

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
AT NEW DELHI**

TA No.340/2009

[W.P. (C) No.4880/2008 of Delhi High Court]

Smt.Dhan Pati

.....Petitioner

Versus

Union of India & Others

.....Respondents

For petitioner: Col.S.R. Kalkal(Retd.), Advocate

For respondents: Ms.Saroj Bidawat, Advocate

CORAM:

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

**ORDER
07.12.2009**

1. Petitioner by this writ petition has prayed that order dated 09.04.2008 raising recovery of a sum of Rs.3,70,878/- against petitioner be quashed being arbitrary, unjust and illegal. She has also prayed that respondents be directed to pay the Special Family Pension to her with effect from 01.10.1980 along with arrears and also prayed that respondents may be directed to pay the gallantry award pay with effect from 20.09.1945 till 1987.

2. Brief facts which are necessary for disposal of present petition are that petitioner is the legally wedded wife of deceased L.D. Chajju Ram who was enrolled in the Indian Army as a regular soldier on 01.11.1940 in Skinner house which was part of Armoured Corps. The late husband of petitioner was granted gallantry award of military medal during Second World War and was entitled for the monetary allowance. The late husband of petitioner was invalided out of service on 20.09.1945 on ground of some disease which was attributable to military service. The late husband of petitioner was in receipt of disability pension till his death. The late husband of petitioner was re-employed in Government of Haryana service as a teacher in Education Department and continued in service till expired on duty on 01.10.1980. The petitioner received family pension from Government of Haryana since her late husband died in harness. The petitioner applied for the family pension but she was refused since she got married after her late husband was discharged from Army service. However, after protracted correspondence, the petitioner was granted ordinary family pension vide PPO no.F/NA/Pri.64/62189/87. It is contended by the petitioner that

under Regulation 222 of the Pension Regulation of Army, she is entitled to both pensions i.e. special family pension from Army service and the ordinary family pension from Haryana Government. The DPDO Bhiwani vide its letter dated 23.03.2008 called upon the petitioner to verify the facts about receipt of her family pension from Government of Haryana. The DPDO Bhiwani vide letter dated 09.04.2008 raised the recovery against the petitioner for a sum of Rs.3,70,878/- to be paid through demand draft. Therefore, petitioner rushed up to file this writ petition before Hon'ble Delhi High Court and matter was transferred for disposal to this Bench after constitution of Armed Forces Tribunal.

3. A reply was filed by respondents. One of the objection raised by the respondents is that the marriage of the petitioner with deceased incumbent took place after his discharge from the Army. Therefore, petitioner is not entitled to grant of special family pension from the Central Government. It is also contended that the petitioner is not entitled to two pensions in respect of same person. It is also submitted that petitioner was asked to bring all the records for assessment but she did not turn up. However, petitioner in her rejoinder submitted that she has

submitted all the relevant record for assessment and after considering the same, the order dated 09.04.2008 has been issued by the Army authorities against the petitioner.

4. So far as the Regulation 222 is concerned there is no two opinions. The incumbent is not entitled to two family pensions. But in case two family pensions are paid to the incumbent then the amount of one family pension can be abated from the another family pension. However, we do not know whether the petitioner has given all the original documents to the DPDO, Bhiwani and after considering the same, the amount received by her as a family pension from Government of Haryana, amount has been deducted from the total amount of pension. Be that as it may we are of the opinion that whatever the documents she has in her possession may be given to DPDO, Bhiwani who will examine the matter how much amount she is getting from Army pension and how much amount she is getting from Haryana Government. If amount of the Army pension is more than amount of the Haryana Government then pension received from the Haryana Government may be deducted from the Army pension and the entire assessment of the Army pension may be worked

out by the DPDO, Bhiwani. Whatever pension she is entitled to from Army may be released after taking into consideration the family pension received by her from Haryana Government. Adjustments may be made and whatever amount is due to her may be pointed out. Whatever amount is due, may be released to her after making necessary adjustments within three months from today. Since petitioner is 80 years old lady of age, recovery if any, may be waived looking at her age as she was ignorant about provisions of law. Petition is accordingly disposed of. No order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
December 7, 2009