

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

OA 1603/2023

Lt Cdr Venkatesh KR (Retd)

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Manoj Kumar Gupta, Advocate

For Respondents : Mr. Neeraj, Sr. CGSC

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

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

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant vide the present OA makes the following prayers:-

“(a) To direct the respondents to grant the disability pension by treating the onsets as attributable and aggravated by the Military service as Onset of ID-1&2 already declared attributable and Onset of ID-2 already conceded aggravated to military service by the RMB as contained in Annex-A1 and set aside the Impugned Orders (Annex-A1) to the extent it deny DP to the applicant; AND/OR

(b) To direct the respondents to pay the due arrears of disability pension including cost of litigation, and hearing loss have causal connection and all the disabilities infested during FIELD posting, relied by the RMB Auth based on fact that injury sustained during course of duty; and/or

(c) To direct the respondents to extend the benefit of Disability Element @50% with broad-banding benefits, to round it off to 75%, with applicable interest on arrears; and/or pass such further order or orders, direction/directions as this Hon'ble Tribunal may deem fit and proper in accordance with law. ”

BRIEF FACTS

2. The applicant joined the Indian Navy on 29.12.2010 and got commissioned into the Indian Navy as an SSC Officer on 03.01.2011

and was discharged from the service on 02.01.2021. The Release Medical Board dated 28.08.2020 held that the applicant was fit to be discharged from service in low medical category S2A2 (H) PMT for the disability (i) Recurrent Dislocation (LT) Shoulder (OPTD) @ 20% for life, and in low medical category S2A2 (A) PMT for the disabilities (ii) Ankle Sprain (LT) @ 15% for 1 year (iii) Bilateral Minimal Sensorineural Hearing Loss & Tinnitus @5% for life, compositely assessed @35% for one year. While the first two disabilities (i) Recurrent Dislocation of the Left Shoulder and (ii) Left Ankle Sprain were conceded to be 'Attributable to Military Service', and the third disability of the applicant of Bilateral Minimal Sensorineural Hearing Loss with Tinnitus was also held to be 'Aggravated By Military Service', later on, the competent authority, upon examination, did not accept the said disabilities as attributable to or aggravated by service and held to be NANA. This decision was communicated to the applicant via letter No. PN/8177/DP/21 dated 13.07.2022 with an advice to prefer his first appeal within six months from the receipt of the rejection of this first appeal. As a result, the applicant was denied disability pension.

3. The applicant preferred his first appeal dated 09.11.2022 against the non-grant of disability pension, however, no response has been received from the respondents till the date of filing this OA. Subsequently, the applicant issued a legal notice dated 15.02.2023 seeking the grant of disability pension, which also remains unanswered. Aggrieved by the continued non-response by the respondents to both his

appeal and legal notice, the applicant has filed the present original application on 29.05.2023. In the interest of justice, it is considered appropriate to take up the present OA for consideration, in terms of Section 21(2) of the AFT, Act 2007.

CONTENTIONS OF THE PARTIES

4. When the matter was initially reserved on 21.05.2025, the learned counsel for the applicant stated that he would be satisfied, if the applicant's claim for grant of disability pension is considered solely for the ailment of Recurrent Dislocation of Shoulder, where the disability is assessed @20%. Thereafter on 09.07.2025, when the matter was taken up in the category of directions after being reserved, during the course of the arguments, the learned counsel for the applicant submitted that the applicant limits his prayer in the present OA only for the purpose of claiming only disability element of pension rather than disability pension with respect to the aforesaid disabilities and reserves his right to claim the full disability pension after the decision of the Hon'ble Supreme Court in the matter of *Union of India v. Sgt Girish Kumar & Ors.* in Civil Appeal Nos. 6820-6824/2018 etc.

5. It has been submitted on behalf of the applicant that in the year 2012, he dislocated his left shoulder for the first time when he was going from his ship to the Headquarters inside the naval base. On the way, he fell off his bike and his left shoulder got dislocated. He was given medicine to reduce the pain. Thereafter, the applicant's left shoulder dislocated 4-5 times when the ship was sailing due to

participation in naval operations. On 12.11.2017, the applicant participated in half marathon by the Indian Navy where he suffered with twist in left ankle. On 10.09.2019, while serving in INHS 'Patanjali', the applicant suffered with hearing loss. All three disabilities of the applicant were assessed as attributable to and aggravated by military service. However, later on the competent authority held it to be NANA without stating any reason.

6. The learned counsel for the applicant also placed reliance on various judgments of the Hon'ble Supreme Court in *UOI & Ors. vs Manjit Singh* JT 2015 (5) SC 255, in *Rajbir Singh and Others* (2015) 12 SCC 264, in *UOI vs. Angad Singh Titaria* (2015) 12 SCC 257, in CA No. 5605/2010 titled as *Sukhvinder Singh Vs. UOI*, and in Civil Appeal No. 418/2012 titled *UOI vs Ram Avtar* dated 10.12.2014 and *Dharamvir Singh v. UOI & Ors [2013 (7) SCC 36]* for grant of disability pension with broad-banding benefits and also on the judgments of Hon'ble High Court of Punjab and Haryana in *Onkar Singh Bawa Vs. UOI* 2013 (1) PLR 830 and also in the case of *Ex Naik Umed Singh Vs. UOI* in CWP 7277/2013 decided on 14.05.2014.

7. The learned counsel for the applicant further placed reliance on the decision of the AFT, Principal Bench, New Delhi in the case of OA 1815/2018 titled *Ex WO Sridam Chandra Das vs. UOI & Ors* decided 10.01.2019 wherein similarly situated person was granted relief.

8. *Per contra*, learned counsel for the respondents contended that the applicant is not entitled to the relief claimed since the Competent Authority after protracted discussion, found the disabilities as "Neither Attributable to Nor Aggravated by Military Service. However, the RMB conceded the disabilities of the applicant, namely, (i) Recurrent Dislocation (LT) Shoulder (OPTD) and (ii) Ankle Sprain (LT) as 'Attributable to Military Service' and (iii) Bilateral Minimal Sensorineural Hearing Loss & Tinnitus as 'Aggravated by the Military Service' but the later adjudication by the competent authority conceded the disabilities as 'Neither Attributable to Nor aggravated (NANA)' by military service as the same do not fulfill the conditions in terms of Regulation 28 of the Navy (Pension) Regulations, 1964. Hence, the learned counsel for the applicant prayed that the OA deserved to be dismissed.

ANALYSIS

9. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, it is observed that the applicant is suffering from the following three disabilities:

- (i) Recurrent Dislocation (Left) (Old) – Assessed @ 20% for life
- (ii) Ankle Sprain (Left) – Assessed @ 15% for one year
- (iii) Bilateral Minimal Sensorineural Hearing Loss & Tinnitus – Assessed @ 5% for life

And, the composite assessment of these disabilities is assessed @35% for a period of one year. However, as per Regulation 28 of the Navy (Pension) Regulations, 1964, only those disabilities which are assessed @ 20% or

more are considered admissible for grant of disability pension. Since the disabilities of Ankle Sprain (Left) (15%) and Bilateral Minimal Sensorineural Hearing Loss & Tinnitus (5%) are assessed below 20%, they do not fulfill the eligibility criteria for disability element of pension. we confine our adjudication only to the disability of Recurrent Dislocation (LT) (Old) @ 20% for life. Therefore, the only question for consideration in the case is whether the applicant is entitled for the grant of disability element of pension for the disability of Recurrent Dislocation (Left) (Old) – Assessed @ 20% for life or not.

10. It is not in dispute that the disability of the applicant i.e. 'Recurrent Dislocation (LT) (Old) @ 20%' has been conceded as 'Attributable to military service' by the Release Medical Board as it is evident in the Part VII, Opinion of the Medical Board of the RMB. On perusal of the documents placed on record, we found that the applicant sustained the initial injury to his left shoulder due to a fall from a two-wheeler while on duty within the premises naval base Visakhapatnam whilst posted on board INS Khanjar. Thereafter, the applicant experienced multiple episodes of left shoulder dislocation for the next three years whilst discharging his duties in the service. The applicant's disability 'Recurrent Dislocation (LT) (Old)' was assessed @20% for life and was conceded to be 'Attributable to military service' by the Release Medical Board. However, the competent authority after adjudication opined the said disability to be 'NANA' without stating any reason for disagreeing with the findings of the Medical Board. The

assessment/opinion of the RMB has been overruled by the administrative authority resulting in denial of the disability element of pension to the applicant.

11. The issue in question is no more *res integra*. The case is hand is squarely covered by the decision of the Hon'ble Supreme Court in the case of *Ex Sapper Mohinder Singh Vs. Union of India & Ors. [Civil Appeal No. 104 of 1993]* decided on 14.01.1993, wherein the Hon'ble Supreme Court has observed that without physical medical examination of the patient, the administrative/higher authority cannot sit over the opinion of a medical board. The observations made in the judgment in the case of *Ex Sapper Mohinder Singh* (supra) being relevant are quoted below:-

"From the above narrated facts and the stand taken by the parties before us, the controversy that falls for determination by us is in a very narrow compass viz. whether the Chief Controller of Defence Accounts (Pension) has any jurisdiction to sit over the opinion of the experts (Medical Board) while dealing with the case of grant of disability pension, in regard to the percentage of the disability pension or not. In the present case, it is nowhere stated that the petitioner was subjected to any higher medical Board before the Chief Controller of Defence Accounts (Pension) decided to decline the disability pension to the petitioner. We are unable to see as to how the accounts branch dealing with the pension can sit over the judgment of the experts in the medical line without making any reference to a detailed or higher Medical Board which can be constituted under the relevant instructions and rules by the Director General of Army Medical Core."


12. In view of the decision of the Hon'ble Supreme Court in *Ex Sapper Mohinder Singh (Supra)*, we are of the considered view that opinion of the RMB was wrongly interfered with by the administrative

authority and is unsustainable in law when the disability of the applicant has been held as 'Attributable to military service'.

13. In view of the aforesaid judicial pronouncement, the applicant is entitled for disability element of pension for the disability of 'Recurrent Dislocation (LT) (Old)' assessed @20% for life. Therefore, the OA 1603/2023 is allowed. The respondents are directed to grant disability element of pension to the applicant @ 20% for life which be rounded off to 50% for life from the date of discharge in terms of the judicial pronouncement of the Hon'ble Supreme Court in the case of *Union of India Vs. Ram Avtar (Civil Appeal No. 418/2012)* decided on 10.12.2014.

14. Accordingly, the respondents are directed to calculate, sanction and issue necessary PPO to the applicant within three months from the date of receipt of a copy of this order, *failing which*, the applicant shall be entitled to interest @ 6% per annum till the date of payment.

Pronounced in open Court on this 29th day of July, 2025.


(JUSTICE RAJENDRA MENON)
CHAIRPERSON


(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

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