

COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

28.

OA 214/2023 with MA 1669/2024

Capt Saurabh Agarwal Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Ajit Kakkar, Advocate
For Respondents : Gp Capt Karan Singh Bhati, Sr CGSC for
R1-4 to R-4 and
Mr. Amit Kumar, Advocate for R-5

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE LT GEN P.M. HARIZ, MEMBER (A)

ORDER
21.05.2024

The prayers made by the applicant vide the prayer clause as per para 8 (a) to (e) and the interim prayer made by the applicant vide para 9 are to the effect:-

“8. (a) To quash the Impugned Order dated 02.01.2023, passed for grant of maintenance allowance to Respondent No.5.

(b) To direct the Respondents to stop the maintenance allowance being deducted from the Applicant's salary.

Amount paid in port to the said order be refunded hack to the Applicant along with interest of 12% per annum till the date of realization

(c) Amount paid in pursuant to the said order be refunded back to the Applicant along with an interest of 12% per annum till the date of realization

(d) To direct the Respondent No.3 to approach the correct forum for claiming maintenance thom the Applicant

(e) To pass any other appropriate order or relief which this Hon'ble Tribunal deems fit and proper anytime during the proceedings of this case.”

“9. Order on the sanctioning of maintenance allowance towards Respondera No.5 till the issue is settled. The Applicant would suffer from financial difficulties because of the excessive maintenance granted to Respondent No.5. The Respondent No.5 falsified the facts in order to claim maintenance from the Applicant and the Respondents in utter disregard of the law sanctioned an excessive maintenance allowance to the Applicant even though the correct forum for claiming such maintenance is the Civil Court. Therefore, the Applicant prays for an Interim stay on the Impugned Letter which sanctioned the maintenance allowance to Respondent No.5.”

2. As regards, the aspect of the correct forum for directing payment of maintenance, the aspect is *subjudice* in OA 1487/2018, OA 1952/2017 etc., wherein the issues before the Larger Bench are to the effect:-

“i) Whether the judgment in the case of Maj Amit Kumar Mishra Vs. Union of India and Ors. (OA No.1229/2017 decided on 31st July, 2018) lays down the correct law with regard to powers available to the Central Government or the Prescribed Authority under Section 90(1), 91(i) of the Army Act, 1950, Section 91(i), 92(i) of the Air Force Act, 1950 and the relevant provisions of the Navy Act, 1957 and the interpretation construed there under is in accordance with the principles of law particularly the principles of Interpretation of Statute?

ii) Whether, as held in the case of Amit Kumar Mishra Section 90(i) of the Army Act and 91(i) of the Air Force Act are nothing but provisions incorporated to give effect to rights available to wives and children by virtue of a decree of maintenance awarded to them and to overcome the difficulties they may face in the matter of getting the amount of maintenance as per the decree in view of the prohibition contained in Section 28 of the Army Act and Section 28 of the Air Force Act. Whether the Interpretation in this regard made by the Bench in the case of Amit Kumar Mishra

(supra) is in accordance with the settled principles of interpretation of a statute/law?

iii) Whether the law laid down in the case of Amit Kumar Mishra is in conflict to the law laid down by the Bench in the earlier case of Charanjit Singh and others or the law laid down by the Hon'ble Delhi High Court in the case of Jaideep Singh Chauhan (supra) and if so, what should be the correct principle of law applicable with regard to the issue in question?

iv) Any other question, as may be considered relevant By the Full Bench to the issue in question, as may be canvassed by the counsel representing the parties.

Referred by the Hon. Bench comprising Hon. Mr Justice Rajendra Menon, Chairperson & Hon. Lt. Gen. Philip Campose, M (A), vide order dated 26.02.2020),”

on behalf of the applicant, it is submitted that all that the applicant submits through the interim prayer is to the effect that the maintenance being granted to the respondent no. 5 is excessive.

3. Part submissions have been addressed on behalf of either side.

4. During the course of submissions, it is submitted on behalf of the applicant to the effect that reference was made on behalf of the applicant to averments made in Para 4.16 specifically in sub clause (b) and sub clause (c) thereof. The averments that are made through the counter affidavit of the respondent no. 5 in relation thereto are wholly vague.

5. It is submitted on behalf of the applicant that monthly installments as stated in Para 4.16 (b) and (c) are still being paid by the applicant and rather it is submitted that a deduction is also being made from the salary of the applicant *qua* having taken a loan as taken as averred in Para 4.16 (b). The details of the properties and

the proof to show that the respondent no. 5 is a joint owner of the said property be placed on record by the applicant with an affidavit, along with proof of such payments being made by the applicant be also placed on record. Furthermore, the respondent no. 5 shall also place on record a specific response *qua* the submission made by the applicant to the effect vide Para 4.16 (b) and (c) that she is the joint owner of the properties.

6. Furthermore, in view of the submission made on behalf of the respondent no. 5, that the elder child of the applicant and respondent no. 5 is now studying in B. Tech and that the fees are being paid by respondent no. 5, the documents in relation to the said aspect that the payment of the fee of both the children is being made by respondent no.5 be placed on record along with the receipt and bank statements with an affidavit of the respondent no. 5.

7. The matter be re-notified for hearing as '**Part Heard**' on **09.07.2024**

The copy of this order be given *DASTI*, as prayed.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(LT GEN P.M. HARIZ)
MEMBER (A)