

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI**  
**12.**

**O. A. No. 171 of 2011**

**Hav Dharam Pal Yadav**

**.....Petitioner**

**Versus**

**Union of India & Ors.**

**.....Respondents**

**For petitioner:** Mr. R.N. Awasthy, Advocate.

**For respondents:** Mr. Anil Gautam, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.**

**HON'BLE LT. GEN. S.S. DHILLON, MEMBER.**

**ORDER**  
**19.12.2011**

1. Petitioner vide this petition has prayed that the impugned order of the Defence Minister's Appellate committee on Pension on the second appeal of the Petitioner may be quashed and respondents may be directed to grant the Petitioner disability pension as per his full entitlements as legally due and payable to him under the rules commencing from the date of his release i.e. 31.05.2003.

2. Petitioner was enrolled in the Indian Army in Infantry as a Sepoy in 4 Kumaon of the Kumaon Regiment on 12.05.1979. He was invalided out from the service as Low Medical Category (LMC) on 31.05.2003. Petitioner had risen to the rank of Hav in the Unit and had a good record throughout. He proceeded on 12 days casual leave from 10.12.2000 to 21.12.2000. While on leave, he met with a serious road traffic accident at about 7.00 am on 18.12.2000 when the scooter which he was driving got hit from behind by a fast moving jeep on the Delhi – Jaipur Highway near Rewari. The Petitioner was admitted to Base Hospital, Delhi Cantt and remained on medical

procedures for a period of two years from 18.12.2000 to 11.10.2002 in different MH, Hospitals. He finally rejoined his duty after getting discharged from MH, Palampur on 11.10.2002. A Court of Inquiry was held in the unit in terms of Para 520 of the Regulations for the Army. The authority recorded that the injury sustained by the Petitioner is attributable to military service in peace. Thereafter an Invaliding Medical Board was held in MH, Palampur which assessed the disability of the Petitioner as 80% (Final) due to Compound Fracture Tibia Fibula (Lt) and Supra Condylar Fracture (Lt) Femur (OPTD) and approved his release from the Army in LMC A3 (Permanent) category. The Medical Board opined that the injury sustained while in service in peace area and recommended for his disability pension which was rejected by the Pension Sanctioning Authority PCDA(P) Allahabad vide letter dated 05.04.2004. Thereafter, Petitioner filed First Appeal and subsequently Second Appeal but without any result. Hence, he has filed the present petition before this Tribunal challenging non-granting of disability pension.

3. A reply has been filed by the respondents. They contested the matter and submitted that injury received by the petitioner is neither attributable nor aggravated by military service. Therefore, the Petitioner is not entitled to disability pension.

4. We have learned counsel for the Petitioner and respondents at length. Learned counsel for the Petitioner has tried to show that the judgment bearing OA No. 203 of 2010 titled **“Smt. Shakuntala Devi Versus Union of India & Ors.”** delivered by this Bench on 20.07.2011 needs to be reconsidered by this Bench or it should be referred to a larger Bench. Learned counsel for the respondents has invited our attention to the decision given by the Hon'ble

Supreme Court in the case of **“Union of India and Others Versus Jujhar Singh (2011) 7 Supreme Court Cases 735”**.

5. Learned counsel for the Petitioner submitted that in the earlier judgment given by this Tribunal on 16.12.2009 in the case of **“Ex-Gnr Munshi Ram Vs. Union of India & Ors”** bearing TA No. 356/2009, a view has been taken that the Petitioner is entitled to disability pension. Thereafter, the case of **“Smt. Shakuntala Devi Versus Union of India & Ors.”** was argued. A decision of the full bench of the Delhi High Court given in the case of **“N.K. Dilbagh Versus Union of India (2008) 106 DRJ 865 (Del)”** was followed in the case of **“Smt. Shakuntala Devi Versus Union of India & Ors.”** and no view has been taken by the Hon’ble High Court of Punjab and Haryana in the case of **“Union of India Versus Khushbash Singh”** bearing LPA No. 978 of 2009.

6. In the judgment delivered by us in the case of **“Smt. Shakuntala Devi Versus Union of India & Ors.”**, we have followed the ratio which has been held by the Hon’ble Delhi High Court in the case of **“N.K. Dilbagh Versus Union of India (Supra)”** and further affirmed by the Hon’ble Supreme Court in the case of **“Union of India and Others Versus Jujhar Singh (Supra)”**. The Lordships in the paragraph no. 18 of the said judgment has observed as under:

*“18. In N.K. Dilbag Versus Union of India, a Full Bench of the Delhi High Court had an occasion to consider a similar issue and eligibility of disability pension by the armed forces personnel. After advertng to various decisions of this Court as well as of the High Courts, it concluded thus: (DRJ 880-81 para 24)*

*“24. To sum up our analysis, the foremost feature, consistently highlighted by the Hon’ble Supreme Court, is that it requires to be established that the injury or fatality suffered by*

*the military personnel concerned bears a causal connection with military service. Secondly, if this obligation exists so far as discharge from the armed forces on the opinion of a Medical Board the obligation and responsibility a fortiori exists so far as injuries and fatalities suffered during casual leave are concerned. Thirdly, as a natural corollary it is irrelevant whether the personnel concerned was on casual or annual leave at the time or at the place when and where the incident transpired. This is so because it is the causal connection which alone is relevant. Fourthly, since travel to and fro the place of posting may not appear to everyone as an incident of military service, a specific provision has been incorporated in the Pension Regulations to bring such travel within the entitlement for disability pension if an injury is sustained in this duration. Fifthly, the Hon'ble Supreme Court has simply given effect to this Rule and has not laid down in any decision that each and every injury sustained while availing of casual leave would entitle the victim to claim disability pension. Sixthly, provisions treating casual leave as on duty would be relevant for deciding questions pertaining to pay or to the right of the authorities to curtail or cancel the leave. Such like provisions have been adverted to by the Supreme Court only to buttress their conclusion that travel to and fro the place of posting is an incident of military service. Lastly, injury or death resulting from an activity not connected with military service would not justify and sustain a claim for disability pension. This is so regardless of whether the injury or death has occurred at the place of posting or during working hours. This is because attributability to military service is a factor which is required to be established."*

*In the light of our discussion, we fully endorse the views expressed by the Full Bench."*

7. The judgment of **"N.K. Dilbagh Versus Union of India (Supra)"** passed by the Hon'ble Delhi High Court has been affirmed by the Hon'ble

Apex Court which has been followed by us in the case of **“Smt. Shakuntala Devi Versus Union of India & Ors.”**. Since the ratio of judgment of **“N.K. Dilbagh Versus Union of India (Supra)”** has been affirmed by the Hon'ble Apex Court and indirectly affirmed the view taken by us in the case of **“Smt. Shakuntala Devi Versus Union of India & Ors.”**, the view taken by us in the said judgment of **“Smt. Shakuntala Devi Versus Union of India & Ors.”** stand reaffirmed.

8. Learned counsel for the Petitioner submitted that so far the judgment of **“Union of India and Others Versus Jujhar Singh (Supra)”** is concerned, it is distinguishable from the present case. In that case, the Petitioner received injury while he was on annual leave and does not attract the provisions which govern the disability pension on receiving injuries while on casual leave. It may be distinguishable on the facts of the case but so far as the ratio is concerned, same has been affirmed by the Hon'ble Supreme Court. Therefore, in view of the ratio laid down by the Hon'ble Delhi High Court in the case of **“N.K. Dilbagh Versus Union of India (Supra)”** affirmed by the Hon'ble Apex Court in the case of **“Union of India and Others Versus Jujhar Singh (Supra)”**, we do not find any merits in the present petition. Hence, same is dismissed. No order as to costs.

**A.K. MATHUR  
(Chairperson)**

**S.S. DHILLON  
(Member)**

**New Delhi  
December 19, 2011  
mk**