

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

O.A. No. 1884 of 2022

In the matter of:

Captain (IN) SS Yadav (Retd) ... **Applicant**

Versus

Union of India & Ors. ... **Respondents**

For Applicant : Mr. Shakti Chand Jaidwal, Advocate

For Respondents : Mr. Avdhesh Kumar Singh, Advocate

CORAM :

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

O R D E R

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) Call for relevant records of the Applicant and after perusal thereof, set aside the impugned order dated 30.05.2022 passed by the Respondents, rejecting second and final appeal of the Applicant for grant of disability pension;

(b) Direct the Respondents to accept Applicant's disabilities, namely, "(i) Bilateral Sensorineural Hearing Loss and (ii) CAD STE IWMI SVD PCI to RCA (1X DES) with normal LV function" as aggravated by Service/Attributable to Service as recommended by the RMB;

(c) Direct the Respondents to pay disability pension to the Applicant at enhanced rate of 50% for life from the date of his reitirement from service i.e. 01.08.2019 by broad-banding his disabilities from 40% to 50% as per Govt. Policy dated 31.01.2001;

(d) Direct the respondents to pay disability pension to the Applicant at enhanced rate of 50% for life from the date of his retirement from service i.e. 01.08.2019 by broad-banding his disabilities from 40% to 50% as per Govt. Policy dated 31.01.2001;

(e) Direct the Respondents to pay to the Applicant an interest @10% p.a. on the arrears of disability pension w.e.f. 01.08.2019 till the actual payment and/or;

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

BRIEF FACTS

2. The applicant was commissioned in the Indian Navy on 01.07.1985 and superannuated from service on 31.07.2019 in low medical category S2A2(H&P)PMT. The Release Medical Board (RMB), held on 02.02.2019, assessed the following disabilities: (i) Bilateral Sensorineural Hearing Loss assessed @ 14–19%; and (ii) CAD STE IWMI SVD PCI to RCA (1×DES) with normal LV function (ICD No. I25.0) assessed @30%. The composite assessment of disabilities was determined as 40% for life. Disability (i) was conceded as “Aggravated by Service” on account of chronic exposure

to loud noise during regular small arms firing, as per specialist opinion and disability (ii) was conceded as "Attributable to Service."

3. The initial claim of the applicant for grant of the disability pension was rejected and the said decision was communicated to the applicant vide letter No. PN/7770/DP/19 dated 29.09.2020, 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 03.12.2020 against rejection of his initial claim for disability pension which was rejected by the Appellate Committee on First Appeal (ACFA) vide IHQ MoD(N)/DPA letter No. PN/7770/DP/19 dated 09.08.2021 stating that in the light of relevant rules and administrative/medical provisions, the appellate committee on First Appeal (ACFA) that the applicant is not entitled for disability pension. Thereafter the applicant preferred his second appeal dated 26.08.2021 which was rejected vide IHQ MoD/DPA letter No. PN/7770/DP/19

dated 30.05.2022. Aggrieved by this, the applicant approached this Tribunal and has filed the present OA on 22.08.2022. In the interest of justice, it is considered appropriate to take up the present OA for consideration, in terms of Section 21(1) of the AFT, Act 2007.

CONTENTIONS OF THE PARTIES

4. The learned counsel for the applicant stated during the course of the hearing that the applicant would be pressing for the disability of (ii) CAD STE IWMI SVD PCI to RCA (1×DES) with normal LV function (ICD No. I25.0) assessed @30% only and not for another disability i.e. (i) Bilateral Sensorineural Hearing Loss assessed @ 14–19%.

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 Indian Navy at various places in different environmental conditions and in most difficult afloat postings for more than seven years in his total 34 years of service with complete dedication and thus

thereby, any disability that arose during his service has to be deemed to be attributable to or aggravated by military service. It is further submitted by the learned counsel that though, the disability of the applicant namely CAD STE IWMI SVD PCI to RCA (1×DES) with normal LV function (ICD No. I25.0) is conceded as 'Attributable to Military Service' by the RMB, however, the disability pension was denied to the applicant.

6. The learned counsel for the applicant emphasized the nature of duties performed by the applicant during his service, stating that as an Executive Officer he had no fixed working hours during his sea service of more than seven years, commencing from his posting onboard INS Kiltan in 1987 till his last sea posting onboard INS Mulki in 1997. During this period, the applicant was required to perform watch-keeping duties almost round the clock under tremendous stress and strain, often without adequate time for proper meals and rest. It was further submitted that the applicant's shore appointments at training establishments such as INS *Chilika* and the National Defence Academy, Khadakwasla, were equally stressful and demanding. In

these appointments, the applicant played a pivotal role in the planning and execution of various training programmes to ensure the timely passing out of a large number of under-trainees in order to meet pressing service commitments.

7. The learned counsel for the applicant further submitted that in the year 2016, while handling multiple projects of the AFNHB at Meerut, the applicant suffered a massive heart attack and was referred to the Army Hospital (Research & Referral), New Delhi, for treatment. After detailed investigations, the applicant was diagnosed with CAD STE IWMI SVD PCI to RCA (1×DES) with normal LV function (ICD No. I25.0). To prevent further damage to his heart, the applicant underwent a surgical procedure and a stent was placed in the affected artery. Subsequently, the Re-categorisation Medical Board held on 05.11.2016 assessed the said disability and opined it to be “attributable to military service”.

8. On behalf of the applicant reliance was placed on the verdicts of the Hon'ble Supreme Court in the case of **Union of India v. Rajbir Singh** 2015(12) SCC 264, UoI & Ors. v. Angad Singh Titaria (2015) 12 SCC 257. The applicant also

placed reliance on orders of the AFT, Principal Bench, New Delhi in OA No. 1508/2017 titled ***Cdr VD Nagar v. UOI & Ors.***, OA No. 909/2019 titled ***Col MPC Rao (Retd.) vs. UOI & Ors.***, wherein similarly situated personnel were given relief.

9. *Per contra*, the learned counsel for the respondents submitted although RMB conceded the disability of the applicant namely 'CAD STE IWMI SVD PCI to RCA (1×DES) with normal LV function (ICD No. I25.0)' as attributable to service considering his 14 days' charter of duties. However, PIFA(Navy) has not concurred for grant of disability pension stating that there is no close-time relationship between the onset of disability and service in field area. Hence, his claim for the grant of the disability was rejected by the competent authority and thus the applicant is not entitled to the grant of the disability pension.

ANALYSIS

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

11. It is an undisputed fact that at the time of joining the service in July, 1985, the applicant was found medically and

physically fit and the present disability had admittedly first occurred in Apr, 2016, i.e. after about 30 years and 9 months of service.

12. It is not in dispute that the present disability of the applicant i.e. 'CAD STE IWMI SVD PCI to RCA (1×DES) with normal LV function (ICD No. I25.0)' has been conceded as 'attributable to military service' by the Release Medical Board dated 02.02.2019 with the reasons for assessment being 'Attributable' mentioned as 'vide 14 days chart duties' in the Part V, Opinion of the Medical Board of the RMB. The same is reproduced to the effect:-

| Causal Relationship of the Disability with Service conditions or otherwise. | | | | |
|---|-------------------------------|-----------------------------|----------------------------------|--|
| Disability | Attributable to service (Y/N) | Aggravated by service (Y/N) | Not Connected with Service (Y/N) | Reason/Cause/Specific condition and period in service |
| CAD STE IWMI SVD PCI to RCA (1×DES) with normal LV function (ICD No. I25.0) | YES | NO | NO | The Condition is attributable to service vide 14 days charter of duties. |
| A disability "Not connected with service" would be neither Attributable | | | | |

nor aggravated by service.

13. 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.

14. 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.”

15. 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'.

CONCLUSION

16. In view of the aforesaid judicial pronouncements and the parameters referred to above, OA 1884/2022 is allowed. The respondents are thus directed to grant disability element of pension to the applicant @ 30% 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.

17. 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.

18. There is no order as to costs.

Pronounced in open Court on this 4th day of February, 2026.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

/nmk/