

**FORM NO – 4**

**(SEE RULE 11 (1))**

**IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA**

**ORDER SHEET**

**APPLICATION No : C A 8 /2012 (TA 14/2010)**

APPLICANT (S)

Col. Arun Dattaji Patole

RESPONDENT (S)

Lt. Gen S.A.Hasnain UYSM,AVSM,SM,VSM &  
Gen. Bikram Singh, UYSM, AVSM, SM, VSM, ADC

Legal Practitioner of applicant

Legal Practitioner for Respondent (s)

Mr. S.S.Banerjee

Mr. Anand Bhandari

NOTES OF THE REGISTRY	<b><u>ORDERS OF THE TRIBUNAL</u></b> Order Sl. No. : <u>4</u> Dated : 29.11. 2012
	<p>Mr. S.S.Banerjee, Id. adv. for the applicant on behalf of the recorded advocate Ms. Gargi Pattanayak. Mr. Anand Bhandari, Id. adv. being assisted by Lt. Col. Anil Kr. Chandra. OIC, Legal Cell, HQ, Bengal Area is present for the alleged contemnors.</p> <p>Mr. Banerjee brought to our notice para 18 of the our judgement and order passed in TA 14 of 2010 dated 28.2.11 at page 155 of the petition and submitted that while directions contained in para 18(a), (b), (C) and (d) have been complied with, but he is of the view that para 18(e) of our order has not been complied with. Thus arises the cause for contempt against the alleged contemnors. To further elaborate his contention, he submitted that to consider the case of the applicant, a special review promotion board (Board No. 2) was held and its result was communicated to him on 30.8.11 (vide annexure-P5) by which he was informed that he has not been empanelled for promotion to the rank of Brigadier. But no reason for rejection in promotion was communicated to the applicant either through this letter dt. 30,8,11 or through any other correspondence</p>

thereafter. The Military Secretary, in total disregard to the letter and spirit of the judgement dt. 28.2.11 passed by this Tribunal, did not even take any step to grant personal interview to the applicant which should have been granted in the manner as indicated in para 18(e) of the Judgement. Instead, the applicant had to remind the Military Secretary i.e. respondent No. 3 vide letter dt. 28.11.11 seeking personal interview. Upon such reminder, the MS Branch vide their letter dt. 30.12.11 (annexure-P7) intimated the applicant that if he wanted personal hearing, its date must be intimated and will be fixed accordingly. He brought to our notice the contents of para 4 of the ibid letter which is quoted below :-

“ In case you want to have personal hearing you must intimate the date so that date is fixed and case be explained about non empanelment along with the reasons as directed by the Hon’ble Armed Forces Tribunal. It is clarified that you have to come on at your own expenses for the said interview, as no funds are allocated for calling retired officers for personal hearing.”

The Id. adv. for the applicant further emphasized that this was not the manner in which the applicant’s case should have been dealt with nor was it an appropriate treatment to war veteran who is disabled.

Notwithstanding above, Mr. Anand Bhandari, Id. adv. for the respondents at the outset submits that the application is defective as the verification has not been done by the applicant but by his wife without any authorization, although it is admitted by him that the affidavit has been properly affirmed by the wife on proper authorization by the applicant. Mr. Banerjee, Id. adv. for the applicant readily concedes to this and with liberty of the Tribunal has removed the defect in court itself.

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Mr. Bhandari submits that the orders of the Tribunal have been complied with in all respects except the portion of para 18(e) of the order, as referred to by the applicant, which is under process of compliance. But Mr. Bhandari very fairly admitted that the authorities had to be reminded by the applicant to start action on the personal interview as indicated in para 18(e) which is regrettable. Nevertheless, as submitted by him, after a prod by the applicant, the MS Branch vide their communication dt. 30.12.11, as referred to above, has asked the applicant to signify his willingness for a meeting with MS for personal hearing for purpose of fixing a date, subsequent to which, as submitted by Mr. Bhadari, a reasoned and speaking order would be passed and communicated to the applicant thereby justifying the manner in which each portion of the order was complied with and also the reason for which the applicant could not be empanelled.

In response to the contention of Mr. Bhandari, Mr. Banerjee further submitted that he should first be given a detailed communication from the authorities on every aspect explaining the reason for which the applicant could not be empanelled to the rank of Brigadier and only if he was not satisfied with such reply, he would seek an interview with the MS, if required.

Ld. adv. for the applicant has also prayed that the impugned order be quashed so that after personal interview, if the respondents so think, they may also reconsider the case of the applicant afresh but if this order stands, they may refuse to do so taking plea of the existence of this order.

We have heard both the sides and also examined the documents placed on record. At the outset, we note from the contents of the MS Branch letter dt. 30.8.11 (annexure-P5) wherein it is stated that " consequent to the relief granted by the Kolkata High Court ... " which is totally wrong. Not with that

	<p>the case No. i.e. TA 14 of 2010 has also not been quoted while making this communication to the applicant. The relevant portion is quoted below :-</p> <p>" 1. Ref WP 15548(W)/2003 filed by you in the High Court at Kolkata.</p> <p>2. Consequent to the relief granted by Kolkata High Court in WP 15548-w/2003 vide order dated 28 Feb 2011, you were considered as Special Review (Fresh) case of the 1971 batch of AOC by the No. 2 SB held from 06 to 08 Apr 2011 under the previous system of selection (value judgement) and not approved for promotion to the acting rank of Brig."</p> <p>The contents and drafting of this communication indicates the lack of seriousness with which the signatory of this document, Col. MS (Legal) Army Head Quarters had dealt with this matter. We consider it a very serious lapse for dealing with the matter in such a callous manner. The authorities may take appropriate action against the defaulter, if they so desire.</p> <p>We also find that delaying personal interview to the applicant after he was not empanelled in the promotion board in pursuance of our order in TA 14 of 2010 dt. 28.2.11, also indicates the non-seriousness for compliance of judicial order of this Tribunal by the concerned authorities. This attitude should be brought to the notice of respondent NO. 1.</p> <p>Now coming to the main issue, we find that although grossly delayed but after timely wake up call from the applicant, the MS did consider to give a personal hearing to the applicant in this regard. However, the manner in which such personal hearing is to be given needs a review. We</p>
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direct that MS, during his visits to various Command HQs including Pune and Kolkata (where the applicant usually resides) must intimate the applicant and grant all possible facilities to give him a personal hearing in which all aspects must be explained to him in detail within the limits of security. The applicant should be apprised as to why he was low on merit and whether all points that were to be covered have indeed been covered while considering his case in the special board. Subsequent to such a personal hearing, it will only be appropriate for the MS on behalf of the respondents to express regret to the war veteran for the delay and agony thus caused. Thereafter, the MS shall pass a speaking order in writing explaining the details of the interview and the reasons for non-empanelment of the applicant in the special board that was conducted on the order of this Tribunal.

The contempt petition stands disposed of accordingly without any order as to costs.

Ld. Registrar of this Bench is directed to send a copy of this order to the respondent No. 1 for such action, as he may deem fit and proper.

Let plain copy of the order be handed over to both sides.

(LT. GEN K.P.D.SAMANTA)  
MEMBER(A)

(JUSTICE RAGHUNATH RAY)  
MEMBER(J)