

**Court No. 1**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**ORIGINAL APPLICATION No. 561 of 2024**

Wednesday, this the 19<sup>th</sup> day of March, 2025

**“Hon’ble Mr. Justice Anil Kumar, Member (J)  
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

DS-12329W Lt. Col. Shashi Kant Sharma (Retd.)  
S/o Shri DK Sharma  
R/o H. No. 92/1 Subhash Nagar, P.O. Kamla Nagar, Dayalbagh,  
Agra, Uttar Pradesh-282005.

**..... Applicant**

Ld. Counsel for the : **Ms. Shalani Puar**, Advocate  
Applicant **Shri Aditya Singh Puar**, Advocate

Versus

1. Union of India, through Secretary to Govt. of India, Ministry of Defence, South Block, New Delhi – 110011.
2. Additional Director General of Personnel Services, PS Directorate, Sena Bhawan, DHQ PO, New Delhi – 110011.
3. Integrated Headquarters of Ministry of Defence (Army), Adjutant General’s Branch, DGMS(Army)/MPRS (O), 3<sup>rd</sup> Floor, ‘A’ Block, Room No. 334/335, Defence Offices Complex, KG Marg, New Delhi – 110001.
4. Principal Controller of Defence Accounts (P), Draupadi Ghat, Allahabad (UP).

**.....Respondents**

Ld. Counsel for the : **Ms. Appoli Srivastava**, Advocate  
Respondents Central Govt. Standing Counsel

**ORDER**

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

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs :-

- (i) *Limited Prayer for Directions to the Respondents to process the case for grant of disability pension including service and disability elements to the Applicant in terms of their own recent policies and law declared by Constitutional Courts and subsequently release the disability pension (including service element and disability element) w.e.f. Applicant's date of release from service (11.01.2023) @ 15% disability (deemed to be 20% in terms of order of Hon'ble Supreme Court in (2014) STPL (WEB) 468, **Sukhwinder Singh vs. Union of India & Ors** rounded off to 50%), with costs and interest as per the declaration of the Applicant's disability being 'aggravated by military service' by the duly constituted Release Medical Board (Impugned Order 1), since the Applicant's disability which was declared 'aggravated' by the Release Medical Board has been unilaterally and arbitrarily rejected by the finance/administrative authorities of the Union of India vide Impugned Order II and deemed rejection of 1<sup>st</sup> appeal.*
- (ii) *With a further alternate prayer to (i) above, in that in the event the above not be granted, the Hon'ble Tribunal declare the applicant's disability II, Thalassemia Trait to be 'Attributable/Aggravated' by service setting aside the Impugned Orders I & II, and thereby grant Disability Pension including service and disability element to the petitioner @ 23%, rounded off to 50% for life in terms of from his date of retirement (11.01.2023) alongwith costs as applicable.*
- (iii) *With a further prayer that impugned order III denying the applicant's request for a Review/Appeal Medical Board be set aside, and respondents be directed that a Review Medical Board be conducted in terms of*

*GOI MoD, DESW letter No. 1(2)/2002/D (Pen-C) dated 01.09.2005/Regulation 65 (III) of the Pension Regulations for the Army, 2008 (Part-II), or any other applicable rule or order, and the applicant be granted the benefit of disability pension for disabilities detected thereby if any, in addition to those found in Prayer (i) and/or (ii) herein from his date of release from service (11.01.2023).*

- (iv) With a further prayer, that in case of contest of the prayer of the applicant, heavy costs, interest and compensation may kindly be directed to be paid to the applicant to be recovered from the authority who may have failed to process the case of the applicant in accordance with law and with a further prayer for ignoring/setting aside of the reasons mentioned in the impugned orders (Impugned Order I, II, III) rejecting the claim of disability pension being in contravention of law laid down by Hon'ble Courts, or any other direction or order that the Hon'ble Tribunal may deem fit in the facts and circumstances of the case.*
- (v) Any other order/direction(s) this Learned Tribunal may deem fit.*

2. Briefly stated, applicant was commissioned in the Indian Army on 12.01.2009 as Short Service Commissioned Officer and retired on 11.01.2023 in Low Medical Category on completion of terms of engagement. Before retirement from service, the Release Medical Board (RMB) held at MH Agra on 21.09.2022 assessed his disabilities (i) **'PRIMARY HYPOTHYROIDISM'** @15% as **aggravated by service** and (ii) **'BETA THALASSEMIA TRAIT'** @10% as neither attributable to nor aggravated (NANA) by

service, **composite disabilities @23% for life**. The applicant's claim for grant of disability pension was rejected vide letter dated 09.01.2023. The applicant preferred First Appeal dated 06.09.2023 which has not been decided by the respondents. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that the first disability of the applicant has been regarded as **aggravated** by service but its degree of disability has wrongly been assessed @15%. He further submitted that at the time of commission, the applicant was found mentally and physically fit for service in the Army and there is no note in the service documents that he was suffering from any disease at the time of commission in Army. The second disease of the applicant was also contracted during the service, hence it is also attributable to and aggravated by Military Service. He placed reliance on the judgments of the Hon'ble Supreme Court in the case of ***Dharamvir Singh vs. Union of India & Ors***, reported in (2013) 7 SCC 316, ***Sukhvinder Singh vs. Union of India & Ors***, reported in (2014) STPL (WEB) 468 SCC, ***Union of India vs. Rajbir Singh*** (2009) 9 SCC 140 and ***Union of India vs. Ram Avtar***, Civil appeal No. 418 of 2012, decided on 10.12.2014 and pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such

the applicant be granted disability pension and its rounding off to 50% for life.

4. On the other hand, Ld. Counsel for the respondents contended that although the first disability of the applicant has been regarded as aggravated by service but it's degree of disability was assessed @15% which is less than 20% and the second disability of the applicant @10% for life has been regarded as NANA by the RMB, hence as per Regulations 37 (a) & 81 of the Pension Regulations for the Army, 2008 (Part-I) which provides that "*An Officer who retires on attaining the prescribed age of retirement or on completion of tenure, if found suffering on retirement, from a disability which is either attributable to or aggravated by military service and so recorded by Release Medical Board, may be granted in addition to the retiring pension admissible, a disability element from the date of retirement if the degree of disability is accepted at 20% or more*" and Rule 4 (a) & (b) and 12 (a) & (b) of Entitlement Rules, 2008, the applicant is not entitled to disability pension. Ld. Counsel for the respondents further contended that the second disability of the applicant is hereditary disease which is not related to service factors. She pleaded for dismissal of the Original Application.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the

Release Medical Board proceedings as well as the records and we find that the questions which need to be answered are three folds:-

- (a) Whether the disabilities of the applicant are attributable to or aggravated by Military Service?
- (b) Whether the Short Service Commissioned Officers are entitled for the grant of Disability Pension?
- (c) Whether the applicant is entitled for the benefit of rounding off the disability pension?

6. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Versus Union of India & Others***, reported in (2013) 7 Supreme Court Cases 316. In this case the Apex Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same in the following words.

*"29.1. Disability pension to be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).*

*29.2. A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service [Rule 5 read with Rule 14(b)].*

*29.3. The onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-*

*entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally (Rule 9).*

*29.4. If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service [Rule 14(c)]. [pic]*

*29.5. If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service [Rule 14(b)].*

*29.6. If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons [Rule 14(b)]; and 29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 - "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."*

7. In view of the settled position of law on attributability, we find that the RMB has denied attributability to the applicant only by endorsing that the second disability ' **BETA THALASSEMIA TRAIT** ' is neither attributable to nor aggravated (NANA) by service on the ground of onset of second disability in January, 2022 while posted in Peace location (Agra), therefore, applicant is not entitled to disability pension. However, considering the facts and circumstances of the case, we are of the opinion that this reasoning of Release Medical Board for denying disability pension to applicant are cryptic, not convincing and doesn't reflect the complete truth on the matter. Peace Stations have their own pressure of rigorous military training and associated stress and strain of military service. The applicant was commissioned in

Indian Army on 12.01.2009 and the second disability has started after more than 13 years of Army service i.e. in 2022. We also find that applicant's ideal weight was 65.25 Kg whereas the actual weight was 72 Kg, over weight is 06.75 Kg which is 10.34% i.e. less than 20%. As such it also cannot be said that the cause of disability is overweight. We are therefore of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant in view of ***Dharamvir Singh vs Union of India & Ors*** (supra), and the second disability of the applicant should also be considered as aggravated by military service.

8. Further, consequent upon the issue of Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare, New Delhi letter No. 1(9)/2006/D(Pen-C) dated 30.08.2006 and letter No. 16(01)/2012-D(Pen-Pol) dated 23.03.2015, Principal Controller of Defence Accounts (Pensions), Prayagraj has issued Circular No. 23 dated 27.05.2015 wherein it is provided that *"in the case of aggravation too, service element of disability pension in respect of non-regular officers would be calculated after taking into account the full commissioned service rendered by them as calculated in the case of Regular Commissioned Officer. As such EC/SSC officers in aggravation cases would also be allowed the benefit of revision w.e.f. 30.08.2006 as allowed to attributable cases vide MoD letter dated 30.08.2006."*



9. In view of the Circular No. 23 dated 27.05.2015 issued by the Principal Controller of Defence Accounts (Pension), Prayagraj the applicant is entitled for disability pension which include disability element as well as service element also.

10. The law on the point of rounding off of disability pension is no more RES INTEGRA in view of Hon'ble Supreme Court judgment in the case of ***Union of India and Ors vs Ram Avtar & ors*** (Civil appeal No 418 of 2012 decided on 10<sup>th</sup> December 2014). In this Judgment the Hon'ble Apex Court nodded in disapproval of the policy of the Government of India in granting the benefit of rounding off of disability pension only to the personnel who have been invalided out of service and denying the same to the personnel who have retired on attaining the age of superannuation or on completion of their tenure of engagement. The relevant portion of the decision is excerpted below:-

*“4. By the present set of appeals, the appellant (s) raise the question, whether or not, an individual, who has retired on attaining the age of superannuation or on completion of his tenure of engagement, if found to be suffering from some disability which is attributable to or aggravated by the military service, is entitled to be granted the benefit of rounding off of disability pension. The appellant(s) herein would contend that, on the basis of Circular No 1(2)/97/D (Pen-C) issued by the Ministry of Defence, Government of India, dated 31.01.2001, the aforesaid benefit is made available only to an Armed Forces Personnel who is invalided out of service, and not to any other category of Armed Forces Personnel mentioned hereinabove.*

*5. We have heard Learned Counsel for the parties to the lis.*

*6. We do not see any error in the impugned judgment (s) and order(s) and therefore, all the appeals*

*which pertain to the concept of rounding off of the disability pension are dismissed, with no order as to costs.*

7. *The dismissal of these matters will be taken note of by the High Courts as well as by the Tribunals in granting appropriate relief to the pensioners before them, if any, who are getting or are entitled to the disability pension.*

8. *This Court grants six weeks' time from today to the appellant(s) to comply with the orders and directions passed by us."*

11. Additionally, consequent upon the issue of Government of India, Ministry of Defence letter No. 17(01)/2017/D(Pen/Policy) dated 23.01.2018, Principal Controller of Defence Accounts (Pensions), Prayagraj has issued Circular No. 596 dated 09.02.2018 wherein it is provided that the cases where Armed Forces Pensioners who were retired/discharged voluntary or otherwise with disability and they were in receipt of Disability/War Injury Element as on 31.12.2015, their extent of disability/War Injury Element shall be re-computed in the manner given in the said Circular which is applicable with effect from 01.01.2016.

12. As such, in view of the decision of Hon'ble Supreme Court in the case of ***Union of India and Ors vs Ram Avtar & ors (supra)*** as well as Government of India, Ministry of Defence letter No. 17(01)/2017/D(Pen/Policy) dated 23.01.2018, we are of the considered view that benefit of rounding off of disability pension @23% for life to be rounded off to 50% for life, which include service element as well as disability element, may be extended to the applicant from the next date of his retirement.

13. In view of the above, the **Original Application No. 561 of 2024** deserves to be allowed, hence **allowed**. The impugned orders, rejecting the applicant's claim for grant of disability pension, are set aside. The first disability has already been regarded as aggravated by service by the RMB. The second disability of the applicant is also held as aggravated by Army Service. The applicant is entitled to get disability pension @23% for life which would be rounded off to 50% for life, which include service element as well as disability element, from the next date of his retirement. The respondents are directed to grant disability pension to the applicant @23% for life which would stand rounded off to 50% for life, which include service element as well as disability element, from the next date of his retirement. The respondents are further directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @8% per annum till the actual payment.

14. No order as to costs.

**(Vice Admiral Atul Kumar Jain)**  
**Member (A)**

**(Justice Anil Kumar)**  
**Member (J)**

Dated : 19<sup>th</sup> March, 2025

AKD/SB