

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI
05.

O.A. No. 305 of 2010

Hav. Ravindra Singh

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. S.M. Dalal, Advocate.

For respondents: Mr. Satya Saharawat, proxy for Mr. Ankur Chhibber,
Advocate for R-1 to R-4
Mr. Mohan Kumar, Advocate for R-5

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.

HON'BLE LT. GEN. Z.U. SHAH, MEMBER.

ORDER
24.01.2012

Heard learned counsels for the parties.

Petitioner vide this petition has prayed that the order dated 18.08.2009 passed by the respondent no. 3 may be quashed being illegal and without jurisdiction.

Petitioner was serving as Hav in 242 Medium Regiment of the Army. He married to Gudiya Devi as per Hindu rites on 13.06.1997. The couple was blessed with a daughter named Sandhya in the year 1999. Till the year 2000, Gudiya Devi was staying with his parents along with his daughter. Petitioner was posted in J & K and was not able to come home frequently. Gudiya Devi left his parents house in the year 2000 at her own will and started staying with her parents. It is alleged that while staying at her parent's house, Gudiya Devi established illicit relations with another man. Despite the petitioner's persuasion, Gudiya Devi did not mend her ways and continued to live in adultery as a result of which a son was born to her who was named Sonu by

her. It is alleged that this fact was established by DNA Test Report dated 11.03.2004 which was carried out on the orders of Learned Additional Civil Judge, Senior Division, District Hardoi. The daughter of the petitioner has been staying either with him or his parents. Gudiya Devi has been staying with her parents at her free will.

Gudiya Devi filed an application for award of maintenance before the learned Civil Judge, Hardoi on 16.10.2003. On 07.10.2003, learned Civil Judge, Hardoi passed a maintenance award in the sum of Rs. 1500/- per month in favour of Gudiya Devi and petitioner started paying that maintenance amount. But because of certain defaults, he has been ordered to pay the maintenance at the rate to Rs. 3,000/- per month in order to clear the arrears.

Thereafter Gudiya Devi sent an application to GOC-in-C, Northern Command dated 20.11.2007 for grant of maintenance. In that application, she did not mention the fact that she has already been awarded maintenance at the rate of Rs. 1500/- per month by the learned Civil Judge. This fact was deliberately concealed by her. Thereafter petitioner was given a show cause notice dated 08.03.2008 on behalf of GOC-in-C, Northern Command. Petitioner sent his reply to the said show cause notice and mentioned the facts about pendency of divorce case in the court of Upper Civil Judge, Hardoi, report of DNA test and granting of maintenance at the rate of Rs. 1500/- per month to the respondent since 2003. GOC-in-C, Northern Command after considering all the aspects passed an order dated 18.08.2009 and granted maintenance at the rate of 22% per month to Gudiya Devi and 5.5% per month to her son totalling to 27.5% per month from the pay and allowance of the petitioner w.e.f November, 2007. It is clearly mentioned in the said order that this amount will include the sum of Rs. 1500/- awarded as

maintenance allowance by the Hon'ble Upper Civil Judge, Dist. Hardoi. It is submitted that as per Army Order 2/2001, the total maintenance amount has not been permitted to be exceeded 27.5%. The order of GOC-in-C, Northern Command dated 18.08.2009 is subject matter of challenge before us.

Reply has been filed by the Union of India and others along with the Respondent no. 5, Gudiya Devi, wife of the petitioner. Respondents have contested the position and submitted that respondents are within their limit to pass the maintenance order upto the ceiling of 22% and 5.5% to the wife and children as per the Army Order 2/2001 of Army Act.

Learned counsel for the petitioner submitted that the Army Order 2/2001 cannot override the order passed by the Hon'ble Civil Court. Once the maintenance award has been passed by the Hon'ble Civil Court, GOC-in-C, Northern Command cannot sit over that order and pass the order exceeding that amount. It is also pointed out that respondent no. 5, Gudiya Devi cannot seek parallel remedy i.e. benefit of order passed by the Hon'ble Civil Court as well as order passed by GOC-in-C, Northern Command under the Army Act. It is also pointed out that out of wedlock of petitioner and Gudiya Devi, only a daughter, Sandhya was born and not another male child, Sonu is so called illicit child of Gudiya Devi. It is further pointed out that fact of granting maintenance by the Hon'ble Civil Court was not brought to the notice of Army authorities.

We have heard learned counsels for the parties and perused the record. It will be more convenient to refer to relevant portion of Army Order 2/2001 which has bearing on the subject. The Clause 2 and 4 of the Army Order 2/2001 reads as under;

“2. All personnel subject to the Army Act are legally and morally bound to maintain their wives and children, whether or not a harmonious relationship exists between them subject to certain conditions which are elucidated subsequently. The issue of grant of maintenance allowance under these provisions of the Army Act arises after detailed examination of a complaint from the wife or from the child or on behalf of the child requesting the competent authority for the same. The powers to grant maintenance under the Army Act are independent of the provisions of the Code of Criminal Procedure, 1973 (Section 125 of CrPC) or for that matter even under Section 24 of the Hindu Marriage Act, 1954. 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 herein below. In case the matter has already been adjudicated upon either under criminal or civil law 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. However, where a warrant has been issued for levying the maintenance allowance due, including arrears, the court order should be given effect under the aforesaid provisions of the Army Act. In sum, the court order, at the first instance, must be complied with by the concerned Army personnel/authority.

4. The procedure given in the succeeding paragraphs will be followed scrupulously on receiving a request for maintenance allowance:

- a) While acknowledging the wife's request, she will be asked to intimate by means of an affidavit whether she is employed, and if so, indicate her emoluments. She will also be asked to intimate details*

of any independent source of income and movable/immovable property she may possess and any income therefrom.

- b) CDA(O)/PAO(OR) will be asked to intimate the latest details of pay and allowances of the individual concerned.*
- c) Details of wife/children will be checked from the unit record and in case of doubt cross checked/confirmed from Adjutant General's Branch/Manpower (Policy and Planning) Directorate at Army Headquarters and Record Offices concerned.*
- d) Each case will be processed on its merits for which it will be imperative to ensure the following:-*
 - (i) The petitioner is the legally wedded wife of the person or his legitimate/illegitimate child.*
 - (ii) The person complained against is neglecting to maintain the petitioner.*
 - (iii) The wife is unable to maintain herself and dependent children.*
- e) Having ascertained the above aspects, a show cause notice duly signed by the 'A' Staff officer of appropriate rank, for and on behalf of the competent authority to sanction maintenance allowance after having obtained the formal approval of the latter, will be served on the individual concerned under Sections 90(i) or 91(i) of the Army Act, as applicable, and reply of the individual will be considered by the authorities in chain commencing from the OC unit. At any stage of processing if the individual has moved out permanently under the jurisdiction of a different Command, the entire correspondence will be transferred to the new command for further processing the case, from the stage the case already stands processed by the previous command. The case, duly analysed, will then be put up to the GOC-in-C for grant of maintenance allowance based on the total emoluments: as given in para (k) below. In a case where the individual is away on temporary duty/attachment, the parent unit of the individual should obtain his reply and submit the same with their recommendations to the concerned Headquarters Command.*
- f) Maintenance allowance may not be granted to wife and/or children in case the petitioner has sufficient income/means to maintain herself and the children.*

- g) *In cases where it is clearly established that the wife is living in adultery, or if, without any sufficient reason, she refuses to live with her husband or if they are living separately by mutual consent, she should be advised to take recourse to a court of law and should not normally be granted maintenance allowance.*
- h) *The amount of maintenance allowance sanctioned will not exceed 33% of the pay and allowances and will not be at a rate higher than the following:-*
 - (i) *22% of the pay and allowances in respect of wife.*
 - (ii) *5.5% of the pay and allowances in respect of each legitimate/illegitimate child dependent on the mother, who too is entitled to be maintained by officer. However, the amount of maintenance allowance may be increased upto 25% of the pay and allowances, where the said child is dependant on the mother who is not entitled to be maintained by the officer.*
 - (iii) *25% of the pay and allowances in respect of a legitimate/illegitimate child not dependent on the mother. In such an eventuality if the mother is also entitled maintenance allowance, it will be restricted to maximum 8% in her case.*
- (j) *The maintenance allowance will be sanctioned from the date of application submitted by the claimant for maintenance.*
- (k) *For the purpose of sub-para (h) above the expression pay and allowances includes all sums payable to a person in respect of his service other than allowances in lieu of lodging, rations, clothing, travelling and kit maintenance etc. [Also refer to Document 6 attached to this Chapter].*
- (l) *To make provision for the payment of the arrears of the maintenance allowance, a maximum deduction upto 50% from the pay and allowances of the individual for that month will be permissible. It would also include the monthly maintenance allowance as sanctioned. Provision of Army Act Section 94 need to be kept in view in the case of JCOs and OR, while realising the arrears of maintenance allowance till liquidated.*
- (m) *The prescribed authority sanctioning the maintenance allowance initially shall quantify the allowance in terms of percentage of the*

pay and allowances which will obviate the requirement of issuing any fresh show cause notice and follow up procedure when a request for increase in maintenance allowance is made by the wife consequent to increase in pay and allowances of the individual. In old cases, for increase in maintenance allowance, a fresh show cause notice shall be served on the individual concerned.

As per provision of the Army Order 2/2001, Army authorities have sanctioned maintenance allowance at the rate of 22% of the pay and allowances in respect of wife and 5.5% in respect of each legitimate/illegitimate child dependent on the mother, who too is entitled to be maintained by officer. However, the amount of maintenance allowance may be increased upto 25% of the pay and allowances, where the said child is dependant on the mother who is not entitled to be maintained by the officer. 25% of the pay and allowances in respect of a legitimate/illegitimate child not dependent on the mother. In such an eventuality if the mother is also entitled maintenance allowance, it will be restricted to maximum 8% in her case. The maintenance allowance will be sanctioned from the date of application submitted by the claimant for maintenance. For the purpose of sub-para (h) above the expression pay and allowances includes all sums payable to a person in respect of his service other than allowances in lieu of lodging, rations, clothing, travelling and kit maintenance etc. The maximum deduction is upto 50% from the pay and allowances of the individual. Comprehensive guidelines have been given in this Army Order 2/2001 that to what extent maintenance can be given to a wife when she is deserted by her husband. The outer ceiling of maintenance allowance has been fixed by the Army authorities.

In the present case, it is clear that the Civil Court has granted Rs. 1500/- per month as maintenance allowance to the respondent, Gudiya Devi which is taken note in the impugned order dated 18.08.2009. It clearly says that 27.5% maintenance allowance is inclusive of amount of Rs. 1500/- awarded as maintenance allowance by the Hon'ble Upper Civil Judge, Court of Dist. Hardoi.

The argument of the learned counsel for the petitioner is that Gudiya Devi has been granted maintenance allowance at the rate of Rs. 1500/- per month by Hon'ble Civil Court and Army authority has no right to grant maintenance allowance at the rate of 27.5% to the wife of petitioner. We do not agree with this submission of learned counsel for the petitioner. Army Order 2/2001 has fixed the ceiling of 27.5%. Now if in case the Civil Court has granted the maintenance allowance over and above 27.5% of the pay and allowances of the petitioner then Army authority will have no right to enhance the same. However, in the present case maintenance allowance has been awarded by the Civil Court is at the rate of Rs. 1500/- per month which is less than the ceiling prescribed in the Army Order 2/2001 then Army authority got every right to increase the maintenance allowance to the extent of 27.5%.

It is not the case that there is prohibition in the Army Rules that in case matter is adjudicated upon in the civil court then it debars the Army authorities to process the case for grant of maintenance allowance. Army Order 2/2001 clearly says that case for maintenance will be processed with due regard to court order. Such court proceedings do not debar the Army authorities to process and grant maintenance allowance to a petitioner. In case the matter has already been adjudicated upon either under criminal or civil law 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. However, where a warrant has been issued for levying the maintenance allowance due, including arrears, the court order should be given effect under the aforesaid provisions of the Army Act. In sum, the court order, at the first instance, must be complied with by the concerned Army personnel/authority.

As per Army Order 2/2001, the court order will have precedence in case it is confronted with Army Order. Once a Civil court adjudicates on the issue of grant of maintenance allowance, it does not prohibit the Army authority to process the case for maintenance allowance upto the extent of limit provided in Army Order 2/2001. It is not the case that Army Order is overriding the order of Civil court. The Army authority will process the case to supplement maintenance allowance within limit of ceiling prescribed therein. The Civil court order will not be treated as a prohibition on the powers exercised by Army authority. Army Order can be given effect to subject to the order passed by the Civil Court. In the present case, while passing the order of maintenance allowance by the Army authority, the order of Civil Court was taken into consideration and maintenance allowance was extended upto 27.5% as per Army Order 2/2001. This is not confronted with Civil Court order rather it supplements the said order by increasing the amount within ceiling permitted by Army Order 2/2001.

Learned counsel for the petitioner argued that claim of maintenance allowance cannot be decided by two forums. It is not the case of confrontation

of forum. Hon'ble Civil Court granted maintenance allowance at the rate of Rs. 1500/- per month to the respondent, Gudiya Devi on a petition filed by her and same has been enhanced upto the prescribed limit by the Army authority as per Army Order 2/2001. Therefore, it supplements the court order by granting maintenance allowance upto the prescribed limit under the Army Order. Hence, both orders supplementary to each other and not confronted with each other.

Learned counsel for the petitioner has also argued that maintenance allowance has been awarded to an illegitimate child. A child can never be an illegitimate. A child is a child. The expression illegitimate has been done away in the Hindu Law Act. The other contention of learned counsel for the petitioner is that her wife, Gudiya Devi is having illicit relation with someone and living in adultery. That will be decided by the Civil Court while deciding the divorce case whether divorce should be granted to petitioner on the ground of adultery as alleged and that decision will be binding on the Army authority also. This petition only involves the issue of maintenance allowance as the matter has not been finally decided by the Civil Court. In case final order is passed, then it will be binding on the Army authority.

Hence, we do not find any merit in the petition. Same is dismissed. Stay granted vide order dated 11.05.2010 stand vacated. No order as to costs.

A.K. MATHUR
(Chairperson)

Z.U. SHAH
(Member)

New Delhi
January 24, 2012
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