

Court No.1**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****O.A. No. 45 of 2017**Wednesday, the 06th day of February, 2019**Hon'ble Mr. Justice SVS Rathore, Member (J)**
Hon'ble Air Marshal BBP Sinha, Member (A)

Smt. Nisha Tomar alias Simran W/o Naik Umesh Toma, D/o Shri Netrapal Singh, K-97, Moh. Bagowalan, near Navin Hospital, Dadri, District Gautam Budh Nagar.

.....Applicant

Ld. Counsel for Applicant : **Smt. Farha Faiz, Advocate**

Versus

1. Union of India through its Secretary, Ministry of Defence, New Delhi.
2. The Major General (ADM), HQ, Central Command, DV Branch c/o 56 APO, LKO
3. The GOC-in-C, HQ, Central Command, DV Branch c/o 56 APO, Lucknow.
4. Brave Heart & Aastha Cell through its lady, Welfare Complex, HQ Central Comnd, Lucknow
5. Officer Command, 5009 Coy ASC (Comp) PIN-905009 c/o 56 APO, Joshimath, Uttarakhand.
6. Umesh Tomar S/o Dharamver Singh, SST/NAIK No 14851417A, 5009 coy ASC (Comp) PIN-905009 c/o 56 APO, Joshimath, Uttarakhand.

.....Respondents

Ld. Counsel for Respondents: **Ms Amrita Chakraborty, Advocate**

ORDER (Oral)

1. By means of this O.A. filed under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has made the following prayers:

“(I) The Hon’ble Tribunal may be pleased to quash the order of respondent no. 3, to close the case for grant of maintenance allowance according to the Army Act.

(II) The Hon’ble Tribunal may be pleased to pass an order to the army authorities to grant maintenance allowance as per Army Act to the applicant and to her daughter from the date of filing application to the army authorities i.e. from march 2016 as soon as possible.

(III) Pass any other order or such relief which the Hon’ble Tribunal deemed fit for the welfare of the applicant and her daughter in the interest of justice.”

2. In brief the facts of the case are that the applicant happens to be a legally wife of Umesh Tomar (Naik no. 14851417), respondent no.6. Her marriage was solemnized with respondent no.6 on 11.12.1012 according to the Hindu Rites and Rituals. After her marriage the applicant was tortured by the respondent no.6. On 30.11.2015 she was badly beaten by the respondent no.6 and his family members and she was kicked out of her matrimonial home. A divorce suit no. 94 of 2016 was filed by her husband before the Principal Judge, Family Court, Hapur on 01.03.2016. The applicant lodged an FIR for the offence of cruelty against the respondent no.6 and his family members at Mahila Thana Gautam Budh Nagar and

also approached the Civil Court and filed a case under Section 12 of the Domestic Violence Act, 2005. By means of this O.A. the applicant has made prayer for grant of maintenance by the Army authorities.

3. On behalf of the respondents it has been argued that the Regional Bench Chandigarh of the Armed Forces Tribunal in the case of **Maj Amit Kumar Mishra vs. Union of India** (O.A. No. 1229 of 2017) decided on 31.07.2018 has held that the Army authorities have no jurisdiction to grant maintenance. This point was raised on the last date of hearing and accordingly the learned counsel for the applicant prayed for time to argue on the point of right of Army authorities to grant maintenance but during the course of arguments learned counsel for the applicant could not produce before us any law contrary to the view expressed by the Hon'ble Regional Bench Chandigarh in aforementioned case of **Maj Amit Kumar Mishra**.

4. Learned counsel for the applicant has made an emotional argument before us saying that the applicant is not getting any maintenance. Interim maintenance which was granted by the Civil Court has also been stopped and therefore she has no means of her livelihood.

5. Since it is a Court of law and therefore the order passed by Hon'ble Co-ordinate Bench of the Armed Forces Tribunal Chandigarh is binding on this Tribunal. Since no law contrary to this case law could be produced before us by the learned

counsel for the applicant, therefore, we cannot go against the said case law. Learned counsel for the applicant has argued that the case may be disposed of in the light of the aforementioned case and liberty be given to the applicant to move the Civil Court for redressal of her grievances.

6. Hon'ble Co-ordinate Bench of Armed Forces Tribunal, Chandigarh in the case of **Major Amit Kumar Mishra vs. Union of India** (O.A.No.1229 of 2017) decided on 31st July 2018 after a long discussion of all the relevant provisions, has concluded as under :

“33. With respect, we wish to differ with the observations made in the cited judgments as regards jurisdiction of the Army Authorities to adjudicate claims for maintenance and hold that the Army Authorities have no jurisdiction to adjudicate such claims and Sections 90(i) and 91(i) of the Act only empower the prescribed officers to pass an order directing deductions from the pay and allowances of a person subject to the Act, only to give effect to a decree passed by a Court of competent jurisdiction granting maintenance in favour of the wife and or child of such person, not otherwise.

40. In view of what has been said and discussed herein-above, the impugned order dated 08 February 2016, Annexure A7, in so far it relates to respondent No. 5, is held to be without jurisdiction, illegal and unsustainable and, as such, is hereby quashed. Natural consequences shall follow. We may clarify that we have deliberately not discussed the merits of the case because such discussion would have prejudiced either of the parties if respondent No. 5 should decide to have recourse to a court of competent jurisdiction to claim maintenance.”

7. In that case, order of maintenance was passed by the respondent no.3 in favour of respondent no.5 and after a long

discussion, the said order of maintenance has been held to be illegal, without jurisdiction and unsustainable and the same was quashed.

8. In view of this specific decision on the point and on the request of the learned counsel for the applicant to dispose of this case in view of the pronouncement of the Hon'ble Coordinate Bench of Armed Forces Tribunal, Chandigarh in the case of **Amit Kumar Mishra** (supra), this O.A. loses all its substance and is accordingly **dismissed**. The applicant is at liberty to seek her remedy before the competent Civil Court in accordance with law.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated : February 06, 2019
JPT