

Notes of the Registry	Orders of the Tribunal
	<p style="text-align: center;">IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH, GUWAHATI.</p> <p style="text-align: center;">OA -21/2016</p> <p>Smt.B Saieswari, W/o No.2609954W Sep B Mailleswsara Rao Bodepalli Quarter No.P-45/07 Pratap Nagar, Missamari Contonment Sonitpur, Assam.</p> <p style="text-align: right;">..... Applicant</p> <p style="text-align: right;">Legal practitioners for the Applicant Ms.Rita Devi Mr.A.R.Tahbildar</p> <p style="text-align: center;">- Versus -</p> <p>(1) Union of India, Represented by the Secretary, Ministry of Defence, Sena Bhawan, New Delhi-1.</p> <p>(2) Officer Commanding, HQ 71 Infantry Division Pin-908471 C/o- 99 APO,</p> <p>(3) Welfare Officer, Welfare Complex HQ Eastern Command Pin-908542 C/o- 99 APO.</p> <p>(4) Administrative Commandant Missamari Contonment, Station Headquarter, Missamari Pin-901224, C/O-99 APO.</p> <p>(5) The Officer-in-Charge, Records Madras Regimental Centre, Wellington, Nilgiri, Tamilnadu.</p> <p style="text-align: right;">.....Respondents</p> <p style="text-align: right;">Legal practitioner for the Respondents Mr.C.Baruah, CGSC</p>

P R E S E N T

**HON'BLE MR. JUSTICE B.P. KATAKEY,
OFFICIATING CHAIRPERSON
HON'BLE LT GEN SANJIV LANGER, MEMBER (A)**

ORDER

18.07.2016

1. Heard Ms.Rita Devi, learned counsel appearing for the applicant and Mr.C.Baruah, learned CGSC assisted by Col Anand, OIC,AFT Legal Cell, appearing for the respondents.
2. The applicant, who is the wife of Sep B Mailleswsara Rao Bodepalli, has filed this application challenging the eviction notice dated 18.04.2016, issued by the Respondent No.4 asking the applicant to vacate the quarter ; the communication dated 12.3.2016 issued by the Respondent No.2 intimating the applicant that her maintenance case cannot be processed due to desertion of service by her husband and for directing the respondent authority to pay 50% of the pay and allowances of her husband as maintenance allowance to the applicant.
3. The learned counsel appearing for the applicant, on instruction, has submitted that the applicant's husband on 15.6.2016 has rejoined service and as such he is no longer a deserter. It has also been submitted that in view of the said position, the communication dated 12.3.2016 issued by the Respondent No.2 needs to be set aside by directing the Commandant to decide on the application filed by the applicant seeking the maintenance allowance. The learned counsel further submitted that for the same reason, the eviction notice dated 18.4.2016 also needs to be set aside as the applicant's husband has rejoined his service.

4. Mr.C.Baruah, learned CGSC, on instruction received, has submitted that the applicant's husband rejoined service on 15.6.2016 and thereafter he has been posted out to 21 Madras, Hqs. Northern Command on 06.7.2016 and presently he is serving there. Mr.Baruah, therefore, submits that the applicant has to vacate the quarter which is under her possession in terms of order dated 17.06.2016 passed by this Tribunal in MA 17 of 2016. Mr.Baruah, learned CGSC, further submits that since the applicant's husband has rejoined and he has been posted out to 21 Madras under Head Quarter, Northern Command w.e.f. 06.07.2016, the competent authority of 21 Madras, HQ, Northern Command, has to take a decision on the representation made by the applicant for grant of maintenance.

5. The applicant admittedly filed an application before the Commanding Officer, respondent No.2, praying for the grant of maintenance, under the provisions of Army Act, 1950. The said application has not been processed by the Commanding Officer on the ground that the applicant's husband has deserted the military service w.e.f. 19.08.2015 and hence the pay and allowances payable to him have been stopped. The Commanding Officer, by order dated 12.03.2016, has intimated the applicant about the same. The applicant having filed the application seeking maintenance under the provisions of the Army Act, 1950 and the applicant's husband having rejoined the military service and presently posted in 21 Madras, HQ, Northern Command, the application filed by the applicant for grant of maintenance, has to be considered in accordance with law, which however, has not been done so far.

6. By the impugned order dated 12.03.2016, the

applicant has also been asked to vacate the quarter. By notice dated 18.04.2016 issued under section 3 (A) of the Public Premises (Eviction of unauthorized Occupants) Act, 1971, the applicant has been asked to give up the possession of the quarter within 15 days from the date of receipt of the said order. Admittedly, the applicant's husband is presently not posted in Station Headquarter, Missamari, Sonitpur, C/o 99 APO, who has been posted at present in 21 Madras, HQ Northern Command and hence, the applicant cannot continue to occupy the quarter which was allotted to her husband while he was posted in Station Headquarter, Missamari, Sonitpur, C/o 99 APO.

7. In view of the above, we dispose of the OA with the following directions :-

(a) The applicant shall, within the time allowed vide order dated 17.06.2016 passed in MA 17 of 2016, vacate the quarter which is under her possession at present ;

(b) The Appropriate Authority of 21 Madras, HQ Northern Command shall, within 3 (three) months from the date of receipt of a copy of this order, shall take a decision on the representation made by the applicant for grant of maintenance, which proceeding has been kept pending vide communication dated 12.03.2016 passed by the respondent No.2 ;

(c) The present OA filed by the applicant shall be treated as the application filed by the applicant for grant of maintenance.

(d) The applicant may also file additional representation

for grant of maintenance, if so advised, within a period of 15 days from today ;

(e) The appropriate authority of 21 Madras, HQ Northern Command, shall pass a speaking order in accordance with law, giving reasons therefor within the aforesaid period of time, on the prayer of the applicant for grant of maintenance ;

(f) The order that may be passed, shall be communicated to the applicant, so that if she has any further grievance, she may approach the appropriate forum.

8. The OA accordingly stands disposed of.

9. No costs.

10. Order dasti.

MEMBER (A)

OFFICIATING CHAIRPERSON

MC/GM

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