i>Disability 1</i>	<i>30%</i>	<i>30%</i>	<i>The disability with max percentage is to be considered first</i>
<i>Disability 2</i>	<i>20%</i>	<i>14%</i>	<i>Held attributable by the</i>

			AMB dated 28.04.2014 and the RSMB dated 12.03.2018
Composite Assessment		44%	Rounded off to 50%
<p><i>Calculation</i></p> <p><i>Disability 1 = 30% (the disability with max percentage)</i></p> <p><i>Disability 2 (100-30) = 70 * 20/100 = 14%</i></p> <p><i>Composite Assessment = 30+14 = 44%</i></p> <p><i>The rounding of composite assessment of 44% will be 50%.</i></p>			

12. As far as the benefit of broad banding is concerned, it was introduced in January 2001 and stands extended w.e.f. 01.01.1996. Although, it was the AMB dated 28.04.2014 that assessed the disability ID (i) SNHL BILATERAL @20% and aggravated by military service which was reconfirmed by the RSMB dated 12.03.2018. But, as the RMB dated 05.11.2011 held ID (i) **PRIMARY HYPERTENSION** as aggravated by military service along with degree of disability @30%, the applicant is entitled to broad banding to 50% for life from the date his discharge i.e. 31.03.2012.

13. The following facts have been established:-

(a) The applicant was commissioned in the Indian Army on 09.06.1979 and superannuated from service on 31.03.2012.

(b) Release medical board dated 05.11.2011 held ID (i) **PRIMARY HYPERTENSION** as aggravated by military service along with degree of disability @30% and ID (ii) **SNHL BILATERAL** as neither attributable to nor aggravated by military service along with degree of disability @15%-

16%with net assessment @ Nil. The composite degree of disability was assessed @40% for-life.

(c) The applicant is in receipt of disability element of disability pension @30% for ID (i) **PRIMARY HYPERTENSION** from the date of discharge i.e 31.03.2012.

(d) AMB dated 28.04.2014 assessed the disability ID (ii) **SNHL BILATERAL @20%** and aggravated by military service which was reconfirmed by the RSMB dated12.03.2018.

(e) The composite disability is 44% for life, rounded off to50%.

(f) The broad banding benefits @50% will be applicable from the date of discharge i.e. 31.03.2012.

14. In view of the above consideration the OA is allowed. The respondents are directed to grant 50% disability pension from31.03.2012. Necessary corrigendum PPO be issued within three months from the date of the-order, failing which the respondents shall be liable to pay interest @ 6% per annum till the date of actual payment. "

4. The applicant then filed MA 4449/2023 seeking modification of the Order of this Tribunal dated 25.07.2023 in OA 832/2015. Vide Order dated 25.10.2023, of the Tribunal, in the interest of justice, it was directed that MA 4449/2023 be treated as a RA and notice issued, and the MA was renumbered as RA 61/2023, in which the applicant has made the following prayers :-

6. Prayer

*It is therefore, most respectfully prayed in the interest of justice that :-*

*(a) As the present application has been most graciously allowed by the Hon'ble Court, the composite assessment of the disabilities in case of the applicant be modified and declared as 50% based on judicial scrutiny and interpretation of para 17 of GMO 2002 as amended in 2008 which is to be rounded up to 75% accordingly.*

*(b) To pass such and further order or orders, as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case in favour of the petitioner and against the respondents.*

5. Review is neither an appeal nor re-hearing of a case. The law with regard to review application is well settled vide the verdict of the Hon'ble Supreme Court in the case of ***Sasi (Dead) Through Legal Representatives v. Aravindakshan Nair and Others*** (2017) 4 SCC 692 whereby vide Para 6,7,8 and 9 the principles essential for review jurisdiction have been laid down which read as under:-

*"6. The grounds enumerated therein are specific. The principles for interference in exercise of review jurisdiction are well settled. The Court passing the order is entitled to review the order, if any of the grounds specified in the aforesaid provisions are satisfied.*

*7. In Thungabhadra Industries Ltd. V. State of A. P., the court while dealing with the scope of review had opined. (AIR p. 1377, para 11)*

*"11. What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an "error" apparent on the face of the record". The fact that on the earlier occasion the Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was*

*an "error apparent on the face of the record". For there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterized as vitiated by "error apparent". A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error".*

8. *In Parsion Devi v. Sumitri Devi, (1997) 8 SCC 715, the Court after referring to Thungabhadra Industries Ltd. V. State of A.P., Meera Bhanja v. Nirmala Kumari Choudhary (1995) 1 SCC 170 and Aribam Tuleshwar Sharma v. Aribam Pishak Sharma (1979) 4 SCC 389, held thus; (Parsion Devi case, SCC p. 719. Para 9)*

*"9. Under order 47 Rule 1 CPC, a judgment may be open to review inter alia if there is a mistake or an error apartment on the face of the record. An error which is not self- evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered, has a limited purposed and cannot be allowed to be "an appeal in disguise".*

*9. The aforesaid authorities clearly spell out the nature, scope and ambit of power to be exercised. The error has to self-evident and is not to be found out by a process of reasoning. We have adverted to the aforesaid aspects only to highlight the nature of review proceedings. "*

6. We have heard both sides. The only issue which merits consideration is whether there is any error apparent on the face of the records, which necessitates the recall/ modification of our order dated 25.07.2023 in OA 832/2015.

7. Relying on Para 17(A) (iii) of Guide to Medical Officers (2008), it is the contention of the applicant in the instant RA that both Primary

Hypertension and SNHL are not related to each other, that there is no overlap, and therefore the composite disability assessment ought to be 50%. It is also the contention of the applicant that since the disabilities have been assessed as 30% for Primary hypertension and 20% for SNHL Bilateral, the composite loss would be greater than the arithmetical sum of the separate assessments of the disabilities and therefore the composite assessment should be held as 50% and rounded of to 75%.

8. It is undisputed that the initial RMB held the disability of Primary Hypertension @ 30% as aggravated by military service and the disability of SNHL Bilateral @ 15 to 19 % and not attributable nor aggravated by military service. The Appeal Medical Board held at Base Hospital Delhi Cantt in Apr 2014 (Annexure A-2) held Primary Hypertension @ 30% and SNHL Bilateral @ 20%, both as aggravated by military service with composite assessment at 40%. The subsequent Reassessment Medical Board held in Feb 2018 on the directions of this Tribunal vide order dated 10.07.2017 reaffirmed the findings of the Appeal Medical Board and held the disability at 30% and 20% and the composite disability at 40%. We find no reason to interfere in the findings of the Appeal and Reassessment Medical Boards. The supremacy of the medical board has been upheld by

the Hon'ble Supreme Court in the case of **Secretary, Ministry of Defence and Others vs A.V. Damodaran (dead) through Lrs. And Others** 2009 (9) SCC 140, relevant paras are extracted below:-

" 17. I have heard the learned counsel for the parties. I am of the considered view that the Medical Board is an expert body and its opinion is entitled to be given due weight, value and credence. In the instant case, the Medical Board has clearly opined that the disability of late Shri A.V. Damodaran was neither attributable nor aggravated by the military service. In my considered view, both the learned Single Judge and the Division Bench of the High Court have not considered this case in proper prospective and in the light of the judgments of this Court. The legal representatives of A.V. Damodaran are not entitled to the disability pension.

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

42. Here is also a case where the Medical Board has given its definite opinion that the disease from which the petitioner was suffering was not attributable to or aggravated by military service. It was recorded by the Medical Board that the case is of schizophrenia in a young officer with five years' service manifested in disorder of thought, perception, behaviour and emotional incongruity. Further opinion of the Board is that he had been reviewed by the medical specialist and no physical contributory factor elicited for his psychiatric breakdown. Disablement assessed is 60% (sixty per cent) disability neither attributable to nor aggravated by service.

43. Clearly therefore, the opinion of the Medical Board ruled out the possibility of the disease of the respondent being attributable to or aggravated

*by military service. That being the position, the respondent cannot claim for payment of any disability pension. "*

9. The assessment of composite disability has been further elaborated vide DGAFMS letter dated 14.12.2009 which explains the modalities of calculating the composite disability where the functional effects of the disabilities overlap. This has been examined at Para 11 and 12 of the order dated 25.07.2023. Further, perusal of medical literature clearly establishes the relationship between primary hypertension and SNHL. A study published on Pub Med Central concluded that hypertension is positively correlated with hearing loss (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8523179/>). We therefore find no error apparent on the face of the record in the Order dated 25.07.2023.

10. The review application thus stands dismissed.

11. No order as to costs.

Pronounced in open Court on this <sup>29</sup> day of August, 2024.

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

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

/ashok/