

**COURT No.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

9.

OA 1487/2018

JWO S K Sahay

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

WITH

OA 1952/2017, OA Nos.1880, 1983, 1641/2018,
OA Nos.1181/2019, OA 2036/2019 WITH MA 2942/2019,
OA 2426/2019 AND OA 34/2020

For Applicant

: OA 1952/2017
: Mr. Rajiv Manglik, Advocate
: OA 1487,1880,1641/2018,
: 1181, 2426/2019 and OA 34/2020
: Mr. Ajit Kakkar, Advocate
: OA 1983/2018
: Ms. Archana Ramesh, Advocate

For Respondents :

: OA 1952/2017
Ms. Barkha Babbar, Advocate for
RR 1 to 3 and 5
Mr. Veerendra Mohan, Advocate for R-4
: OA 1487/2018
: Dr. V. S. Mahndiyan, Advocate RR 1-4
None for R-5
: OA 1880/2018
: Mr. Ashok Chaitanya, Advocate for R 1-4
None for R-5
: OA 1983/2018
: Dr. V. S. Mahndiyan, Advocate RR 1-3
: None for R-4
: OA 1641/2018
: Ms. Jyotsna Kaushik, Advocate for R 1-3 &5
None for R-4
: OA 1181/2018
: Mr. V. S. Tomar, Advocate for R 1-4
: OA 2426/2019
: Dr. V. S. Mahndiyan, Advocate for R 1-3
: Mr. S.H. Sandhu, Advocate for R-4
: OA 34/2020
: Mr. Tarunvir Singh Khehar, Advocate
For RR 1-3
: None for R-4

CORAM:

**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN PHILIP CAMPOSE, MEMBER (A)**

**ORDER
26.02.2020**

As the common questions of law are involved, all these cases listed for hearing today are being heard together.

2. Challenge in all these cases are made to orders passed by the Competent Authority of the Army under the Army Act, 1950; or the Air Force under the Air Force Act, 1950 or the Navy under the Navy Act, 1957.

3. In all the cases, the Prescribed Authority or the Central Government, as the case may be, have exercised the powers available to them under Section 90(i) or 91(i) of the Army Act, 1950, or Section 91(i) or 92(i) of the Air Force Act, 1950 or Section 31 (1) of the Navy Act, 1957.

4. It is the case of each of the applicants, before us, that grant of maintenance to wives and children is governed by the provisions of the civil laws or the statutory enactment governing grant of these benefits, namely, Section 125 of the Code of Criminal Procedure, relevant provisions of the Hindu Marriage Act or the personal law, as may be applicable to the parties. It is their case that once Parliament has enacted a specific law with regard to family disputes, including grant of maintenance to wife and children; in the garb of statutory provisions contained in the Army Act or the Air Force Act, maintenance cannot be

granted and in support of the aforesaid contention, the learned counsel appearing for the applicants, relied upon a judgment rendered by a Co-ordinate Bench of the Armed Forces Tribunal, Regional Bench, Chandigarh in the case of *Major Amit Kumar Mishra* Vs. *Union of India and Others* (OA No.,1229/2017 decided on 31st July, 2018) wherein, after analyzing various provisions of the Army Act, Air Force Act and particularly Sections 28 and 90(i) of the Army Act and Sections 28 and 91(i) of the Air Force Act, the principle laid down is that the Competent Authority (Prescribed Authority) or the Central Government does not have any power to determine the amount of maintenance to be granted to the wife or the children of a personnel working in the armed forces. The provisions of the Act only empowers the Prescribed Authority to pass an order directing deduction from pay and allowances of a personnel and to give effect to the decrees passed by a court of competent jurisdiction granting maintenance in favour of the wife and or children of such personnel, not otherwise. In sum and substance, the law laid down in the case of *Amit Kumar Mishra* (supra) is that Section 90 (i) or 91 (i) of the Army Act and 91(i) or 92 (i) of the Air Force Act is nothing but a provision to give effect to the mandate of a decree for maintenance and to overcome the hurdle created by the prohibition contained under Section 28 in the matter of execution of decrees of Courts it is not an independent provision empowering the Prescribed

Authority or the Central Government to grant maintenance after determining it. Accordingly, each of the applicants submits that in view of the judgment rendered in the case of *Amit Kumar Mishra* (supra), all these applications are liable to be allowed and the entire proceedings and impugned action quashed. They also relied upon certain other orders passed by various Benches of the Tribunal like Regional Bench Lucknow on 6th February, 2019 in the case of *Smt Nisha Tomar alias Simran* Vs. *Union of India and Ors.* (OA No.45/2017) wherein after relying upon the law laid down in the case of *Amit Kumar Mishra* (supra) the application has been rejected.

5. Per contra, the respondents, namely, the counsel representing Union of India, the department concerned and the counsel appearing for the respondents – wives and children, invited our attention to an earlier judgment rendered by the Hon'ble Delhi High Court in the case of *Jaideep Singh Sandhu* Vs. *Union of India and Ors.* (1995 (34) DRJ 307) wherein after analyzing the provisions of Section 28 and 90(i) of the Army Act and after taking note of the specific purpose for which these provisions have been incorporated in the special Military statute, the ambit and the legislative intent in enacting such a special provision as is made applicable to army personnel, after taking note of the personal law with regard to grant of maintenance etc., relying upon certain judgments of the Hon'ble Delhi High Court, it was held that the provisions of

Section 90(i) of the Army Act is an independent provision unconnected or controlled by the provisions of Section 28 of the Act and that the provisions of Section 28 which prohibit attachment or deductions from the salary of a personnel of armed forces in the matter of decree of a Civil Court and the power to grant maintenance available to the Competent Authority under Section 91 of the Army Act operates on two different fields, the latter is a special beneficial provision incorporated into the armed forces Acts because of special need of the services and various other aspects attributed thereto and the action has been upheld. Even though, this judgment was brought to the notice of the Bench dealing with the case of *Amit Kumar Mishra* (supra), we find that it has been taken note of and it is held that the said judgment does not apply.

6. After having bestowed our anxious consideration and the various submissions made before us and after taking note of the provisions of Sections 28, 90(i)/91(i) and 91(i)/ 92(i) of the Army and the Air Force Acts and with due respect to the Bench which laid down the law in the case of *Amit Kumr Mishra* (supra), we are of the considered view that the Bench has not applied the principles normally applicable in the matter of interpretation of statute, the legislative intention in incorporation of a provision in a particular chapter under a particular heading and various cardinal principles of law governing interpretation of a statute have not been adverted to

and the reasoning given by the High Court of Delhi has also not been taken note of in its right perspective. That apart, we also find that earlier to the said judgment, the Regional Bench, Chandigarh in the case of *Charanjit Singh* Vs. *Union of India and ors.* in OA 4252/2013 has delved into the same question and after considering various aspects of the matter has held that not only the statutory provision but also the Army Order 2/2001 is an independent statutory power which enables the Competent Authority, by way of an additional remedy, to grant maintenance to wives and children. In fact, the law laid down earlier in the case of *Charanjit Singh* (supra) has not been taken note of in the case of *Amit Kumar Mishra* (supra). Certain other judgments were also brought to our notice wherein divergent views are said to have been taken, some of which are referred to by the Learned Bench in the case of *Amit Kumar Mishra* (supra) and differed without giving any cogent reason.

7. Keeping in view all these circumstances and also the fact that Union of India has on identical grounds sought review of the judgment rendered in the case of *Amit Kumar Mishra* (supra) has been admitted and pending consideration before a Co-ordinate Bench of this Tribunal, we are, prima facie, of the considered view that *Amit Kumar Mishra* (supra) has not taken note of various principles of law applicable so also relevant judgment in the matter, such as the law laid down by the

Hon'ble High Court and the AFT Regional Bench, Chandigarh in *Charanjit Singh* (supra) and certain other judgments and, therefore, it is a fit case where the entire issue should be placed before a Larger Bench for reconciling the law and to lay down the correct proposition of law. Accordingly, by formulating the following questions, we direct the office to place this matter before the Chairperson on the administrative side for constitution of a Larger Bench. The following questions may be referred to the Larger Bench for its consideration:

- i) Whether the judgment in the case of *Maj Amit Kumar Mishra Vs. Union of India and Ors.* (OA No.1229/2017 decided on 31st July, 2018) lays down the correct law with regard to powers available to the Central Government or the Prescribed Authority under Section 90(i), 91(i) of the Army Act, 1950, Section 91(i), 92(i) of the Air Force Act, 1950 and the relevant provisions of the Navy Act, 1957 and the interpretation construed there under is in accordance with the principles of law particularly the principles of Interpretation of Statute?
- ii) Whether, as held in the case of *Amit Kumar Mishra* Section 90(i) of the Army Act and 91(i) of the Air Force Act are nothing but provisions incorporated to give effect to rights available to wives and children by virtue of a decree of maintenance awarded to them and to overcome the difficulties they may face in the matter of getting the amount of

maintenance as per the decree in view of the prohibition contained in Section 28 of the Army Act and Section 28 of the Air Force Act. Whether the interpretation in this regard made by the Bench in the case of *Amit Kumar Mishra* (supra) is in accordance with the settled principles of interpretation of a statute/law?

- iii) Whether the law laid down in the case of Amit Kumar Mishra is in conflict to the law laid down by the Bench in the earlier case of *Charanjit Singh* and others or the law laid down by the Hon'ble Delhi High Court in the case of *Jaideep Singh Chauhan* (supra) and if so, what should be the correct principle of law applicable with regard to the issue in question?
- iv) Any other question, as may be considered relevant By the Full Bench to the issue in question, as may be canvassed by the counsel representing the parties.

8. Learned counsel representing the respondents are requested to ensure that all relevant documents and material necessary for deciding the issue in question including the discussion before the Legislature at the time of formulation of the statutory provisions, if any, the aims and objects for incorporating the provisions and any other material relevant for determining the legal questions are placed on record with copy to learned counsel for the applicants well before the date fixed for hearing of these matters.

9. The Principal Registrar is directed to circulate a copy of this order to each of the Regional Benches of the Armed Forces Tribunal for their information with a request to bring this to the knowledge of the Advocates through their respective Bar Associations so that any individual or Advocate interested in the matter can address the Full Bench at the time of hearing.

10. List the matter for hearing after orders from the Chairperson.

(RAJENDRA MENON)
CHAIRPERSON

(PHILIP CAMPOSE)
MEMBER (A)

/vks/