

WPA 14795 of 2023

Tanmoy Ghosh
vs.
The Union of India & Ors.

Mr. Dhananjay Banerjee
Ms. Oindrila Ghosh

...for the petitioner

Mr. Debasish Basu
Mr. Rivu Dutta
Mr. Rhitam Chatterjee
Mr. Arun Bandyopadhyay

...for the respondents

The Standing Operating Procedure (SOP)
handed over in Court today is retained with the
records.

The petitioner is working with the Border
Security Force (BSF) as a Constable. Under the
provisions of the Protection of Women from
Domestic Violence Act, 2005 in Misc Case No. 285
of 2016, the Judicial Magistrate, 2nd Court,
Ranaghat, Nadia directed a sum of Rs.8,000/- to
be paid to the petitioner's wife as regular monthly
maintenance, within the 10th day of every
succeeding month with effect from September 12,
2022.

Rely upon the order passed by a competent
Court of Law, the Deputy Commandant, BSF vide
its order dated December 30, 2022 directed a sum
of Rs. 8000/- to be deducted from the monthly

pay and allowances of the petitioner and deposited into the bank account of his wife on account of regular maintenance payable to her.

The petitioner's grievance is that such amount of monthly maintenance could not have been deducted from his pay and allowances under the Border Security Force (Deduction of Pay and Allowances) Rules, 1978.

Mr. Banerjee, learned counsel appearing on behalf of the petitioner draws the attention of this Court to Rule 4(f) of the Deduction of Pay and Allowances Rules. He submits that only by way of Central Government's order the maintenance for the wife, legitimate or illegitimate child or stepchild could have been deducted from the pay and allowances of the petitioner. Such deduction could only be made in the event any relief was given by the Central Government to the wife or child.

Mr. Basu, learned counsel appears on behalf of the Union of India and hands over in Court the Standing Operating Procedure (SOP) for deduction of family maintenance allowances to the wives and children of BSF personnel. The attention of this Court is drawn to Clause 8 of the said SOP. Under Clause 8 of the said SOP, the authorities concerned could implement the

provision for deduction of pay and allowances under Rule 4(f) of the 1978 Rules in the event a competent Court passed an order of maintenance. It was also clarified that such order of maintenance by a competent Court would have precedence over any administrative action of the Government.

Considering the rival submissions of the parties and the materials placed on record, this Court is of the view that under Clause 8 of the SOP it has been clarified that even if there is a Governmental direction for maintenance of the wife and child of the personnel, the order passed by a competent Court of Law **shall** have precedence over such Governmental order.

In the light of the discussion above this Court finds no perversity or arbitrariness in the decision making process of the impugned order passed by the Deputy Commandant on December 30, 2022. The Deputy Commandant has acted in accordance with a competent Court's order and also in accordance with the SOP. Therefore, no administrative action of the Deputy Commandant can be held to be either perverse or erroneous.

Accordingly, **WPA 14795 of 2023** is **dismissed.**

Since affidavits have not been invited in the present writ petition, the allegations made in the writ petition are deemed not to have been admitted by the parties.

All parties are to act on a server copy of this order downloaded from the official website of this Hon'ble Court.

Urgent certified website copies of this order, if applied for, be made available to the parties subject to compliance with all requisite formalities.

(Lapita Banerji, J)