

FORM NO – 4

(SEE RULE 11 (1))

IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

ORDER SHEET

APPLICATION No : O A 3/2013

APPLICANT (S)	Sankar Kumar Das
RESPONDENT (S)	<u>Union of India & 4 Ors</u>
Legal Practitioner of applicant	Legal Practitioner for Respondent (s)
Miss Ashima Roy Chowdhury	Mr. D.K.Mukherjee

NOTES OF THE REGISTRY	<u>ORDERS OF THE TRIBUNAL</u>	
	Order Sl. No. : <u>14</u>	Dated : 07.01.2014
	<p>Miss Ashima Roy Chowdhury, Id. adv. is present for the applicant. The applicant is also present in person Mr. D.K.Mukherjee, Id. adv. appears on behalf of the respondents. He has filed a separate vokalatnama on behalf of respondents 6, 7 and 8, which may be kept on record.</p> <p>Briefly stated the case relates to the applicant, who was enrolled in the Army Medical Corps on 13.9.65 and was subsequently removed from service under the provision of Army Act, Sec. 20 for contracting plural marriage w.e.f. 30.1.85. The GOC-in-C, Central command under powers vested upon him had terminated his service in terms of reg. 333(C)(b) of Regulations for the Army. The order of the GOC's is dt. 27.9.84, which is available at annexure-R2. Ultimately, however, his date of termination from service took effect from 30.1.85 after condoning certain shortfall in service by the competent authority as is evident from Ministry of Defence letter dt. 10.9.91 (annexure-R7).</p> <p>The applicant with his service having been terminated did not receive any pension and not even his provident fund</p>	

amount. The only amount that he received is a cheque from the Army Group Insurance for an amount of Rs. 3956/- towards his share to the AGI. Being denied of his pension and provident fund, the applicant after having represented to various other authorities, finally moved this Tribunal by filing the instant OA on 22.12.11 along with an application for condonation of delay u/s 22 of the Aft Act, which was allowed. In the OA, the applicant has prayed for release of his provident fund amount and also for grant of pension w.e.f. 30.1.85. He has also prayed for 18% interest on the arrears since, according him, he has been wrongly denied his rightful dues for which he and his family has been suffering for more than 25 years now.

Miss Ashima Roy Chowdhury, Id. adv. appearing on behalf of the applicant has reiterated the issues as already submitted in the application. She has also drawn our attention to annexure-R3 of the A/O vide which the Jt. CDA i/C PAO (OR), AMC, Lucknow has refused to issue even the Last Pay Certificate (LPC) vide their letter dt. 15.3.85. She also brings to our notice that without any LPC, no further action, even for processing pension case, could be started. Therefore, she is of the view that crux of the issue is indicative of the attitude of the concerned officials by wrongfully denying LPC, which prevented him from drawing his pension. she also brings to our notice that as per ibid letter, the PAO has quoted no rules or regulations for taking such harsh and insensible action to cause distress to a service personnel, who after putting in 20 years of service, has been discharged without any pension and provident fund, which is own money. Therefore, the Id. adv. prays that suitable action be taken against the defaulting staff besides granting the applicant his due pension and provident fund amount with interest which is his rightful claim.

Mr. Mukherjee, Id. adv. appearing for the respondents refers

to his affidavit-in-opposition and submits that the respondents authorities including Ministry of Defence have been extremely kind to the applicant by not only regularizing his absence for 125 days vide their order dt. 10.9.91 (annexure-R7) so as to enable him to have his date of discharge as 30.1.85, but have also taken all measures to take up the matter with the competent authority regarding grant of pension as per rules, as will be evident from various communications annexed to the A/O.

We, however, notice that the Accounts Officer in the office of PAO (OR), AMC, Lucknow is the person to issue the LPC so that the case for pension could be processed. We further find from annexure-R4 that a letter was issued on 25.3.85 from the AMC, Record addressed personally to Mr. Sanjaya Bahal, IDAS, Jt. CDA, PAO (OR), AMC, Lucknow-2. In the ibid letter it was very clearly brought to the notice of the addressee that in terms of para 131(b) of the Pension Regulations, it was clearly stipulated that pension could be paid to the applicant. Therefore, he is entitled to get the LPC and other connected documents which should be issued so that the case could be processed with appropriate authority for grant of pension. Unfortunately, it appears, the PAO(OR) continued to maintain their earlier stand and refused to issue any LPC to the applicant by taking the view that he was not entitled to pension since he was removed from service. The authorities continued to issue reminders from Zila Sainik Board to grant pension to the applicant. However, the PAO(OR), AMC did not deter from his earlier stand that the applicant was not entitled to get pension and it is for this reason that the case could not be progressed any further for grant of pension. Accordingly, the applicant has not received his pension till date. As regards the prayer for non-grant of provident fund is concerned, the matter, as it appears, is again pending with the PAO(OR) AMC.

We have heard the submissions of both sides and perused the documents placed on record. It surprises us that one Jt. CDA heading the PAO office for the Other Ranks of Army Medical Corps, Lucknow (for short Jt. CDA, PAO (OR), AMC, Lucknow) can take such arbitrary action and deny pension to an eligible service personnel by refusing to issue LPC which is a mandatory document to begin with processing the case for sanction of pension. We find such action of the Jt. CDA of Pension is not only arbitrary and thoughtless but also quite harsh and without any rational or reason which added to the suffering of this applicant. It is shattering to think how many more could have been the victims of such arbitrary and thoughtless action of the officers in the office of PAO.

In the present case, it is evidently clear that the applicant's service was terminated under the provisions of Section 20 of the Army Act, 1950 for contracting plural marriage in violation of para 333(C)(b) of Regulations for the Army. Therefore, his pension and provident fund cannot be automatically withheld as has been done. Provisions of Reg. 113(b) of Pension Regulations for army quoted below is quite clear on the subject "-

" 113(b) An individual who is removed from service under the Army Act, Section 20, may be considered for the grant of pension/gratuity at the rate not exceeding that for which he would have otherwise qualified had he been discharged on the same date. The competent authority may, however, make, if considered necessary, any reduction in the amount of pension/gratuity on the merits of each case."

Therefore, before we pass any final order in this case, we direct the CDA/Jt. CDA in-charge of PAO(OR), AMC, Luknow to be personally present or be represented through an officer not below the rank of Jt. CDA on the next date to explain the circumstances which led them to deny LPC and subsequently

pension to the applicant. He should also explain the circumstances under which the legitimate provident fund dues of the applicant have been denied for so many years without any reason or authority. We also direct the OC, AMC Records to be personally present on the next date to explain under what circumstances, he did not raise the matter to higher authorities within the Army and within the Accounts Deptt. to obtain justice to the applicant.

As an interim measure, we direct that the provident fund amount, as was due to the applicant, be released to him within 30 days from the date of receipt of a copy of this order. The amount shall carry interest as admissible under the rules from the date it was due.

The matter is fixed for hearing on 19.2.14.

On the oral prayer of Miss Roy Chowdhury, Id. adv. for the applicant, she is permitted to implead Jt. CDA, i/C, PAO(OR), AMC, Lucknow-2 as respondent No. 2. She will make necessary correction in the cause title by making appropriate endorsement with date of order in the margin i.e. "added with the leave of the court". She will serve the newly added respondent a copy of the applicant along with a copy of this order. She will also serve the amended petition to other respondents. The applicant is also to be present in person on the next date.

To 19.2.14 for hearing.

Let a plain copy of the order duly countersigned by the Tribunal Officer be furnished to both sides on observance of due formalities.

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

(JUSTICE RAGHUNATH RAY)
MEMBER(J)