

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

O.A. No. 2212/2023

In the matter of :

Col Rajeev Sharma (Retd) ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Mr. Ved Prakash, 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 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 read as under:

*“(a) Quash the Impugned Order No. 13416/IC-59050H/EME/MP-6(F)/464/2022/AG/MP(ORO) dated 15 Sep 2022.*

*“(b) Direct the respondents to grant disability element of pension duly rounded off to 50% from the date of discharge.*

*“(c) Direct respondents to pay the due arrears of Pension with interest @12% p.a. with all consequential benefits.*

*(d) 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."*

### BRIEF FACTS

2. The applicant, having been found medically and physically fit, was commissioned in the Indian Army on 12.06.1999 and took premature retirement from service on 14.05.2022(AN). The Release Medical Board (RMB) dated 11.05.2022, found the applicant fit to be released in low medical category S1H3(P)A1P1E1 for the disability ID 'Sensori Neural Hearing Loss-Bilateral-Noise Indused and assessed the percentage of the disablement @20% for life. Despite the RMB holding the applicant's disability 'Sensori Neural Hearing Loss-Bilateral-Noise Indused' as 'Aggravated' by military service', the Competent Authority held the said disability as 'neither attributable to nor aggravated by military service' (NANA).

3. The initial claim of the applicant for grant of the disability pension was rejected by the competent authority and the said decision was communicated to the applicant vide letter dated 15.09.2022 with an advice that in case, the applicant is not satisfied with the decision of the respondents, he may prefer an appeal to the Appellate

Committee for First Appeals (ACFA) within six months from the date of issue of the above mentioned letter. The applicant preferred his first appeal dated 31.10.2022 against the non-grant of disability pension which has not been replied to by the respondents till the date of filing this OA which was so filed on 24.07.2023. Thereafter the applicant did not prefer any appeal and filed the present OA praying for the grant of disability element of pension. In the interest of justice in accordance with Section 21(2) of the AFT Act, we take up the OA for consideration.

#### CONTENTIONS OF THE PARTIES

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

5. The learned counsel for the applicant placed reliance on the verdict of the Hon'ble Supreme Court in Civil Appeal No. 164/1993 in the case of *Ex Sapper Mohinder Singh Vs. Union of India & Ors.* which was followed in the subsequent judgments of Hon'ble High Court of Punjab and Haryana including CWP 3296/2003 in the case of *Ex Havildar Babu Singh Vs. Union of India & ors.* and in the orders of the

AFT (PB) New Delhi including OA 14/2018 titled as *Brig Rajesh Madan (Retd) Vs. Union of India & Ors.*

6. *Per contra*, learned counsel for the respondents contended that the applicant is not entitled to the relief claimed since the Competent Authority found the disability "Neither Attributable to Nor Aggravated by Military Service. However, the RMB assessed the disability of the applicant 'Sensori Neural Hearing Loss-Bilateral-Noise Indused' @20% for life and conceded the same as aggravated by the military service but the initial adjudication conceded the disability as Neither Attributable to Nor aggravated (NANA) by military service since no causal connection with service was established as it does not fulfill the conditions as per Rule 6, 10 and 11 of Entitlement Rules for Casualty Pensionary Award to Armed Forces Personnel-2008, read in conjunction with Para 23 Chapter VI, GMO 2002/2008 and Regulation 37 (a) of Pension Regulations for the Army Part-1 (2008). Hence, the OA deserved to be dismissed.

#### ANALYSIS

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

7. It is an undisputed fact that at the time of joining the service in June, 1999, the applicant was found medically and physically fit and the present disability had admittedly first occurred in March, 2008, i.e. after about 8 years of service.

8. It is not in dispute that the present disability of the applicant i.e. 'Sensori Neural Hearing Loss-Bilateral-Noise Indused' has been conceded as 'Aggravated by military service' by the Medical Board with the reasons for assessment being 'Aggravated' is mentioned as 'applicant's exposure to loud noise of Arty firing' in the Part VII, Opinion of the Medical Board of the RMB. The same is reproduced to the effect:-

"PART VII

OPINION OF THE MEDICAL BOARD

1. Please endorse diseases/disabilities in chronological order of occurrence.

Disability	Attributable to military Service (Y/N)	Aggravated by Military Service (Y/N)	Detailed Justification
Sensori Neural Hearing Loss-Bilateral-Noise Indused	NO	YES	Aggravated to mil service due to exposure to loud noise of Arty firing vide Para 23 Chapter VI of GMO-2008

Note:1 A detailed justification regarding the board's recommendations on the entitlement for each disease/disability must be provided sequentially especially in NANA cases as per enclosed Appendix 'A'.

2. In case of multiple disabilities or inadequate space, do not paste over the opinion, an additional sheet should be attached instead, providing a detailed justification, which is authenticated by the President and all members of the Medical Board.

3. In case the medical board differs in opinion from the previous medical board, a

detailed justification explaining the reasons to differ should be brought out clearly.

4. A disability cannot simultaneously be both attributable to or aggravated by military service, only one or neither of which will apply.

However, 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. The issue in question is no more *res integra*. The case in 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."*

9. Subsequent to this, the Integrated HQ of MoD(Army) issued letter dated 25.04.2011, which states, *"These alterations in the findings of IMB/RMB by MAP (PCDA(P) without having physically examined the individual, do not stand to the scrutiny of law and in numerous judgments, Hon'ble Supreme Court has ruled that the Medical Board which has physically examined should be given due weightage, value and credence."* It further asks *"Command Headquarters to instruct all Record Offices under their control to withdraw unconditionally from such cases, notwithstanding the stage they may have reached and such files be processed for sanction"*.

10. In view of the decision of the Hon'ble Supreme Court in *Ex Sapper Mohinder Singh (Supra)*, we are of the considered view that the claim for disability pension was wrongly interfered with by the administrative authority and is unsustainable in law when the disability of the applicant has been held as 'Aggravated by military service'.

11. In view of the aforesaid judicial pronouncements, the applicant is entitled for disability element of pension. Therefore, the OA 2212/2023

is allowed. The respondents are thus 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.

12. 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.

Pronounced in open Court on this 8<sup>th</sup> day of April, 2025.

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[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

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[REAR ADMIRAL DHIREN VIG]  
MEMBER (A)

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