

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

T.A. No. 373/2009

[W.P. (C) No. 8109/2009 of Delhi High Court]

Smt. Roshni DeviPetitioner

Versus

Union of India & OthersRespondents

For petitioner: Sh.A.K. Trivedi, Advocate

For respondents: Sh.Ankur Chibber, Advocate with Capt Alifa
Akbar

CORAM:

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

ORDER
22.02.2010

1. The present petition has been transferred from Hon'ble Delhi High Court to this Tribunal on its formation.

2. Petitioner by this writ petition has prayed that impugned orders dated 05.11.2002, 11.06.2002 and 20.01.2009 be quashed as illegal and unjust and respondents may be

directed to grant disability pension to the husband of petitioner from the date of his discharge till his death i.e. 17.01.1980.

3. Brief facts which are relevant for the disposal of present writ petition are that husband of petitioner was enrolled in Indian Army on 21.08.1971. He was invalidated out from service on 14.08.1976 in low medical category CEE(P) after rendering 4 years and 359 days of service due to the Fracture 7 & 8 Ribs(Rt) and his disability was assessed as 20% and it was also recorded that his disability was attributable to Military service but he was not granted his disability pension as his case was rejected by the PCDA(P) Allahabad. Petitioner after coming to know about the decision of Hon'ble Delhi High Court in case of Ex Sep Chajju Ram vs UOI decided on 08.05.2002, realised that she is entitled to family pension as such she filed the present writ petition before the Hon'ble Delhi High Court though belatedly.

4. A written was filed by the respondents wherein they took the position that petitioner is not entitled to family pension. Learned counsel for respondents submitted that it is true that husband of petitioner received the injury when he met with an accident while returning back from casual leave and medical

board found that incumbent was suffering from disability to the extent of 20% and he was discharged from service on 14.08.1976 but husband of petitioner could not get any disability pension from the date of discharge i.e. 14.08.1976 till date of his death i.e. 17.01.1980.

5. Learned counsel for petitioner has submitted that this case is squarely covered by the decision of Full Bench judgment of Delhi High Court in the case of Ex. Nk. Dilbagh Vs. Union of India – 152 (2008) Delhi Law Times 148 (FB) wherein it was held that as per the 12 (d) of Appendix-II of Entitlement Rules in which it is mentioned that a person when proceeding from his duty station to his leave station or vice-versa he deemed to be treated in service. The relevant Regulation reads as under:-

“12. (d) When proceeding from his duty station to his leave station or returning to duty from his leave station, provided entitled to travel at public expenses, i.e. on railway warrant, on concessional voucher, on cash TA (irrespective of whether railway warrant/cash TA is admitted for the whole journey or for a portion only), in Government transport or when road mileage is paid/payable for the journey.”

6. In view of this Regulation, the Full Bench of Hon'ble Delhi High Court took the view that incumbent whoever meets with an accident while joining back to service after availing the casual leave, shall deemed to be in service. Consequently, in the present case also the husband of petitioner while returning back from the casual leave on 10th September, 1974 for joining back to his unit, met with an accident and suffered Fracture 7 & 8 Ribs (Rt). This has been certified by the Medical Board which found the disability to the extent of 20% and he was discharged from service on 14th September, 1976. Therefore, he was entitled to the disability pension to the extent of 20%. But the petitioner filed the present writ petition before the Hon'ble Delhi High Court in the year 2009 which is extremely belated. But it appears that the petitioner is an ignorant lady and she had no idea about rules and regulations. Therefore, in peculiar facts and circumstances of this case, we propose to condone this extreme delay. However, we will modify the relief. In the present situation the husband of petitioner was discharged with 20% disability, he should have been given disability pension to the extent of 20% which was not given to him and he died on 17th January, 1980. However, the wife of the deceased now has approached Hon'ble Delhi High

Court in 2009, therefore, petitioner will be entitled to disability pension of her husband as a family pension on account of her husband being discharged from service with 20% disability. This petition was filed on 05th April, 2009, therefore, she will be entitled to the arrears for 3 years preceding the filing of the present petition. She will continue to get the family pension on account of her deceased husband being suffering from disability. Arrears of pension should be paid within three months from today. She will be entitled to interest @ 12% per annum.

7. Petition is accordingly disposed of. No order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
February 22, 2010.