

COURT NO. 3
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA 1859/2018

Lt Col S Railkar (Retd.)

... Applicants

Versus

Union of India & Ors.

.... Respondents

For Applicant : Mr. Shakti Chand Jaidwal, Advocate

For Respondents : Mr. Prabodh Kumar, Sr. CGSC

CORAM :

HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)

HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this Original Application seeking the following reliefs for grant of disability pension for the disability of the applicant i.e. "SENSORINEURAL HEARING LOSS (LEFT) OLD", and further broad-banding of his medical disability from 15-19% to 50% in terms of Govt. Notification dated 31.01.2001, further, to direct the respondents to pay arrears of disability pension to the applicant from 23.07.2009, along with an interest of 10% per annum.

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BRIEF FACTS

2. The applicant was commissioned in the Indian Army on 11.06.1988 (PC) and took premature retirement from service on 23.07.2009(AN). The Release Medical Board (RMB) held on 20.07.2009, found the applicant fit to be released in medical category S1H2(P)A1PAE1 for the disability ID 'Sensorineural Hearing Loss (Lt) (Old)' and assessed the percentage of the disablement @15-19% for life, and the same was considered as neither attributable to nor aggravated by military service (NANA). The net assessment qualifying for disability pension with duration is 'Nil'.

3. The applicant's initial disability claim was not processed on account of his premature retirement. Thereafter, vide petition dated 26.02.2018, the Applicant sought grant of disability pension in terms of MoD letter No. 16(05)/2008/D(Pension/Policy) dated 19.05.2017, which extended disability pension to pre-2006 retirees, subject to the disability being attributable to or aggravated by service and non-availment of lump-sum compensation. The case was processed to AG/PS-4, and RSMB was ordered. The

RSMB was conducted at Command Hospital (SC), Pune on 12.07.2018, wherein the disability "Sensorineural Hearing Loss (Left) Old" was assessed at 20% for life, but again opined as neither attributable to nor aggravated (NANA) by Military Service. Based on the RSMB proceedings, the Applicant's case for disability pension was re-processed to AG/PS-4 for adjudication. However, the claim was rejected on the ground that the disability was held to be "NANA" (Neither Attributable to Nor Aggravated by Military Service) vide AG/PS-4 letter No. 12681/IC-47651/T-10/MP-5(B)/191/2018/AG/PS-4 (Imp-I) dated 13.12.2018. Aggrieved by the rejection of his disability pension claim, the applicant has filed the present OA.

CONTENTIONS OF THE PARTIES

4. The learned counsel for the applicant submitted that the applicant, at the time of joining the service, was declared fit medically and physically and no note of his suffering from any disease was made in the service documents of the applicant at the time of entry into the service, therefore, any disability detected during the service has to be deemed to be attributable to military service.

5. The learned counsel further submitted that the applicant had participated in small arms firing practice continuously for more than 10 years before he was detected suffering from a disability of 'Sensorineural Hearing Loss (Lt) (Old)' in May 2008. Keeping in view the working, intensity of continuity, duration and distance of sound nuisances of small arms firing undertaken by the applicant while in service, the RMB had initially assessed applicant's disability @20% for life as aggravated by prolonged exposure to small arms firing. However, on coming to know that the applicant was taking PMR and he was not entitled for disability pension, the assessment was changed by the RMB to less than 20% (15-19%) as NANA.

6. The learned counsel further submitted that while denying the disability pension, the respondents failed to appreciate the provisions contemplated under Rules 5 and 14(b) of the Entitlement Rules for Casualty Pensionary Awards, 1982 (hereinafter referred to as 'Entitlement Rules, 1982'), which provide that in case of discharge from service in low medical category, if no note is on record at the time of joining of service, the deterioration in health is to be presumed due to service conditions. The learned counsel

further relied on various provisions of the Entitlement Rules, 1982 to submit that any disease contracted during service, would be presumed to be attributable to service and worsening of the same during service would be treated as aggravated by military service and onus to prove otherwise lies with the respondents only.

7. To content to the effect that in as much as in absence of any cogent reasons recorded by the Medical Board for the cause of the disability that has arisen during the course of service of the applicant and which the applicant did not suffer at the time of commissioned into the service, the same has to be presumed to be attributable to service, the applicant has placed reliance on the verdict of the Hon'ble Supreme Court in the case of **Dharamvir Singh v. Union of India and others** (2013) 7 SCC 316, CA-5605/2010 in **Sukhvinder Singh vs UOI** 2014(14) SCC 364, dated 25.06.2014, CA No 2904 of 2011 in **Union of India & Anr. Vs Rajbir Singh** dated 13.02.2015, it is further submitted that in terms of verdict of Hon'ble Supreme Court in **Union of India vs Ram Avtar**, the applicant is entitled to rounded off of the disability pension assessed @ 30% to 50% for life.

8. Per contra, the learned counsel for the respondents contended that the applicant is not entitled to the relief claimed since the RMB, being an Expert Body, found the disability as "Neither Attributable to Nor Aggravated by Military Service" as the same occurred in peace station and that the applicant was managed promptly and appropriately. The learned counsel submitted that since the applicant's disability does not fulfil one of the twin conditions in terms of Regulation 37 of the Pension Regulations for the Army (Part-I) as the same was assessed as neither attributable to nor aggravated by military service, the applicant is not entitled to disability pension and, therefore, the OA may be dismissed.

ANALYSIS

9. We have heard the learned counsel for the parties and have perused the record produced before us.

10. It is an undisputed fact that at the time of joining the service on 11.06.1988, the applicant was found medically and physically fit and the present disability had occurred in May 2008 during service and that at the time of retirement, the applicant was placed in low medical category

S1H2(P)A1PAE1.

11. The law on the issue of attributability of a disability is already settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Vs. Union of India [(2013) 7 SCC 316]***, and in the case of ***Union of India and others Vs. Rajbir Singh*** (2015) 12 SCC 264 which has been followed in subsequent decisions of the Hon'ble Supreme Court and in a catena of orders of this Tribunal, wherein the Apex Court had considered the question with regard to the grant of disability element of pension and after taking note of the provisions of the Pension Regulations, Entitlement Rules for Casualty Pensionary Awards, 1982 and the General Rules of Guide to Medical Officers (Military Pensions), 2002 and Para 423 of the Regulations for the Medical Services of the Armed Forces.

12. 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 thereof as under:

"6. Causal connection:

For award of disability pension/special family 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 contracted prior to enrolment or during leave, the incubation period of the disease will be taken into consideration on the basis of clinical

courses 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 Altitude etc.”

13. It is the case of applicant that he suffered from the disability Sensorineural Hearing Loss due to the prolonged exposure to small arms fire (more than 10 years), which is not rebutted by the respondents. Furthermore, the applicant was discharged on compassionate ground, being in a low medical category on 23.07.2009. The RMB held on 03.07.2009, found the applicant suffering from Sensorineural Hearing Loss (Lt) Old. The Summary & Opinion of the ENT Specialist WGCDCR P K Sahu, attached to the RMB and reproduced herein under, shows that

applicant was exposed to small arms for about 10 years and suffered Sensorineural Hearing Loss in his left ear.

**“SUMMARY AND OPINION OF WG CDR SAHU GR.
SPL ENT IN RESPECT OF IC-47651 LT COL SG
RAILKAR OF SDG, PMO, CIDSS ON 02 JUL 09**

41 yr old serving officer. A known case of Sensorineural hearing loss Left ear in LMC H2 (Permanent) reported for RMB.

Last reviewed in CH (AFB) in Dec 2008.

Presented with complaints of tinnitus left ear, continuous ringing tone. Associated history of reduced hearing left ear.

No complaints of otorrhoea, vertigo, impaired hearing.

Gives history of exposed to small arms fire for 10 years

O/E-GC fair, vital stable.

ENT Examination:

Ear-bilateral TM intact, mobile.

Tuning Fork Test-sensorineural hearing loss left ear.

Free Field Hearing-

Right ear-600/600 cm

Left ear- 550/550 cm

Neuro- Otological Examination-NAD.

Nose- NAD

Throat- NAD

PTA dated 02 Jul 09:- SNHL of 50-60 dB at high frequencies left ear.

***AN OLD CASE OF SENSORINEURAL HEARING
LOSS LEFT EAR FOR RMB.***

There has been no change in his disability since last review.

**Recommended to be released in LMC
H2(Permanent)."**

14. We find force in the argument of the applicant that the percentage of his disability was deliberately reduced and it was held NANA to deprive him of the benefit of disability pension.

15. As perusal of the Opinion of the Medical Board given in Part-V of RMB, the cause/reason of Sensorineural Hearing Loss (Lt) (Old) was exposure to "prolonged loud noise, despite that it was held as NANA", no occupational. The same is reproduced as under :-

"

PART V
OPINION OF THE MEDICAL BOARD

1. Casual Relationship of the Disability with Service conditions or otherwise.				
Disabilities	Attributable to service (Y/N)	Aggravated by service (Y/N)	Not connected with Service (Y/N)	Reason/Cause/Specific condition and period in service
SENSORY NEURAL HEARING LOSS (LT) (OLD)	N	Y N	N Y	History of prolonged exposure to small arms fire No infection/Trauma/No occupational exposure to 5 prolonged loud noise.
<i>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)</i>				

16. It is also clear from Para 6 (on page 5) of the Medical Board proceedings that initially the percentage of disablement was mentioned as 20% for life, but later on reduced to 15 to 19% and NIL for life. The same is reproduced as under :-

6. What is percent 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%.					
Disability (As numbered in Question 1 Part IV)	Percentage of disablement	Composite assessment for all disabilities with duration (Max 100%)	Disability Qualifying for Disability Pension with duration	Net Assessment Qualifying Disability Pension (Max 100%) with duration	
SENSORY NEURAL HEARING LOSS (LT) (OLD)	20%	20% for life	20% for life	20% (twenty) for life	
	15 to 19%	15 to 19% for life	Nil For Life		
				Nil For Life	

17. The RSMB held on 12.07.2018 though assessed the disability of the applicant as 20% for life but held it as neither attributable to nor aggravated. The same is reproduced as under :-

“8. (a) Assessment of disablement.

Disabilities	Whole disablement	Part	Worsening	Net	Duration of
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	Separate assessment	Combined assessment	(disability) due to non-service factors	due to natural progress of the disability	assessment properly referable to service	assessment
1	2	3	4	5	6	7
SENSORY NEURAL HEARING LOSS (LT) (OLD)	20% for life	20% for life	NIL	NIL	NIL for life	NIL for life

”

18. 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. 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.

19. Para 23 of the Guide to Medical Officers (Military Pensions), 2008 describes the causes for deafness, 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 disease. (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 labyrinthine deafness. In these cases intensity of continuity, duration and 21 distance of sound nuisance should be considered before conceding aggravation."

20. It is not in dispute that applicant was exposed to loud noise of small arm firing for more than 10 years under such a background, the onset of his disability in May 2008, i.e. after 20 years of service, is directly related to such exposure. Accordingly, the said disability of *Sensorineural Hearing Loss (Lt) (Old)*' of the applicant is held to be aggravated by military service as per Para 23 of Guide to Medical Officers (Military Pensions), 2008.

21. As a result, the OA 1859/2018 is allowed. The respondents are directed to grant the disability element of disability pension to the applicant for the disability i.e. *Sensorineural Hearing Loss (Lt) (Old)*' @ 20% for life which is directed to be rounded off to 50% for life from the date of discharge in terms of the judgment of the Hon'ble Supreme

Court in the case of **Union of India Vs. Ram Avtar** (Civil Appeal No. 418/2012).

22. Accordingly, the respondents are directed to calculate, sanction and issue necessary PPO to the applicant within three months from the date of receipt of copy of this order, failing which, the applicant shall be entitled to interest @ 6% per annum till the date of payment. The amount of arrears however are directed to commence to run from a period of three years prior to the institution of the present OA i.e. 06.03.2019 in terms of the verdict of the Hon'ble Supreme Court in **Union of India and others Vs. Tarsem Singh** (2009(1) AISLJ 371).

23. There is no order as to costs.

Pronounced in the open Court on the 17th day of October, 2025.

(JUSTICE NANDITA DUBEY)
MEMBER (J)



(RASIKA CHAUBE)
MEMBER (A)