

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

OA 4019/2023

Captain (TS) N Raghunathan (Retd) ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Mr. Shakti Chand Jaidwal, Advocate

For Respondents : Mr. Neeraj, Sr. CGSC

CORAM :

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

ORDER

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 impugned order dated 10.08.2023 passed by the Respondent, rejecting second and final appeal of the Applicant for grant of disability pension.

(b) Direct the Respondents to accept / concede all the four disabilities of the Applicant, as “Attributable to /Aggravated by Service”, since the same have been caused/ aggravated in service.

(c) Direct the Respondents to grant disability pension to the Applicant @ 78.72% for life w.e.f. 01.06.2022, as degree of his disablement has been assessed @ 78.72% for life by the RMB.

(d) Direct the Respondents to pay disability pension to the Applicant @100% for life w.e.f 01.06.2022 by board banding his disabilities

from 78.72% to 100% 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. 01.06.2022 till the actual payment of the same and/ or.

(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 Navy on 17.08.1987 and retired from the service on 31.05.2022 under the clause of "On attaining the age of superannuation" after rendering total 34 years, 09 months and 18 days of regular service. The Release Medical Board held on 30.12.2021 found the applicant fit to be released from service in low medical category S3A2(H&P) Pmt and assessed the disabilities of (i) Bilateral Sensorineural Hearing Loss(ICD H 90.3) @ 30% for life, (ii) Obstructive Sleep Apnea (ICD G 47.3) @ 05% for life (iii) Hypertension (ICD I 10) @ 60% for life and (iv) Type 2 Diabetes Mellitus (ICD E 11.9) @ 20%, compositely assessed @78.72% for life. While the first disability, 'Bilateral Sensorineural Hearing Loss' was conceded to be 'Aggravated by military service' by the Release Medical Board, the other three disabilities viz 'Obstructive Sleep Apnea', 'Hypertension' and 'Type 2

Diabetes Mellitus' 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 IHQ of MoD (Navy) vide letter No. PN/8294/DP/22 dated 21.06.2022 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 21.07.2022 against rejection of initial claim grant of disability pension, which was also rejected by the Appellate Committee on First Appeal (ACFA) vide letter No. PN/8249/DP/22 dated 28.11.2022 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 27.12.2022 but the same was also rejected by the Competent Authority vide letter No. PN/8249/DP/22 dated 10.08.2023. Aggrieved by the rejection of his claim, the

applicant has filed the present OA on 12.12.2023. 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 'Bilateral Sensorineural Hearing Loss' assessed @ 30% for life only and the prayer made for grant of disability element of pension in relation to other three disabilities *viz* 'Obstructive Sleep Apnea', 'Hypertension' and 'Type 2 Diabetes Mellitus' 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 Sea Service such as Vizag, Arakonam, etc., that while the applicant was posted as an Naval Aeronautical Quality Assurance Service (NAQAS) at Kochi, Peace Area in 2005 to 2008 he suffered from the disability 'Bilateral Sensorineural Hearing Loss', that the applicant had to carry out inspections of Naval Aviation Technical Assets to ensure their quality by visiting different units, with heavy noise of aircraft operations and small arms firing and gradually the disability of the applicant got deteriorated and in Feb 2007, the applicant was diagnosed with the disability of 'Bilateral Sensorineural Hearing Loss' and the same was conceded to be aggravated by Military Service by the Release Medical Board dated 30.12.2021. It was further submitted on behalf of the applicant that the applicant's disability of 'Bilateral Sensorineural Hearing Loss' was detected in 2007 while he was working in INS Garuda/NAQAS (Kochi) after around 19

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, **UOI & Ors. vs Chander Pal** in Civil Appeal No. 2337/2009, **UOI & Ors. vs Angad Singh Titaria** (2015) in Civil Appeal No. 11208/2011 (12 SSC 257), **UOI & Ors. vs Manjeet Singh** (2015) (12 SSC 275) and **Ex-Gnr Laxman Ram Poonia vs UOI & Ors.** (2017) (4 SSC 697) 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 220/2016 titled **Lt Gen Ashok Mehta (Retd) vs. UOI & Ors** decided on 02.08.2017, and OA 2269/2022 titled **Sgt Satyapira Sahoo (Retd) vs. UOI & Ors** decided on 27.07.2023 wherein similarly situated persons were granted relief.

9. Furthermore, learned counsel for the applicant submitted that even though the applicant's disability of 'Bilateral Sensorineural hearing Loss' has been conceded as

aggravated by the Military service by the Release Medical Board held on 30.12.2022, but the claim of his disability pension was rejected by the Competent Authority stating as **'Not Entitled'**.

10. *Per contra*, the learned counsel for the respondents submitted that although RMB conceded the disability of the applicant namely Bilateral Sensorineural Hearing Loss' as 'aggravated by service' as per Para 23, Chapter VI GMO 2002 amendment 2008, however, the competent Financial Authority, PIFA (N) observed that the applicant's disability first detected whilst he was posted at Kochi (Peace) Station and the causal connection between the onset of disability and service factors could not be established as per Para 11 of GoI, MoD, Department of Ex-Servicemen Welfare letter No. 1(3)/2002/D(Pen/Pol) dated 18.01.2010 and the Appellate Committee on First Appeals (ACFA) and Second Appellate Committee on Disability Pension (SACDP) have not concurred the opinion of Release Medical Board for grant of disability pension stating that in the light of relevant rules and administrative/medical provisions the applicant is not entitled for grant of disability pension. Hence, his claim for the grant of the disability pension was

rejected by the competent authority and thus the applicant is not entitled to the grant of the 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 'Obstructive Sleep Apnea', 'Hypertension' and 'Type 2 Diabetes Mellitus' not being pressed by the applicant, we adjudicate only for the disability of 'Bilateral Sensorineural hearing Loss' 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, 1987, the applicant was found medically and physically fit and the present disability had admittedly first occurred in 2007, i.e. after about 19 years of service, and was conceded as 'aggravated by service' by the Release Medical Board dated 30.12.2021 with the reasons for assessment being 'Aggravated' mentioned as 'due to exposure to loud noises of aircraft vide Para 23, Chapter VI of GMO 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 Causal diseases/ Disability in chronological order of occurrence:-

Disability	Attributable to service (Y/N)	Aggravated by service (Y/N)	Reason/Cause/Specific condition and period in service
(a) BILATERAL SENSORINEURAL HEARING LOSS (ICD NO H 90.3)	No	Yes	ONSET OF INDIVIDUAL'S ID WAS ON FEB 2007 WHILE POSTED AT INS GARUDA / NAQAS (KOCHI) PEACE. DUE TO EXPOSURE TO LOUD NOISES OF AIRCRAFT VIDE PARA 23, CHAPTER VI OF GMO 2008.
(b) OBSTRUCTIVE SLEEP APENNA (ICD NO. G47.3)	NO	NO	THE ONSET OF INDIVIDUAL'S ID WAS ON DEC 2010. WHILE POSTED AT INS HANSA/ NAY (G) (PEACE). IN THE INSTANT CASE THE CAUSE OF DISABILITY IS PRIMARY STRUCTURAL ABNORMALITY OF UPPER AIRWAYS AND NOT CONNECTED WITH SERVICE VIDE INITIAL MEDICAL BOARD DATED 28 DEC 2018. HENCE, THE DISABILITY IS CONCEDED AS NANA TO MILITARY SERVICE.
(c) HYPERTENSION (ICD NO I 10.0)	NO	NO	ONSET OF INDIVIDUAL'S ID WAS ON JAN 2020, WHILE POSTED AT INS KADAMBA/MO (KARWAR) (PEACE). AGGRAVATION IS CONCEDED WHEN THE ONSET OCCURS WHILE SERVING IN FD/CL OPS/HAA/AFLOAT SERVICE. IN THE INSTANT CASE THE DISABILITY IS CONCEDED AS NANA DUE TO ONSET OF DISABILITY OCCURRED IN PEACE.
(d) TYPE 2 DIABETES MELLITUS (ICD NO E 11.9)	NO	NO	ONSET OF INDIVIDUAL ID WAS ON NOV 2021, WHILE POSTED AT INS GOMANTAK / HQ GNA (GOA) PEACE. AGGRAVATION IS CONCEDED WHEN THE ONSET OCCURS WHILE SERVING IN FD/CL OPS/HAA/AFLOAT SERVICE. IN THE

			INSTANT CASE THE DISABILITY IS CONCEDED AS NANA DUE TO ONSET OF DISABILITY OCCURRED IN PEACE.
<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, 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.</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 military service, only one or neither of which will apply.</p>			

14. However, the competent authority after adjudication assessed the said disability to be 'NANA' 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 for the disability of 'Bilateral Sensorineural Hearing Loss'.

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 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 'Bilateral Sensorineural Hearing Loss' assessed @ 30% for life along with broad-banding benefits.

CONCLUSION

17. In light of the above, O.A. No. 4019 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 'Bilateral Sensorineural Hearing Loss' @ 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 @ 8% 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 ¹²18 day of March, 2026.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DEIREN VIG]
MEMBER (A)

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