

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

T.A. No. 583/2009

[WP(C) No.7414/07 of Delhi High Court]

Smt Usha Devi

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh.D.N. Sharma, Advocate

For respondents: Sh.Ankur Chibber, Advocate

CORAM:

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

**O R D E R
22.03.2010**

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

2. Petitioner by this petition has prayed that by a writ or direction respondents may be directed to pay special family

pension authorised to her vide Pension Payment Order No. F/1468/79 with arrears at the rate as admissible from time to time and respondents may be further directed to pay death gratuity and other dues resulted with the death of her husband.

3. Brief facts which are necessary for disposal of the present petition are that petitioner is the widow of deceased Gunner Permanand who was medically invalided out of Army service in the medical category of EEE on 10th April, 1977. Subsequently, on death of her husband special family pension was sanctioned to her vide pension payment order no.F/1468/79, which was later modified to F/3300/83. Thereafter, her father-in-law raised rival claim for retiral dues of her deceased husband. The Officer-in-Charge Records (Artillery), Nasik Road authorised payment to her an amount of Rs.2562.40 as death gratuity on 31.01.1984 and at the same time rejected his father-in-law's rival claim on the ground that in the light of rules governing the grant of residual gratuity is not admissible to father Ram Swaroop as Smt. Usha Rani is nominee/heir to receive the Death-cum-Retirement Gratuity by the deceased husband. It is alleged that after the

death of her husband, the petitioner with her teenaged son Devendra Kumar was mercilessly turned out of her father-in-law's house. All the belongings of her late husband as well as valuables of her personal belongings were also usurped. Then it is alleged that her father-in-law engineered a complaint to pension sanctioning authority that petitioner has remarried after her husband death. Petitioner was not aware of any such communication and then it is also requested that she is not entitled to family pension. No show cause notice was given to the petitioner by the pension sanctioning authority and without even divulging to her contents of the complaint, her pension was discontinued. She made a grievance to the District Soldier Welfare and Rehabilitation Officer, Mathura but without any result. She approached the Treasury Officer, Mathura for payment of pension where she has been informed that there is a complaint of her re-marriage, therefore, Controller of Defence Accounts ordered stoppage of her pensionary benefits. Thereafter, she went one place to another place but without any result. Ultimately, she shifted to Mathura with her surviving son. A legal notice was given to the respondents and thereafter she filed the

present petition before Delhi High Court and it has now come up before us after formation of this Tribunal for disposal.

4. A counter was filed by the respondents and respondents in their counter have submitted that it is true that she is the widow of late Gunner Permanent. It is also submitted that she was granted special family pension @ 142/- from 08th December, 1977 to 07th December, 1984 and Rs.125/- per month from 08th December, 1984 till remarriage. But thereafter, this was discontinued on the ground that she has solemnised remarriage with Sh. Komal Prasad on 11th March, 1980, a person other than real brother of the deceased soldier. Therefore, pension was denied to her. On her incurring this disqualification, the Record Officer, Artillery processed the claim of Sh. Ram Swaroop, father of deceased soldier to PCDA, Allahabad on 11th March, 1980. This was also rejected on the ground that average monthly income from Halwaigiri was Rs.200/- per month which was more than the scale of special family pension at that time. Hence, father of the deceased incumbent was also not granted this special family pension.

5. We have heard learned counsel for the parties and perused the record.

6. It is admitted that before recalling the order of special family pension granted in favour of petitioner, she was not given any notice whatsoever. In fact when the PCDA, Allahabad on so-called complaint which was received from the father-in-law before recalling the pension in favour of the petitioner, should have at least given the notice disclosing about complaint of second marriage. But no such notice was given to the petitioner.

7. Learned counsel for the respondents has produced before us two communications, one of 22nd February, 2010 from Colonel, Director Recruiting, Army Recruiting Office, 65, Taj Road, Agra Cantt. in which it is pointed out that she has remarried to another person namely Komal Prasad and it transpires that Komal Prasad has also expired. The second communication is a report from Post : Krishna Nagar, PS: Kotwali, Janpat, Mathura addressed to Senior Superintendent of Police wherein it has been mentioned that petitioner has not contracted any second

marriage. She is residing in House No. F-25, Janakpuri, BSA College Road.

8. Let both these documents may be kept on record.

9. But the fact remains that whether petitioner has really contracted second marriage or not and on the basis of that her special family pension was discontinued and she should have been given a notice by PCDA, Allahabad before stoppage of special family pension. This is in our opinion is breach of principle of natural justice when the petitioner was getting special family pension for such a long period from 1977 to 1980 and then suddenly on so-called complaint received from the father-in-law, her special family pension was discontinued by PCDA. Before undertaking this revocation of pension, petitioner should have been at least given a notice to show cause why her pension should not be revoked on account of her remarriage but no such step was taken and in back of the petitioner, her pension was stopped. This is serious breach of principle of natural justice.

10. Consequently, we set aside the order of PCDA, Allahabad dated 11th March, 1980 and direct that petitioner should be heard in the matter in the light of aforesaid two reports and Authorities should reconsider the case for restoring special family pension to the petitioner in accordance with law. It should be decided as far as possible within three months from the date of receipt of this order. Let the copy of this order may be sent to Authorities for compliance of the directions as mentioned above.

11. Petition is accordingly allowed. No order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
March 22, 2010.