

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.18 of 2013

Thursday, the 18<sup>th</sup> day of July, 2013

THE HONOURABLE JUSTICE V. PERIYA KARUPPIAH  
(MEMBER - JUDICIAL)

AND

THE HONOURABLE LT GEN (RETD) ANAND MOHAN VERMA  
(MEMBER – ADMINISTRATIVE)

1. Smt. V. Nalini Kumari,  
Wife, aged about 33 years
2. Master V. Noah,  
Son, aged 12 years
3. Miss V. Beulah,  
Daughter, aged about 10 years,  
of- Ser.No.JC 308723-H, Rank-Subedar,  
Name- Y. Victor.

(2<sup>nd</sup> & 3<sup>rd</sup> applicants are minors &  
represented by the 1<sup>st</sup> applicant)  
All the applicants are residing at -  
House No.6/722, MadhaKovil Street,  
Village & Post-Kunnathur, Taluk-Arni,  
District-Thiruvannamalai, T.N.-632314.

... Applicants

By Legal Practitioners:  
M/s. M.K. Sikdar & S. Biju

Vs.

1. Union of India,  
Rep. by – Ministry of Defence (Army),  
Adjutant General's Branch,  
Army Head Quarters, DHQ Post,  
New Delhi.

2. The Commandant,  
H.Q. Madras Engineer Group & Centre,  
Pin – 900 493, C/o – 56 APO.
3. The Commanding Officer,  
38, Assault Engineer Regiment,  
Pin – 900 493, C/o – 56 APO.
4. JC 308723-H, Subedar, Y. Victor,  
38, Assault Engineer Regiment,  
Pin – 900 493, C/o – 56 APO.

... Respondents

Mr.B.Shanthakumar, SPC  
For R1 to R3

Mr. SP. Ilangovan (Retd.),  
Counsel for R4

### **ORDER**

(Order of the Tribunal made by  
Hon'ble Justice V. Periya Karuppiah,  
Member(Judicial))

1. This application has been filed by the applicants seeking for grant of maintenance allowance at 33% per month (22% for the wife and 11% each for both the children) of the pay and allowances of 4<sup>th</sup> respondent i.e. Rs.15,000/- per month with arrears with effect from December, 2009; to make endorsement of the name of the 1<sup>st</sup> applicant for family pension, and to grant other benefits like Canteen Smart Card, ECHS Card etc. and any other justifiable relief.

2. The case of the applicants as stated in the application would be as follows :-

The 1<sup>st</sup> applicant's husband is the 4<sup>th</sup> respondent. He was enrolled in the Indian Army, promoted as Subedar and was posted at 38 Assault Engineer Regiment (the 3<sup>rd</sup> respondent) and now the 4<sup>th</sup> respondent was at the verge of retirement from service at the time of filing this application. The marriage between the 1<sup>st</sup> applicant and the 4<sup>th</sup> respondent was solemnised on 13.12.1988 as per Christian customs and rites. They lived a normal married life and were blessed with two children, the applicants 2 and 3 herein, aged 12 years (date of birth 5.12.2000) and 10 years (date of birth 21.12.2002) respectively. The applicants 2 and 3 are studying in VII and V classes respectively in a private school at Arni. The 1<sup>st</sup> applicant is unable to bring both the hands together to meet the day-to-day expenditure as she studied only upto X class, being a house wife and unemployed. The 4<sup>th</sup> respondent used to send Rs.10,000/- per month till November, 2009 and thereafter, he reduced it to a sum of Rs.3000/- per month without any valid reason and that too intermittently. The said sum of Rs.3000/- per month is not sufficient to meet the present escalated market prices of all commodities. The 4<sup>th</sup> respondent was posted in different places and the applicants were residing with him till his tenure at Delhi during May, 2008. Subsequently, the 4<sup>th</sup> respondent shifted the applicants from Delhi to a rented house at Vellore, Tamil Nadu, since the 4<sup>th</sup> respondent was

transferred to field area. The applicants had purchased a plot at Arni with the amount sent by the 4<sup>th</sup> respondent during July, 2010 in order to construct a house for settlement after his retirement. However, the 4<sup>th</sup> respondent stopped sending money regularly from December, 2009 onwards and he used to come over on leave and adopted a habit of beating the 1<sup>st</sup> applicant mercilessly even in the presence of the villagers and attempted to kill the 1<sup>st</sup> applicant. Therefore, the 1<sup>st</sup> applicant applied before the 2<sup>nd</sup> respondent on 21.4.2010 for maintenance and the 4<sup>th</sup> respondent had sent a sum of Rs.4000/- only for few months thereafter. The 4<sup>th</sup> respondent came on leave and started torturing, assaulting the 1<sup>st</sup> applicant physically and put the applicants in mental agony and, therefore, the applicants were forced to shift their residence to the 1<sup>st</sup> applicant's mother's house. The 1<sup>st</sup> applicant would claim that the 4<sup>th</sup> respondent started having illicit relationship with another woman and the said relationship was also the cause of the 1<sup>st</sup> applicant shifting her residence to her parent's house. The 1<sup>st</sup> applicant tolerated all the tortures of the 4<sup>th</sup> respondent in order to look after her innocent minor children, the 2<sup>nd</sup> and 3<sup>rd</sup> applicants. The 4<sup>th</sup> respondent had also fought with the father of the 1<sup>st</sup> applicant and, therefore, the 1<sup>st</sup> applicant lodged a complaint before the District Social Welfare Officer, Thiruvannamalai, on 8.7.2010, which was transferred to the Judicial Magistrate, Arni, and was taken on file in MC No.8/10. The 4<sup>th</sup> respondent appeared in the proceedings and is paying a sum of Rs.3000/- per month till now. The 1<sup>st</sup> applicant's parents are poor and her father recently expired

and the applicant cannot be a burden on her widowed mother. The 1<sup>st</sup> applicant represented her pitiable condition to the 2<sup>nd</sup> respondent dated 21.4.2010, but no relief was granted. The representation made in the letter dated 10.12.2010 to the 1<sup>st</sup> respondent also did not bring any relief. The 1<sup>st</sup> applicant was advised to reconcile with her husband in the interest of the children by the 3<sup>rd</sup> respondent through his letter dated 14.4.2011. The 1<sup>st</sup> applicant submitted her application dated 2.5.2011 to the 3<sup>rd</sup> respondent that the reunion of the 1<sup>st</sup> applicant with the 4<sup>th</sup> respondent would cause danger to her life and her children since the 4<sup>th</sup> respondent had already attempted to pour kerosene on her and tried to burn her and threatened her life. The respondents 1 to 3 tried for an amicable settlement and requested the 1<sup>st</sup> applicant to produce papers for the grant of maintenance allowance in terms of AO 2/2001. Even after submitting the said papers, the applicants were not given with any relief by the respondents. The 1<sup>st</sup> applicant was not employed, having no source of income and was looking after the children and her husband, the 4<sup>th</sup> respondent used to beat her and tried to burn her by pouring kerosene and had also assaulted her with knife. A Mercy Petition was forwarded by the 1<sup>st</sup> applicant before the Hon'ble President of India on 29.4.2011 stating all these facts. The 1<sup>st</sup> applicant did not receive any communication in response to the said letter. The 1<sup>st</sup> applicant represented on 29.4.2011 before the 2<sup>nd</sup> respondent for endorsement of her name for family pension to avoid further impediment since the 4<sup>th</sup> respondent was to retire from service shortly. However, the respondents have shown interest

to reconcile only and no maintenance allowance was granted, nor her name was included for payment of family pension. The 3<sup>rd</sup> respondent passed the impugned order on 6.8.2011 stating that the 1<sup>st</sup> applicant had withdrawn Rs.8,30,516/- from the joint bank account in State Bank of India, Arni, from Account No.11113145733, and it was a big amount for a service person and advised her to resolve the differences amicably. The applicants replied that the said amount of Rs.8,30,516/- was withdrawn during the joint living of the 4<sup>th</sup> respondent with the applicants for purchase of a plot. Even then, the respondents have not passed any order towards maintenance of the applicants from the pay and allowances of the 4<sup>th</sup> respondent. A legal notice was sent by the 4<sup>th</sup> respondent to the 1<sup>st</sup> applicant on 9.10.2011 with false allegations against the 1<sup>st</sup> applicant and the said notice was suitably replied through her lawyer on 17.11.2011. The 1<sup>st</sup> applicant had also requested the 3<sup>rd</sup> respondent for payment of Rs.15,000/- from her husband's salary per month as maintenance allowance, but the same has not been ordered so far. Since the respondents 1 to 3 have not passed any order towards maintenance allowance for the applicants from the pay and allowances of the 4<sup>th</sup> respondent, the present application has been filed for maintenance and other reliefs and the said application may be allowed.

3. The objections raised by the respondents 1 to 3 in their Counter would be as follows :-

The 4<sup>th</sup> respondent was enrolled as a recruit on 19.3.1983 and was attested as a soldier on 14.7.1984 and he was promoted to the rank of Naib Subedar with effect from 1.4.2007 and to the rank of Subedar with effect from 1.3.2010. He was posted to 38 Assault Engineer Regiment with effect from 31.3.2013 and his date of birth is 2.4.1964. The 4<sup>th</sup> respondent as per records was married to the 1<sup>st</sup> applicant on 13.12.1998, and he nominated her as his legal heir to receive family pension etc. The same was notified through Part II Order and was entered in service records. The names of his son V. Noah and daughter Beulah are entered in his service records. Ever since his marriage, the 4<sup>th</sup> respondent kept his family in Government Married Accommodation except when he was posted to filed area. The 4<sup>th</sup> respondent shifted his family to his home station Vellore in May, 2008 as he was posted to filed area. The 1<sup>st</sup> applicant submitted an application on 21.4.2010 to the 2<sup>nd</sup> respondent that the 4<sup>th</sup> respondent was not maintaining his family and that he attempted to kill her by pouring kerosene on her and, therefore, she requested for grant of maintenance allowance. A detailed investigation was carried out by the Regiment by examining various persons. The investigation showed that the complaint lodged by the 1<sup>st</sup> applicant was fabricated and false. It further revealed that the 4<sup>th</sup> respondent and the 1<sup>st</sup> applicant have a joint account in State Bank of India, Bagayam A/c. No.11113145733 and he deposited a sum of Rs.8,80,000/- in his account from July, 2008 to June, 2010 and his wife has withdrawn the entire amount from the said account and bought a plot of land in her name without informing the 4<sup>th</sup> respondent.

The 1<sup>st</sup> applicant seemed to have shifted to her parents' house owing to the exposure of her extra marital affairs and started levelling serious and fabricated charges against Y. Victor the 4<sup>th</sup> respondent. The SP, Thiruvannamalai, also confirmed the said fact and intimated that a case has been filed in MC No.8/2010 before the Family Welfare Court and enquiry is pending. Therefore, the applicants have no scope for filing the present O.A. as it is not maintainable in law. As per investigation report, the 4<sup>th</sup> respondent was willing to live with his wife and children and, therefore, the unit advised the lady to join her husband and start a fresh life. Accordingly the case for grant of maintenance allowance was closed. However, the 1<sup>st</sup> applicant was writing to various authorities from time to time. Though the 4<sup>th</sup> respondent was willing to start his married life afresh with the 1<sup>st</sup> applicant, she did not agree and was neglecting him, and wants to enjoy the financial benefits only. There is no cause of action for the applicant to file the present application for grant of maintenance allowance at 33% per month and for endorsement of her name for family pension without following the remedy available to her within the department. As per Section-11 of the Pension Act, 1871, and Regulation 59 of Pensions Regulations for the Army, 1961 (Part I) and Para 28 of Army Order 1950, pay and allowances and pension of a service person/retired person cannot be shared/divided/withheld/attached under order of any Civil Court during the life time of service person/pensioner. The respondents have no power to retain the pay and allowances and they are not competent authority to stop



and grant any pay and allowances of a service person without the special sanction of the Government of India. Therefore, the application filed by the applicant has to be necessarily dismissed.

4. The objections raised by the 4<sup>th</sup> respondent in his Reply Statement and Additional Reply Statement would be as follows :-

It is true that the 1<sup>st</sup> applicant was married to 4<sup>th</sup> respondent on 13.12.1988 and two children were born out of the wedlock, the applicants 2 and 3 herein, who are aged about 12 years and 10 years respectively. The family life of the 4<sup>th</sup> respondent was rocked when the 1<sup>st</sup> applicant, his wife, developed illicit relationship with a person by name Udhayasurya in 2009 in Arni, where she was living with her children, which came to light later. The 4<sup>th</sup> respondent being a loving husband and caring and dutiful father took the best care of his family. The 4<sup>th</sup> respondent regularly sent a sum of Rs.10,000/- and more every month to the applicant for maintenance of his family till 2009. He opened a Savings Account No.11113145733 in SBI, Arni, in the joint name with the 1<sup>st</sup> applicant and gave the ATM card to her which was operated by the applicant only throughout. The 4<sup>th</sup> respondent kept over Rs.8 lakhs in the above bank with a view to buy a plot of land and construct a house for settlement after retirement. Later, it came to light that the 1<sup>st</sup> applicant misused the power and used money from this joint account for her paramour and to continue their illicit relationship. On the

instigation of her paramour, she withdrew Rs.8,80,500/- from the said account and purchased three plots of land and registered one plot in her name and two plots in her father's name in which her paramour Udhayasurya had signed as a witness in the registration papers. She lied that one plot was purchased by her and registered in the name of her children out of the money withdrawn from the Bank. The 4<sup>th</sup> respondent scolded her to give up the illicit relationship for the sake of the children. Instead, she set up her paramour and the brothers, to attack the 4<sup>th</sup> respondent on which a complaint was lodged with the Police. However, the Police did not register any case. She vacated the rented house at Bagayam, Vellore, since the neighbours objected to the immoral conduct of the 1<sup>st</sup> applicant and she shifted her home to Kunnathur village with her children. The Principal of the school prevented the 4<sup>th</sup> respondent from seeing the children as per the instructions of the 1<sup>st</sup> applicant. There is no conjugal relationship between the 1<sup>st</sup> applicant and the 4<sup>th</sup> respondent for over three years. Even after this incident, the 4<sup>th</sup> respondent had been sending a sum of Rs.3000/- regularly for maintenance of the family. The 1<sup>st</sup> applicant made all attempts to harass the 4<sup>th</sup> respondent by sending frivolous complaints to his unit and higher forums and President of India. She also filed a case under Domestic Violence Act. Several respectable persons and the Police Superintendent of the District have given statements confirming the illicit relationship of the 1<sup>st</sup> applicant with her paramour. The 1<sup>st</sup> applicant was unwilling to live with 4<sup>th</sup> respondent, but wanted his money alone. The

representation of the 1<sup>st</sup> applicant for maintenance allowance was rightly closed by the Head Quarters South Western Command through its letter dated 8.4.2011. The advice given by the 38 Assault Regiment through its letter dated 14.4.2011 to live with the 4<sup>th</sup> respondent was not heeded by the 1<sup>st</sup> applicant. Considering the welfare and the future of children and family image, the 4<sup>th</sup> respondent is ready to forgive the applicant for her past conduct and take her back provided the 1<sup>st</sup> applicant gives up her illicit relationship with her paramour. All allegations made in the O.A. are false. For the sake of children's future, the 4<sup>th</sup> respondent is always ready to look after his wife and children. The 4<sup>th</sup> respondent is ready to take back the applicants, if the 1<sup>st</sup> applicant gives up the illicit relationship and her immoral conduct.

5. In the Additional Counter Affidavit, the 4<sup>th</sup> respondent submitted that the application is not maintainable in law. The applicants have no locus standi to file this application before the Tribunal since the applicant is not subject to Army Act and subject matter is not a service matter concerning the service of the 4<sup>th</sup> respondent. The impugned order is the letter dated 6.8.2011, and the said order clearly brings out the swindling of a sum of Rs.8,30,516/- from the 4<sup>th</sup> respondent's account. The application has been filed by the applicants in order to harass the 4<sup>th</sup> respondent in utter disregard of the well being of the children. The applicant is continuously living in adultery and is refusing to give up her adulterous life, she is also

making false allegations against the 4<sup>th</sup> respondent, which causes mental agony. The 4<sup>th</sup> respondent is not liable to maintain her under law. The declaration of the applicant's name for family pension, ESHS and Canteen card facilities and other facilities is the choice of the 4<sup>th</sup> respondent and the 4<sup>th</sup> respondent cannot be compelled by any forum to exercise such choice in view of the circumstances stated. According to Section-60 (1) CPC and Section-28 of Army Act, 1950, the pay and allowances cannot be attached. The documents produced by the 4<sup>th</sup> respondent would disprove the case of the applicant. Therefore, the application is liable to be dismissed with punitive cost and direction to return the sum of Rs.8,30,516/- and also award a sum of Rs.10 lakhs as damages for the wrong doings and withholding the pay and allowances of retirement benefits and causing damage to the name and reputation of the 4<sup>th</sup> respondent.

6. On the above pleadings, the following points were framed for consideration :-

- 1) Whether the applicants are entitled for an order of maintenance from the pay and allowances of the 4<sup>th</sup> respondent available in the hands of the respondents 1 to 3 ?
- 2) Whether the impugned Order passed by the 3<sup>rd</sup> respondent is liable to be set aside ?

- 3) Whether the 1<sup>st</sup> applicant's name can be ordered to be included in the nomination for the payment of family pension in the pension records of the 4<sup>th</sup> respondent ?
- 4) Whether the application is not maintainable in law ?
- 5) To what relief the applicants are entitled for ?
- 6) Whether the 4<sup>th</sup> respondent is entitled to the reliefs as asked for in the Additional Counter Affidavit ?

7. Heard Mr. M.K. Sikdar and S. Biju, Learned Counsel for the applicants, Mr. B. Shanthakumar, Learned Senior Panel Counsel assisted by Captain Vaibhav Kumar, Learned JAG Officer, appearing for respondents 1 to 3 and Mr. SP. Ilangovan, Learned Counsel appearing for 4<sup>th</sup> respondent.

8. The Learned Counsel for the applicants while reiterating the pleadings raised in the application would submit that the 4<sup>th</sup> respondent being the husband of the 1<sup>st</sup> applicant and father of the 2<sup>nd</sup> and 3<sup>rd</sup> applicants (the minor children of both) has sent a sum of Rs.10,000/- per month till the end of 2009 towards maintenance and thereafter he has reduced the said maintenance on his own accord to Rs.3000/- per month till the date of application and it is very difficult for the 1<sup>st</sup> applicant to maintain herself and the applicants 2 and 3 with the said amount of Rs.3000/- and, therefore,

request that a sum of Rs.15,000/- be ordered from and out of the pay and allowances of the 4<sup>th</sup> respondent, being 33% of his salary. He would also submit that the request made by the 1<sup>st</sup> applicant was rejected and an impugned order was passed on 6.8.2011 without any valid reasons. He would further submit that the 1<sup>st</sup> applicant was tortured on the false accusation that she was having illicit intimacy with some person and the advice given by the respondents 1 to 3 to start a fresh life with the 4<sup>th</sup> respondent is not implementable since it may be fatal to the 1<sup>st</sup> applicant and therefore the maintenance amount should have been ordered by the respondents 1 to 3. He would submit that the maintenance of joint account in Savings Account No.1113145733, at SBI, Arni, was admittedly done in the name of the 1<sup>st</sup> applicant and 4<sup>th</sup> respondent and ATM card was handed over to the 1<sup>st</sup> applicant willingly by the 4<sup>th</sup> respondent to withdraw money for the purchase of a plot and the same was rightly done in the name of the children. He would further submit that the handing over of the ATM card would itself indicate that the 1<sup>st</sup> applicant was permitted to handle the money as if it belonged to her also. If the 4<sup>th</sup> respondent is prejudiced by the act of 1<sup>st</sup> applicant in withdrawing the money, he could have immediately intimated the Bank authorities to stop the single operation by one joint account holder and prevented the same. He would further submit that the withdrawal of the said money from the joint account cannot be a ground for denying the payment of maintenance from the pay and allowance of the 4<sup>th</sup> respondent by the respondents 1 to 3. The withdrawal of money from the

Bank account is a different cause of action in which it was agreed by the 1<sup>st</sup> applicant and the 4<sup>th</sup> respondent to buy a plot for them and accordingly a plot has been purchased in the name of the children. He would also submit that the accusation was levelled against the 1<sup>st</sup> applicant only for not paying the maintenance by the 4<sup>th</sup> respondent and it cannot be endorsed by the respondents 1 to 3 without any proof and the said statement put forth by the 4<sup>th</sup> respondent as endorsed by the respondents 1 to 3 are defamatory in nature. The applicants, who have no income to maintain themselves, are certainly depending upon the income of the 4<sup>th</sup> respondent and the payment of Rs.3000/- per month as maintenance is not sufficient and therefore the actual maintenance amount should have been deducted from the pay and allowances of the 4<sup>th</sup> respondent as per the provisions of Section-91(i) of the Army Act, 1950, and as per the procedure laid down in Army Order 2/2001. He would also submit that the case of the 4<sup>th</sup> respondent that the pay and allowances are not attachable, is not applicable to the present case since the Army Act is a special statute to provide relief to the families of army personnel. The reference to para-59 of Pension Regulations for the Army, 1961 (Part-I) and the Pension Act, are not relevant for payment of maintenance to the family of the army personnel. Therefore, he would request the Tribunal that the application may be allowed.

9. The Learned Senior Panel Counsel would submit in his argument that the objections raised in the Counter of the respondents 1 to 3 are adopted. He would also submit that the 4<sup>th</sup> respondent has retired from service on 31.3.2013 and his pension payments and other benefits cannot be deducted towards the maintenance amount. He would further submit that the applicants themselves asked for deduction of maintenance amount from and out of the pay and allowances of the 4<sup>th</sup> respondent and even if allowable, that would be available with the respondents 1 to 3 till the date of his retirement, namely 31.3.2013 and there cannot be any further order from 1.4.2013 onwards. He would, therefore, request us to pass suitable orders in the facts and circumstances of the case in accordance with law.

10. The Learned Counsel for the 4<sup>th</sup> respondent would submit in his argument that the 1<sup>st</sup> applicant being the wife of the 4<sup>th</sup> respondent was living in adultery with one Udhayasurya of Arni, which is supported by letters given by the Panchayat Board President, and SP of Police. He would also submit that the investigation report received by the respondents 1 to 3 revealed the illicit character of the 1<sup>st</sup> applicant and, therefore, the maintenance asked for by her was rejected by the respondents 1 to 3. He would further submit that the 1<sup>st</sup> applicant did not heed to the advice given by the respondents 1 to 3 to start a fresh life with the 4<sup>th</sup> respondent and, therefore, the 1<sup>st</sup> applicant is not entitled to any maintenance on that score also. He would further submit that the request for maintenance cannot be



sustained before this Tribunal for which the applicant should go to the Family Court or Civil Court or Criminal Court for fixing the maintenance amount and this forum is not empowered to fix the maintenance amount. He would further submit that the nomination is the prerogative right of the 4<sup>th</sup> respondent and it cannot be interfered and be directed to issue nomination on the respective family pension. He would also submit that since the 1<sup>st</sup> applicant was leading an adulterous life, she is not entitled for any maintenance from the pay and allowances of the 4<sup>th</sup> respondent. He would refer to the Judgements of various High Courts i.e. High Court of Himachal Pradesh in a case between Harjeet Kaur Vs Bupinder Singh, High Court of Uttarakhand in a case between Aarchana Gupta Vs Rajiv Gupta, and High Court of Madras in a case between M Kanniappan Vs Akilandammal, for the principle that wife is not entitled to maintenance from the husband when she wilfully deserted her husband and is living in adultery. He would also submit that due to the act of the 1<sup>st</sup> applicant, the 4<sup>th</sup> respondent had undergone mental agony and his pension payments and other benefits have been stopped and on that aspect, he is entitled to a sum of Rs.10 lakhs as damages and the 4<sup>th</sup> respondent is entitled for the return of a sum of Rs.8,30,516/- from the 1<sup>st</sup> applicant. Therefore, he would request us to dismiss the application with punitive cost.

11. We have given anxious thoughts to the arguments advanced on either side. On 21.3.2013, we had directed the respondents 1 to 3 to stop payment of PF, AGIF and pension to 4<sup>th</sup> respondent. The 4<sup>th</sup> respondent retired on 31.3.2013 during the hearings. On 22.4.2013, this Tribunal vacated the Order withholding disbursement of pension to the 4<sup>th</sup> respondent and ordered withholding pay and allowances to him till further orders.

12. **Points 1 to 6:** The indisputable facts arising out of the pleadings and arguments would be that the 1<sup>st</sup> applicant is the wife of 4<sup>th</sup> respondent, who were married on 13.12.1988 as per Christian religious customs and rites and they have got two children, namely V. Noah, the son aged about 12 years and V. Beulah, the daughter aged about 10 years out of the said wedlock. The 1<sup>st</sup> applicant jointly lived with the 4<sup>th</sup> respondent in various stations in the married quarters provided by the army and at last when he was posted at field area, the family was dislocated and the applicants had come down to Bagayam, Vellore, the native place of the 4<sup>th</sup> respondent and settled there and the 4<sup>th</sup> respondent was sending Rs.10,000/- per month towards the expenditure of the family.

13. The dispute arose during 2009, when the 4<sup>th</sup> respondent suspected that the 1<sup>st</sup> applicant was having illegal intimacy with some person at Arni and from then onwards, the difference in lives of the 1<sup>st</sup> applicant and the 4<sup>th</sup>

respondent got widened. The 4<sup>th</sup> respondent seriously accused the 1<sup>st</sup> applicant that she was having illegal intimacy with one Udhayasurya of Arni, and the 1<sup>st</sup> applicant joined hands with the said person and was withdrawing the money remitted in the joint account of the 4<sup>th</sup> respondent and the 1<sup>st</sup> applicant in SBI, Arni, in SB Account No.11113145733. As per the statement of the 4<sup>th</sup> respondent, a sum of Rs.8,30,000/- has been withdrawn clandestinely without the knowledge of the 4<sup>th</sup> respondent on the advice of her alleged paramour Udhayasurya and she utilised the money for the purchase of a plot in her name and in the name of her father. The said accusation was seriously disputed by the 1<sup>st</sup> applicant stating that the illegal intimacy as put forth by the 4<sup>th</sup> respondent was not true and 4<sup>th</sup> respondent has illicit intimacy with a woman and the 1<sup>st</sup> applicant was tortured by the 4<sup>th</sup> respondent whenever he came to residential house at Bagayam and on one occasion, he poured kerosene on her person and was about to murder her. Therefore, the proposal to have a joint living and to start a fresh life is not possible. The other allegations made by the 4<sup>th</sup> respondent are also disputed.

14. During the hearings, on an earlier occasion, we convened a meeting of the 1<sup>st</sup> applicant with children and the 4<sup>th</sup> respondent in our Chamber for narrowing down their disputes and to have a quiet family life for the sake of children. In the said counselling, both the 1<sup>st</sup> applicant and the 4<sup>th</sup> respondent have only put forth their case as stated in their pleadings and

there was no chance of any compromise in between them. The children, namely the applicants 2 and 3, are under the care and custody of the 1<sup>st</sup> applicant.

15. In the backdrop of the case, whether the Order passed by the 3<sup>rd</sup> respondent in refusing to pay the maintenance is sustainable is the present question. According to the submission of the Learned Counsel for the 4<sup>th</sup> respondent, this forum has no jurisdiction to entertain such maintenance application for ordering maintenance to the applicants and Civil Court alone has got jurisdiction for this. But the applicants have come forward with a prayer for setting aside the refusal order of the 3<sup>rd</sup> respondent for the grant of maintenance. In the said circumstance, this Tribunal has to look into the matter as to whether the respondents 1 to 3 have exercised the jurisdiction conferred upon them correctly. The provisions of Section-91(i) of the Army Act, would empower the respondents to deduct the maintenance sum as required by the Central Government or prescribed officer towards the maintenance of his wife or his legitimate or illegitimate children or towards the cost of any relief given by the said Government to the said wife or child. It runs as follows :-

***"91. Deductions from pay and allowances of persons  
other than officers.-***

*Subject to the provisions of section 94 the following penal deductions may be made from the pay and allowances of a person subject to this Act other than an officer, that is to say,-*

- (a) .....
- (b) .....
- (c) .....
- (d) .....
- (e) .....
- (f) .....
- (g) .....
- (h) .....

- (i) *any sum required by order of the Central Government or any prescribed officer to be paid for the maintenance of his wife or his legitimate or illegitimate child or towards the cost of any relief given by the said Government to the said wife or child."*

16. The above said provision of law empowers the respondents to deduct from the pay and allowances of a person subject to Army Act other than officers, for the maintenance of his wife or children. Therefore, the argument levelled by the Learned Counsel for the 4<sup>th</sup> respondent that this forum cannot entertain such application against the orders passed by the respondents 1 to 3 refusing to grant maintenance or deduct maintenance amount payable to the wife or children from the pay and allowances of the persons and other officers subject to Army Act, falls to ground. There is a separate Army Order, namely AO 2/2001 on the procedure for grant of maintenance. Among the provisions of AO 2 of 2001, para-4 would be

relevant. As per para-4(d), the merits which are to be processed by the respondents would be the status of the wife or legitimacy or illegitimacy of the children, negligence of the husband in maintaining the wife and children and the financial status of the wife and the dependent children. The said provision runs as follows :-

*"4(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."*

17. However, in para-4(g), it has been laid down that a wife living in adultery or if she refuses to live with her husband without sufficient reason or living separately by mutual consent, she should be directed to take recourse to the Court of law and not to be granted any maintenance. Section-4(h) would go to show that the amount of maintenance shall be given at 33% of the pay and allowances and will not be at a rate higher than the following –22% of the pay and allowances in respect of wife and 5.5% of the pay and allowances in respect of each legitimate child. Therefore, the

point raised by the 4<sup>th</sup> respondent that the 1<sup>st</sup> applicant was living in adultery has been established or not would be the prime issue before the respondents. The 4<sup>th</sup> respondent has produced various Xerox copies of letters from Panchayat Board President, and a letter from SP of Police to the effect that the 1<sup>st</sup> applicant was living in adultery. The respondents 1 to 3 have also obtained an investigation report to the effect that the 1<sup>st</sup> applicant was living in adultery. The said submission made by the respondents 1 to 3 in their Reply Statement that the SP of Police reported about the illegal intimacy has not been clearly mentioned as to the relationship with one Udhayasurya as told by the 4<sup>th</sup> respondent. The investigation report has not been produced to show that the 1<sup>st</sup> applicant was living in adultery with the said Udhayasurya. It is a highly sensitive issue that any person cannot issue any certificate that a woman was living in adultery. It is a specific act and it ought to have been proved by documentary evidence in which, the 1<sup>st</sup> applicant's name should be found as living with the alleged paramour or any other person in the same residence. It is an admitted fact that the 1<sup>st</sup> applicant is living at her parent's house along with her parents and the father of the 1<sup>st</sup> applicant died recently. Therefore, the respondents 1 to 3 cannot come to the conclusion that the 1<sup>st</sup> applicant was living in adultery as told by the 4<sup>th</sup> respondent. The case of the 1<sup>st</sup> applicant was that the 4<sup>th</sup> respondent was beating her and was torturing her to the level of attempt to murder her by pouring kerosene on her person. It is also an admitted fact that the 1<sup>st</sup> applicant has given a complaint under Domestic Violence Act

before the District Social Welfare Officer, and the same was prima facie found to be true and it was referred to the Judicial Magistrate for enquiry and the said complaint has been numbered as MC No.8/10 before the Judicial Magistrate. In the said circumstances, it can be presumed that the 1<sup>st</sup> applicant was tortured by the 4<sup>th</sup> respondent and, therefore, the complaint has been given by the 1<sup>st</sup> applicant against the 4<sup>th</sup> respondent and it is pending adjudication. In the said circumstances, the alleged establishment of adultery by the 1<sup>st</sup> applicant with some other person as told by the 4<sup>th</sup> respondent should not have been considered as established so as to invoke the provisions of Section-4(g) of AO 2/2001 in order to refuse maintenance. It should not be a reason for refusing maintenance.

18. The Learned Counsel for the 4<sup>th</sup> respondent has relied upon various citations of Hon'ble High Court of Himachal Pradesh in between Harjeet Kaur Vs Bupinder Singh, High Court of Uttarakhand in between Aarchana Gupta Vs Rajiv Gupta, and High Court of Madras in between M Kanniappan Vs Akilandammal, to the effect that there would not be any obligation on the part of a deserted husband to pay maintenance amount to the wife, guilty of desertion or living in adulterous life. There is no dispute over the principles of law laid down by the Hon'ble High Courts. As far as this case is concerned, it has not been proved or established before the respondents 1 to 3 that the 1<sup>st</sup> applicant was living in adultery or the 1<sup>st</sup> applicant had deserted wilfully the 4<sup>th</sup> respondent. The reasons put forth by the applicant



would be that the applicants have to necessarily move and reside with their parents since the 4<sup>th</sup> respondent had tortured and beaten the applicants and was attempting to murder the 1<sup>st</sup> applicant. The said allegations have not been specifically denied by the 4<sup>th</sup> respondent in his Reply Statement or in his Additional Reply Statement. In the said circumstances, it cannot be presumed that the 1<sup>st</sup> applicant had wilfully deserted the 4<sup>th</sup> respondent. Moreover, we could see that the children are living with the 1<sup>st</sup> applicant. If really the 1<sup>st</sup> applicant deserted the 4<sup>th</sup> respondent, she should have left the children with the 4<sup>th</sup> respondent. Therefore, we are of the considered view that the 1<sup>st</sup> applicant did not desert the 4<sup>th</sup> respondent. The apprehension in the mind of the 1<sup>st</sup> applicant as stated in the application as well as at the time of counseling was that she would be beaten by the 4<sup>th</sup> respondent after he consumes alcohol which would be dangerous for her life, if she lives with the 4<sup>th</sup> respondent.

19. It has been reasoned that a sum of Rs.8,30,516/-, deposited by the 4<sup>th</sup> respondent in a joint account standing in the name of the 1<sup>st</sup> applicant and the 4<sup>th</sup> respondent, was withdrawn by the 1<sup>st</sup> applicant and the said amount would be a very large amount for a service man and, therefore, the maintenance amount could not be granted to the applicants. The said reason put forth by the respondents 1 to 3 could not be correct because once an amount has been deposited in a joint account standing in the name of two persons, it would be deemed that the said amount belongs to both

the persons. The intention of the 4<sup>th</sup> respondent in sending the money to joint account and handing over the ATM card in the hands of the 1<sup>st</sup> applicant was that the 1<sup>st</sup> applicant was permitted to withdraw the amount as she likes for the purchase of a plot for their living. It is shown by the Learned Counsel for the applicants in open court that a plot has been purchased out of the said money in the name of the 1<sup>st</sup> applicant and in turn, the 1<sup>st</sup> applicant has settled the property in the names of the applicants 2 and 3 represented by her as guardian. Now the submission of Learned Counsel for the 4<sup>th</sup> respondent is that the said purchase of plot in the name of the 1<sup>st</sup> applicant and thereafter settled in the name of applicants 2 and 3 is amounting to seclusion of money from the hands of the 4<sup>th</sup> respondent and, therefore, the 1<sup>st</sup> applicant is guilty of committing withdrawal of money without the knowledge of the 4<sup>th</sup> respondent. The said argument advanced by the Learned Counsel for the 4<sup>th</sup> respondent is not sustainable since the 4<sup>th</sup> respondent had willingly deposited the money and handed over the ATM card and permitted the 1<sup>st</sup> applicant to withdraw the money from the said account. If really the 4<sup>th</sup> respondent is aggrieved by the acts of the 1<sup>st</sup> applicant, he should have complained and instructed the Bank authorities not to permit the 1<sup>st</sup> applicant to withdraw money from the joint account without his signature. In the said circumstances, the reason adduced by the respondents 1 to 3 to the effect that the withdrawal of the amount of Rs.8,30,516/- by the 1<sup>st</sup> applicant would be amounting to the detriment of the 4<sup>th</sup> respondent and cannot be the reasons for rejection of maintenance

amount. Admittedly, there was no maintenance case pending before Civil Court. The case filed by the 1<sup>st</sup> applicant in MC No.8/2010 before Judicial Magistrate, Arakkonam, is arising out of Domestic Violence Act. When the reason furnished by the respondents 1 to 3 are not sustainable or the allegations put forth by the 4<sup>th</sup> respondent regarding the adulterous life of the 1<sup>st</sup> applicant has not been established, the respondents 1 to 3 ought to have granted maintenance amount as per the provisions of para-4(h) of Army Order 2/2001, in favour of the applicants. But it was not done so.

20. In the said backdrop of the case, when we address the application of the provisions of para-4(g), of Army Order 2/2001 to the present case, it would appear that maintenance as asked for by the applicants should have been ordered by the respondents 1 to 3 and the respondents 1 to 3 ought to have exercised their jurisdiction under Section-91(i) of the Army Act, 1950, coupled with para-4(h) of the Army Order 2/2001 and granted maintenance to the applicants. But they did not do so. Therefore, the impugned order not granting maintenance to the applicant is liable to be set aside.

21. As per the admitted case, we find that the applicants were provided with a sum of Rs.3000/- per month from December, 2009, till the date of filing of the application. However, it has been asked by the applicants that 22% of pay and allowances for the wife, the 1<sup>st</sup> applicant, and 5.5% for each child (i.e.) the applicants 2 and 3, totally at 33% of the salary towards maintenance. From this, an amount of Rs.3000/- per month will be deducted

as admittedly this amount has been paid by the 4<sup>th</sup> respondent to the 1<sup>st</sup> applicant. However, it was argued by the Learned Counsel for the 4<sup>th</sup> respondent that the house rent for the house at Bagayam, Vellore, was paid by him and the applicants were residing in the said house till they left for their parental house and, therefore, the said payment of house rent should also be deducted from the maintenance amount, if any, ordered. He would also submit that the said house rent was taken by the 1<sup>st</sup> applicant from the joint account money and she paid the rent for the said house. The said argument could not be accepted since there is no proof produced for such payment of rent. We have already discussed and found that the money sent by the applicant through joint account was for the purpose of purchasing a plot for the family. The said sending of money by the 4<sup>th</sup> respondent in the joint account of the 1<sup>st</sup> applicant and 4<sup>th</sup> respondent in Account No.11113145733, SBI, Arni, is a separate cause of action and it is unconnected with the payment of maintenance. Even if it is considered towards the payment of house rent also, it ought to have been pleaded and proved by acceptable documentary evidence. But it was not shown by the 4<sup>th</sup> respondent as required by law. Therefore, the said submission of the Learned Counsel for 4<sup>th</sup> respondent towards deduction of rent payable to the house cannot be accepted. In the said circumstances, the applicants are entitled to a payment of maintenance for three years prior to the date of filing of this application i.e. from 24.1.2010 onwards at the rate of an amount which is 33% of the pay and

allowance per month of 4<sup>th</sup> respondent for this period less the sum of Rs.3000/- already paid by the 4<sup>th</sup> respondent every month in favour of the applicants. The said arrears of payment shall be calculated till the date of retirement of the 4<sup>th</sup> respondent i.e. upto 31.3.2013 and be paid out of the pay and allowances, if any, available with the respondents 1 to 3.

22. The arguments advanced by the Learned Counsel for the 4<sup>th</sup> respondent that the pay and allowances cannot be attached or cannot be deducted does not hold water in view of the provisions of Section-91(i) of the Army Act, 1950 and, therefore, from the available pay and allowances the computed amount shall be deducted towards the maintenance and if there is any rest, the said amount alone shall be paid by the respondents 1 to 3 to the 4<sup>th</sup> respondent. However, the applicants cannot seek for the relief of maintenance amount being deducted from the pension of the 4<sup>th</sup> respondent on and from 1.4.2013 since the 4<sup>th</sup> respondent retired from service on 31.3.2013. If for any reason, the applicants want to proceed against the 4<sup>th</sup> respondent for maintenance w.e.f. 1.4.2013, it is open to them to approach the Civil Court or the jurisdictional Criminal Court under appropriate laws for the payment of such maintenance to be fixed by the said Courts. In case the entire quantum of the computed amount of maintenance fixed as ordered cannot be paid with the pay and allowances of 4<sup>th</sup> respondent available with the respondents 1 to 3 to the applicants, the said unpaid maintenance claim can be pursued by the applicants before civil

forums as if they are arrears of maintenance money payable by 4<sup>th</sup> respondent.

23. As regards the claim for endorsement of the name of the 1<sup>st</sup> applicant as the family pension recipient, the argument advanced by the Learned Counsel for the 4<sup>th</sup> respondent was that this forum has no jurisdiction to pass such an order. Of course, it is for the respondents 1 to 3 to act in accordance with law to enter the name of the dependent as per the records already submitted before respondents 1 to 3. It has been categorically admitted by respondents 1 to 3 that the 4<sup>th</sup> respondent has entered the 1<sup>st</sup> applicant's name as his wife and the applicants 2 and 3 as his children in the Service Records. Therefore, it is for the respondents 1 to 3 to register the name of the dependent of the 4<sup>th</sup> respondent in the said nomination as per rules. As regards the grant of ECHS and Canteen card facility, the applicants being the dependents and the family members of 4<sup>th</sup> respondent, they are entitled for such facilities as asked for by them.

24. From the foregoing discussion and findings reached by us, we are of the considered view that all the points are decided in favour of the applicants 1 to 3, but the payment of maintenance is restricted to an extent of the pay and allowances of the 4<sup>th</sup> respondent available at the hands of respondents 1 to 3 at the rate of 33% of monthly pay and allowances of the 4<sup>th</sup> respondent from 24.1.2010 to 31.3.2013 less Rs.3000/- per month already paid. No order of deduction is passed against the payment of pension payable by the

respondents 1 to 3 in favour of the 4<sup>th</sup> respondent. With the aforesaid observation, the application is allowed to that extent. The prayer made by the 4<sup>th</sup> respondent in the Additional Counter for the return of money of Rs.8,30,516/- from the 1<sup>st</sup> applicant and for payment of Rs.10 lakhs towards compensation, are not sustainable since they were not established by the 4<sup>th</sup> respondent. Moreover, such Counter claim made by the 4<sup>th</sup> respondent was not in the proper format and with proper Court fee. In the said circumstances, the prayer made by the 4<sup>th</sup> respondent for the payment of Rs.8,30,516/- and the payment of compensation of Rs.10 lakhs by the applicants in favour of the 4<sup>th</sup> respondent are not grantable.

25. In fine, the application of the applicants is allowed to that extent as indicated above in Paragraphs 21, 23 and 24 only. Considering the relationship of parties, we do not pass any orders on costs. Both the parties are directed to bear their respective costs.

Sd/-  
LT GEN (Retd) ANAND MOHAN VERMA  
(MEMBER-ADMINISTRATIVE)

Sd/-  
JUSTICE V.PERIYA KARUPPIAH  
(MEMBER-JUDICIAL)

**18.7.2013**  
(True Copy)

**Member (J)** – Index : Yes / No  
**Member (A)** – Index : Yes / No

Internet : Yes / No  
Internet : Yes / No

To,

1. Ministry of Defence (Army),  
Adjutant General's Branch,  
Army Head Quarters, DHQ Post,  
New Delhi.
2. The Commandant,  
H.Q. Madras Engineer Group & Centre,  
Pin – 900 493, C/o – 56 APO.
3. The Commanding Officer,  
38, Assault Engineer Regiment,  
Pin – 900 493, C/o – 56 APO.
4. JC 308723-H, Subedar, Y. Victor,  
38, Assault Engineer Regiment,  
Pin – 900 493, C/o – 56 APO.
5. M/s. M.K. Sikdar & S. Biju,  
Counsel for applicants.
6. Mr. B. Shanthakumar, SPC  
Counsel for R1 to R3.
7. Mr. SP. Ilangovan,  
Counsel for R4
8. OIC, Legal Cell (Army),  
ATNK & K Area HQ,  
Chennai.
9. Library, AFT, Chennai.



**HON'BLE MR.JUSTICE V. PERIYA KARUPPIAH  
MEMBER (JUDICIAL)  
AND  
HON'BLE LT GEN (RETD) ANAND MOHAN VERMA  
MEMBER (ADMINISTRATIVE)**

O.A.No.18 of 2013

18.7.2013