

(2019) 06 MP CK 0002

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 18024 Of 2019

Lt.Col. Deepak Tyagi

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 06-06-2019

Acts Referred:

Army Act, 1950 — Section 18, 90(1)
Armed Forces Tribunal Act, 2007 — Section 2(o), 3(o), 14, 14(2)
Navy Act, 1957 — Section 15(1)
Air Force Act, 1950 — Section 18
Evidence Act, 1872 — Section 123, 124
Constitution Of India, 1950 — Article 226, 227

Citation : (2019) 06 MP CK 0002

Hon'ble Judges : Vivek Rusia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Heard on I.A.No.2606/2019, an application for urgent hearing during vacation.

Keeping in view the reasons mention therein, application stands allowed. Matter is taken up for hearing.

The petitioner has filed the present petition being aggrieved by the letter dated 15.11.2012, whereby AEE(Civ.), AGE B/R-II, Mhow has informed the CDA(O), Golibar Maidan, Pune that General Officer Commanding-I Chief, Central Command has granted sanction for deduction of 27.5% per month from the pay and alloance of the petitioner for payment to his wife Mrs. Neha Tyagi for the maintenance of herself and her son. The petitioner is posted as Garrison Engineer (Maintenance), Infantry School MHOW Cantonment District Indore, hence, approached this Court by way of present petition.

The petitioner has assailed the aforesaid order on the ground that under Section 90(i) of the Army Act, 1950, no recovery can be made from the salary of the petitioner unless there is an order from the competent family Court. He submits

that in compliance of the aforesaid order, the respondent has started deducting maintenance amount from the pay and allowance of the petitioner. By judgement and decree dated 19.05.2018 the marriage dated 16.11.2005 of the petitioner has been dissolved and the respondents have stopped the deduction but now the wife of the petitioner has filed an appeal before the High Court in which the stay has been granted and thereafter she made a representation to the respondents and again they have started the recovery hence, the petition before this Court. He further submits that in identical facts and circumstances, Orissa High Court, Cuttack has entertained the writ petition filed by the Major K.D. Singh and passed the interim order on 30.01.2019, hence, notices be issued to the respondents.

That by virtue of the Act called Armed Forces Tribunal Act, 2007 (in short, hereinafter referred as the "Act of 2007"). The Armed Forces Tribunal has been established by the Central Government to exercise the jurisdiction, power and authority conferred to it by or under the Act. Under Section 14 of the Act of 2007 the Tribunal shall exercise or on from the appointment date jurisdiction, power and authority in relation to all the service matters of a an Army Personal. Under sub Section (2) of Section 14 a person aggrieved by the order pertaining to any service matter may make an application to the Tribunal in such form to the Tribunal. Service matter is defined in Section 3(o) which includes remuneration (including allowances), tenure, commission, appointment, enrolment, probation, confirmation, seniority in any other matter whatsoever. Section 2(o) and Section 14 are reproduced below:

"3. Definitions.-In this Act, unless the context otherwise requires,-

(o) "Service matters", in relation to the persons subject to the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950), mean all matters relating to the conditions of their service and shall include-

(i) remuneration (including allowances), pension and other retirement benefits;

(ii) tenure, including commission, appointment, enrolment, probation, confirmation, seniority, training, promotion, reversion, premature retirement, superannuation, termination of service and penal deductions;

(iii) summary disposal and trials where the punishment of dismissal is awarded;

(iv) any other matter, whatsoever, but shall not include matters relating to-

(i) orders issued under section 18 of the Army Act, 1950 (46 of 1950), sub-section (1) of section 15 of the Navy Act, 1957 (62 of 1957) and section 18 of the Air Force Act, 1950 (45 of 1950); and

(ii) transfers and postings including the change of place or unit on posting whether individually or as a part of unit, formation or ship in relation to the persons subject to the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of

1957) and the Air Force Act, 1950 (45 of 1950);

(iii) leave of any kind;

(iv) summary court martial except where the punishment is of dismissal or imprisonment for more than three months; "

14. Jurisdiction, powers and authority in service matters.-(1) Save as otherwise expressly provided in this Act, the Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority, exercisable immediately before that day by all courts (except the Supreme Court or a High Court exercising jurisdiction under articles 226 and 227 of the Constitution) in relation to all service matters.

(2) Subject to the other provisions of this Act, a person aggrieved by an order pertaining to any service matter may make an application to the Tribunal in such form and accompanied by such documents or other evidence and on payment of such fee as may be prescribed.

(3) On receipt of an application relating to service matters, the Tribunal shall, if satisfied after due inquiry, as it may deem necessary, that it is fit for adjudication by it, admit such application; but where the Tribunal is not so satisfied, it may dismiss the application after recording its reasons in writing.

(4) For the purpose of adjudicating an application, the Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely-

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decisions;

(g) dismissing an application for default or deciding it ex parte;

(h) setting aside any order of dismissal of any application for default or any order passed by it ex parte; and

(i) any other matter which may be prescribed by the Central Government.

(5) The Tribunal shall decide both questions of law and facts that may be raised before it."

Since, the petitioner is aggrieved by the deduction from his pay allowances payable to respondent No.6, therefore, the petitioner is having remedy before the Armed Forces Tribunal under Section 14 of the Act of 2007.

Hence, the writ petition is dismissed, with the liberty to the petitioner to approach the Armed Forces Tribunal.