

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

OA No. 4171/2023

Col Sandeep Sharma (Retd.) ... **Applicant**
Versus
Union of India & Ors. ... **Respondents**

For Applicant : Mr. Indra Sen Singh, Advocate
For Respondents : Mr. Prabodh Kumar, Sr. CGSC

CORAM :

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

ORDER

The applicant has instituted the present Original Application (OA) No. 4171/2023 seeking grant of disability pension on account of the following disabilities: (i) Bilateral Sensorineural Hearing Loss (SNHL), assessed at 20% for life; (ii) Disc Degenerative Disease, assessed at 20% for life; (iii) Primary Hypertension, assessed at 30% for life; and (iv) Stroke – Left Basal Ganglia Infarct, assessed at 20% for life. The aforesaid disabilities have been cumulatively assessed at 64% for life by the Release Medical Board (RMB), which has further opined that the said disabilities were aggravated by military service.

2. The applicant was commissioned in the Indian Army on 13.06.1992 and was released from service on 30.11.2021 upon

attaining the age of superannuation. At the time of his release, the Release Medical Board (RMB) assessed the aforesaid disabilities at the percentages indicated hereinabove and recorded a categorical opinion that the same were aggravated by military service. However, the competent administrative authorities, upon examination of the claim, held that the disabilities did not satisfy the requisite conditions for grant of disability pension and, accordingly, rejected the applicant's initial claim vide letter No. 13416/IC-51293Y/EME/MP-6(F)/560/2022/AG/MP (ORO) dated 30.06.2022.

3. Aggrieved by the said rejection, the applicant preferred a First Appeal dated 24.08.2022 before the Appellate Committee on First Appeal (ACFA), which came to be rejected vide order dated 30.11.2022. The applicant thereafter preferred a Second Appeal dated 30.12.2022 before the Appellate Committee on Second Appeal; however, the same was also rejected vide order dated 16.11.2023 on the ground that the disabilities were neither attributable to nor aggravated by military service.

4. Being aggrieved with the aforesaid orders of rejection, the applicant has approached this Hon'ble Tribunal by way of the

present Original Application, seeking grant of disability pension together with consequential arrears and all ancillary benefits flowing there from.

5. The respondents, inter alia, have placed reliance upon Paragraph 4(a) of the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008 (ER-2008), which stipulates that disability pension shall be admissible only in cases where the disability is attributable to or aggravated by military service. The respondents have further invoked Paragraphs 6, 10 and 11 of ER-2008 to contend that only such disabilities as bear a direct nexus with military duty, operational stress, or conditions peculiar to service would qualify for the grant of disability pension under the said Rules.

6. The respondents have further reliance upon Rule 12 of the Entitlement Rules for Casualty Pensionary Awards, 2008, and have contended that the mere existence of a disability at the time of release from service does not ipso facto entitle an individual to disability pension and that the competent authority is vested with the jurisdiction to examine the medical and service records in

order to determine whether such attributability or aggravation is made out in accordance with the prescribed parameters :-

"12. Competent Authorities:

(a) Attributability/Aggravation:

(i) Injury Cases: Decision regarding attributability/aggravation in respect of injury: cases in invalidment/retirement or discharge would be taken by the Service HQrs. in case of officers and OIC Records in case of PBOR, for the purpose of casualty pensionary awards.

(ii) Disease Cases: The decision regarding attributability/aggravation in respect of disease cases shall be taken by the Service HQrs in case of officers and OIC Records in case of PBOR on the basis of the findings of the RMB/IMB as approved by the next higher medical authority which would be treated as final and for life."

7. We have heard learned counsel for the parties at considerable length and have carefully perused the pleadings and documents placed on record, including the proceedings of the Release Medical Board (RMB), the impugned orders of rejection, and the relevant statutory provisions governing the field.

8. The principal question that arises for determination in the present Original Application is whether the applicant is entitled to the grant of disability pension under the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008 (ER-2008), in a case where the Release Medical Board has opined that

the disabilities in question are "aggravated by service," but the administrative authorities and the Appellate Committees have rejected the claim on the ground that the same are neither attributable to nor aggravated by military service.

9. We are of the considered opinion that the action of the respondents in denying the disability element of pension to the applicant is contrary to the law laid down by the Hon'ble Supreme Court in ***Ex Sapper Mohinder Singh Vs. Union of India*** (C.A. No. 164 of 1993 decided on 14.01.1993) and ***Dharamvir Singh Vs. Union of India***. The ratio decidendi of the aforesaid judgments unequivocally mandates that where a duly constituted Medical Board has recorded a finding that the disability is attributable to or aggravated by military service, such opinion cannot be lightly disregarded or substituted by administrative authorities in the absence of cogent and legally sustainable reasons. It is also pertinent to note that the Integrated Headquarters (Army) has issued a communication dated 25.04.2011 clarifying the implementation of the aforesaid judicial pronouncements. The relevant extract of the said communication is reproduced hereinbelow for ready reference:

"2 These alterations in the findings of IMB/RMB by MAP (PCDA(P)) without having physically examined the individual, do not stand to the scrutiny of law and in numerous judgments, Hon'ble Supreme Court has ruled that the medical Board which has physically examined should be given due weightage, value and credence.

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4. All Command HQs are requested to instruct all Record Offices under their command to withdraw unconditionally from such cases, notwithstanding the stage they may have reached and such file be processed for sanction."

10. It is trite law, as consistently reiterated by this Tribunal in a catena of judgments, including O.A. No. 270 of 2016 decided by the Armed Forces Tribunal, Regional Bench, Chandigarh, that due weightage, credibility, and primacy must be accorded to the findings of a duly constituted Medical Board. The opinion of the Medical Board, being that of a body of experts, carries significant evidentiary value and cannot be lightly disregarded. It has been repeatedly held that neither the Principal Controller of Defence Accounts (PCDA) nor any administrative authority is competent to sit in appeal over the medical findings recorded by the Release Medical Board. Any disagreement with the opinion of the Medical Board must necessarily be founded upon a cogent and reasoned opinion rendered by another duly constituted and more competent Medical Board. In the absence of such countervailing medical

evidence, interference with the findings of the Medical Board is legally impermissible.

11. In the present case, the Release Medical Board, after due examination of the applicant, assessed his disabilities and recorded a composite assessment of 64% for life, further opining that the same were aggravated by service. The respondents have not placed on record any opinion of a higher or specialist medical authority dislodging or contradicting the findings of the said Board. In such circumstances, we find no justifiable or sustainable reason on the part of the respondents to deny the disability element of pension to the applicant. The impugned action of the respondents, in disregarding the considered opinion of the Release Medical Board without any independent medical basis, cannot be sustained in law.

12. Further, in view of the judgment of the Hon'ble Supreme Court in **Union of India and others Vs. Ram Avtar** (in C.A No. 418 of 2012 dated 10.12.2014), the applicant is entitled to get the disability element of pension broad banded to 75%, based on the Government notification dated 31.01.2001.

13. In view of the foregoing discussion and analysis, the present Original Application deserves to be allowed and is accordingly allowed. The respondents are directed to grant to the applicant the disability element of pension on the basis of composite disability assessed at 64%, and to broad-band the same to 75% in terms of the applicable rules, with effect from the date of his retirement, i.e., 30.11.2021.

14. It is pertinent to note that the applicant has been diligently pursuing his remedy by preferring a First Appeal dated 24.08.2022, which came to be rejected on 30.11.2022, and thereafter a Second Appeal dated 30.12.2022, which was also rejected on 16.11.2023. The record reflects that but for the unwarranted overruling of the opinion of the Release Medical Board by the administrative authorities, the applicant would have been granted the disability element of pension from the date of his discharge itself. In such circumstances, we are of the considered view that no restriction on arrears is warranted in the facts of the present case.

15. The respondents are directed to implement this order within a period of four months from the date of receipt of a certified copy

of this order. In the event of failure to comply within the stipulated period, the respondents shall be liable to pay interest at the rate of 8% per annum on the entire arrears from the date they became due till the date of actual realization.

16. No order as to costs.

17. Pending miscellaneous application(s), if any, are disposed of.

Pronounced in the Open Court on 13th day of March, 2026

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT GEN C.P. MOHANTY
MEMBER (A)]

Akc