

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

TA No. 298/2010

[W.P. (C) No.9109/2009 of Delhi High Court]

Lt Col R.A. Khan

.....Petitioner

Versus

Union of India & Others

.....Respondents

For petitioner: Ms.Tinu Bajwa, Advocate

For respondents: Sh.Gaurav Liberahan, Advocate

CORAM:

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

ORDER
28.01.2010

1. The present petition has been transferred from Hon'ble Delhi High Court to this Tribunal on its formation.
2. Heard learned counsel for parties.

3. Petitioner by this writ petition has prayed to quash the enhanced maintenance allowance to Rs.23,571/- per month from the pay and allowances of the petitioner for payment to his daughter and respondents may be directed to deduct Rs.420/- per month fixed earlier by order of Army Commander, Central Command. He further prayed that respondents may be directed to refund the amount deducted from the pay of the petitioner with effect from January, 2009 after deducting a sum of Rs.420/- per month.

4. Petitioner was commissioned in the Indian Army on 08.06.1985 and is presently serving as a Lt. Colonel. He married with one Ms.Shameem Aara Khan according to Muslim rites on 22.05.1988. The petitioner out of this wedlock had one daughter. They could not get along well thereafter they were divorced on 17.09.1990 and divorce was worked out amicably on payment of Rs.40,000/-. No maintenance of daughter was granted by the Court on compromise divorce obtained by the parties. Therefore, a petition was filed before the Army Authority for grant of maintenance and on that application on 17.06.1992 Defence

Ministry, Government of India directed recovery of Rs.275/- per month with effect from 01.07.1992 from pay and allowances of the petitioner towards maintenance of his daughter. This continued and thereafter, when the pay scale of petitioner revised, proportionately the maintenance @ 5.5% was increased i.e Rs.420/- per month. Since according to the provision the maintenance @5.5% is only admissible towards maintenance of daughter, the Authorities may work out the maintenance @5.5% and pay the same to the daughter of petitioner. If any excess amount has been deducted, same may be adjusted against the maintenance of petitioner's daughter and in case of any future increase arises then the maintenance allowance should be increased proportionately @5.5%.

5. The petition is disposed with above observations with no order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

28 Jan 10