IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

O.A.No. 203 of 2010

Smt. Shakuntala Devi .....Petitioner

Versus

Union of India & Ors. .....Respondents

For petitioner: Sh. S.R. Kalkal, Advocate.
For respondents: Sh. Ankur Chhibber, Advocate for Respondents 1 to 4.
None for Respondent No. 5.

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.
HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

O R D E R
20.07.2011

A.K. Mathur, Chairperson

1. Petitioner by this petition has prayed that the respondents may be directed to release special family pension in favour of the applicant with effect from 11th March 2008 i.e. date of re-marriage of the widow of late Gnr. Sombir. It is also prayed that order dated 3rd January 2010 issued by the respondents may be quashed being arbitrary, illegal and without jurisdiction.

2. Late Gnr. Sombir was enrolled in the Army as a combatant soldier on 22nd March 2001. Petitioner is the mother of late Gnr. Sombir and fully dependent on him since he was the sole bread earner in the family. Late Gnr. Sombir met with an accident on 16th October 2004 while on casual leave and died in Civil Hospital, Jind, Haryana on the same day. Therefore it is alleged

that the petitioner being on casual leave for 20 days was on duty as per Rule 10 of the Defence Service Regulations. Rule 10 of Defence Service Regulations reads as under:

> "10. Casual counts as duty except as provided for in Rule 11(a).
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> It cannot be utilised to supplement any other form of leave or absence except as provided for in clause (A) of Rule 72 for personnel participating in sporting events and tournaments. Casual leave due in a year can only be taken within that year if, however, an individual is granted casual leave at the end of the year extending to the next year, the period falling in the latter year will be debited against the casual leave entitlement of that year."

3. Late son of petitioner was married to Smt. Vijeta Devi D/o Sh. Tara Chand Rathee R/o Village & Post Office Gajbarh Distt. Panipat on 15th May 2004. After the death of late son of petitioner, Smt. Vijeta Devi left the house of her in-laws and went to her parent's house. Then Smt. Vijeta Devi got married to one Ajit Singh S/o Sh. Joginder Singh on 11th March 2008. When the respondents got information that Smt. Vijeta had already remarried, they stopped her family pension from the same date i.e. 11th March 2008. Thereafter the petitioner submitted her claim for special family pension through Secretary, District Soldiers, Sailors and Airmen Board, Jind on 13th January 2005 to Records Artillery, Nasik Road Camp. Her request was rejected on the ground that the death of her son was not attributable to military service. It is also alleged that the Station Commander, Hissar has certified under Regulation 520 that the death was attributable to military service as he has a statutory power

under Section 8 of the Army Act, 1950, despite that the request was rejected. The case of petitioner is that petitioner's son who died on casual leave was, therefore, on military service and his widow having remarried, the mother is entitled to special family pension under Regulation 213 of the Pension Regulations for the Army, 1961 Part-I. Respondent Vijeta Devi, the former wife of the deceased Gnr. Sombir, was made respondent in the petition but an affidavit has been filed by Sh. S.R. Kalkal, learned counsel for the present petitioner that he has spoken to Respondent No. 5 Vijeta Devi, wife of late Gnr. Sombir, and she has specifically stated that she does not wish to contest the aforesaid petition pending before this Tribunal. Therefore the only grievance which survives is that of the mother of the petitioner, since the deceased widow of her son has already remarried and family pension that was being granted to Smt. Vijeta Devi has been stopped on account of her remarriage, therefore the pension may be released to the petitioner who is the mother of the deceased Gnr. Sombir as she was fully dependent on him.

4. The first and foremost question which arises for consideration in the present case is whether death of Gnr. Sombir could be construed to be on duty and is attributable to military service or not. If it is found that he is on duty and death is attributable to military service, then petitioner will be entitled to family pension subject to that the petitioner being fully dependent on late Gnr. Sombir.

5. A reply has been filed by the respondents and respondents have taken the position that after the death of Gnr. Sombir, his wife Smt. Vijeta Devi was

sanctioned family pension @ Rs. 1913/- per month with effect from 10th October 2004 till widowhood and a sum of Rs.35,292/- on account of death-cum-retirement gratuity was also sanctioned in favour of the widow and the claim of the widow with regard to special family pension was rejected on 14th September 2005. The father of the deceased Gnr. Sombir informed the Artillery Records on 27th March 2008 that Smt. Vijeta Devi has solemnised a second marriage on 11th March 2008 and he requested to stop payment of family pension to Smt. Vijeta. Thereafter another petition was received on 29th May 2008 from the petitioner Shakuntala Devi, mother of the deceased, through Zila Sainik Board, stating the aforesaid fact of remarriage of widow of the deceased and grant of same pension to her. She was informed by Artillery Records that second life award of ordinary family pension cannot be granted to parents where deceased has left behind either a widow or children. She again approached Artillery Records for supply of Court of Inquiry proceedings conducted to investigate the circumstances under which her son died and her counsel was sent the record of Court of Inquiry. So far as the grant of family pension to mother is concerned it is alleged that the son of the petitioner left behind a childless widow and she is not interested in pension as she has remarried, therefore, petitioner is entitled for grant of an ordinary family pension. It is also alleged that a second life award of an ordinary family pension cannot be granted to parents where the deceased has left behind either a child or a widow.

6. As per the existing orders regarding special family pension, it may be granted if death was due to or hastened by a wound, injury or disease which

was either attributable to or aggravated by military service. But in the present case the son of the petitioner died on 16th October 2004 at his native place while on casual leave due to a motorcycle accident. As such, his death has been assessed as not attributable to military service by the competent pension sanctioning authority i.e. PCDA(P). Earlier the petitioner had filed a writ petition before the Hon'ble Delhi High Court which was disposed of with the directions to the Chief of Army Staff to accord due consideration to applicant's application dated 15th December 2008 and pass appropriate orders thereon in accordance with law. Thereafter the Army HQ passed the order rejecting the petitioner's claim on 16th December 2009.

7. Learned counsel for the petitioner has submitted that since petitioner has died while on casual leave therefore the widow is entitled to special family pension. He has also submitted that since the widow of the deceased soldier has already remarried therefore the mother is entitled to the benefit of special family pension. In this connection learned counsel has invited our attention to Para 173 of the Pension Regulations for Army, 1961. As per para 173, disability pension, consists of service element as well as disability element, and can be granted to an individual who is invalidated out of service on account of disability which is attributable to or aggravated by military service in non-battle casualty case and is assessed at 20% or over. Therefore the question which arises in the present case is since the petitioner has died in an accident when he was on casual leave, can it be said to be attributable to or aggravated by military service. Learned counsel for the petitioner invited our attention to para

5 of the decision given by the Apex Court in the case of **Joginder Singh (Lance Dafadar) v. Union of India & Ors. 1995 Supp (3) SCC 232** which reads as under:

> "5. The question for our consideration is whether the appellant is entitled to the disability pension. We agree with the contention of Mr. B. Kanta Rao, learned counsel for the appellant that the appellant being in regular Army there is no reason why he should not be treated as on duty when he was on casual leave. No Army Regulation or Rule has been brought to our notice to show that the appellant is not entitled to disability pension. It is rather not disputed that an Army personnel on casual leave is treated to be on duty. We see no justification whatsoever in denying the disability pension to the appellant."

Similarly he invited our attention to the decision in the case of **Madan Singh Shekhawat v. Union of India & Ors. JT 1999 (6) SC 116** wherein their Lordships after considering Rule 10 of the Defence Regulations read with Rule 48 observed in para 17 as under:

> "17. We, therefore, construe the words "at public expense" used in the relevant part of the rule to mean travel which is undertaken authorisedly. Even an army personnel entitled to casual leave may not be entitled to leave his station of posting without permission. Generally, when authorised to avail the leave for leaving the station of posting, an army personnel uses what is known as "travel warrant" which is issued at public expense, same will not be issued if person concerned is travelling unauthorisedly. In this context, we are of the opinion, the words, namely, "at public expense" are

used rather loosely for the purpose of connoting the necessity of proceeding or returning from such journey authorisedly. Meaning thereby if such journey is undertaken even on casual leave but without authorisation to leave the place of posting, the person concerned will not be entitled to the benefit of the disability pension since his act of undertaking the journey would be unauthorised."

8. In the case of **Madan Singh Shekhawat v. Union of India & Ors**. their lordships has construed the expression 'public expense' meaning thereby that when a person is travelling with the travel warrant which is used as 'public expense' and same is issued after a person is travelling authorisedly and it will not be issued if he is travelling unauthorisedly. Their Lordship after examining the definition 'Duty' read with Rule 10 of Leave Rules, held that person travelling on casual leave shall be construed to be on duty. Therefore in that context their Lordships had construed with reference to Rule 10 of Leave Rules that it to be on duty except as provided in Rule 11(a). Therefore this judgment which was decided on its peculiar facts has not laid down a general principle that all persons who are on casual leave and meet with an accident shall be considered to be on duty. This case has to be evaluated in the light of the facts which have been given therein. In the case of **Madan Singh Shekhawat v. Union of India & Ors**., the petitioner has joined Indian Army as a Sawar and thereon completed 11 years and 6 months of service and he was discharged from military service on medical grounds on 25th April 1987. The cause of his discharge on medical ground arose from an accident in which appellant was involved on 1st October 1994 while alighting from the train at Didwara Railway

Station, consequent to which the appellant's right hand was amputated just four inches below the joint of the collar bone. At the time of his accident the appellant was travelling from Jodhpur to his home station on authorised casual leave granted to him. Therefore, from these facts it appears that he was travelling on authorised casual leave granted to him. In this context, their lordships held that since he was travelling with authorised grant of leave with a warrant and as per Rule 48 which says that "A person is also considered to be 'on duty' when proceeding to his leave station or returning to duty from his leave station at public expense he was considered to be on duty." Rule 48 of the Regulation has been reproduced which reads as under:

> "Disability pension when admissible-An officer who is retired from military service on account of a disability which is attributable to or aggravated by such service and is assessed at 20 per cent or over may, on retirement, be awarded a disability pension consisting of a service element and a disability element in accordance with the regulations in this section."
>
> In respect of accident the following rules will be observed:-
> (a)...
> (b)...
> (c) A person is also deemed to be 'on duty' during the period of participation in recreation, organised or permitted by Service Authorities and of travelling in a body or singly under organised arrangements. A person is also considered to be 'on duty' when proceeding to his leave station or returning to duty from his leave station at public expense."

9. Therefore from this judgment it is clear that a person shall be considered to be on duty when he proceeds to his leave station or returning to his duty from his leave station at public expense. Therefore the parameter has been clearly laid down in Rule 48 that a person who is travelling to his leave station or returning to duty from his leave station at public expense is to be considered on duty. In fact, Regulation 48 was meant for persons going for official duties. However the Apex Court extended it to a person going on casual leave also. However their lordships have very clearly laid down that if a journey is undertaken on casual leave without authorisation, the person will not be entitled for disability pension since his act of undergoing such journey was unauthorised. Therefore the ratio of the judgment is that whenever a person goes on casual leave, with permission, the journey from his duty station to his home station and back will be treated to be on duty; and if anything happens during the journey from his place of posting or returning to his place of posting, he will be treated as on duty. Their lordships have not laid down a general proposition that if any person while on casual leave, travelling on a motorcycle for personal reasons and meets with an accident is to be considered as attributable to military service. In this context our attention was invited to a Full Bench decision of the Punjab & Haryana High Court in **Union of India & Ors. v. Khushbash Singh**. The Punjab & Haryana High Court has delivered a detailed judgment considering the various other judgments delivered by Punjab & Haryana High Court and other High Courts and after detailed discussion they concluded in para 18 as under:

"18. We have attempted to state the whole law in the context of the Rules as explained by the Hon'ble Supreme Court and by the decisions of Division Bench of this Hon'ble Court. We answer the reference by holding that there is no conflict between the decisions in Jarnail Singh on the one hand and Gurjit Singh and Pooja and another, on the other. An Army Personnel, while on casual leave or annual leave, shall be considered to be on duty except when by virtue of Rule 11 of the Leave Rules, he could not be deemed to be on duty, if he had not actually performed duty in that year. If he was on duty and he suffers the disability due to natural causes, the issue whether it was attributable to or aggravated by military service will be examined by taking the case of the Army Personnel as he was and examining whether it was the intervention of the army service that caused the disability. The decision of the Medical Board in examining the physiological injury or the psychological impacts of military service would obtain primacy and the Court shall normally be guided by such scientific medical opinion. However, in cases where the injury that results in disability is due to an accident, which is not due to natural, pathological, physiological or psychological causes of the personnel, the question that has to be asked is whether the activity or conduct that led to the accident was the result of an activity that is even remotely connected to Military Service. An activity of an independent business or avocation or calling that would be inconsistent to Military Service and an accident occurring during such activity cannot be attributable to Military Service. Any other accident, however, remotely connected and that is not inconsistent with Military Service such as when a person is returning from hospital or doing normal activities of a military

personnel would still be taken as a disability attributable to Military Service."

10. The Full Bench also has not laid down a general proposition and they have specifically said that "an activity of an independent business or avocation or calling that would be inconsistent to Military Service and an accident occurring during such activity cannot be attributable to Military Service". However, their lordships have broadly laid down a proposition that "any other accident, however remotely connected and that is not inconsistent with Military Service such as when a person is returning from hospital or doing normal activities of a military personnel would still be taken as a disability attributable to Military Service." This, in our opinion, is overstating the case. When their lordships have clearly observed that an activity of an independent business or avocation or calling that is inconsistent with Military Service and cannot be attributable to military service; thereafter to further generalise that "any other accident however remotely connected and that is not inconsistent with Military Service, incurring any disability shall be deemed to be on military service" appears to be inconsistent. In this connection our attention was also invited to para 24 of the decision of the Full Bench of the Hon'ble Delhi High Court in the case of **Ex Nk Dilbag v. Union of India & Ors**. which summarises the position of law as under:

> "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 concerned military personnel 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 concerned personnel 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."

11. Therefore what emerges from these two decisions-one delivered by Hon'ble Delhi High Court and other delivered by Hon'ble Punjab & Haryana High Court is that the crux of the matter which has been touched upon by the Hon'ble Delhi High Court is that "since travel to and from 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." Therefore the Hon'ble Delhi High Court has correctly summed up the matter after discussion of the judgment of the Hon'ble Punjab & Haryana High Court and other judgments delivered from time to time by various High Courts, that only journey from place of posting to the home station and on way back for attending duty at place of posting, these are the two situations wherein, if anything happens, then it can be deemed to be attributable to military service. The idea is that when a person leaves his place of posting to reach his home on casual leave with authorised warrant and permission that can be treated to be on duty. Likewise when he leaves his house for attending the place of posting during casual leave and any accident happens then it can be attributable to military service. But when any person on casual leave meets with an accident during the course of his private work, can by no stretch of imagination be deemed to be on military service as there is no causal connection whatsoever. Therefore, in our view, the view taken by the Full Bench of the Hon'ble Delhi High Court correctly lays down the position of law and rightly sums up the proposition that every accident during casual leave cannot be treated to be on duty and attributable to military service. We are of the view that the decision

delivered by the Hon'ble Delhi High Court correctly sums up the position of law and we agree with that. Learned counsel for the petitioner has also invited our attention to a decision of the Division Bench of the Hon'ble Punjab and Haryana High Court following this Full Bench judgment wherein the same was challenged before the Apex Court and it was dismissed in limini by the order dated 10th December 2010 in Special Leave to Appeal (Civil) No. 33614 of 2010. Therefore that dismissal of petition in limini does not lay down any proposition of law.

12. Now turning to the facts of the present case, the petitioner has died on account of road accident during casual leave wherein he was not leaving the place of posting to go home or on the way back, therefore, this cannot be treated to be attributable to military service and as such petitioner's widow or his mother is not entitled to the benefit of special family pension.

13. Next question is with regard to grant of an ordinary family pension to the widow or in case the widow is remarried and not interested in family pension then can such family pension be granted to the mother or not. So far as the grant of family pension to the widow is concerned the widow is not interested and there are no children out of this wedlock, then next of kin in the hierarchy for pension are father, mother, brother etc. So far as father is concerned this petition has not been filed by the father and petition has been filed by the mother. Since the affidavit has been filed by Sh. S.R. Kalkal that widow is not interested then next question comes as to who else is entitled for the pension.

Therefore, after remarriage the widow of Gnr. Sombir has given up her right to claim pension on account of her remarriage then only two persons survive i.e. father and mother. Father has not claimed the pension and mother alone has claimed the pension. Therefore the authorities may examine the application of the mother and release the pension to the mother of the deceased soldier as widow has already given up her claim as per the affidavit filed by Sh. S.R. Kalkal, learned counsel for the petitioner. Hence the ordinary family pension may be released to the mother because she is one of the parents of the deceased soldier. Let the pension be worked out from the date it was stopped to the widow of the deceased on her remarriage and all the arrears be released to the petitioner.

14. With these directions, the petition is allowed in part with no order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
July 20, 2011