

**(E-court)**

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

**Original Application No 253 of 2021**

**Wednesday, this the 1<sup>st</sup> day of September, 2021**

**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

No 15109667K Ex Sep Sunder Lal Son of Late Dev Dutt Tiwari, R/o Village – Purba Bale, Post – Gularya, Distt – Auraiya – 206244 (UP).

..... Applicant

Ld. Counsel for the Applicant: **Shri R Chandra, Advocate**

Versus

1. Union of India, through, The Secretary, Ministry of Defence, Government of India, New Delhi-11.
2. Chief of the Army Staff, Integrated Headquarters of Ministry, of Defence, (Army) DHQ Post Office, New Delhi-11.
3. The Officer-In-Charge, Defence Security Corps Records PIN 901277, C/o 56 APO.
4. The Chief Controller Defence Accounts, Draupadi Ghat Allahabad (UP)-14.

..... Respondents

Ld. Counsel for the Respondents : **Shri Amit Jaiswal,**  
Central Govt Counsel.

**ORDER (Oral)**

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

*(a) Hon'ble Tribunal may pleased to set aside the Impugned Order dated 21.01.2020 (Annexure No A-1) and Order dated 16.09.2020 (Annexure No A-2).*

*(b) Hon'ble Tribunal may pleased to summon the Release Medical Board from custody of respondents and set aside the finding of the Release Medical Board holding the disabilities as neither attributable to nor aggravated by military service.*

*(c) Hon'ble Tribunal may pleased to set direct the respondents to grant disability pension with effect from 01.09.2019 with the interest at the rate of 18% per annum.*

*(d) Allow this application with costs.*

2. Brief facts of the case giving rise to this application are that the applicant was enrolled in the Defence Security Corps (DSC) on 30.09.2013 and after having completed more than 06 years of service, he was discharged locally from service on 31.08.2021 in low medical category 'S1H1A1P2(P)E1' due to disabilities (i) "**OBESITY**" (ii) "**THALASAEMIA TRAIT**". Prior to discharge from service, applicant was brought before Release Medical Board (RMB) which assessed him to be suffering from (i) "**OBESITY**" @ 20% and (ii) "**THALASAEMIA TRAIT**" @ 15% for life and opined it to be neither attributable to nor aggravated by military service (NANA). Disability pension claim was rejected vide order dated 21.01.2021 on the ground of disabilities being NANA. Thereafter, applicant's first appeal was

also rejected on 16.09.2020. Applicant has not preferred second appeal after rejection of his first appeal and has filed this O.A. for grant of disability pension.

3. Ld. Counsel for the applicant submitted that applicant was enrolled in the Defence Security Corps (DSC) in medically and physically fit condition and there was no note in his service documents with regard to suffering from any disease prior to enrolment, therefore any disabilities suffered by applicant after joining the service should be considered as attributable to or aggravated by military service and he should be entitled to disability pension. Ld. Counsel for the applicant further submitted that disability pension claim of applicant has been rejected in a cavalier manner without assigning any meaningful reason. He concluded by pleading that since the aforementioned diseases/disabilities occurred while in service, applicant is entitled to grant of disability pension in terms of this Tribunal judgment was passed order in O.A. No. 312 of 2015 dated 04.10.1917.

4. On the other hand, Ld. Counsel for the respondents submitted that the RMB has declared the applicant's disabilities as NANA, therefore, the competent authority has rejected claim of disability pension. The ground of rejection of the claim is primarily in agreement with the opinion of RMB declaring the diseases as NANA on grounds of the diseases having no relation to service conditions. Further submission of Learned Counsel for the respondents is that and **'Thalasemia Trait'** is unacceptable medical category in terms of Adjutant General's Branch letter dated 03.05.2018 and Integrated

Headquarters of MoD (Army) letter dated 20.11.2018 which envisage that persons placed in temporary LMC and even persons who are placed in LMC for 'Alcohol Dependency Syndrome (ADS)' will be discharged from service during contract period or retention period. He pleaded for dismissal of O.A. of the applicant.

5. Heard Ld. Counsel for the parties and perused the material placed on record. We have also gone through the rejection order of disability pension claim. The question before us is simple and straight i.e. – are the disabilities of applicant attributable to or aggravated by military service?

6. The law on attributability of a disability has already been well settled by the Hon'ble Supreme Court in the case of *Dharamvir Singh Vs. Union of India and Ors*, (2013) 7 SCC 213. 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/aggravation, we find that the respondents have denied attributability/aggravation factor to applicant with regard to disability

**'Obesity'** on account of life style disease having no relation with military service. We are in agreement with the views expressed by the respondents that the disability **'Obesity'** is a life style disease and has no relation to military service. Therefore, applicant is not entitled to disability element on account of aforesaid disability i.e. **'Obesity'**. With regard to disability **'Thalasemia Trait'**, we observe that this disease has taken place when applicant had completed more than four years of service, therefore, it can be held as aggravated by military service by giving benefit of doubt in view of judgment in the case of **Dharamvir Singh** (supra).

8. Since the applicant was discharged from service prior to completion of terms of engagement in low medical category, his discharge shall be treated as a case of deemed invalidation in terms of Hon'ble Supreme Court judgment in the case of **Sukhwinder Singh vs Union of India & Ors**, reported in (2014) STPL (WEB) 468 which has held as under:-

*"9. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. Thirdly, there appears to be no provisions authorising the discharge or invaliding out of service where the disability is below twenty per cent and seems to us to be logically so. Fourthly, wherever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty per cent. Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension."*

9. As a result of foregoing discussion, the O.A. is **allowed**. The impugned orders are set aside. The disability '**Thalasemia Trait**' of the applicant is to be considered as aggravated by military service and the benefit of rounding off to 50% is extended in terms of **Union of India and Ors vs. Ram Avtar & Ors**, (Civil Appeal No 418 of 2012 decided on 10<sup>th</sup> December 2014). Applicant is held entitled to disability pension along with arrears w.e.f. his date of discharge i.e. 31.08.2019. Default will invite interest @ 8% p.a.
10. No order as to costs.
11. Pending applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)  
Member (A) Member (J)

Dated: 01 September, 2021

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