

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI**

O.A.No.02 of 2014

Wednesday, the 28<sup>th</sup> day of January, 2015

The Honourable Justice V.Periya Karuppiah  
(Member-Judicial)  
and  
The Honourable Lt Gen K Surendra Nath  
(Member-Administrative)

M.Deivam (15323583) LNK  
S/o K.Muthiah  
North Street, Mayiladumparai  
Andipatti Taluk, Theni District  
Tamil Nadu – 625 579

...Applicant

By Legal Practitioners:  
M/s S.Meenakshi, A.Suresh Sakthi Murugan

vs

1. The GOC-in-C  
Headquarters  
Southern Command, Pune – 411 001
2. The Commanding Officer  
13 Engineer Regiment  
C/o 56 APO  
Army Postal Service Pincode – 914013  
Secunderabad
3. The Payment Account Officer {PAO (OR)}  
Madras Engineer Group,  
Bangalore – 560 042
4. The Record Office  
Madras Engineer Group  
C/o 56 APO  
Army Postal Service Pincode – 900 493  
Bangalore – 560 042

5. Mrs.D.Bhuvaneshwari  
C/o Mr.M.Subburaj  
333, Krishnan Koil Street  
Kadamalaikundu, Theni District – 625 579
6. Union of India  
Rep by its Secretary  
Ministry of Defence, South Block  
New Delhi – 110 011
7. The Chief of the Army Staff  
Integrated Headquarters of MOD (Army)  
South Block, New Delhi – 110 011

*[Respondents No. 6 & 7 impleaded as per order of this Tribunal dated 17.02.2014  
in M.A. No.32 of 2014 in O.A. No. 02 of 2014]*

...Respondents

Mr.E.Arasu, CGSC, for Respondents 1-4 & 6-7  
Mr.S.Vanchinathan, for Respondent 5

## ORDER

[Order of the Tribunal made by  
Hon'ble Lt Gen K Surendra Nath, Member (Administrative)]

The applicant, L/Nk M Deivam, in his application has requested to call for the records relating to the impugned order dated 24.09.2013 passed by the 1<sup>st</sup> respondent regarding grant of maintenance allowance to his wife and to set aside the said order and to direct the respondents to reimburse the amount deducted from his pay and allowances being paid as maintenance allowance to his wife.

2. Briefly, the applicant was married to Ms D Bhuvaneshwari on 22.08.2010. He would claim that after marriage, he had come to know

that his wife was married earlier and is a divorcee with a girl child from her previous marriage. He would claim that though they had been married for 3-4 years the marriage was not consummated as the wife had psychiatric problems and, therefore, had filed for a petition for divorce before the Subordinate Judge, Theni, Tamil nadu, on 23.03.2011 which is pending. He would also claim that his wife has also filed a petition for conjugal rights before the same Court which is also pending. Meanwhile, his wife had applied to respondent No.1 for grant of maintenance allowance and the respondents, vide their order dated 24.09.2013 have granted a deduction of 22% per month from his pay and allowances as maintenance allowance to his wife, with effect from 07.10.2011.

3. The applicant would claim that his wife is from a wealthy family, there are numerous properties owned by them and his father in law is also running an iron business in the name of his wife and have earned huge sums of money from the business. He would also claim that his wife has received a sum of Rs.5,50,000/- as maintenance from her first husband. The applicant claims that in the affidavit submitted by her to the respondents, she has suppressed all the above facts and had produced a forged certificate from a Village Administrative Officer of another village where she has no movable or immovable properties. Even though the applicant had represented to the 2<sup>nd</sup> respondent bringing about the above facts, the 1<sup>st</sup> respondent passed the said order causing grave hardships to him. The applicant submits that he has aged parents to look after and

passing of the above order amounts to payment of arrears of Rs.1,19,826/-for the period 07.10.2011 to 30.09.2013 as well as a monthly sum of Rs.5,479/-. This is too huge a burden for him and is causing enormous hardships. The applicant, would, therefore, submit that in view of the divorce petition pending before the Subordinate Court, Theni as well as the fact that his wife has a large number of movable and immovable properties and earns income from them enabling her to maintain herself, he should not be asked to pay maintenance to her.

4. The respondents in their reply statement would state that the applicant joined the Army on 08 January 2001 and as per the service records, he is married to Ms Bhuvaneshwari, daughter of Shri Subburaj M on 22 August 2010 and the date of birth of Ms.Bhuvaneshwari is recorded as 12 February 1984 and there is no endorsement of children in his service documents. They would state that Ms Bhuvaneshwari forwarded an application on 07 October 2011 to all respondents (1 to 4 and 6) that the applicant and his family members are harassing her for additional dowry and her husband was trying to get her signature in blank papers for appealing for divorce and as she was not being looked after by her husband, has sought maintenance allowance.

5. The said complaint was investigated in accordance with provisions of Army Order 2/2001. During the investigations, the applicant had confessed that he was aware that Ms Bhuvaneshwari was a divorcee but was unaware that she had a female child from her previous wedlock. He

would also claim that she had refused to share matrimonial bliss with him and, therefore, he is seeking divorce. Further, due investigations were carried out in accordance with the said Army Order and a Show Cause Notice was issued to the applicant as to why maintenance allowance should not be granted to his wife in accordance with the provisions of Section 91(i) Army Act 1950 read in conjunction with Army Rule 193 and Army Order 02/2001. The applicant in reply to the Show Cause Notice claimed that his wife had suppressed the fact that she was a divorcee with a child, has large amount of properties and that she has her own sources of income and hence she should not be paid maintenance allowance. On the other hand, respondent No.5, i.e., Ms D Bhuvaneshwari, wife of the applicant claimed that she has no properties, be it movable or immovable in her name and has produced a certificate to this effect from VAO of Village Kadamalaikundu, Andipatti Taluk, Theni District, Tamil Nadu. Based on the investigation carried out and after recommendations from Commanders in Chain, the General Officer Commanding- in-Chief, Southern Command under the powers conferred to him under Army Act Section 91/1 read with Army Rule 193 ordered the deduction of 22% per month from the pay and allowances of the applicant as maintenance allowance to be granted to his wife, the 5<sup>th</sup> respondent from 07 October 2011. The respondents would claim that the impugned order is legal and since the applicant is not maintaining his wife and as the wife has no known sources of income, the order is maintainable. In view of the foregoing, the

respondents contend that the OA may be dismissed as being baseless and devoid of merits.

6. We have heard the arguments M/s S.Meenakshi and A.Suresh Sakthi Murugan, learned counsel for the applicant, Mr.E.Arasu, learned Central Government Standing Counsel, assisted by Maj Suchithra Chellappan, learned JAG Officer (Army) appearing for respondents 1 to 4 and 6 and 7 and Mr.S.Vanchinathan, learned counsel for Respondent No.5, and perused all the documents placed before us.

7. While granting maintenance allowance, three issues need to be looked into:

- (i) Whether the petitioner is legally wedded wife of the person;
- (ii) The person complained against is neglecting to maintain the petitioner; &
- (iii) The petitioner is unable to maintain herself and dependent children.

8. There is no dispute that L/Nk M Deivam was married to Ms D Bhuvaneshwari on 22 August 2010. The applicant appears to have been aware that his wife was a divorcee at the time of marriage. This Tribunal, looking at the young age of the couple, arranged for reconciliation with each other through counseling, through the good offices of Army Wives Welfare Association (AWWA), both at ATNK & K Area, as well as professional counseling at Chennai. Though the respondent No.5, i.e., wife of the applicant is willing for a compromise and live amicably with her husband, it appears that the applicant is adamant and is not willing to lead a normal life with his wife. The reconciliation has not been possible. The divorce petition filed by the applicant and the application for conjugal rights

filed by the applicant's wife continue to remain pending before the Hon'ble Court of Sub-Judge, Theni.

9. We have examined the procedure adopted in the enquiry on the application of the 5<sup>th</sup> respondent for maintenance allowance in accordance with the laid down procedures under Army Order 2/2001. We find that adequate opportunity and counseling was given to the applicant and only thereafter a Show Cause Notice was issued to him as to why maintenance allowance should not be granted to his wife. The respondent No.5, in her affidavit dated 23.12.2011 has stated that she had no source of independent income and also produced a certificate purported to be issued by the Village Administrative Officer, Kadamalaikundu village stating that she has no movable or immovable properties. Accordingly, the GOC-in-C, Southern Command has sanctioned 22% of pay and allowances of the applicant as maintenance in accordance with section 91(i) of the Army Act 1950 read with Army Rule 193. Even though the certificate of income produced by the applicant's wife (5<sup>th</sup> respondent) was not a correct one, we find that adequate enquiries have been conducted by the respondents prior to the granting of the maintenance allowance. The applicant has claimed that his father-in-law has enormous properties, both movable and immovable, and his wife has a shop in her name and earns an income in excess of Rs.5000/- a month. However, he has produced no evidence to substantiate his claim that his wife owns any movable or immovable property from which she is getting income or that she has any other

independent source of income. Even though the genuineness of the certificate issued by the Village Administrative Officer, Kadamalaikundu appears to be doubtful, that itself would not vitiate the claim of respondent No.5 for maintenance as the applicant has not submitted any proof to the contrary showing any known independent source of income including from movable / immovable properties, despite the fact that sufficient opportunities were provided to him to place the same, if any, before the Tribunal. However, the respondent No.1 is at liberty to conduct further enquiry and pass suitable orders, if necessary.

10. The only other issue for consideration is whether the percentage or quantum of maintenance allowance granted is adequate / excessive. From the submissions of the applicant, he is drawing a pay of approximately Rs.26,000/- after allowing for deductions etc. The competent authority, in this case, has sanctioned 22% of pay and allowances of the applicant which works out to Rs.5,749/- per month. Sub Para 4 (h) of Army Order 2/2001 provides for the maximum limits of maintenance allowance as under:

*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:*

- (a) 22% of pay and allowances in respect of wife;  
 (b) xx                      xx                      xx                      xx  
 (c) xx                      xx                      xx                      xx



Considering the cost of living, we find that the percentages fixed by the competent authority as maintenance allowance to the petitioner is reasonable and we are not inclined to interfere with it.

11. In sum, the impugned order dated 24.09.2013 granting maintenance allowance to the wife of the applicant is in order and is sustainable. The O.A. is accordingly dismissed. No order as to costs.

Sd/-

Lt Gen K Surendra Nath  
Member (Administrative)

Sd/-

Justice V.Periya Karuppiah  
Member (Judicial)

28.01.2015

Member (J) – Index : Yes/No

Internet : Yes/No

Member (A) – Index : Yes/No  
*ap*

Internet : Yes/No

*True copy*

To

1. The GOC-in-C  
Headquarters  
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Counsel for the applicant
8. Mr.E.Arasu, CGSC  
For Respondents 1 to 4 and 6 a& 7
9. M/s S.Vanchinathan and T.Arul  
Counsel for the 5<sup>th</sup> respondent
10. O i C, Legal Cell, ATNK & K Area,  
Chennai-600009.
11. Library, AFT/RB, Chennai

Hon'ble Justice V.Periya Karuppiah  
(Member-Judicial)

and

Hon'ble Lt Gen K Surendra Nath  
(Member-Administrative)

O.A.No.02 of 2014

Dated: 28.01.2015