

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

12.

OA 3830/2024

Ms Avni Banari (Minor) & 3 Ors thru
Dr Nisha Bali (Divorced Mother) Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Veerendra Mohan, Advocate
For Respondents : Mr. Shivani kumari, Advocate
Mr. Rajeev Kumar, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
20.09.2024

The four applicants who have instituted the present OA through their mother have made the following prayers:-

“8.1.1 Issue Orders to the Respondents Nos 1 and 2 to deduct Rs 134000/- (Rupees One Lakh thirty four thousand only) from the Pay and Allowances of their Respondent No. 4 Father's CDA(O) Acct No. 03020205830K for remittance in the “Yes Bank Account No. 014063300000910 IFSC-YESB0000140” of the Applicants.

8.1.2 Direct the Respondent Nos 1 and 2 to work out the arrears of the Maintenance due from the date of divorce of the respondent No. 4 from the mother of the Applicants and also issue orders for it's recovery from the Pay and Allowances of their Respondent No. 4 Father from his CDA (O) Acct No: 03020205830K, and remit the same in the

“YES Bank Account No. 014063300000910 IFSC- YESB0000140” of the Applicants.”

2. Along with the same is also a prayer seeking grant of interim relief to the effect:-

“9.1 Direct the Respondent No. 4 to file affidavit of his assets, disclosing all sources of his income and assets with supporting proof including the latest pay slips, IT returns of past three years, bank accounts, PAN Cards, Wealth and Property return etc, and to place on record the disbursement of house loan, within four weeks-time.

9.2 The applicants further seek directions under Order 11 of the CPC to direct the Respondent Nos 1 to 3 to produce the replies of the Respondent No. 4, considered by the said Respondents in consideration of the Applications of the Applicants. (Annexure A-7 Colly)

9.3 Issue orders to stop any withdrawals from CDA(O) Acct No: 03020205830K and connected DSOP Fund Account, until disposal of this OA.”

3. Notice thereof is issued to the respondents and is accepted on their behalf. Pleadings in the matter be completed by either side within a time frame of 6 weeks.

4. On behalf of the applicants learned counsel for the applicant submitted that the mother of the applicants and the Respondent No. 4, (as accepted on behalf of the Respondents Nos. 1 to 3) have since been divorced. Notice of the OA with its prayers is directed to be issued to Respondent No. 4 (father of the applicants) on taking of steps by the applicants for the next date of hearing.

5. In as much as there are prayers made by applicants Nos. 1-4 *qua* redressal against the order dated 09.08.2024, the impugned order whereby it has been stated to the effect:-

“2. Comments on the above letters were obtained from Lt. Col Avina S Banari and from AFMC Pune, alongwith a copy of the Memorandum of Understanding (MoU) dt 05 Sep 2022 regarding the case. The comments received from AFMC on your letters , alongwith MoU and other documents were legally analysed at this HQ. The following has been observed:-

(a) The marriage between the couple have been dissolved by the order of Principal Judge, Family Court, Gurugram, dt 14 Nov 2022 on HMA case No. 783, filed by the parties under Section 13 (B) of Hindu Marriage Act 1955, by mutual consent.

(b) The order was passed by the Hon’ble Family Court on the application, mutually filed by both the parties, wherein both have accepted and agreed on the terms and conditions, including custody/expenditure of the children.

(c) As the case has attained finality by the order of Competent Civil Court, no action can be taken by the Army authorities on your application, without the leave of the Court.

3. In view of the above, no action can be taken on your personal application, by the Army. However you may approach the competent Civil Court of jurisdiction, to challenge/review the terms and condition of the MoU.”

6. The attention of the respondent Nos. 1-3 is drawn to the order dated 22.04.2019 of the Hon’ble Supreme Court in Civil Appeal No. 4031-4032 of 2019 in *Ganesh Vs. Sudhir Kumar Shrivastava & Ors.* whereby, it has been observed to the effect:-

“Before we part with, we must also express our reservation insofar as Term No. 6 is concerned, which was incorporated

in the order on 08.11.2017 by the Principal Judge, Family Court, Aurangabad. It was certainly open to the wife to give up any claim as far as maintenance or permanent alimony or stridhan but she could not have given up the rights which vest in the daughter insofar as maintenance and other issues are concerned,”

whereby prima facie it would be open to respondents No. 1-3 to act on the prayer made by the Applicants Nos. 1-4 (minor children of the respondent no. 4), *qua* the prayer made by them seeking the grant of interim maintenance *qua* the father i.e. Respondent No. 4. The respondents shall respond *qua* the said prayer on the next date of hearing.

7. The matter be re-notified for hearing on 18.10.2024.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

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