

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT
NEW DELHI

OA NO.29/AFT/09

Miss Tabassum Parvin & Another

.....Petitioners

Versus

Union of India & Ors.

.....Respondents

CORAM:

**HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON
HON'BLE LT. GEN. M.L. NAIDU, ADMINISTRATIVE MEMBER**

For the petitioners Col(Retd.) S.R. Kalkal, Advocate

For the respondent U.O.I. Col. Naveen Sharma

ORDER
11.09.2009

1. Heard. Issue notice to UOI. Col. Naveen Sharma appearing on behalf of U.O.I., accepts the notice.

2. Petitioners are minor daughters of Hav. Tahir Ali have by this petition prayed that they should be granted 25% of the retiral benefits which are likely to be paid to Hav. Tahir Ali on his retirement on 30.09.2009 and the petitioners should

be paid 25% of pension of Hav. Tahir Ali as maintenance under the provision of Pension Regulation for the Army, 1961 Part-I. It is further prayed that petitioners should be paid balance of amount which was due to be paid @Rs.4000/- p.m. w.e.f. August, 2009 to January, 2010 for the part of arrears of the 6th Pay Commission.

3. The brief facts necessary for disposal of petition are that these two petitioners namely Miss Tabassum Parvin and Miss Iftasam Heena are the daughters of respondent no.5 Hav. Tahir Ali. It is alleged that petitioners' mother Late Mrs.Samima Khatoon was married to Hav. Tahir Ali in the year 1991. One daughter named Miss Tabassum Parvin was born on 03.03.1994 out of this wedlock and another daughter named Miss Iftasam Heena was born on 01.08.1999. It is alleged that meanwhile, Mrs.Samima Khatoon, wife of respondent no.5 died leaving behind these two daughters. Both these two daughters are in guardianship of their Nana (Maternal Grandfather). Thereafter, an application was moved by maternal grandfather on behalf of petitioners for grant of maintenance of these two daughters and General Officer



Commanding-in-Chief Eastern Command Kolkata sanctioned maintenance for these two daughters of Hav. Tahir Ali and 25% of pay was to be deducted and paid to both these two petitioners. This payment continued. Meanwhile, the pay scale of Hav. Tahir Ali was revised by virtue of 6th Pay Commission and petitioners were paid 25% of his revised salary @Rs.4231/- per month.

4. The grievance of the petitioners now is that the incumbent is likely to retire on 30.09.2009. Therefore, learned counsel for petitioners submitted that petitioners are entitled to 25% out of total retiral benefits of Hav. Tahir Ali and 25% out of pension after his retirement.

5. So far as the payment out of pension is concerned that is correct. The petitioners are entitled to maintenance @ 25% from the salary or from the revised salary of Hav. Tahir Ali but the petitioners cannot claim 25% on the entire retiral benefits received by respondent no.5 Hav. Tahir Ali or pension. No provision of law has been brought to our notice under which a direction can be given to respondents. However, it was

submitted that petitioners were not paid their maintenance for a period of two months i.e. August, 2009 and September, 2009. If this amount has not been released, then this should be released forthwith. Learned counsel for petitioners submitted that petitioners are also entitled to regular 25% maintenance allowance from the pension of the Hav. Tahir Ali per month as maintenance. But this argument does not appear to be well founded because he has not able to bring to our notice any provision of Army Act or Rules whereby 25% of pension can be reduced for maintenance of both petitioners. He has alternatively submitted that it is possible by virtue of family pension under Rule 228 of Pension Regulation for the Army, 1961 Part-1 but we regret to say this submission of learned counsel for petitioners is totally misconceived. The payment of family pension only arises in case incumbent dies. The question of family pension does not arise in this case incumbent is alive. Therefore, this submission of learned counsel is without any merit and rejected.

6. All that petitioners are entitled to is 25% of the maintenance out of salary drawn by respondent no.5 Hav.

Tahir Ali for a period of two months i.e. August/September, 2009, if not paid. That amount of 25% of maintenance shall be released to petitioners forthwith if not paid so far.

7. In case incumbent is allowed to continue beyond the period of superannuation then this method of paying 25% as maintenance out of his salary shall continue till he retires from the service.

8. The petition is disposed of with above directions.

No costs.

JUSTICE A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Administrative Member)

September 11, 2009