

**ARMED FORCES TRIBUNAL CHANDIGARH BENCH
AT CHANDIMANDIR**

OA No.87 of 2012

Smt.Bimla Devi

.....Petitioner

Vs.

Union of India & others.

..... Respondents

**ORDER
10.01.2012**

Coram: Justice N P Gupta, Judicial Member

Air Marshal (Retd) S C Mukul, Administrative Member.

For the petitioner (s) : Mr.Samarvir Singh, Advocate.

For the respondent (s) : Mr.S.K.Sharma, Sr.Panel Counsel.

Justice N P Gupta

Heard learned counsel for the parties.

By this petition, the petitioner claims grant of disability pension from 11.04.2000 to 12.02.2011, along with interest.

The necessary factual averments are, that the late husband of the petitioner, being Subedar Mohinder Singh Yadav, was enrolled on 26.04.1972 and was invalided out on 01.03.2000. While serving, he was granted part of annual leave during the year 1997, while on such leave, as alleged in Para No. 4 (e) of the petition. On 21.03.1997, he suddenly fell down from roof of his house while doing some work, and sustained grievous fracture injuries. The injury was diagnosed as “**Compression Fracture DV-11-12 with Traumatic Paraplegia**”. He incurred 100% disability and was, accordingly, invalided out. The claim for disability pension has been rejected on the ground of the disability being neither

attributable to nor aggravated by Military Service. As things had it, the individual had expired on 13.02.2011, and therefore, the disability pension claim has been made for the aforesaid period.

Arguing the petition, learned counsel for the petitioner, relied upon the provisions of Leave Rules 10 to 12, so also the Entitlement Rules, and also relied upon the judgment of this Bench dated 15.12.2010, passed in Bunch of matters led by **TA No.237 of 2010 Ex. NK Raj Pal Vs. Union of India and others**, and another judgment dated 8.11.2011 passed in another Bunch of matters led by **OA No. 49 of 2011 “Bhagwan Singh v. Union of India and others**, which was passed following the judgment in Raj Pal’s case.

We have heard the learned counsel and have considered the submissions. In our view, there is no sufficient ground made out for interference with the rejection for grant of disability pension.

The question of entitlement to disability pension in cases where the disability is suffered during leave of any kind, of course, has been considered and decided by the co-ordinate bench in judgment in Raj Pal’s case, but then we may also notice that in **TA No. 671 of 2010 “Jagjit Singh v. Union of India”** decided on 1.6.2010 also, disability pension was granted, where the disability being fracture, was suffered during leave, and that judgment had been challenged before Hon’ble the Supreme Court by way of Civil Appeal No. 7479 of 2011 **“Union of India v. Jagjit Singh**, wherein vide order dated 19.8.2011, Hon’ble the Supreme Court has stayed the operation of the judgment passed by this Tribunal. This is one aspect of the matter.

The another aspect of the matter is, that in another bunch of matters decided by this Bench, led by **TA No. 61 of 2010 decided on 2.11.2010 being Jagtar Singh vs. Union of India**, wherein it was held that in such cases the individual is not entitled to disability pension, as the injury suffered during annual leave of any kind, cannot be said to be attributable to or aggravated by Military Service, in absence of no causal connection. Out of the bunch of matters, decided in this judgment, one SLP NO. 22417 of 2011 was filed by one Sukhwinder Singh to challenge it, and that has been dismissed by Hon'ble the Supreme Court vide judgment dated 05.08.2011. In that view of the matter, in a way the judgment rendered by this bench in Jagtar Singh case stands affirmed by Hon'ble the Supreme Court. Then, Hon'ble the Supreme Court in **Civil Appeal No. 4281 of 2006 decided on 15.7.2011 "Union of India v. Jujhar Singh"** has categorically laid down the requirement of existence of causal connection between incurring of the disability and military services, to be a necessary condition for entitlement to get disability pension. To precisely quote the words of Hon'ble the Supreme Court "In the case on hand,xx.....xx.....xx.....the injury which had no connection with the military service even though, suffered during annual leave, cannot be termed as attributable to or aggravated by military service. The member of Armed Forces who is claiming the disability pension must be able to show a normal nexus between the act, omission or commission resulting in an injury to the person and in normal expected standard of duties and way of life expected from member of such forces. Inasmuch as the respondent sustained disability while he was on annual leave, that too, at his home town in a road accident, the conclusion of the learned Single Judge that he is entitled to disability pension under Regulation 179 is not based on any

material whatever. Unfortunately, the Division Bench without assigning any reason, by way of cryptic order, confirmed the order of the learned Single Judge.” It is with these findings, that the judgments of learned Single Judge and Division Bench were set aside, and the claim for disability pension was rejected.

Coming to the judgment in **Raj Pal’ s case** and **Bhagwan Singh’s case**, it appears that the judgment proceeds, with taking into consideration various other judgments of the High Courts, and by the time Raj Pal’s judgment was rendered, the aforesaid two judgments of Hon’ble the Supreme Court in **Jujhar Singh’s case** and **Sukhwinder Singh’s case** had not come. However, in **Bhagwan Singh’s case**, the judgment in **Jujhar Singh case** has been considered, but then, all that has been said in that regard is at page 10, where, though reference has been made, and some portion of the judgment of Hon’ble the Supreme Court has been quoted, but then, it has been taken to be as “Hon’ble Apex Court has not laid down any generalized law regarding attributability or aggravation of injuries sustained by the individual while he is on authorized leave. Apart from it, the various important decisions have not been brought to the notice of Hon’ble apex Court, some of the decisions which are not brought to the notice are ...x..xx.....xx.....xx” and the judgments which are said to have been brought to the notice of the Hon’ble Supreme Court are of different High Courts, may be, that SLP against them had been dismissed. Then, at page 12 again, it has been observed, after referring to the different High Court’s judgments, as under: “Thus, having regard to the above discussion, we are of the view, that the above decision of the Apex Court rendered in **Jujhar Singh’s case** is not of much help to the respondents as it has not laid down any law on the point in issue”.

With all humility at our command, all that we can observe is that this observation is clearly contrary to the precise issue involved before Hon'ble the Supreme Court in **Jujhar Singh's case** and the precise law laid down by Hon'ble the Supreme Court in Jujhar Singh's case, as quoted above. That being the position, on the face of the mandate of Article 141 of the Constitution, at least, we do not feel strong enough to take a view contrary to the one taken by Hon'ble the Supreme Court.

Thus, it cannot be said that the disability incurred by the individual was attributable to or aggravated by Military Service.

The petition has, thus, no force and is dismissed.

[Justice N P Gupta]

[Air Marshal (Retd) S C Mukul]

10.01.2012

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