

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
AT NEW DELHI**

O.A. No. 197/2010

Smt. Tanwar KanwarApplicant

Versus

Union of India & OthersRespondents

For applicant: Sh. A.K.Trivedi, Advocate.

For respondents: Sh. Mohan Kumar, Advocate.

CORAM:

**HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.
HON'BLE LT. GEN. M.L. NAIDU, MEMBER.**

**ORDER
31.08.2010**

1. In this case applicant has prayed that he may be granted service element of disability pension for her diseased husband with effect from June, 1976 along with arrears in view of the judgment given in the case of Ex. Sep. Chajju Ram Vs. Union of India and consequently the applicant may be paid her family pension from 23.10.2007 i.e. after the date of death of her husband with arrears of family pension with interest.

2. Brief facts of the case are that husband of the applicant was enrolled in the Indian Army on 21.01.1957 and he

was medically examined at the time of enrolment and he was not suffering from any ailment. Applicant's husband was invalidated out from service on 01.03.1960 in view of the low medical category which has arisen during the service and was treated as attributable to Army Service. He was issued PPO upto May, 1967. Disability of the applicant's husband was discontinued on the ground that disability of the applicant's husband fell less than 20%. It is alleged that before 01.01.1973, service element of disability was contingent upon length of service but after 01.01.1973, this restriction has been removed and Army personnel has been released the service element of disability pension irrespective of the length of the service. Similar issue was taken up in the case of Ex. Sep. Chajju Ram Vs. Union of India 2002 (1) FLJ-568 decided by Hon'ble Delhi High Court on 08th May, 2002 and Hon'ble Delhi High Court held that benefit of amended pension regulations are available to pensioners irrespective of their date of retirement. Though the applicant was not aware but he came to know about the judgment then he filed the representation on 06.02.2006 for grant of service element of disability pension. Poorva Sainik Sewa Parishad, Rajasthan forwarded her representation to restore the service element of disability pension on 03.06.07 and reiterated on 02.07.2007 but

without result and meanwhile applicant's husband died on 22.10.2007 and no service element of disability pension was granted. It is alleged that a SLP against the judgement of Hon'ble Delhi High Court in the case of Ex. Sep. Chajju Ram (supra) was filed and the same has now been dismissed by Hon'ble Supreme Court on 30th July, 2010. This is an identical case, therefore, in view of the reasons mentioned in the case of Ex. Sep. Chajju Ram (supra) which has been confirmed by Hon'ble Supreme Court, we allow this application in part and direct that service element of disability pension may be released to applicant preceding three years from the date of filing of the present application i.e. 29th March, 2010. Arrears of service element of the disability pension may be worked out and same may be paid to the applicant with interest @ 12% and family pension may be released to the applicant forthwith as per the rules applicable to the applicant. No order as to costs.

A.K. MATHUR
(Chairperson)

M.L. Naidu
(Member)

New Delhi
August 31, 2010.