

AFR
Court No. 2
Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 21 of 2015

Friday this the 8th day of December, 2017

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)

Hon'ble Lt. Gen. Gyan Bhushan, Member (A)

IC-65993X Major Saurabh Dutt, S/o Lt Col Iqbal Bahadur Dutt (Retd) of 111 Engineer Regiment attached with Training Battalion No. 2 Bengal Engineer Group and Centre, Roorkee - 247667

..... **Applicant**

By Legal Practitioner: Maj Saurabh Dutt, in person.

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi - 110011.
2. The Chief of the Air Staff, Integrated Headquarters of Ministry of Defence (Army), South Block, New Delhi – 110011.
3. General Officer Commanding-in-Chief, Northern Command, C/o 56 APO.
4. General Officer Commanding-in-Chief, Central Command, Lucknow.
5. Chairperson/Secretary, Family Welfare Organization C/O 11 Infantry Division C/o 56 APO.
6. Dr. Mrs. Ann S. Dutt W/o IC-65993X, Major Saurabh Dutt Resident of A-34, Mayfair behind IOC Pump, near D-Mart Vastrapur, Ahmadabad – 380015.

..... **Respondents**

By Legal Practitioner: Dr Shailendra Sharma Atal, Learned Standing Counsel for the Central Government for respondents No. 1 to 5 and Shri RP Verma, learned counsel for the Respondent No. 6.

ORDER

Per Hon'ble Mr. Justice S.V.S. Rathore, Member (J)

1. By means of this Original Application (O.A.), the applicant has prayed the following relief:

- “(a) *Issue/pass an order or direction to the respondents to quash/set aside the illegal and arbitrary and capricious Orders dated 12.05.2014 and dated 26.11.2014 Annexure No. A-1 (i) and A-1 (ii).*
- (b) *Issue/pass an order or direction to the respondents to ensure that there should not be any honouring of the directions given by the above mentioned orders by the respondents No.4 because of the reason that the order dated 26.11.2014, is per se illegal, arbitrary and capricious and since the applicant has voluntarily consented to make the payment of Rs. 7500/- p.m to their daughter named Dhairyra Dutt, there was no require to pass the order dated 26.11.2014.*
- (c) *Issue/pass any other order or direction to respondents as this Hon'ble Tribunal may deem fit in the circumstances of the case*
- (d) *Allow this application with cost”*

2. In brief the facts as averred by the Applicant in his O.A., may be summed up that the applicant was commissioned in the Army (Corps of Engineers) on 06th September 2003. During his service period, he solemnised marriage with Dr (Ms.) Ann Michael, respondent no.5 (typing mistake in O.A., it should be respondent no.6) on 03.12.2009. Out of this wedlock, one daughter named Dhairyra was born on 12th April 2012. This marriage was also solemnised by Christian Rites on 04th December 2009 and was also registered under the Special Marriage Act, 1954 on 11th February 2010. The couple remained together for some time, but thereafter the conflict arose between the two after the pregnancy of the wife of the applicant. As per the averments in the O.A., the respondent no.6 started making unreasonable demand and she refused to stay with her parents-in-law residing in Ahmedabad. Her basic demand was to pressurise the applicant to sever his relationship with his parents which was totally unreasonable. There was also demand of huge money to agree for cohabitation. Several efforts were made by various persons for reconciliation of the dispute. It is pertinent to mention here that during pendency of this case, the parents of the applicant and respondent no.6 and both the parties were also called for mediation and an effort was made to settle the dispute amicably. In the first sitting, there was some positive sign of settlement, but subsequently the parties declined for an amicable settlement. The respondent no.6 made a complaint on 24.02.2013 to the Chairperson, Family Welfare Organization, Ahmedabad (respondent no.5) requesting for maintenance allowance. The case of the applicant is that the

respondent no.5 was not competent to process this application and was suppose to return this application to respondent no.6 for approaching the competent authority. On this basis, the claim of the applicant is that since the respondent no. 5 has processed the application, therefore, all the subsequent actions taken by the Chairperson or any other authority without any complaint having been made to them, has no legal sanction and sanctity and this by itself is a sufficient ground to set aside all the subsequent proceedings. As per the applicant, the matters agitated by respondent no.6 were too trivial to agitate her and make the complaint. As per Para 4.5 of the O.A., the applicant and respondent no.6 remained together in Jammu & Kashmir and after stay for five months in Ahmedabad, where on petty domestic matters, the ground for seeking maintenance allowance have been based. The respondent no.5 sent this complaint to the Commanding Officer, 118 Engineer Regiment, who in turn served show cause notice dated 06.03.2013 to the applicant, which was replied by the applicant on 13.03.2013. Subsequently, the Commanding Officer in his wisdom, advised the respondent no.6 vide letter dated 06th March 2013 to see the light of reason and maturity and lead a married life with the applicant for which whatever assistance was needed, would be given to her, but the respondent no.6 did not pay any heed to such an advice. Thereafter again a show cause notice dated 05th June 2013 was served to the applicant seeking replies of the applicant to the complaint made by the respondent no.6 addressed to respondent no.5. The applicant replied the said notice on 10th June 2013. The Commanding Officer of the applicant gave his recommendation giving fair and concrete aspect that matters agitated by the respondent no.6 were too trivial to take cognizance and accordingly the Commanding Officer recommended that no maintenance allowance be granted. The applicant was doing his M.Tech course at IIT, Roorkee. The matter was forwarded to the Headquarter, Central Command. Subsequently, an order dated 12th May 2014 was passed by the GOC-in-Chief, Central Command informing the CDA(O) to carry out the necessary deductions from the pay and allowance of the applicant. To the surprise of the applicant, this letter which was against the interest of the applicant was not given to him and it was communicated to him at a much later stage on 15.09.2014 in response to various letters and an application under RTI Act. The applicant made all efforts to convince the respondent no. 6 to join him, even at the cost of agreeing to severe relations with his parents. He filed a Petition No.1692 of 2013 in the Family Court, Ahmedabad on 09th December 2013 for restitution of conjugal rights under Section 22 of the Special Marriage Act. Since respondent no. 6 was not allowing the applicant to meet his daughter Dhairya even at the place of

residence of respondent no.6, hence the applicant filed an application in the same petition for visiting rights. In response the respondent no.6 submitted to the court that she would agree to the visiting rights only on the condition that the applicant pays Rs.20,000/- per month to her and Rs.10,000/- per month to the daughter Dhairyaa and thus, she displayed her motive of making money out of the pious institution of marriage. Learned Judge of the Family Court, Ahmedabad passed an order on 21.05.2014 granting maintenance of Rs.7500/- per month for daughter Dhairyaa. However, no maintenance was granted in favour of respondent no.6.

3. The case of the applicant is that after the judicial scrutiny and after having the version of the respondent no.6, no maintenance was granted by judicial order to respondent no.6. Thus, there was no question of invoking Note 22 to Army Act and to pass order dated 26.11.2014 under Army Order 2/2001 and thereafter order dated 12.05.2014.

4. It has also been pleaded that the maintenance allowance in favour of the daughter was granted by the Family Court with the consent of the applicant. Since there was a judicial order of the Family Court, Ahmedabad, therefore, the same ought to have prevailed over the order passed by the respondents dated 12th May 2014. Thus, the case of the applicant is that once the request or submission made by the respondent no.6 has been subjected to judicial consideration, the earlier order passed by the respondent no.4 would automatically fall, will have no legal sanction and sanctity. The order passed by the respondent granting maintenance suffered from several infirmities, which have been pointed out by the applicant during the course of arguments.

5. On the contrary, respondent no.6 in her counter affidavit has admitted the fact of marriage and has also pleaded that after marriage, she lived with her husband in Pune and thereafter in Kargil. On 27.09.2011, she came to her in-law's house in Ahmedabad as she was in her family way and her condition was critical. She was advised bed rest, but she was not only harassed by her in-laws and applicant, but virtually she was thrown out of her in-laws house and they started demanding dowry from her, as well as her parents. When such demand could not be fulfilled, then they threatened with divorce. On 06.07.2012 to save her marriage and life of the newly born baby, she again went to Pune, where the applicant was posted at that time, but inspite of several requests on telephone, the applicant did not come to pick her up. The respondent no.6 waited for the applicant to come on the Railway Station, Pune for the entire day, but he did not come to receive her. In the evening, the applicant told the deponent to find and

seek her own accommodation and later on, he stopped answering the telephone calls. So the deponent having no choice, returned back to her parental house on the very same day alongwith the baby by bus. Copies of the train and bus tickets have also been filed with the counter affidavit. She approached Lt Col Niloy Saha and informed him about the desertion by her husband and requested him to reconcile the matter. On the request of the deponent, the Commanding Officer of the applicant suggested the deponent to come to the Regiment, as such on 23.08.2012, the respondent no.6 left for Kargil alongwith the baby to reconcile the matrimonial dispute and stayed there for a period of three months and thereafter they again came back to Ahmedabad and then to Pune for a short duration. She had to leave from Kargil, because the minor baby suffered from fits. Later on she was taken to Chandigarh for her treatment. The applicant left the respondent no.6 with the baby at the Railway station, Ahmedabad Jn and told her to call her parents to pick her. However, the applicant stayed in Ahmedabad for more than 20 to 25 days and never cared for the treatment of his daughter. No money for the expenses of the treatment of daughter Dhairya was given by the applicant. Thereafter the applicant deserted both of them and never bothered to enquire about their welfare. As such, the deponent asked for the maintenance for the baby on 15.01.2013 which was declined by the applicant. On 22.02.2013, the applicant filed an application before the Mahila Sureksha Samiti, CID Crime Cell Branch, The Police Commissioner, Ahmedabad wherein in paragraph 19 he threatened with divorce. As per respondent no.6, this was not the first time when she was threatened with divorce. When the applicant declined to give any maintenance, then she approached the Army Authorities to provide maintenance. She moved an application with a petition to the GOC-in-C, Northern Command for grant of maintenance, wherein she had maintained that she is not employed anywhere and has no source of income to maintain herself and also her child. In exercise of power conferred under Section 91(i) of the Army Act 1950 read with Army Rule 193, the GOC-in-C, Northern Command vide order dated 22.05.2014 accorded sanction for deduction @27.5% i.e. @22% per month to the respondent no.6 and @5.5% per month to the daughter Dhairya as maintenance allowance from the pay and allowances of the applicant.

6. On behalf of the other respondents, it has been pleaded in their counter affidavit as under :

That in the month of August 2012 Mrs. Ann S Dutt reported to the CO 118 Engr Regt that she is not pulling along well with her husband Maj Saurabh Dutt and wants a divorce. The CO 118 Regt Counselling the couple and found that the

discord is totally emotional based on Maj Saurabh Dutt not looking after his in laws and Mrs. Ann S Dutt not caring about her in laws. It was considered that if the couple stay together in unit the problems are likely to get resolved. Accordingly, CO 118 Engr Regt allotted a quarter to Maj Saurabh Dutt at regimental HQ location. The Couple stayed together in the quarter for 05 months from August 2012 and then went to CME Pune as Maj Saurabh Dutt was appearing for M Tech entrance exam. After the Exam Maj Saurabh Dutt was granted 30 days leave and the couple went to their home town at Ahmedabad.

That the house of both Maj Saurabh Dutt and Mrs, Ann S Dutt are located nearby and the parents of the couple do not pull along well with each other. As a result, again all problems between the couple proped up. Mrs. Ann S Dutt again called up CO 118 Engr Regt in the month February 2013 and told him that she wants divorce from Maj Saurabh Dutt.

That CO 118 Engr Regt counselled the couple again and told them that the Regt is moving to peace loc shortly and a quarter will be allotted to the couple immediately on arrival there. Maj Saurabh Dutt agreed to stay together again and he intimated the same to his wife Mrs. Ann S Dutt vide his personal letter on 17 May 2013. But she did not give her consent to stay together. The application no. Nil dated 24.02.2013 recd from Mrs. Ann S Dutt addressed to the Chairperson GK FWD Ahmedabad was processed by HQ Northern Comd vide their letter no. 22018/5402/DV-4 dated 05.06.2013 by issuing show cause notice to the officer to obtain comments of the officer on the petition.

That the officer vide his reply dated 10.07.2013 had stated that all allegation made by Mrs. Ann S Dutt are ill conceived, false and baseless and he is being harassed financially, emotionally, psychologically and physically by his wife. He also stated that his wife had deserted him for no reason and that earlier his wife had opened a dental clinic at Pune which functioned for six / seven months and she earned Rs. 3 lacks to 4 lacks during the short period. He has also brought out that his wife and her sister Ms. Sophia have opened a "Mars Dental Aesthetic Clinic" at Ahmedabad on 06.03.2011 and are earning from the said clinic.

That this HQ Northern Command had asked comments from the lady regarding her income from dental Clinic the lady vide her affidavit dated 23.12.2013 confirmed that she does not have any other source income. GOC, UB Area had recommended that maintenance allowance be granted to the lady as per army orders.

That it being the legal and moral responsibility of the officer to maintain his wife and daughters and based on the merit of the case and after due consideration GOC-in-C, Central Command vide letter no. 90105/Maint/2665/AG/DV-4 dated 12.05.2014 accorded sanction of maintenance from the pay and allowance of the officer as under :-

- a. 22% for Mrs. Ann S Dutt
- b. 5.5% for daughter.

That Mrs. Ann S Dutt and Maj Saurabh Dutt had been contesting a case in civil court filed by Maj Saurabh Dutt for restitution of conjugal rights and the Hon'ble Family Court no. 3 Ahmedabad vide order dated 21.05.2014 passed interim order granting Rs. 7,500/- for maintenance and medical expenses of the daughter of the couple. No maintenance allowance was granted to Mrs. Ann S Dutt. Accordingly GOC-in-C, Central Command modified their order vide letter no. 190105/2665/AG/HR dated 26.11.2014 as under:-

- a. 22% Maintenance to Mrs. Ann S Dutt.
- b. Rs. 7,500/- maintenance allowance as per court order for the daughter.

7. The applicant and the respondent no.6 have filed their rejoinder affidavits. During the pendency of the instant O.A., certain demands were raised on behalf of the applicant to bring on record the bank details and bank deposits of the respondent no.6. The purpose of the same was to show that the respondent no.6 has sufficient means to maintain herself and has some other source of income also and, therefore, she was not entitled to any maintenance allowance. In pursuance there, all the bank details and some other details have been filed by the respondent no.6. The applicant has raised certain objections to the said documents and has stated that the said documents are not complete. At this stage, we would like to clarify that we do not find it proper to go into the details of the bank account and details therein because both the parties are making allegations against each other. The case of the applicant is that she has some other source of income also. However, the specific source of income could not be brought to our notice. On the contrary, the wife has alleged that the applicant has purchased a Skoda Car valuing Rs. 30 lacs and also purchased a imported Motor Cycle for Rs. 06 lacs. We are, at this stage, concentrating only on the following points (i) whether the competent authority, who passed the order for grant of maintenance to the wife was competent to pass such order, (ii) whether the wife was entitled to get maintenance allowance from her husband, (iii) whether the applicant is in a position to pay the maintenance allowance and (iv) whether in view of the

reasons stated by the applicant, the respondent no.6 is not entitled to get any maintenance.

8. The submission of the applicant, who has argued his case in person, is that the Army Authorities have passed the order granting the maintenance without any speaking order. Copies of the affidavit of the respondent no. 6 was not provided to the applicant due to which he could not furnish his reply and this conduct of the Army Authorities (Respondent no.5) was against the principle of natural justice. The Family Court had awarded the maintenance only to the daughter, while the claim of the respondent no.6 for grant of maintenance was rejected, therefore, the order of Family Court ought to have prevailed over Army authorities, but the same was over looked. The applicant himself volunteered to pay maintenance to his daughter. Since his wife is living separately out of her own will and the applicant has made all efforts to pursue her to cohabit with him, therefore, she is not entitled to any maintenance under law. In spite of the specific order of this Court giving visiting rights to the applicant, the applicant has not been permitted by the respondent no.6 to meet his daughter. The daughter of the applicant is studying in Government aided School, which is not expensive and his daughter is not suffering from any illness. Respondent no.6 has moved several applications against her parents-in-law, which were found to be false. The Army Authorities have acted upon the contents of the affidavit filed by the respondent no.6 without verifying its contents, taking the contents of the affidavit as gospel truth. This conduct of the Army Authorities (respondent no.5) cannot be said to be in accordance with law. It has also been argued that till date the respondent no.6 has received a sum of about 14 lacs as maintenance allowance. He has also argued that the case under Section 22 of the Special Marriage Act has been withdrawn and he will, in the very near future, file suit for divorce.

9. On behalf of the respondent no.6, it has been argued that the applicant though is a Dentist, but after marriage, she could not practice as she has to look after her daughter also. Therefore, simply because she was a BDS qualified, Dentist, the maintenance cannot be denied to her. She is living separately because of the cruel behaviour of the applicant and it is incorrect to say that she is not willing to reside with her husband. It has also been argued that the applicant at several occasions in writing had threatened her with divorce. In spite of this torture at the hands of the applicant, she has not filed any case of maintenance in any court of law. It has also been argued on behalf of the respondent no.6 that she is still ready to cohabit with the applicant.

10. On behalf of the other respondents, it has been argued that the respondent no. 5 was the competent authority to pass the order for grant of maintenance and there is no illegality in passing the said order. A show cause notice was issued to the applicant. The wife was asked to file an affidavit and thereafter this administrative order was passed. It has also been argued that the applicant is under legal and moral obligation to maintain his wife and that too at the same standard which she would have enjoyed if they would have lived together. It has also been argued that all the necessary conditions for grant of maintenance were in existence, therefore, the competent authority was right in exercising discretion in favour of the respondent no. 6 and no interference is required in this matter.

11. The applicant in support of his submission, has placed reliance on the pronouncements of Armed Forces Tribunal, Regional Bench, Chandigarh in the case of **A. Ramar vs. Union of India & ors** [O.A.No.1215 of 2011] decided on 11th February 2013. Learned counsel for the respondents has placed reliance on the following cases.

(a) Shamima Farooqui vs. Shahid Khan [2015 (5) SCC 705]

(b) Sunita Kachwaha & ors vs Anil Kachwaha [Civil Appeal No.2310 of 2014] decided on 28th October 2014

(c) Firojabanu Anvarhussain Shaikh vs. State of Gujarat [Special Criminal Application No.2359 of 2012] decided on 05.10.2015.

12. Before proceeding further in the matter, we would like to quote Sections 90(i) and 91(i) of the Army Act 1950 as under :

“90. Deduction from pay and allowances of officers-The following penal deductions may be made from the pay and allowances of an officer, that is to say:—

(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.

91. Deduction 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,—

(i) any sum required by order of the Central Govt. 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.”

13. In order to decide the rights of the maintenance of the wife and to consider the objections raised on behalf of the applicant, the main points to be considered is the authority of the officer, who has granted maintenance whether he was competent under law to pass such an order. If the query to this question comes in affirmative, then the next question that arises for consideration is whether all the

necessary conditions entitling a wife to get maintenance allowance from her husband are in existence.

14. The Applicant in his O.A. has challenged the authority of the officer granting the maintenance on the ground that the application for maintenance was addressed to respondent no.5, who had no authority and right under law to pass any such order. Since the application for maintenance was addressed to a person who had no authority to pass any order, therefore, he was equally incompetent to take any action on this application and to forward the same to the competent authority for information and necessary action. The Applicant in his O.A. has taken this as one of the grounds to challenge the authority of the officer granting the maintenance, but during the course of arguments before us, he has not pressed this ground. Even otherwise simply because the respondent no.5, who happens to be the Chairperson/Secretary, Family Welfare Organization, C/0 11 Infantry Division C/o 56 APO, who has forwarded the application given by the respondent no.6 to the authority concerned it by itself does not mean that the competent authority had no authority to proceed with the case and to pass order. We do not find any substance in this ground taken by the applicant in his O.A., simply because a person has addressed an application to the person, who himself is not competent to grant the relief claimed and if he in his turn, forwards the said application to the authority concerned, then this procedure by itself would not adversely affect the powers of the authority to process the application and to pass the order. Thus, we do not find any substance in this ground taken by the applicant in his O.A.

15. In the instant case, the order granting maintenance has been passed by the GOC-in-Chief, Central Command. Rule 193 of the Army Rules, 1954 empowers the Chief of the Army Staff or Commanding the Army to pass such an order. Rule 193 of the Army Rules, 1954 reads as under:-

“Prescribed Officer under Section 90(i) and 91.— The prescribed officer for the purpose of clause (i) of section 90 and clause (i) of section 91 shall be the Chief of Army Staff or the officer commanding the Army.”

Thus, so far as the authority of the officer, who has granted maintenance, cannot be challenged. We hold that he had the authority to pass such an order.

16. Now the next question arises is whether the wife of the applicant was entitled to get maintenance.

17. During pendency of this O.A., several applications and replies have been filed between the applicant and the respondent no.6 and under the orders of this Tribunal, the respondent no.6 was directed to bring on record her bank accounts. But the purpose of such a request by the applicant was mainly to satisfy the Tribunal that the respondent no.6 has some other source of income, which she has concealed. Apart from it, it has also been argued that she is a qualified Dentist and capable of earning. She runs her own Dental Clinic and, therefore, it cannot be presumed by any stretch of imagination that she is unable to maintain herself. Apart from it, it has also been argued that the respondent no.6 is living separately out of her own sweet will, therefore, on this score also, she is not entitled to any maintenance from the applicant. However, the applicant has nowhere challenged the maintenance which is being paid by him to his daughter Dhairya @ Rs.7500/- per month. He has argued that only thing that pinches him is that he had himself volunteered to pay the maintenance allowance to his daughter and, therefore, no order for penal deduction of the same from his salary should have been passed by the authorities concerned, rather an opportunity ought to have been given to the applicant to deposit the maintenance allowance of his daughter Dhairya in the relevant bank account. However, the respondent no.6 has not raised any argument in reply to this submission.

18. The submission of the learned counsel for the respondent is that simply because respondent no.6 is well educated and a Dentist, it does not debar her from claiming maintenance allowance. It has been argued that she had to stop the practice when she became pregnant and thereafter, she is busy in looking after her daughter, so she is unable to practice. In support of his submission, learned counsel for the respondent no.6 has placed reliance on the pronouncement of Hon'ble Apex Court in the case of **Sunita Kachaha & others vs. Anil Kachwaha** (Criminal Appeal No.2310 of 2014) decided on 28th October 2014, wherein in Para 10, Hon'ble Apex Court has observed as under :

“10. Therefore, she has income of her own and needs no financial support from respondent. In our considered view, merely because the appellant-wife is a qualified post graduate, it would not be sufficient to hold that she is in a position to maintain herself. Insofar as her employment as a teacher in Jabalpur, nothing was placed on record before the Family Court or in the High Court to prove her employment and her earnings. In any event, merely because the wife was earning something, it would not be a ground to reject her claim for maintenance.”

19. Learned counsel for the respondent no.6 has also argued that it is the settled principle of law that the wife is entitled to live separately from her husband on valid and reasonable ground at the same standard, which she would have lived with her husband. On this point, reliance has been placed on the

pronouncement of the Hon'ble Apex Court in the case of **Shamima Farooqui vs. Shahid Khan** [2015 (5) SCC 705], wherein the Hon'ble Apex Court in Paras 15 and 18 held as under :

"15. While determining the quantum of maintenance, this Court in Jabsir Kaur Sehgal v. District Judge Dehradun & Ors.[13] has held as follows: (SCC p.12, para 8)

"8.The court has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those he is obliged under the law and statutory but involuntary payments or deductions. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be excessive or extortionate."

"18. In this context, we may profitably quote a passage from the judgment rendered by the High Court of Delhi in Chander Prakash Bodhraj v. Shila Rani Chander Prakash[17] wherein it has been opined thus"(SCC OnLine Del para 7)

"7.an able-bodied young man has to be presumed to be capable of earning sufficient money so as to be able reasonably to maintain his wife and child and he cannot be heard to say that he is not in a position to earn enough to be able to maintain them according to the family standard. It is for such able-bodied person to show to the Court cogent grounds for holding that he is unable to reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child. When the husband does not disclose to the Court the exact amount of his income, the presumption will be easily permissible against him."

20. The applicant has placed reliance on a Report of Raksha Mantri Committee of Expert, wherein the Expert Committee has made certain recommendations. The applicant, through information obtained by RTI, has tried to inform the Tribunal that the said Report has been approved by the Hon'ble Raksha Mantri. During course of arguments, we requested both the parties to inform whether any G.O./Circular modifying the existing Policy for grant of maintenance has been substituted by the Report of the Expert Committee, wherein certain suggestions have been given with regard to cases for maintenance. None of the parties could bring to our notice any such G.O., therefore, simply because there exist an Expert Committee report, which was subsequently approved by the Raksha Mantri, the same cannot replace the existing Policy, unless and until specific order for implementation of the same is issued. Army Order 2/2001 sets out a detailed procedure to be observed by the competent authorities before ordering for deduction of any amount from the pay and allowances of an officer on account of maintenance to his wife or to his legitimate/illegitimate child. Noticing that all personnel subject to the Army Act, are legally and morally bound to maintain their wives and children, the said

Army Order prescribes the procedure for grant of maintenance allowance after detailed examination of a complaint from the wife or from or on behalf of the child.

21. In view of the aforementioned provisions contained in the Army Act and the Rules framed thereunder, the respondent no.6 was thus not debarred from claiming maintenance for herself by making an application to the Army Authorities. The Army Order 2/2001, before making any order for deduction from the pay and allowances of a particular officer, requires the competent authority to satisfy itself that the petitioner is legally wedded wife of the officer concerned, that the officer is neglecting to maintain her, and that she is unable to maintain herself. The detailed procedure, prescribed by way of the Army Order, ensures that each case, for deduction from the pay and allowances of an officer for maintenance of wife or his legitimate/illegitimate child, is processed on its merits on the basis of well recognised legal parameters, which the courts normally follow, while granting maintenance allowance to the wife or child of an Army person. This Army Order also ensures that on account of deduction for maintenance allowance to the wife or child, the officer concerned is not put to undue financial hardship, by providing a ceiling regard to such deductions. In case of deduction from the pay and allowances of an army person in respect of his wife, the same is not to be at a rate higher than 22% of his pay and allowances and in no case, the amount of maintenance allowance sanctioned to the wife and/or child of an army person is to exceed 33% of his pay and allowances.

22. Now we proceed to examine the submission of the applicant that Family Court declined the maintenance to the respondent no.6. It transpires from perusal of the order passed by the Family Court that the said case was filed under Section 22 of the Special Marriage Act for restitution of Conjugal Rights, wherein the respondent no.6 filed her written statement. Subsequently, she filed a counter claim also. With the consent of the parties, the maintenance amount in favour of the daughter was granted @ Rs.7500/- per month. The claim of the maintenance in the said counter claim for respondent no.6 was not declined on merits, but it was declined only on technical grounds that the counter claim has been filed after filing the written statement. Thus, the civil court has not decided on merit that wife-respondent no.6 has no right to claim maintenance, but her prayer for grant of maintenance was turned down only on the ground that such prayer in counter claim after filing written statement is not maintainable.

23. Army Order 2 of 2001 deals with the subject and prescribed the procedure for processing the maintenance cases. We would like to quote the said part of the Army Order:

“Procedure for processing Maintenance Cases.

4. The procedure given in 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 employments. 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 child.

(ii) The person complaint 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 staff officer of appropriate rank, for and on behalf of the competent authority to sanction maintenance allowance having obtained the formal approval of the latter will be served on the individual concerned under Sections 90 (i) of the Army Act, as applicable and reply of the individual will be considered by the authorities in chain commencing from OC Unit. At any stage of processing if the individual has moved out 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 analyzed 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 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 or/and children in case the petitioner has sufficient income/means to maintain herself and the children.

(g) In case 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 the officer. However the amount of maintenance allowance may be increased

upto 25% of the pay and allowances where the said child is dependent on the mother who is not entitled to be maintained by the officer.

(iii) 25% of the pay and allowances in respect of any legitimate/illegitimate child not dependent on the mother in such and eventuality if the mother is also entitled to 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 allowance.

(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.

Channel of Processing of Maintenance Allowance Cases

5. To ensure that all relevant facts and circumstances including the recommendations of commanders in chain are examined the channel of processing of maintenance allowance in case of Officer, JCOs and OR will be as under:-

(a) Officer Unit, Bde/Sub Area HQ Area/Div HQ/Corps HQ (where applicable)/Command HQ.

*(b) **JCOs/OR** Unit/Bde/Sub Area HQ/Command HQ."*

24. The case of the applicant is that the facts of the affidavit which was subsequently filed by the respondent no.6 were not even verified by the competent authority and in this regard, he has placed reliance on reply given to him under the RTI Act. He has also argued that on the basis of the material available on record, the Commanding Officer Col Niloy Saha vide his report Annexure A-1, had not recommended for the grant of the maintenance allowance. But when the said report was placed before Dig Vijay Setia, Station Commander, then he without assigning any reason, has turned down the recommendation of the Commanding Officer and the recommendation of the Station Commander, was acted upon by the GOC-in-C Central Command. The submission of the applicant is that both these authorities without assigning any reason to reject the recommendation of the Commanding Officer, have turned down the said recommendation on their whims and such a procedure is unwarranted under law. We find substance in this submission of the applicant.

Reasons are the backbone of every order which indicates as to what prevailed in the mind of the authority passing the order. It is evident that the competent authorities dealing with the petitions regarding maintenance allowance are exercising quasi-judicial functions and they are suppose to dispose them of by passing a speaking order.

Hon'ble Supreme Court in the case of **The Stemens Engineering & Manufacturing Co. of India Ltd. Vs. Union of India and another, (1976) 2 SCC 981**, has held as under :-

"6. If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law."

As this stage, we would like to quote the order whereby the recommendation of the Commanding Officer was rejected by Brigade Station Commander.

RECOMMENDATIONS OF THE STATION COMMANDER ROORKEE ON GRANT OF MAINTENANCE OF MRS ANN S DUTT, WIFE OF IC-65993X MAJOR SAURABH DUTT OF 118 ENGR, REGT, PRESENTLY UNDERGOING COURSE AT IIT, ROORKEE, (ATT WITH NO.2 TRG BN BEG & CENTE

1. I am not in agreement with the recommendations GIVEN BY Col N Saha, CO 118 Eng Reg.
2. The lady and officer were personally spoken to by me to work out any reconciliation. However the lady is absolutely unwilling for any dialogue on the subject and wants the maintenance allowance to be given to her.

Station: Roorkee
Dated : Jan 2014

(Dig Vijay Setia)
Brig
Station Commander

RECOMMENDATION OF THE GENERAL OFFICER COMMANDING, UTTAR BHARAT AREA ON THE REPLY TO SHOW CAUSE NOTICE FOR GRANT OF MAINTENANCE ALLOWANCE TO MRS ANN S DUTT WIFE OF IC-65993X MAJOR SAURABH DUTT OF 118 ENGR REGT, PRESENTLY UNDERTOING COURSE AT IIT, ROORKEE.

1. I have perused the reply to Show Cause Notice submitted by IC-65993X Major Saurabh Dutt and the recommendation of Station Commender, Roorkee.
2. Mrs Ann S Dutt is legally weeded wife of IC-65993X Major Saurabh Dutt it is evident from available records that the couple has a strained relationship and efforts for reconciliation have not been successful.
3. Apropos, I concur with the recommendation of the Station Commander, Roorkee and recommend that maintenance allowance be granted to Mrs Ann S Dutt under the provisions of Army Order 2/2001.

Station : Bareilly
Dated 15 Feb 2014

(RN Nair)
Lt Gen
GOC

25. A perusal of the aforesaid two orders clearly indicates that no reason was assigned to reject the view taken by the Commanding Officer, whereby he had not recommended for grant of maintenance and that too by a detailed order. After discussing the background, the Commanding Officer had made the following recommendations, which were rejected without assigning any reason:

Recommendations of the CO 118 Engr Regt.

- (a) The scuffle betn the couple is purely emotional, on mundane issues pertaining to their in laws.
- (b) The couple pull along absolutely fine, once they are away from their in laws.
- (c) The lady should be advised to stay together with Maj Saurabh Dutt at IIT, Roorkee. Staying together for two yrs is likely solve to problem betn the couple.
- (d) No maint allce is recommended.

(Niloy Saha)
CO
Commanding Officer

The said recommendations were rejected without assigning any reason. Thus, the grievance of the applicant has substance that his case was not properly considered by the competent authority and the order for grant of maintenance was passed without considering all the facts and without verifying the reasons for the matrimonial dispute.

26. In this back grounds, we are of the view that this application deserves to be allowed and is hereby allowed. Impugned orders dated 12.05.2014 and 26.11.2014 are hereby set aside. Matter is hereby remanded back to the Commanding Officer, who shall, after following the procedure prescribed under Army Order 2 of 2001, shall pass a speaking and reasoned order and thereafter the said recommendation shall be considered by the concerned army authorities in the chain of command including the recommendations of the Commanding Officer will be considered by them and thereafter they shall pass a speaking and reasoned order. This exercise shall be completed within a period of four months from the date a certified copy of this order is produced before the Commanding Officer. It is hereby made clear that the competent authority shall consider the prayer of grant of maintenance of respondent no.6 and not with regard to the daughter Dhraiya.

27. In order to safeguard the welfare of the wife also, we consider it appropriate to direct the applicant to pay Rs.15,000/- per month to his wife, respondent no.6 through his bank account as interim maintenance allowance, which shall be paid by the applicant in the first week of every month and the said interim maintenance allowance shall not be deducted directly from his salary. In case of two consecutive defaults in making payment of this interim maintenance, the respondent authority shall be at liberty to order for the deduction of

maintenance allowance directly from the salary of the applicant and deduction of this interim maintenance to the respondent no. 6, which shall remain effective till the final order is passed by the competent authority.

28. We further direct that Rs.7500/- per month, which the applicant has himself volunteered to pay to his daughter Dhairya, shall not be deducted directly from the salary of the applicant, but the applicant shall himself deposit the said amount in the bank account of his wife in the first week of every month. In case of two consecutive defaults by the applicant, the respondent authority shall be at liberty to pass an appropriate order for deduction of the maintenance allowance directly from salary of the applicant. Applicant shall continue to pay this amount regularly as it is the amount which the applicant has himself volunteered to pay.

29. Subject to the aforesaid directions, this Original Application is hereby finally **disposed of**.

30. No order as to costs.

(Lt Gen Gyan Bhushan)
Member (A)

(Justice S.V.S.Rathore)
Member (J)

Dated: December , 2017.
PKG