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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

**+ W.P.(C)No.6073/2011**

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Date of decision: 20<sup>th</sup> July, 2012

SHAKUNTLA DEVI

..... Petitioner

Through : Col. (Retd.) S.R. Kalkal, Adv.

versus

UOI AND ORS

..... Respondents

Through : Mr. Ankur Chhibber, Adv.

**CORAM:**

**HON'BLE MS. JUSTICE GITA MITTAL**

**HON'BLE MR. JUSTICE J.R. MIDHA**

**JUDGMENT (ORAL)**

1. By way of the present writ petition, the order dated 20<sup>th</sup> July, 2011 passed by the Armed Forces Tribunal in O.A.No.203/2010 has been assailed before us. The petitioner had prayed before the Armed Forces Tribunal for a direction to the respondents to release special family petition in her favour w.e.f. 11<sup>th</sup> March, 2008 which was the date of re-marriage of the widow of her son late Gnr. Sombir. The petitioner had also prayed for quashing of the order dated 3<sup>rd</sup> January, 2010 issued by the respondents rejecting the same prayer.

2. Late Gnr. Sombir, son of the petitioner was enrolled in the army as a soldier on 22<sup>nd</sup> March, 2011. It is claimed that the petitioner was fully dependent on her son who was the sole

bread earner in the family. While on casual leave, on 16<sup>th</sup> October, 2004, late Gnr. Sombir met with an accident and expired in the Civil Hospital, Jind, Haryana on the same date.

3. It appears that on 15<sup>th</sup> May, 2004 late Gnr. Sombir was married to one Smt. Vijeta Devi. Upon death of late Gnr. Sombir, the respondents released the family pension in favour of the widow of the jawan. On 11<sup>th</sup> March, 2008, Smt. Vijeta Devi got remarried to one Sh. Ajeet Singh. Upon receipt of this information, the respondents passed an order dated 11<sup>th</sup> April, 2008 stopping the family pension, being paid to Smt. Vijeta Devi w.e.f. 11<sup>th</sup> March, 2008.

4. The petitioner thereupon made a request to the respondents for grant of special family pension which was rejected by the respondents by a letter dated 3<sup>rd</sup> January, 2010 on the ground that the death of late Gnr. Sombir, (son of the petitioner) was not attributable to the military service. Aggrieved thereby, the petitioner filed the aforementioned petition before the Armed Forces Tribunal which accepted the stand of the respondents to the effect that the death of late Gnr. Sombir was not attributable to the military service and placing reliance on the several judicial pronouncements including the pronouncement of the Supreme Court and the Full Bench pronouncement of this court, on the issue, passed

the order dated 20<sup>th</sup> July, 2011 dismissing the prayer for grant of special family pension. The Armed Forces Tribunal by the same order, however, has directed that ordinary family pension be released to the petitioner as mother of the deceased soldier.

5. Learned counsel for the petitioner has vehemently contended before us that by virtue of Regulation 520 under the Defence Service Regulation; and the letter dated 7<sup>th</sup> February, 2001 of Government of India, the Station Brigadier is required to certify that the death of the service personnel was attributable to military service. In the case of the petitioner, upon such certification, by virtue of para 173 of the Pension Regulations for Army, 1961 Part – I, upon remarriage of late Gnr. Sombir's widow, the petitioner would be automatically entitled to special family pension. Colonel (Retd.) S.R. Kalkal, learned counsel for the petitioner has also drawn our attention to the affidavit filed by Smt. Vijeta Devi to the effect that she is not pressing any claim in respect to the pension which may be admissible under the rules.

6. We find that before the Armed Forces Tribunal, the respondents had contested the petitioner's claim inter-alia on the ground that the soldier had expired on 16<sup>th</sup> October, 2004 at his native place while on casual leave on account of a

motorcycle accident and his death has been assessed as not attributable to the military service by the Competent pension sanctioning authority.

7. The question, therefore, posed before us for consideration is as to whether the death of late Gnr. Sombir while on casual leave was attributable to his military service or not. We find that the same question was placed for consideration before the Full Bench of this court which has authoritatively adjudicated upon the issue in the judgment reported at **152 2008 DLT 148, Ex Nk Dilbag Singh vs. Union of India & Ors.** On this question, it has been ruled as follows:-

“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 irrelevant 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."

8. The aforenoticed decision of the Full Bench would show that the causal connection between the military service and a reason for injury/death is essential and that in law every injury sustained while availing casual leave would not justify or entitle a claim for disability pension. It needs no elaboration that disability pension or extraordinary pension to serving personnel or the special family pension to their dependants is admissible if an injury or death occurred while traveling to and fro the place of posting which may have a causal relationship with the military service and that specific provision has been incorporated in the pension regulation to bring such travel

within the entitlement of disability pension if injury is sustained during such duration. However, if a person on casual leave met with an accident during the course of his private work, he can by no stretch of imagination be deemed to be on military service as it has no causal connection whatsoever.

9. In the judgment dated 20<sup>th</sup> July, 2011, the Armed Forces Tribunal has placed reliance on the findings and directions of the Full Bench in Ex Nk Dilbag Singh's case to hold that the death of late Gnr. Sombir had occurred not in an accident when he was travelling to and fro the place of posting and, therefore, it could not be held to be attributable to military service.

The relief of special family pension was denied for this reason.

10. We are unable to fault the reasoning of the Armed Forces Tribunal. We are also bound by the position authoritatively laid down by the Full Bench in the case of Ex Nk Dilbag Singh vs. Union of India & Ors. and are, therefore, compelled to deny the relief claimed by the petitioner. So far as the grant of ordinary family pension to the petitioner is concerned, the same has not been assailed by the respondents and the petitioner would be entitled to the same.

11. In view of the above, we find no merit in this writ petition which is hereby dismissed.

**GITA MITTAL, J**

**JULY 20, 2012**  
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**J.R. MIDHA, J**