

**COURT No.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

OA 3400/2024

Col Harsh Vardhan Dubey (Retd) Applicant
Versus
Union of India and Ors. Respondents

For Applicant : Mr. K R Verma, Advocate
For Respondents : Mr. Sundeep Kumar, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this OA and has made the following prayers:

"(a) Quash and set aside the impugned orders dated 17.05.2023 and order dated 01.12.2023, passed by the respondents rejecting the Initial Claim and First Appeal of the applicant for claim to disability pension. (Annexure A-1(Colly)).

(b) Quash and set aside the recommendations of Impugned release medical proceedings dated 16.02.2023 to the extent that held ID(II). CAD – MICROVASCULAR ANGINA as NANA, on the presumption of being acquired while posted to a peace station (Annexure- A2).

(c) Direct the respondents to grant disability pension to the applicant from the date of retirement @ 44% dully broad banded to @ 50% with all consequential benefits like arrears on account of disability pension and interest on amount due (Date of Retirement – 31 Aug 2023).

(d) Direct the respondents to pay interest at 9% per annum w.e.f. 01.09.2023, the date of retirement of the applicant to till the actual date of payment.

(e) Pass any other order / direction that this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."

2. The applicant was commissioned in the Indian Army on 08.06.1991 and superannuated from service on 31.08.2023 in the Low Medical Category. The Release Medical Board (RMB), held on 15.03.2023, assessed the following disabilities: (i) Bilateral High Frequency Sensorineural Hearing Loss assessed @ 20% for life; and (ii) Coronary Artery Disease Microvascular Angina assessed @ 30% for life. The composite assessment of disabilities was determined as 44% for life. Disability (i) was conceded as "Aggravated by Service" on account of exposure to loud sound in form of small arms and artillery guns firing during routine training activities and field firing as per specialist opinion and disability (ii) was conceded as "neither attributable to nor aggravated" by military service.

3. The initial claim of the applicant for grant of the disability element of pension was rejected and the said decision was communicated to the applicant vide letter No. 13415/IC-50461A/AOC/MP-6(F)/243/2023/AG/MP(ORO) dated 17.05.2023, 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 1st Appeal dated 21.07.2023 against the rejection of his initial claim for disability element of pension which was rejected by the Appellate Committee on First Appeal (ACFA) vide AG/PS-8 letter No. 13415/IC-50461A/AOC/MP-6(F)/392/2023/AG/PS-8 dated 01.12.2023 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 2nd Appeal dated 10.01.2024 but as submitted by him the same has not been considered. However, from the counter affidavit it is revealed that vide AG/PS-9 letter No.B/38046A/311/2024/AG/PS-9 dated 30.12.2024 [Annexure R-1 (Colly)], the 2nd Appeal of the applicant was rejected by the appellate committee. Aggrieved by this, the applicant approached this Tribunal and has filed the present OA on 20.08.2024. 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.

4. The learned counsel for the applicant stated during the course of the hearing that the applicant would be pressing for the disability

of (i) Bilateral High Frequency Sensorineural Hearing Loss assessed @ 20% for life only and not for another disability, i.e., (ii) Coronary Artery Disease Microvascular Angina assessed @ 30% for life.

5. Placing reliance on the judgement of the Hon'ble Supreme Court in the case of **Dharamvir Singh Vs. Union of India & Ors** [2013 (7) SCC 36], 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 Army at various places in different environmental conditions 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, Bilateral High Frequency Sensorineural Hearing Loss is conceded as 'Aggravated by Military Service' by the RMB, however, the disability pension was denied to the applicant.

6. Learned counsel for the applicant submitted that the applicant was posted as Commanding Officer to 46 UP Battalion NCC, Gorakhpur, during the period from 17.06.2019 to 03.06.2021. It was contended that Gorakhpur is a hard peace station with limited

facilities as compared to a Military Station or Cantonment area. It was further submitted that NCC units function with constrained resources in terms of manpower and finances and are largely dependent upon the State Government for support. It was averred that, pursuant to the announcement made by the Hon'ble Prime Minister on 15.08.2020 during his Independence Day address regarding expansion of NCC to colleges, universities, and institutions in border areas, the applicant's unit, i.e., 46 UP Battalion NCC, was entrusted with the responsibility of expanding NCC coverage in the border district of Siddharthnagar. In this regard, the applicant undertook extensive travel between August 2020 and February 2021 to accomplish the said task within a stipulated timeframe. It was submitted that due to the time-bound nature of the assignment, coupled with limited resources, the applicant was subjected to considerable stress and strain.

7. Learned counsel for the applicant further submitted that while the applicant was posted to NCC Group Headquarters, Warangal (Telangana), during the period from 04.06.2021 to 31.08.2023, he developed hearing impairment in both ears. It was submitted that the applicant underwent treatment from an ENT Specialist at Military

Hospital, Secunderabad, where he was diagnosed with "Bilateral High Frequency Sensorineural Hearing Loss." It was further submitted that the Release Medical Board convened on 16.02.2023 assessed the said disability and opined that the same was "aggravated by 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** Vs. **Rajbir Singh** [2015(12) SCC 264] and in the case of **Union of India** Vs. **Ram Avtar** (Civil Appeal No.418/2012 decided on 10.12.2014). The applicant also placed reliance on the Regulations 422 (k) (i) and 423 of the Regulation for Medical Services of the Armed Forces, 2010, 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, 'Bilateral High Frequency Sensorineural Hearing Loss' as aggravated by military service. However, Second Appellate Committee on Pension (SACP) has not concurred for grant of disability pension stating that there is no documented evidence of service related acoustic trauma or infection. Moreover, the RMB has over assessed

the condition at 20% as CV both ear at the time of RMB is 550cm. hence, the assessment should have been @ 10% at the time of RMB as per Para 20, Chapter VII, GMO 2002/2008. Hence, the claim of the applicant for grant of disability element of pension was rejected by the competent authority as disablement percentage qualifying for disability pension is less than 20% as per Para 37/PRA Part-I, 2008 and thus, he is not entitled to grant of disability element of pension.

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 June, 1991, the applicant was found medically and physically fit and the present disability had admittedly first occurred in Nov, 2020, i.e., after about 29 years and 05 months of service.

12. It is not in dispute that the present disability of the applicant, i.e., 'Bilateral High Frequency Sensorineural Hearing Loss' has been conceded as 'aggravated by military service' by the Release Medical Board dated 16.02.2023 with the reasons for assessment being 'Aggravated' mentioned as 'there is history of exposure to loud sound in form of small arms and artillery guns

firing during routine training activities and field firing as per initial specialist opinion dt 25 Feb 2022' in the Part V, Opinion of the Medical Board of the RMB. The same is reproduced to the effect:-

<i>Sr. No</i>	<i>Disability</i>	<i>Attributable to service (Y/N)</i>	<i>Aggravated by service (Y/N)</i>	<i>Detailed Justification</i>
(a)	<i>BILATERAL HIGH FREQUENCY SENSORINEURAL HEARING LOSS (H-90.3)</i>	<i>No</i>	Yes	<i>Disability was detected in year 2020. There is history of exposure to loud sound in form of small arms and artillery guns firing during routine training activities and field firing as per initial specialist opinion dt 25 Feb 2022. Hence, aggravation conceded as per para 23, Ch-VI of GMO-2008.</i>

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 at 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 the case of ***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 'Aggravated by military service'.

16. In view of the aforesaid judicial pronouncements and the parameters referred to above, OA 3400/2024 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.

17. The action of the respondents in treating the said disability as "Neither Attributable to Nor Aggravated (NANA)" and consequently denying the disability element of pension to the applicant is found to be legally unsustainable, arbitrary, and in violation of the settled principles of law governing grant of disability pension.

18. Accordingly, the impugned orders dated 17.05.2023 and 01.12.2023, as well as the rejection of the applicant's claim for grant of disability pension, are hereby quashed and set aside to the extent they deny disability pension for the disability "Bilateral High Frequency Sensorineural Hearing Loss".

19. The respondents are directed to grant disability element of pension to the applicant for the disability "Bilateral High Frequency Sensorineural Hearing Loss", assessed at 20% for life and duly broad-banded to 50% in terms of the applicable rules, with effect from the date of retirement, i.e., 31.08.2023. The applicant shall also be entitled to arrears of disability pension from 01.09.2023 along with interest @ 8% per annum from the date it became due till the date of actual payment.

20. The aforesaid directions shall be complied with by the respondents within a period of four months from the date of receipt of a certified copy of this order.

21. No order as to costs.

22. Pending miscellaneous application(s), if any, stands closed.

Pronounced in open Court on this 2nd day of April, 2026.

**(JUSTICE RAJENDRA MENON)
CHAIRPERSON**

**(LT GEN C.P. MOHANTY)
MEMBER (A)**

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