

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

O.A.No. 170 of 2010

Lt.Col. Naveen Ahlawat

...Petitioner

Versus

Union of India & Anr.

...Respondent

For the Petitioner : Ms. Jyoti Singh, Advocate

**For the Respondents: Shri Ankur Chhibber, Advocate(R1-R4)
Shri Mohan Kumar, Advocate (R-5)**

C O R A M:

**HON'BLE MR. JUSTICE A.K.MATHUR, CHAIRPERSON
HON'BLE LT.GEN. S.S.DHILLON, MEMBER (A)**

JUDGEMENT

01.03.2011

1. Petitioner by this petition has challenged the order dated 03.03.07 whereby GOC-in-C, Headquarters, Northern Command accorded deduction of 27.5% per month from the pay and allowances of Lt.Col. Naveen Ahlawat of HQ Chief Engineer Project Sampark and its payment to Mrs. Renu Ahlawat for the maintenance of herself and her daughter

inclusive, of Rs.8,000 per month awarded by the Family Court, Meerut by order dated 18.03.2009. It was further directed that arrears plus monthly maintenance allowance be worked out and deduction may be made by way of equal monthly instalments so as not to exceed 50% of pay and allowances per month.

2. The deduction of maintenance allowance for the wife will continue till her death whichever is earlier. In respect of the daughter, the deduction of maintenance allowance will continue till she gets married or till her death, whichever is earlier. The amount deducted was to be remitted to Mrs. Renu Ahlawat.
3. Petitioner is a Lt.Colonel in the Army and by this petition he has challenged the order of maintenance granted in favour of his first wife Mrs.Renu Ahlawat. It is alleged that the petitioner filed a suit for divorce before the family court at Meerut and a exparte decree of divorce was passed by the Family Court, Meerut on 30.05.2006 and after obtaining decree of divorce, he got remarried on 30.10.2006 with one

Ms.Aditi. After that the name of Mrs. Aditi was entered in the Part-II order of the Army. Thereafter, an application was moved by Respondent No.5 before the Family Court on 22.02.2007 for recalling the exparte decree and on 28.07.2007 the exparte decree was set aside.

4. Thereafter, it is alleged that Respondent No.5 pressurised the Army Wives Welfare Association to get an order of maintenance, though this attempt was resisted by all the subordinate authorities that since the matter is pending in the Civil Court, therefore, it is not possible to grant any maintenance, but despite that the impugned order was passed. Earlier an order was passed by the Army authorities on 23 Nov 2007 granting 25% maintenance to his daughter though suit for custody of the child was pending in the Civil Court. This amounted to Rs.12,915/- per month which was later increased to Rs.17,469/- per month, though petitioner protested that Respondent No.5 was not maintaining his daughter properly. Petitioner made various references of the application filed by R-5 before the Family

Court, Meerut and made a grievance about misusing of funds and that the funds were not properly utilised for the benefit of the daughter.

5. We are not concerned with that part of the litigation, what we are concerned is that after the decree of divorce was recalled and case was restored back, the Hon'ble Judge, Family Court passed an order that either of the parties will not take any benefit of observations made in the order in any proceedings, till the disposal of the divorce petition. An amount of Rs.8,000/- was granted by the Family Court towards the maintenance of the first wife of the petitioner Mrs. Renu Ahlawat Respondent No.5. Thereafter, the matter was taken up before the High Court in a Civil Revision No.79 of 2009 and on Stay Application the following order was passed on 31.03.2009 by Hon'ble Allahabad High Court which reads as under:

"For a period of six months operation of impugned order dated 18.03.2009 passed in Misc. Case No.465 of 2008 is stayed only in respect of payment of monthly maintenance provided that instead of Rs.8,000/- monthly maintenance as directed by the impugned order a amount of Rs.3,000/- per month is paid by the applicant to the opposite party.

This order is passed in view of statement of the learned counsel for the applicant that under Army Rules initially an amount of about Rs.13,000/- was directly being paid to the opposite party and now after enhancement of salary an amount of about Rs.17,200/- is being directly paid to the opposite party out of the salary of the applicant."

6. The above order is passed in view of statement of the learned counsel for the applicant that under Army Rules initially an amount of about Rs.13,000/- was directly being paid to the opposite party for daughter and now after enhancement of salary an amount of about Rs.17,400/- is being directly paid to the opposite party out of the salary of the applicant for maintenance of his daughter.
7. As per the order of the Hon'ble High Court, the maintenance of Rs.8,000/- which was granted by the Family Court, Meerut was reduced to Rs.3,000/- per month because daughter was already getting maintenance. Despite, there been a civil litigation and the matter already pending before the Hon'ble High Court consequent to its order dated 31.03.2009, the respondent passed the order dated 03.03.2010 and interfered with the order of the Family Court, Meerut and Hon'ble High Court and directed that Mrs. Renu Ahlawat will

get 22% as maintenance allowance and Miss Monishka, daughter will 5.5% as maintenance allowance which will be inclusive of Rs.8,000/- per month awarded by the Family Court, Meerut by the order dated 18.03.2009. Therefore, petitioner has filed this petition and prayed that the order dated 03.03.2010 passed by the Respondent, is sheer violation of the orders passed by the Family Court and Hon'ble High court which overrules order of judicial court by a executive order, be set aside. It is in serious violation of propriety & is contemptuous. It is alleged that authorities are fully aware that the matter is already seized by the Civil Court, still Army authorities under the pressure of the AWWA authorities, has passed the aforesaid order which is in serious violation of the basic tenets of law that when a matter is pending with the Civil Court, the army authorities has no jurisdiction to pass any order.

8. In this connection, reference is also made to an Army Order dated 2/2001 and in that our attention was invited to the powers to grant maintenance under the Army Act as being independent of the provisions of the Code of Criminal

Procedure, 1973 (Section 125 of Cr PC) and also of Section 24 of the Hindu Marriage Act, 1954. It is said that a case for maintenance will be processed simultaneously while court proceedings are in progress. Such court proceedings do not debar the Army authorities to process and grant maintenance allowance to a petitioner subject to the conditions explained. In case the matter has already been adjudicated upon either under criminal or civil court and orders are passed, which the individual does not honour, a case for sanctioning maintenance allowance will be initiated as laid down hereafter. In case a wife is already in receipt of maintenance allowance under the provisions of the Army Act and a court order to the same effect is passed, the court order should be given due consideration while dealing with the question of alteration in allowance. It was further observed that "In sum the court order, at the first instance, must be complied with by the concerned Army personnel/authority". It is also submitted that this Army Order of 2/2001 infact does not empower the army authorities to exercise the power over the authority of the

Civil Court and rather it sums up that Court order at first instance must be complied by the concerned army authorities, meaning thereby, dominance of the Civil Court orders has been accepted. And it only says that in case any adjudication, either under criminal or civil law, has been already done by a Civil Court, which the individual does not honour, case for sanctioning maintenance allowance will be initiated as laid down hereafter. A close reading of this Army Order 2/2001 does not in any manner gives any power to the army authorities to override the order of the Civil Court. The reading of Army Order 2/2001 only shows that in case when there is no order passed by the Civil Court, then of course army is free to pass the order, but in case there is already an order passed by the civil court then that order has to be complied with. It further clarifies that in case the wife is already in receipt of maintenance allowance under the provisions of army act and the court also order's to the same effect, then the court order should be given due consideration while dealing with the question of alteration in allowance. A close reading of this order leaves

us in no doubt that the Army order has to be subject to civil court order.

9. A detailed reply has been filed by the Army as well as Respondent No.5 to justify that the action of the army is well within their power as per Army Order No.2/2001. It is a matter of regret that despite the clear mandate contained in AO 2/2001 that the order passed by the Civil Court has to be complied with by the Army, it has not been done. Over and above this, the Army has passed the order on 03.03.2010 changing the terms and conditions which have been given by the District Court & modified by the High Court. This impertinence by order cannot be countenance. It is only in the situation, where there is no order passed by the Civil Court that the Army can invoke their provisions for grant of maintenance. Once Civil Court has passed the order then the Civil Court's order will take precedence and no Army authority can sit over the matter. A judicial order can only be set aside or over ruled by superior court, which is the basic structure of the Constitution. Therefore, order passed by the civil court always has precedence & there is no option with

Army authorities to sit over that order of Civil Court. The army by their so called AO of 2/2001 cannot undo the order passed by the Civil Court of competence. The order dated 03.03.2010 is a contemptuous order and has to be condemned. The army cannot take resort to illegalities to bypass the order of the Civil Courts, or overriding the order passed by the High Court of Allahabad as reproduced above. Once order is passed by the High Court, the army cannot undo it by its so called order dated 03.03.2010. It is a constitutional mandate that Civil Court decrees or order cannot be undone by administrative authorities. It is only the competent higher court that can undo it. It is unthinkable that the orders passed by the District Court and High Court can be undone by the executive fiat of the army orders. We fail to appreciate such action by the Army authorities and whoever has advised this, has done a great disservice to the army. We strongly condemn such action in no uncertain terms as the Army authorities have no business to interfere with the orders of the High Court. Infact the order passed by the Army on 03.03.2010 is a contempt of the order of the

Allahabad High Court as reproduced above. If the army wanted to pass the order, they should have moved an application before the High Court for modification of the order dated 31.03.2009. Resorting to this kind of methodology is totally unwarranted. The order passed by the Army is without jurisdiction and ~~is~~ nullity in view of the order passed by the Allahabad High Court on 31.3.2009 and we set aside the impugned order dated 03.03.2010 and award a sum of Rs.20,000/- to the petitioner and responsibility may be fixed on the persons who have passed such impertinent order and the amount may be deducted from their salary.

10. In view of above, the matter is disposed of. No order as to costs.

[Justice A.K. Mathur]
Chairperson

[Lt. Gen. SS DHILLON]
Member (A)

New Delhi
1st March, 2011