

Court No. 1
Reserved Judgment

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

Original Application No. 236 of 2016

Friday this the 06th day of April, 2018

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

Hon'ble Air Marshal B.B.P. Sinha, Member (A)

Kunal Krishna Singh (No.6948552M) Sepoy, OD Fort, Allahabad
C/0 56 APO Pin 908778

..... **Applicant**

By Legal Practitioner: Dr Ashish Asthana, Advocate,
Learned Counsel for the Applicant.

Versus

1. Union of India through its Secretary, Ministry of Defence,
New Delhi.
2. Chief of Army Staff, Integrated Head Quarter, MOD (Army),
New Delhi.
3. GOC-In-Chief (Northern Command), Uddhampur,
(Jammu & Kashmir).
4. Pay Account Officer (PAO)- OR, Sikandrabad.
5. IOC Office, Incharge Records, Ordinance Record, Sikandrabad.
6. Additional D.G. Discipline and Vigilance, Adjutant General
Branch, Integrated Head Quarters, MOD (Army), New Delhi.
7. AWWA, Lucknow (Through its President Army Wife Welfare
Association), C/o Central Command, Lucknow.
8. Ms Priyanka Singh, D/0 Sri Amrendra Prasad Singh,
R/o House No.E-213 Sector C-1, LDA Colony,
P.S. Krishna Nagar, Kanpur Road Yogna, District Lucknow, U.P.

..... **Respondents**

By Legal Practitioner: Dr Shailendra Sharma Atal, Advocate,
Learned Counsel for the respondents.

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

1. By means of this Original Application, the applicant has made the following prayers :

“(i) To quash the impugned order dated 27.08.2013 by which the allowance has been granted to respondent no.8 and direct the authorities not to deduct the maintenance allowance from the salary of applicant.

(ii) To issue an appropriate direction for the recovery of salary deducted in pursuance of order dated

(iii) To direct the respondent no.3 and other relevant authorities to stay further payments of maintenance allowance to respondent no.8 with immediate effect.

(iv) To pass any other or orders in which Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the law.”

2. For the purpose of this Original Application, the brief facts may be summed up as under :

The applicant was enrolled in the Army on 09.03.2004. His marriage was solemnized with respondent no.8 Mrs Priyanka Singh on 28th November 2010. It is alleged by the applicant that she left the house after some days of marriage and by that time, the marriage was not even consummated. The date of leaving the matrimonial home is mentioned as 19.12.2010 in the written reply of the applicant submitted to show cause notice. The wife of the applicant, against the will of the family members of the applicant, went to the house of her parents and she is living there. In between 2010 to 2012, the applicant continuously requested his wife and her parents for coming to her matrimonial home and to live with her, but she paid no heed to such request. On 2nd January 2012, the applicant under mental agony and circumstances, filed Divorce Suit No. 2 of 2012 in the Family Court, Muzaffarpur (Bihar). On 7th April 2012, he received a notice from the President AWWA, Lucknow to appear before them for reconciliation. Another show cause notice was received by the applicant from the Headquarters, Northern Command. On 11th May 2013. The applicant sent reply to the show cause notice stating the facts and legal position. On 24.05.2013, while the applicant was posted at 28 Mount DOU

(OC), J & K., was awarded punishment of 7 days Pay Fine without any authority and law by 28 Mount DOU (OC), J & K. (at this stage, it is pertinent to mention here that this order of imposing pay fine is not under challenge in the instant O.A.). Subsequently, the Divorce Suit was transferred to Lucknow for hearing under the orders of the Hon'ble Apex Court. An application for grant of maintenance allowance moved by the respondent no.8 to the Army authorities, was allowed by the impugned order dated 27th August 2013. Maintenance allowance @ 22% of the pay and allowances of the applicant was awarded to the respondent no.8 and this is the order under challenge. Apart from it, the applicant has also prayed for refund of the maintenance amount already paid to the respondent no.8.

3. The submission of the learned counsel for the applicant is that before passing the order for grant of maintenance, proper enquiry was not conducted in the matter and without such enquiry, the order for grant of maintenance allowance was passed, therefore, the same is not sustainable in the eye of law. It has further been argued that the respondent no.8 is a Post Graduate and she is capable of maintaining herself. She takes tuition of small kids and is able to maintain herself. Therefore, grant of maintenance in her favour is un justified.

4. Learned counsel for the applicant has placed reliance on the pronouncement of Hon'ble Apex Court in the case of **Deb Narayan Halder vs Smt. Anushree Halder** (Appeal (Crl) No.1059 of 2003) decided on 26th August 2003. On the strength of this case law, it has been argued that the respondent no.8 has left her matrimonial home on her own free will, therefore, she is not entitled to any maintenance. Though on behalf of the applicant, it has been pleaded that she has left her house out of her own free will, but in reply to the said averments, it is pleaded by the respondent no.8 that her husband did not give respect to his wife and she was treated like a maid servant. She was left with no option, but to leave her matrimonial home out of fear. In the case of Dev Narayan Halder (supra), in the operative portion, the Hon'ble Apex Court has observed that there is no such evidence of misbehaviour with the wife on record. That was a case on an application under Section 125 Cr.P.C. claiming maintenance for

herself and her son, where both the parties are required to lead evidence in their favour, but in the instant case, we are only examining the validity of the order passed by the competent authority.

5. On the contrary, it has been argued by the learned counsel for the respondents that the respondent no.8 that the applicant has filed a suit for divorce, which was subsequently transferred to the Family Court, Lucknow. The procedure provided under the rules, was duly followed and only thereafter the maintenance was granted in favour of the respondent no.8. It has also been argued that the amount awarded in favour of the respondent no.8 cannot, in any manner, be said to be excessive. It was not even 1/4th of the total income of the applicant.

6. It has also been argued that she is legally wedded wife of the applicant. She still intends to live with her husband. She was compelled by ill behaviour of the applicant and his family members to leave her matrimonial home. She does not take any tuition and has no means to maintain herself. At present her parents are looking after her.

7. For grant of maintenance, the main factors that prevail in the mind of the sanctioning authority, are whether the relationship of husband and wife exists between the two, whether the wife is living separately without any valid reason, whether she is earning sufficient amount to maintain herself and whether the respondent is able to maintain his wife? At this stage, we would like to quote the procedure provided for maintenance to wives and children of Army Personnel under the Army Act as under :

“AO 2/2001: PAYMENT OF MAINTENANCE ALLOWANCE TO WIVES AND CHILDREN OF ARMY PERSONNEL UNDER THE ARMY ACT.

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.”

8. In the instant case, there is no dispute to the facts situation that the applicant and respondent no.8 are legally married husband and wife. Admittedly, the applicant has filed a suit for divorce in Family Court, Muzaffarpur (Bihar). The suit was filed on the ground that the respondent no.8 left the house of the applicant on the ground that the applicant was less educated than her and the respondent no.8 was non vegetarian. Hon'ble Apex Court vide order dated 15th May 2015 has transferred the said Divorce Suit from Muzaffarpur (Bihar) to Family Court, Lucknow. A perusal of the order, copy of which has been annexed as Annexure 3 to the O.A., shows that at that stage, mediation proceedings were between the parties, but the mediation has failed. Even during the course of hearing of the present O.A., willingness was expressed through her counsel that she is ready to live with her husband and this open offer of the respondent no.8 was not replied by the learned counsel for the applicant in specific terms. Virtually he avoided to give any specific answer to this offer. It is also admitted that the respondent no.8 is M.A. in Education, but this does not by itself prove that she is earning sufficient amount to maintain herself. Maintenance allowance can be deducted from pay and allowance by virtue of Section 91 (i) of Army Act, 1950. Admittedly, she is living with her parents. So if a girl is living with her parents, it would not give rise to a presumption that she is maintaining herself. There is only a bald assertion on behalf of the applicant that she is earning sufficient money to maintain herself through tuition, but there is no evidence in support of this assertion.

9. It also transpires from perusal of the record that before passing the impugned order, a show cause notice dated 09.04.2013 was sent to the applicant and he was asked to put his case and only thereafter this impugned order was passed. Admittedly, the applicant had filed his written reply to the said show cause notice. Therefore, now at this stage the applicant cannot say that due enquiry was not conducted. During the course of hearing, we also asked learned counsel for the applicant to explain any such circumstance which he would have brought to the notice of the maintenance allowance sanctioning authority, then he could not bring any such circumstances to our notice, which disentitles the respondent no.8 from getting the maintenance. Admittedly the applicant and the respondent no.8 are husband and wife. The relations between the two are not cordial. She is living separately with her parents. A mediation proceedings between the two have already failed. The applicant himself has avoided to give any specific answer to the offer to live with him given by the respondent no.8. Respondent no.8 is living separately with her parents. There is no evidence to hold that she is earning any amount which is sufficient for her maintenance. Admittedly, only 22% of the pay and allowance, as provided under the procedure (mentioned above), has been awarded as maintenance amount which is less than one fourth of the income of the applicant.

10. In the explanation filed by the applicant to the show cause notice, he has raised an objection that in the written statement filed by the respondent no.8 in the Divorce Suit, she had claimed the maintenance allowance, as well as the expenses of the litigation. Therefore, the question of grant of maintenance is sub judice before the civil court and, therefore, Army authorities ought to have refrained from adjudicating this point of maintenance in favour. This aspect has already been considered in AO 2/2001, wherein Paragraph 2 which deals with legal position this aspect has been considered. At this stage, we would like to quote the relevant part of the said Paragraph, which reads as under :

“2. The powers to grant maintenance under the Army Act are independent of the provisions of the Code of Criminal Procedure, 1973 (Section 125 of Cr.P.C.) or for that matter even under Section 24 of the Hindu Marriage Act, 1954. A case for maintenance will be processed

simultaneously while court proceedings are in progress. Such court proceedings do not debar the Army authorities to process and grant maintenance allowance to a petitioner”.

11. In view of the aforesaid provisions, the Army authorities are competent to proceed with the claim of maintenance irrespective of the fact that civil suit is pending. The purpose of grant of maintenance is that early relief should be provided to wife who is living like a destitute and is unable to maintain herself. Admittedly, till date no order of maintenance by any competent civil court has been passed in favour of the respondent no.8. Therefore, simply on the ground that in the written statement, the respondent no.8 has stated submitted that she is entitled for maintenance and the cost of litigation, would not bar the Army authorities to process the claim of the respondent no.8 for grant of maintenance. Thus, this ground of the applicant has no substance.

12. Law is settled on the point 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. 8 and no interference is required in this matter.

13. Learned counsel for the respondent no.8 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, reference may be made to 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.** 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** 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."

14. Keeping in view the cost of living in the present day, an amount of 22% of husband's salary cannot be said to be excessive. At this stage, we would like to quote few lines of Para 18 of the judgment of the Hon'ble Apex Court in the case of **Shamina Farooqui vs. Shahid Khan** (Criminal Appeal Nos.564-565 of 2015) decided on April 06, 2015, which reads as under :

"18. From the aforesaid enunciation of law it is limpid that the obligation of the husband is on a higher pedestal when the question of maintenance of wife and children arises. When the woman leaves the matrimonial home, the situation is quite different. She is deprived of many a comfort. Sometimes the faith in life reduces. Sometimes, she feels she has lost the tenderest friend. There may be a feeling that her fearless courage has brought her the misfortune. At this stage, the only comfort that the law can impose is that the husband is bound to give monetary comfort. That is the only soothing legal balm, for she cannot be allowed to resign to destiny. Therefore, the lawful imposition for grant of maintenance allowance."

In the case of **Jasbir Kaur Sehgal vs. District Judge, Dehradun** (1997 (7) SCC 7, wherein the Hon'ble Apex Court has held as under :

"No set formula can be laid for fixing the amount of maintenance. It has, in very nature of things, to depend on the facts and circumstance of each case. Some scope for liverage can, however, be always there. Court has to consider the status of the parties, their respective needs, capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and those; he is obliged under the law and statutory but involuntary payments or deductions. 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.

Therefore, in the circumstances of the present case, maintenance pendente lite can be fixed at the rate of Rs 5000 per month payable by the respondent-husband to the appellant-wife."

15. Keeping in overall view of the matter, we do not find any circumstance, which disentitles the wife to get maintenance. Therefore, we do not find any illegality or irregularity in the order, whereby the amount of 22% of the pay and allowance has been granted as maintenance in favour of the respondent no.8. Impugned order does not suffer from any irregularity of illegality.

16. In view of what has been discussed above, this Original Application is devoid of merit, deserves to be dismissed and is hereby **dismissed**.

(Air Marshal B.B.P. Sinha)
Member (A)

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

Dated: April , 2018.
PKG