

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Court No 1****O.A. No 707 of 2023****Thursday, this the 02 May, 2024****Hon'ble Mr. Justice Anil Kumar, Member (J)****Hon'ble Lt Gen Anil Puri, Member (A)**

**Service No 13746512 Ex Naik Bishnu Bahadur Thapa, Son of Shri Padam Bahadur, Resident of Village- Banjara Wala, Post Office- Nanjara Wala, Tehsil Dehradun, District – Dehradun (Uttarakhand)**

..... Applicant

Ld. Counsel for the Applicant: **Shri VP Pandey & Shri RK Singh, Advocates**

Versus

1. Union of India through Secretary, Ministry of Defence, New Delhi-110011.
2. The Chief of the Army Staff, Integrated Headquarters, Ministry of Defence (Army), South Block, New Delhi-110011.
3. Officer In Charge Records, JAK RIF Records, PIN – 908774, C/o 56 APO.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (U.P.) -211014.

..... Respondents

Ld. Counsel for the : **Dr Shailendra Sharma Atal,**  
Respondents **Central Govt Counsel.**

**ORDER (ORAL)****“Per Hon’ble Mr. Justice Anil Kumar, Member (J)”**

1. This is an application filed under Section 14 of the Armed Forces Tribunal Act, 2007 for issuing directions to the respondents to grant disability element @ 80% to the applicant for intervening period 31 October 2000 to 19 June 2022.
2. Submission of learned counsel for the applicant is that applicant was enrolled in Indian Army on 15 December 1980 and invalided out from service on 31 October 1998 for the disability “SENSORY NEURAL DEAFNESS BILATERAL (NOISE INDUCED DEAFNESS) 389” before completion of terms of service. His claim for grant of disability element for two years was rejected by PCDA Military Advisor (P). Applicant filed O.A. No 394 of 2020 which was allowed and applicant was granted 40% disability for 2 years with direction to respondents to conduct fresh RSMB to assess further entitlement of disability element to the applicant. RSMB was carried out and the disability was re-assessed @ 80% for life wef 21.06.2022 and @ 40% for intervening period wef 01.11.2000 to 20.06.2022. Accordingly, PPO was issued and the applicant is getting the same. As per opinion of Classified Specialist (ENT), applicant suffered disability of hearing loss due to loud sound of

RCL Gun Firing and noise of rocket launcher. Learned counsel for the applicant prayed that disability of the applicant was persistent throughout intervening period hence directions be given to respondents to grant disability element @ 80% for the intervening period wef 01.11.2000 to 20.06.2022.

3. Per contra, learned counsel for the respondents submitted that instant application being based on imaginary and hypothetical calculation is not maintainable and is liable to be dismissed as such. His further submission is that applicant had filed an specific case O.A. No 394 of 2020 before this Tribunal which was allowed vide order dated 07 September 2021 and direction was given to respondents to grant disability element to the applicant @ 40% (rounded of to 50%) for two years from the date of discharge and to conduct fresh RSMB to re-assess medical condition of the applicant for further grant of disability element. RSMB of the applicant was conducted at Military Hospital Dehradun on 21 June 2022 and medical board re-assessed disability of the applicant @ 80% for life wef 21.06.2022 and disability for intervening period wef 01.11.2000 to 20.06.2022 was assessed @ 40%. Based on the opinion of RSMB a fresh PPO No 195199800349-0102 was issued and applicant has been paid all dues admissible to him. Now again contrary to the opinion of RSMB, applicant is praying for grant of

disability element @ 80% for intervening period. RSMB has assessed the disability of the applicant for the intervening period @ 40% which applicant is already getting. Learned counsel for the respondents pleaded that instant O.A. has no substance and is liable to be dismissed.

4. We have heard learned counsel of both the parties and perused the documents available on record.

5. Upon hearing the submissions of learned counsels of both sides and having gone through judgment and order dated 07 Sep 2021 passed in O.A. No 394 of 2020, we find that order passed by the Tribunal has been fully complied with and applicant is already getting 40% disability element as assessed by the RSMB for the intervening period. The Hon'ble Supreme Court in the case of ***Ex Sapper Mohinder Singh vs. Union of India & Others*** in Civil Appeal No 164 of 1993, decided on 14.01.1993, has held that Medical Board is an expert body in the medical line and their decision is final. The issue of sanctity of the opinion of a Medical Board is no more Res Integra. Hence, RSMB has decided his disability for the intervening period @ 40% as per initial Release Medical Board.

6. In view of the above, we are of the considered opinion that all dues as per RSMB report have been paid to the applicant. We

do not find any reason to interfere with the opinion of the RSMB. Consequently, the application being devoid of merit is liable to be **dismissed**. Resultantly, O.A. is **dismissed**.

7. No order as to costs.

8. Miscellaneous applications pending, if any, shall stand disposed off.

**(Lt Gen Anil Puri)**

**Member (A)**

Dated: 02 May, 2024

Ukt/-

**(Justice Anil Kumar)**

**Member (J)**