

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

OA 1649/2023

Col Madhu Kanzhully (Retd) ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Mr. Indra Sen Singh, Advocate

For Respondents : Mr. Neeraj, Sr. CGSC

CORAM :

**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)**

O R D E R

1. 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) Set aside the order dated 18.04.2023 whereby the Applicant’s claim for disability element of pension has been arbitrarily rejected by the Respondents;

(b) Direct the Respondents to admit the 30% Hearing Disability for “B/L SNHL-NOICE INDUCED” (for which Aggravation due to Military Service has already been conceded) to the Applicant, as upheld in the Applicant’s RMB;

(c) Direct the Respondents to treat the Applicant’s disability on account of “PRIMARY HYPERTENSION”, and HYPERURICEMIA” as Aggravated by military service, if not attributable to military service;

(d) Direct the Respondents to pay arrears of disability element of pension, after calculating the same at the rate of 75% (‘B/L

SNHL-NOISE INDUCED', 'PRIMARY HYPERTENSION', and 'HYPERURICEMIA composite of 55.31%) (55.31% rounding off/ broad-banding policy of the Govt.;

(e) Direct the Respondents to pay arrears of disability element of pension, after calculating the same at the rate of 75% with effect from 31.08.2022, with interest at the rate of 10% per annum until the date of actual payment; and

(f) Issue such order(s)/direction(s) as may be deemed appropriate in the facts and circumstances of the case.

BRIEF FACTS

2. The applicant was commissioned in the Indian Army on 25.08.1990 and retired from the service on 31.08.2022 under the clause of "On attaining the age of superannuation" after rendering total 32 years and 06 days of regular service. The Release Medical Board held on 29.01.2022 found the applicant fit to be released from service in low medical category P2 (P) and assessed the disabilities of (i) B/L SNHL (Noise) Induced(ICD 90.3) @ 30% for life, (ii) Obesity (ICD E 66.9) @ 05% for life (iii) Primary Hypertension (ICD I 10) @30% for life and (iv) Hyperuricemia (ICD E-79) @4%, compositely assessed @55.31% for life. While the first disability, 'B/L SNHL (Noise) Induced' was conceded to be 'Aggravated by military service' by the Release Medical Board, the other three disabilities viz 'Obesity', 'Primary Hypertension' and 'Hyperuricemia' were

held to be 'neither attributable to nor aggravated by service'. However, the applicant was not granted the disability pension.

3. The initial claim of the applicant for grant of the disability pension was rejected by the Adjutant General's Branch, IHQ of MoD (Army) vide letter No. 13301/46772W/JAK LI/MP-6(E)/127/2022/AG/MP (ORO) dated 21.04.2022 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 within six months from the date of receipt of the above mentioned letter. The applicant preferred his first appeal dated 07.05.2022 against rejection of initial claim grant of disability pension, which was also rejected by the Appellate Committee on First Appeal (ACFA) vide letter No. 13301/IC-46772W/JAK LI/MP-6(E)/190/2022/AG/PS-4 (1st Appeal) dated 21.07.2022 with an advice that in case, the applicant is not satisfied with the decision of the respondents, he may prefer second appeal to the Second Appellate Committee on Pension (SACP) within six months from the date of issue of the above mentioned letter. The applicant preferred his second appeal dated 10.09.2022 but

the same was also rejected by the Competent Authority vide letter No. B/38046A/689/2022/AG/PS-4(2nd Appeal) dated 18.04.2023. Aggrieved by the rejection of his claim, the applicant has filed the present OA on 19.06.2023. 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 Armed Forces Tribunal Act 2007.

CONTENTIONS OF THE PARTIES

4. The learned counsel for the applicant submitted that the prayers made in the present OA are confined to the grant of disability element of pension in relation to the disability of 'B/L SNHL (Noise) Induced' assessed @ 30% for life only and the prayer made for grant of disability element of pension in relation to other three disabilities *viz* 'Obesity', 'Primary Hypertension' and 'Hyperuricemia' are not pressed.

5. Placing reliance on the judgment of the Hon'ble Supreme Court in ***Dharamvir Singh v. UOI & Ors [2013 (7) SCC 36]***, the learned counsel for the applicant submitted that no note of any disability was recorded in the service documents of the applicant at the time of the entry into the service, and that he served in the Army at various places in

different environmental and service conditions in his prolonged service and thus thereby, any disability during the time of his service has to be deemed to be attributable to or aggravated by military service.

6. The learned counsel for the applicant submitted that during service the applicant has been posted to various different and difficult stations including HAA such as Siachen Glacier, Ladakh, etc., that while the applicant was posted as an Inspector in Counter Insurgencies and Jungle Warfare School (CIJWS) at Vairengte, Mizoram, Field & CI Area in 2003 to 2006 the applicant suffered from the disability B/L SNHL that the applicant had trained numerous courses of students/ Foreign Mil Trainees in day and night firing of small arms from numerous ad hoc firing ranges housed in Tin Shed Shelters which often magnified the sound of weapon firing, and gradually the disability of the applicant got deteriorated and in Aug 2013, the applicant was diagnosed with the disability of hearing loss and constant ringing sound in both the ears, confirmed by ENT Specialist and thus the same was conceded to be aggravated by Military Service by the Release Medical Board dated 22.09.2013. It was further submitted on behalf of the

applicant that the applicant's disability of 'B/L SNHL (Noise Induced)' was detected in 2006 while he was working in HQ CIF (K) after around 16 years of continuous service, and thus the disability can be presumed to be attributable to Military Service also.

7. The learned counsel for the applicant placed reliance on judgment of the Hon'ble Supreme Court in **UOI & Ors.** vs **Rajbir** in Civil Appeal No. 2904/2011, **K Srinivas Reddy** vs **UOI & Ors.** (Mil LJ 2014 SC 20) to submit that the disability is to be treated as attributable to/aggravated by military service.

8. The learned counsel further placed reliance on the decision of the AFT, Principal Bench, New Delhi in the case of OA 59/2011 titled **Ex MWO Gajodhar Singh vs. UOI & Ors** decided on 01.05.2014, OA 781/2016 titled **Ex Ravinder Mohan Gaur vs. UOI & Ors** decided on 12.09.2018, OA 482/2014 titled **Ex Gp. Capt D.P.S. Tomar vs. UOI & Ors** decided on 09.07.2015, OA 484/2016 titled **Col (Retd) Madan Singh Negi vs. UOI & Ors** decided on 21.08.2018, OA 435/2013 titled **Sub (Retd) Suresh Kumar vs. UOI & Ors** decided on 16.05.2018, OA 1359/2016 titled **Ex Sgt Dinesh Singh vs. UOI & Ors** decided on

13.12.2018, OA 258/2015 titled **Ex Sub Mast Ram Chauhan vs. UOI & Ors** decided on 03.09.2015 and OA 1143/2017 titled **Ex Col Saran Jit Singh vs. UOI & Ors** decided on 01.10.2019 wherein similarly situated persons were granted relief.

9. Furthermore, learned counsel for the applicant submitted that even though the applicant's disability of 'B/L SNHL (Noise) Induced' has been conceded as aggravated by the Military service by the Release Medical Board held on 22.01.2022, but the claim of his disability pension was rejected by the Competent Authority stating as **'Not Approved'**.

10. The respondents have not filed their counter affidavit despite number of opportunities granted to them for the purpose. However, the learned senior counsel submitted that while disposing of the second appeal submitted by the applicant dated 10.02.2022, the competent authority i.e. SACP, after due consideration of the service/medical documents of the applicant and in accordance with the relevant rules on the subject, rejected the said appeal vide order dated 18.04.2023 re-assessing the disability of the applicant less than 20%. The counsel further added that

since the disability is less than 20%, it does not qualify for grant of disability pension, hence the OA be rejected.

ANALYSIS

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

12. In view of the disabilities of the applicant namely 'Obesity', 'Primary Hypertension' and 'Hyperuricemia' not being pressed by the applicant, we adjudicate only for the disability of 'B/L SNHL (Noise) Induced, which has been assessed @ 30% for life and was conceded to be 'aggravated by military service' by the RMB.

13. It is an undisputed fact that at the time of joining the service in Aug, 1990, the applicant was found medically and physically fit and the present disability had admittedly first occurred in 2006, i.e. after about 16 years of service, and was conceded as 'aggravated by service' by the Release Medical Board dated 22.01.2022 with the reasons for assessment being 'Aggravated' mentioned as 'Prolonged exposure to small Arms Firing at CIJW Mizoram. Para 23 Chapter VI of Guide to Medical Officer (MP) 2008' 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/ dis in chronological order of occurrence:-

Disability	Attributable to service (Y/N)	Aggravated by service (Y/N)	Detailed Justification
(a) B/L SNHL – NOISE INDUCED (ICD NO H 90.3)	No	Yes	Prolonged exposure to small Arms Firing at CIJW Mizoram. Para 23 Chapter VI of GMO 2008'
(b) OBESITY (ICD No E 66.9)	No	No	Obesity is individualistic disorder
(c) PRIMARY HYPERTENSION (ICD No I 10.0)	No	No	Onset of disability on peace station. Para 43 Chapter VI of GMO 2008.
(d) HYPERURICEMIA (ICD No E 79.0)	No	No	Metabolic Disorder
<p>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'.</p> <p>2. In case of multiple disabilities of inadequate space, does 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.</p> <p>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.</p> <p>4. A disability cannot simultaneously be both attributable to and aggravated by mil service, or one or neither of which will apply.</p>			

14. However, the competent authority after adjudication assessed the said disability to be 'NANA' without stating any reason for disagreeing with the findings of the Medical Board, thereby, 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.

15. The primacy of the opinion/assessment of a Medical Board 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 of the Hon'ble Supreme Court 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.”

16. In view of the decision of the Hon'ble Supreme Court in ***Ex Sapper Mohinder Singh*** (Supra), which has been relied upon in numerous orders of the Tribunal, we are of the considered view that the assessment/opinion of the RMB with regard to the disability in question to claim for disability element of pension was wrongly interfered with by the administrative authority which is unsustainable in law when the disability of the applicant has already been assessed @ 30% and held the same as 'Aggravated by military service', by the RMB, which is a medical expert body. We, therefore, hold that the applicant is entitled to the disability element of disability pension in respect of the disability of 'B/L SNHL (Noise) Induced' assessed @ 30% for life along with broad-banding benefits.

CONCLUSION

17. In light of the above, O.A. No. 1649 of 2023 is allowed. The respondents are directed to grant the disability element of disability pension to the applicant with respect to his disability of 'B/L SNHL (Noise) Induced' @ 30% for life from the date of his retirement, which is directed to be

further rounded-off to 50% for life 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.

18. The respondents are thus directed to calculate, sanction and issue the necessary PPO to the applicant within a period of three months from the date of receipt of copy of this order and the amount of arrears shall be paid by the respondents, *failing which*, the applicant will be entitled for interest @ 6% per annum from the date of receipt of copy of the order by the respondents.

19. There is no order as to costs.

Pronounced in the open Court on this 3rd day of March, 2026.

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

**[REAR ADMIRAL DHIREN VIG]
MEMBER (A)**

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