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**(2014) 04 J&K CK 0009**  
**In the Jammu And Kashmir High Court**  
**Case No : L.P.A.S.W. No. 183 of 2005**

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|----------------|----|------------|
| Rajinder Singh | Vs | APPELLANT  |
| Union of India |    | RESPONDENT |

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**Date of Decision :** 01-04-2014

**Acts Referred:**

**Citation :** (2014) 2 JKJ 556 : (2014) LabIC 2113

**Hon'ble Judges :** M.M. Kumar, C.J;Muzaffar Hussain Attar, J

**Bench :** Division Bench

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## Judgement

M.M. Kumar, C.J.—The instant appeal has been preferred by one Rajinder Singh challenging the judgment and order dated 07.10.2005

rendered by the learned single Judge of this Court, while refusing to grant him the relief of disability pension on the ground that the injuries suffered

by the appellant were sustained when he was on annual leave and cannot be considered as attributable to the Military service. Therefore, the sole

question which arises for consideration before us is ""Whether an injury sustained by a member of the armed forces while he is on annual leave or

casual leave could be imputed to Military service or not"". The matter is no longer res integra because Hon'ble the Supreme Court in the case of

Union of India (UOI) and Others Vs. Jujhar Singh, has held that in such circumstances a member of the armed forces would not be entitled to

claim disability pension. In that case the member of the armed force was staying at his home town when he was on annual leave. He met with an

accident. On the ground that there was no casual connection between the nature of injuries and the relevant factors for grant of disability pension

under Regulation 179 of the Pension Regulations for the Army Part-I, 1961, his

claim for disability pension was rejected. It would be appropriate

to set out Regulation 179 of the Regulations, which is directly relevant for the decision of the instant appeal:--

179. Disability at the time of retirement/discharge.--An individual retired/discharged on completion of tenure or on completion of service limits or

on completion of terms of engagement or on attaining the age of 50 years (irrespective of their period of engagement), if found suffering from a

disability attributable to or aggravated by military service and recorded by Service Medical Authorities, shall be deemed to have been invalidated

out of service and shall be granted disability pension from the date of retirement, if the accepted degree of disability is less than 20 per cent or

more, and service element if the degree of disability is less than 20 per cent. The service pension/service gratuity, if already sanctioned and paid,

shall be adjusted against the disability pension/service element, as the case may be (2) the disability element referred to in clause (1) above shall be

assessed on the accepted degree of disablement at the time of retirement/discharge on the basis of the rank held on the date on which the

wound/injury was sustained or in the case of disease on the date of first removal from duty on account of that disease.

2. A perusal of the aforesaid regulation shows that if a member of the armed forces is found suffering from disability attributable to or aggravated

by military service then he is to be granted disability pension. Such a disability is also required to be assessed by Service Medical authorities and

the decision has to be taken by the competent authority on that basis. Keeping in view the aforesaid Regulation and placing reliance on its earlier

judgments including Union of India (UOI) and Another Vs. Baljit Singh, , their Lordships reached the following conclusion in Union of India (UOI)

and Others Vs. Jujhar Singh, :--

23. As rightly pointed by the counsel for the Union of India, the High Court failed to appreciate that even though the respondent sustained injuries

while he was on annual leave in 1987, he was kept in service till superannuation and he was superannuated from service w.e.f. 01.07.1998. It is

relevant to point out that he was also granted full normal pension as admissible under the Regulations. In the case on hand, inasmuch as 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 the Armed Forces who is claiming disability pension must be able to show a normal nexus between the act, omission or commission resulting in an injury to the person and the normal expected standard of duties and way of life expected from a member of such forces. Inasmuch as the respondent sustained disability when 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 whatsoever. Unfortunately, the Division Bench, without assigning any reason, by way of a cryptic order, confirmed the order of the learned Single Judge.

(Emphasis added)

3. A similar view has been taken in the case of Sukhwant Singh Vs. Union of India (UOI) through the Secretary, Ministry of Defence and Others, and Secretary M/o Defence and Others Vs. Ajit Singh, .

4. Coming back to the facts of the present case, the appellant was enrolled in Indian army on 01.10.1969. At the time of his enrolment he was found fit and there was no disability found. He was posted in 13 JAKRIF with effect from 15.08.1970. He availed annual leave in 1974 and while on leave sustained electric shock/burns on 09.12.1974 while switching off the main switch. He was evacuated to 148 Base Hospital by his relatives. The details of hospital admission/discharge are set out below:

(a) Admitted to 148 Base Hospital on 11 Dec. 74 and discharged on 08 Apr. 75.  
(b) Admitted to Military Hospital Jammu on 04 Jun. 1975 and discharged on 07 Jun. 75. (c) Admitted to Military Hospital Jabalpur on 14 Nov. 1975 and discharged on 25 Nov. 1975.

5. The appellant failed to improve his disability. The medical authorities examined him and opined that he should be invalidated out of service as he was unlikely to be fit person for further service. Accordingly, Invalidating Medical Board was held at 159 General Hospital on 26.04.1977 which was later approved by ADMS PH & HP area on 12.05.1977. The Medical Board opined that the disability of the appellant was neither attributable to nor aggravated by military service and it has arisen during the annual leave on 09.12.1974 while switching off the main switch verified by IAFY-2006, which was assessed at 20% for two years.

6. The appellant made a claim for grant of disability pension which was rejected on 26.10.1977 on the ground that the disability of the appellant

was not attributable to the military service. The decision was communicated to the petitioner-appellant on 16.11.1977 with the advice that he may

prefer an appeal to the Government of India, Ministry of Defence against that decision within six months. On 30.10.1989 a letter was sent by the

petitioner-appellant for grant of disability pension which was replied by the respondents on 11.11.1989. The writ petition has been filed after more

than 26 years.

7. We have heard learned counsel for the parties at a considerable length.

8. Mr. Qureshi, learned counsel for the appellant has placed reliance on a Division Bench Judge of Delhi High Court rendered in the case of

Jatinder Kumar v. Chief of Army Staff and others [W.P.(C) No. 1637/2006, W.P.(C) No. 2325/2002 and W.P.(C) No. 9839/2005 decided on

19.10.2006]. The aforesaid judgment does not require any serious consideration in view of the opinion expressed by Hon'ble the Supreme Court

in the cases of Jujhar Singh, Sukhwant Singh and Ajit Singh (supra). The aforesaid judgment is a complete answer to the argument canvassed by

Mr. Qureshi on behalf of the petitioner-appellant.

Therefore, we do not find any merit in the appeal and the same is liable to be dismissed.

As a sequel to the above discussion, this appeal fails and the same is dismissed affirming the decision taken by the learned Writ Court.