Court No. 2

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Cases of Court No. 2 taken in Court No. 1

Original Application No. 201 of 2016

Friday this the 27th day of October, 2017

Hon'ble Mr. Justice Devi Prasad Singh, Member (J)
Hon'ble Lt Gen Gyan Bhushan, Member (A)

Renu Singh, wife of Rajneesh Kumar Singh, (No.15707742F Nk) daughter of Ram Bilash Singh, presently residing at Village Sarai Sahjadi, Post Office Banthra, District Lucknow, UP.

…….. **Applicant**

By Legal Practitioner: **Shri Yashpal Singh,**
Learned Counsel for the Applicant.

Versus

1. Union of India, through Secretary, Ministry of Defence, Central Secretariat, New Delhi – 110 001.
2. General Officer, Commanding-in-Chief, Headquarters, Northern Command, PIN 908 545, C/o 56 APO.
3. Officer-in-Charge, Records Signals, PIN- 901124, C/o 56 APO
4. Commanding Officer, 14 Sector RR Signal Company, PIN – 904814, C/o 56 APO.
5. Rajneesh Kumar Singh, (No.15707742F Nk), 14 Sector RR Signal Company, PIN – 904814 C/o 56 APO.

…… **Respondents**

By Legal Practitioner: **Shri VPS Vats,**
Learned Counsel for the Central Government.
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ORDER (ORAL)

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant for grant of maintenance allowance by wife of Army personnel.

2. We have heard Shri Yashpal Singh, learned counsel for the applicant, Shri VPS Vats, learned counsel for the respondents and Shri KKS Bisht, learned counsel holding brief for Shri V.K. Pandey, learned counsel for private respondent no. 5 and perused the record.

3. Applicant Renu Singh, wife of Rajneesh Kumar Singh, (No.15707742F Nk), a member of the Armed Forces has approached this Tribunal for grant of maintenance allowance with the allegation that Rajneesh Kumar Singh, respondent No. 5 is not taking care of her and has deserted her. According to learned counsel for the applicant, the marriage was solemnized between the applicant and respondent No. 5 as per Hindu rites and rituals. It is further submitted that after marriage, respondent No. 5 is neither maintaining her nor is giving her justifiable treatment, rather the applicant has been tortured and humiliated for demand of dowry. It is further pleaded that almost after a year of the marriage, the applicant was sent to her parents' home *(Maika)* and at the present she is residing with her parents. Feeling aggrieved with the treatment meted to the applicant, the applicant submitted application for grant of maintenance allowance to

the Army authorities. A copy of the application has been filed by the applicant as ***Annexure-4*** to the Original Application. After considering the application for grant of maintenance allowance, the Army Authorities have rejected the application by means of impugned order dated 08.06.2016 and have declined to grant maintenance allowance on the ground that the case involved peculiar facts and circumstances and since the applicant has a right to approach the civil court.

4. We have gone through the impugned order, a copy of which has been annexed as ***Annexure-1*** to the Original Application. The impugned order does not explain the reasons as to why and on what grounds decision has been taken not to grant maintenance allowance to the applicant in terms of Army Order 2 of 2001.

5. Army Order 2 of 2001 provides that Army Act Sections 90 (i) and 91 (i) read with Army Rule 193, as amended, empower the competent authorities to order deductions from the pay and allowances of an officer, JCO or an OR for the maintenance of his wife and children, including illegitimate children. It mandates that all personnel subject to the Army Act are legally and morally bound to maintain their wives and children, whether or not a harmonious relationship exists between them, subject to certain conditions which are elucidated subsequently. The issue of grant of maintenance allowance under these provisions of the Army Act arises after detailed examination of a complaint from the wife or from the child or on

behalf of the child requesting the competent authority for the same. 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 PC) 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 an applicant subject to the conditions explained in the Army Order (supra). Procedure for processing maintenance cases is provided in Para-4 of the said Army Order being relevant is reproduced as under:-

> "4. The procedure given in the 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 emoluments. 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.
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> (b) CDA(O)/PAO(OR) will be asked to intimate the latest details of pay and allowances of the individual concerned.
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> (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/illegitimate child.

(ii) The person complained against is neglecting to maintain the petitioner.

(iii) The wife is unable to maintain herself and dependent children."

6. We have gone through the application moved by the applicant which contains specific averment that the applicant has not been treated fairly by respondent No. 5 and she is residing with her parents, hence she may be given maintenance allowance. Mere pendency of the matter before the Civil Court, as noticed hereinabove, does not preclude the Army authorities to take a decision for grant of maintenance allowance. In case an incumbent approaches Army authorities with an appropriate application, such an applicant must be attended on merit after providing reasonable opportunity of hearing to the parties.

7. In the present case, we find that Army authorities have not considered the grounds raised by the applicant in her application dated 16.10.2016 (Annexure-4 to the Original Application) and have rejected it by a cryptic and unreasoned order which vitiates the order in view of the fact that principles of natural justice have not been followed and thus, is hit by Article 14 of the Constitution of India.

8. Now, it is well settled principle of law that every order passed by quasi-judicial authority must be a speaking and reasoned, vide, ***K.R. Deb Vs. The Collector of Central Excise, Shillong,*** AIR 1971 SC 1447***; State of Assam & Anr. Vs. J.N. Roy Biswas,*** AIR 1975 SC

2277***; State of Punjab Vs. Kashmir Singh,*** 1997 SCC (L&C) 88***; Union of India & Ors. Vs. P. Thayagarajan,*** AIR 1999 SC 449; and ***Union of India Vs. K.D. Pandey & Anr.,*** (2002) 10 SCC 471, ***Assistant Commissioner, Commercial, Tax Department, Works, Contract and Leasing, Quota Vs. Shukla and brothers,*** (JT 2010 (4) SC 35***, CCT Vs. Shukla and Brothers*** 2010 (4) SCC 785.

9. In the case of ***CCT Vs. Shukla and Brothers*** (supra), their Lordships held that the reason is the very life of law. When the reason of a law once ceases, the law itself generally ceases. Such is the significance of reasoning in any rule of law. Giving reasons furthers the cause of justice as well as avoids uncertainty, to quote :-

> *"Reasons are the soul of orders. Non-recording of reasons could lead to dual infirmities; firstly, it may cause prejudice to the affected party and secondly, more particularly, hamper the proper administration of justice. These principle are not only applicable to administrative or executive actions, but they apply with equal force and, in fact, with a greater degree of precision to judicial pronouncements".*
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> *The concept of reasoned judgment has become an indispensable part of the basic rule of law and, in fact, is a mandatory requirement of the procedural law".*

10. In the case reported in ***JT (12010) (4) SC 35: Assistant Commissioner, Commercial, Tax Department, Works, Contract and Leasing, Quota. Vs. Shukla and Brothers*** their lordships of Hon'ble Supreme Court held that it shall be obligatory on the part of the judicial or quasi judicial authority to pass a reasoned order while

exercising statutory jurisdiction. Relevant portion from the judgment of Assistant Commissioner (Supra) is reproduced as under :-

> "*The principle of natural justice has twin ingredients; firstly, the person who is likely to be adversely affected by the action of the authorities should be given notice to show cause thereof and granted an opportunity of hearing and secondly, the orders so passed by the authorities should give reason for arriving at any conclusion showing proper application of mind. Violation of either of them could in the given facts and circumstances of the case, vitiate the order itself. Such rule being applicable to the administrative authorities certainly requires that the judgment of the Court should meet with this requirement with high degree of satisfaction.* ***The order of an administrative authority may not provide reasons like a judgment but the order must be supported by the reasons of rationality.*** *The distinction between passing of an order by an administrative or quasi-judicial authority has practically extinguished and both are required to pass reasoned orders."*

11. Thus, it is well settled proposition of law that not only judicial or quasi-judicial order but even the administrative order affecting the civil rights of the citizens, should be reasoned one to cope with the requirement of Article 14 of the Constitution. Unreasoned order creates instability and distrust in people's mind towards the administration or the authority who has passed such order. In democratic polity, there is no scope to pass an order affecting civil rights of the citizens which may be unreasoned. It is constitutional obligation and right of the citizens to know the reasons in the decision making process affecting their right or cause.

12. In view of observations made hereinabove, we are of the view that the impugned order dated 08.06.2016 is not sustainable and deserves to be set aside.

13. While parting with the case we put on record that our finding with regard to alleged unfair treatment is not conclusive and need not be treated to be a finding recorded by the Tribunal and we leave it open for the respondents to look into the matter and record a specific finding for the purpose of grant of maintenance allowance to the applicant in accordance with the Army Act and Rules framed thereunder as well as in accordance with Army Order 2 of 2001 (supra).

14. The Original Application is accordingly **allowed**. Impugned order dated 08.06.2016 is hereby set aside. The matter is remanded back to the concerned Army Authorities who shall look into the matter and pass fresh order taking into account the pleadings on record after providing reasonable opportunity of hearing to the applicant as well as respondent no. 5. Decision shall be taken by the respondents within three months from the date of presentation of a certified copy of this order.

15. Original Application is **allowed** accordingly.

No order as to costs.

(Lt Gen Gyan Bhushan)
Member (A)

(Justice D.P. Singh)
Member (J)

Dated : October 27, 2017
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