

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

O.A. No. 380/2018

In the matter of :

Colonel Dharamveer Singh (Retd) ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Ms. Archana Ramesh, Advocate

For Respondents : Mr. V.S. Mahndiyan, Advocate

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) Issue directions to quash and set aside ADGPS, IHQ of MoD (Army) Letter dated 06.11.2017 being assailed in the instant Original Application as an Impugned Order placed herein as Annexure A-1 being legally unsustainable in the light of the Hon'ble Supreme Court Judgment in Re Dharamvir Singh Versus Union of India (2013) 7 SCC 316 to meet the ends of justice;*

*(b) Issue directions to the Respondents to hold an Medical Board so that the disability of the applicant of 'Bilateral Sensory Neural Hearing loss' could be declared either as Attributable or aggravated to military service with quantification thereon as also declare the Disabilities of 'Primary Hypertension' and 'Cervical Spondylitis' either as attributable or aggravated to*

*military service and duly quantified thereon and that based on the Composite Disability Pension the applicant could be granted Disability Pension for life with its arrears thereon with penal interest to meet the ends of equity, justice and fair play;*

*(c) Pass such other and further orders and directions to the Respondents by way of awarding cost of litigation as also an adequate exemplary compensation in the attendant genuine circumstances of the case, to meet the ends of justice and fair play."*

## **BRIEF FACTS**

2. The applicant, having been found medically and physically fit, was commissioned in the Indian Army on 04.09.1987 and was discharged from service on 30.09.2015. The Release Medical Board (RMB) dated 11.06.2015, found the applicant fit to be released in low medical category S1H2(P)A1P1E1 for the disability 'Bilateral Sensorineural Hearing Loss' and assessed the percentage of the disablement @20% for life. Despite the RMB holding the applicant's disability 'Bilateral Sensorineural Hearing Loss' assessed the percentage of the disablement @20% 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 claim for the grant of disability pension was rejected by the respondents, which was communicated to him vide letter dated 21.09.2015. Aggrieved by this decision, the applicant preferred a first appeal on 02.12.2015, which was rejected by the respondents vide letter dated 07.09.2016, stating that the disability was constitutional in nature and therefore NANA. However, the applicant

contends that his first appeal has not been replied to by the respondents till date. The applicant thereafter submitted a second appeal on 14.10.2016, which has been rejected and replied by Army HQ vide ADGPS, IHQ of MoD (Army) Letter dated 06.11.2017.

4. Aggrieved by the rejection of his claim, the applicant has filed the present Original Application (OA) seeking grant of the disability element of pension. In the interest of justice, and in accordance with Section 21(1) of the Armed Forces Tribunal Act, we take up the OA for consideration.

#### CONTENTIONS OF THE PARTIES

5. The learned counsel for the applicant stated during the course of the hearing today that the applicant would be pressing for the disability of Bilateral Sensorineural Hearing Loss (SNHL) only and not for any other disability.

6. 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.

7. The learned counsel for the applicant placed reliance on the verdict of the Hon'ble Supreme Court in *Dharamvir Singh Vs. Union of India & Ors. [2013 (7) SCC 316]*, which was followed in

subsequent judgments of the Apex Court in *Union of India & Anr. Vs. Rajbir Singh [2015 (2) SCALE 371]* and *Sukhvinder Singh Vs. Union of India & Ors. [2014 STPL (Web) 468 SC]*, wherein the Hon'ble Apex Court had considered the question with regard to grant of disability pension and after taking note of the provisions of the Pension Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers and Para 423 of the Regulations for the Medical Services of the Armed Forces, it was held by the Hon'ble Supreme Court that an Army personnel shall be presumed to have been in sound physical and mental condition upon entering service except as to physical disability noted or recorded at the time of entrance and in the event of his being discharged from service on medical grounds, any deterioration in his health, which may have taken place, shall be presumed due to service conditions. The Apex Court further held that the onus of proof shall be on the respondents to prove that the disease from which the incumbent is suffering is neither attributable to nor aggravated by military service.

8. The learned counsel for the applicant placed reliance on the orders of the Armed Forces Tribunal (Principal Bench), New Delhi in the cases of *Lt Col Arun Kumar vs. Union of India* (OA No. 422/2015, decided on 09.07.2015), *Col G.S. Ahluwalia vs. Union of India* (OA No. 316/2013, decided on 10.02.2014), and *Capt G. Vivekanand vs. Union of India* (OA No. 460/2015, decided on 11.09.2015), wherein

similarly situated personnel were granted relief in similar circumstances.

9. The learned counsel for applicant further placed specific reliance on the order of AFT(PB) New Delhi, in OA 1088/2019 titled as *Hav Pooran Mal (Retd.) vs. Union of India & Ors.*, AFT (RB) Lucknow in OA 802/2021 titled as *Col Rajiv Kacker (retd) vs. Union of India & Ors.* and AFT (RB) Mumbai in OA 37/2022 titled as *Lt. Cdr. Sumeet Kumar (Retd) vs. Union of India & Ors.* ), wherein similarly situated personnel were granted relief in comparable circumstances

10. *Per contra*, the learned counsel for the respondents contended that the applicant's disability has been assessed as neither attributable to nor aggravated by military service (NANA), and therefore he is not entitled to the grant of disability element of pension. It was submitted that, as per Para 23 of Chapter VI of the Guide to Medical Officers (GMO), 2002/2008, the applicant's disability is either to a disease of the cochlea or the auditory fibres in the eighth nerve and its connections in the brain. In the absence of any service-related trauma or infection, the disability cannot be considered as attributable to service. Further, under the provisions of the GMO, aggravation may be conceded only after considering factors such as the intensity, continuity, duration, and proximity to loud noise exposure in a particular case.

11. In the present instance, the disability was first reported in peace station, after the applicant had completed three years of field service. The officer was noted to have normal hearing in the Annual Medical Examinations (AMEs) of 2010 and 2011, and no injury report was initiated, even if the condition was linked to field firing. Hence the disability of the applicant is due to constitutional changes and thus, it was contended that the Original Application deserves to be dismissed.

### ANALYSIS

12. We have heard the learned counsel for the parties and have perused the record produced before us. The issue that arises for determination before this Tribunal is whether the applicant's disability, namely "*Bilateral Sensorineural Hearing Loss*," can be held to be attributable to, or aggravated by, military service entitling the applicant to the disability element of pension.

13. It is an undisputed fact that at the time of joining the service on 04.09.1987, the applicant was found medically and physically fit and the present disability of the applicant had occurred in Sept 2009 whilst he was serving in North Sikkim after rendering approx 22 years of military service in various field and peace stations and that at the time of retirement, the applicant was placed in low medical category S<sub>1</sub>H<sub>2</sub>A<sub>1</sub>P<sub>1</sub>E<sub>1</sub>.

14. 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.

15. 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."*

16. The applicant has made a statement that he suffered from the disability Bilateral Sensorineural Hearing Loss due to the prolonged exposure to loud noise (SA Fire) in Sep 2009 in North Sikkim (High Altitude Area) and post exposure to the fire, he felt headache and blocked sensation in both ears, which is not rebutted by the

respondents. Consequently, the RMB held on 11.06.2015, found the applicant suffering from Bilateral Sensorineural Hearing Loss, the applicant was discharged on low medical ground, being in a low medical category on 30.09.2015. The Opinion of Maj Arun Yadav Graded Specialist (ENT) 167 Military Hospital dated 16.04.2015, attached to the RMB also shows that the applicant was exposed to loud noise when he was diagnosed with the said disability of Bilateral Sensorineural Hearing Loss, and the same reads as under:-

“OPINION OF MAJ ARUN YADAV Graded Specialist (ENT) 167  
Military Hospital dated 16 APR 2015  
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*PART-II*

*CLINICAL ASSESSMENT*

*(All relevant data required to arrive at the diagnosis and assessment of progress on the physical state of the patient to be entered.)*

- 1. History (a) Location of the onset: Peace/Field/High Altitude/CI Ops: North Sikkim*
- (b) Date & time of onset: Sep 2009*
- (c) Relevant history: Old case of B/L SNHL since 2009 and were in LMC H2(P) since Jan 2015. C/O reduced hearing in both ears (Rt>Lt). H/O exposure to loud noise (SA fire) in Sep 2009 in North Sikkim (high Altitude area). Post exposure to the fire, he felt headache and blocked sensation in both ears which have improved since then. No H/O discharge, Vertigo or tinnitus. Now reported for review.  
XX”*

17. Perusal of the posting profile of the applicant also reveals that during the period from 17.03.2003 to 14.06.2005, the applicant was posted at Missamari, which was a Counter Insurgency (CI) posting. thereafter, he was posted at Pathankot, and thereafter to North Sikkim, which is a field/high-altitude area and during this tenure at North

Sikkim, the applicant was diagnosed with the said disability. The posting profile of the applicant is reproduced hereinbelow:

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**PART-1**  
**PERSONAL STATEMENT**

**1. Give details of service (P=Peace OR F=Field/Operational/Sea Service)**

S/No.	from	To	Place/Ship	P/F (HAA/Ops/Sea Sea Service/Other	S/No.	from	To	Place/Ship	P/F (HAA/Op s/Sea Sea Service/ Other
(i)	17 Sep 87	16Dec 89	Tawang	HAA	(ii)	17 Dec 89	05 Aug 92	Ahemadaba	P
	06 Aug 92	09 Jul 94	Akhnoor	FD		10 Jul 94	12 Sep 96	Mohanbari	FD
(iii)					(iv)				
(v)	13 Sep 96	23 Oct 98	Siachin	HAA	(vi)	24 Oct 98	30 Dec00	New Delhi	P
(vii)	31 Dec 00	16Mar 03	Mumbai	P	(viii)	17 Mar 03	14 Jun 05	Missamari	CI
(ix)	15 Jun 05	11Aug07	Pathankot	P	(x)	12 Aug 07	15 Nov 09	Khaprail	FD
(xi)	16 Nov 09	31 Jul 11	Jalandhar	P	(xii)	01 Aug 11	30 May 12	Delhi Cantt	P
(xiii)	31May 12	Till Dt	Pathankot	P	(xiv)				

”

Hence, it is evident from the posting profile of the applicant that the said disability of the applicant occurred while he was serving in a field area, and not in a peace area as incorrectly noted by the respondents in the RMB of the applicant. Furthermore, four years prior to the diagnosis of the said disease in September 2009, the applicant was serving in a Counter-Insurgency posting, and throughout his service tenure, he had been posted to two High Altitude Area (HAA) field postings and three other field area postings.

18. We may refer to Para 23 of the Guide to Medical Officers (Military Pensions), 2008 wherein the causes for deafness are given 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 8<sup>th</sup> 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 labrynthine deafness. In these cases intensity of continuity, duration and 21 distance of sound nuisance should be considered before conceding aggravation.*

*(emphasis supplied)"*

19. It is not in dispute that applicant served in field and peace areas, where he was exposed to high level of noise during the military service which has been evident from the RMB of the applicant. The onset of his

disability is in September 2009 in field area and even, prior to this, the applicant served in the one CI area posting, two HAA postings, and three field area postings where he was likely exposed to loud noise and have worked in close proximity of gun/fire. Consequently, the disability of the applicant can be considered directly related to such exposure and moreover, the respondents have not placed any cogent medical evidence or reasoning to rebut the presumption of attributability/aggravation. The mere mention in the RMB that the disability is “constitutional in nature” does not, by itself, discharge the burden of proof imposed upon the respondents. Accordingly, the said disability of ‘Bilateral *Sensorineural Hearing Loss*’ of the applicant is held to be attributable/aggravated by military service as per Para 23 of Guide to Medical Officers (Military Pensions), 2008.

20. Furthermore, in support of our analysis we may refer to 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.*

*(emphasis supplied)”*

to submit to the effect that the said disability of Bilateral 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 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.

### CONCLUSION

21. In view of the above, the OA 380/2018 is allowed. The respondents are directed to grant the disability element of disability pension to the applicant for the disability i.e. Bilateral *Sensorineural*

*Hearing Loss @ 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.

23. There is no order as to costs.

Pronounced in the open Court on the <sup>14</sup>18 day of November, 2025.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]  
MEMBER (A)

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