

FORM NO – 4

(SEE RULE 11 (1))

IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

ORDER SHEET

APPLICATION No : T A 56/2012

APPLICANT (S)

Biswanath Mondal

RESPONDENT (S)

Union of India & 6 Ors

Legal Practitioner of applicant

Legal Practitioner for Respondent (s)

Mr. Asok Kumar Bairagi/Mr. P.K.Chatterjee

Mr. Anand Bhandari

NOTES OF THE REGISTRY	<u>ORDERS OF THE TRIBUNAL</u>
	<p data-bbox="628 869 1378 918">Order Sl. No. : <u>7</u> Dated : 27.01.2014</p> <p data-bbox="628 918 1378 1120">Mr. Asok Kr. Bairagi, Id. adv. along with Mr. P.K.Chatterjee, Id. adv. appears for the applicant. The applicant is also present in person. Mr. Anand Bhandari, Id. adv. is present on behalf of the respondents. The Transferred Application is taken up for hearing.</p> <p data-bbox="628 1120 1378 1411">This application was initially filed before the Hon'ble Calcutta High Court as a writ petition being WP 13788-w of 2009 which, after establishment of the Armed Forces Tribunal, has been transferred to this Bench of the Tribunal by operation of Sec. 34 of the AFT Act, 2007, for disposal and renumbered as TA 56/2012.</p> <p data-bbox="628 1411 1378 1948">The brief facts of the case are that the applicant was enrolled in the army on 30th January 1980 and on completion of his training, he was posted to 15 Rajput Regiment. While his unit was in field area in Jammu & Kashmir, the applicant submitted his willingness seeking discharge on compassionate ground on 7th Oct. 1985 vide annexure-R1 of the A/O. He had also submitted an application explaining the details of domestic problems while seeking discharge on compassionate ground as is evident from Annexure-R2. As per rules, when his discharge was sanctioned he was put before a Release Medical Board (RMB) on</p>

16th Oct 1985 where his medical category was considered as "AYE" (annexure-R3). Finally his discharge was sanctioned and he was discharged from Army under rule 13(3)(III)(iv) on 9th Nov 1985 (annexure-R4). At the time of his discharged as per provision of the ibid Army Rule, he was put on two years' reserve liability as per extant rules wherein he was required to remain in reserve list for two years or till attainment of the age of 40 years whichever was earlier. This two year period was completed on 8th November 1987. Thereafter, the applicant was never put on any reserve liability.

The applicant, however, submits that his entire process of discharge was manipulated because he actually declined to do the job of a Sahayak to an officer of the battalion, as has been explained by him in para 3 of the TA. Having refused to do such duty, as submitted by the applicant, he was forced to sign on an application written in Hindi seeking discharge on compassionate ground. In fact, as submitted by him, there was no compassionate ground at all in his family and his signature was obtained by deceit. He further submits that he could not read what was written in Hindi but he signed on the said document as a good soldier, as he was verbally told that this was regarding his transfer to another establishment.

During the course of argument, Mr. Bairagi, Id. adv. for the applicant submits that since the discharge itself was obtained by deceit, the authorities should have granted him pension purely on the ground that he was not allowed to serve upto 15 years which is the required minimum qualifying service to earn pension in the Army as per rules.

Mr. Bairagi further submits that in the normal course, whenever such application for discharge on compassionate ground is submitted, clarifications regarding domestic problems are obtained from the wife and parents of the concerned soldier.

However, in the case of the applicant, no such clarification was obtained either from his wife and parents nor from the concerned Zila Sainik Board of the district. All these indicate that a case was made out to discharge the applicant just because his immediate superior officer was not pleased with him for refusing to do the job of Sahayak. Under such circumstances, Mr. Bairagi submits that although the discharge was made out to appear as if it was on compassionate ground, the fact remains that he was not allowed to serve his full term so as to be eligible for pension. Therefore, he prays that the Tribunal should be gracious enough to grant him pension. In order to justify his prayer, Mr. Bairagi has placed reliance on the following two decisions :-

- i) Rajasthan High Court, Jaipur Bench in SB Civil WP NO. 5863 of 1999 decided on 12.8.2008 – Pratap Singh –vs- UOI & Ors.
- ii) Union of India –vs- Bashir Ahmed, (2006) 9 SCC 609.

Mr. Anand Bhandari, Id. adv. for the respondents in his counter affidavit has strongly denied the allegations that have been mentioned in para 3 of the writ petition by submitting that all such incidents, as have been mentioned in the ibid para 3, are not corroborated by any documentary evidence. According to him, these are not actually the facts for which the applicant was discharged. He has produced documents to substantiate that the applicant did have domestic problem for which he applied for discharge on compassionate ground as per his application at annexure-R2. His willingness certificate to go on for discharge on compassionate ground without fulfilling the terms has also been furnished at annexure-R1. Mr. Bhandari, therefore, contends that it is abundantly clear that there was no other ground to precipitate his early discharge except on his own voluntary request to leave the service as his evident from the above

applications and annexures indicated above.

Moreover, Mr. Bhandari submits that after having known that he was discharged as early as in November 1985, the applicant took no step to challenge such discharge either before the appropriate statutory authorities or before any judicial forum till the time he filed the instant writ petition before the Hon'ble Calcutta High Court in the year 2009. Such delay has not been explained anywhere. The delay that has been condoned by this Tribunal is actually on the ground of his prayer for grant of pension which is a recurring cause of action.

Mr. Bhandari further submits that there is no prayer by the applicant in the TA for cancellation of the discharge order on any technical or factual ground. In fact, the fact that he has only prayed for pension, clearly indicates that he has no grievance with regard to his premature discharge and all the allegations that are now made out in this application, are nothing but after-thought.

Mr. Bhandari has also drawn our attention to regulation 132 of Pension Regulations for the Army, 1961 which stipulates that minimum 15 years qualifying service is required to be eligible to earn service pension. In the present case, Mr. Bhandari points out that the applicant has put in barely 5 years of colour service and even if two years reserve liability is added, though not strictly entitled to, then also, the total service span works to be about 7 years, which does not entitle him to get any pension.

Mr. Bhandari further submits that his medical category was SHAPE 1 (AYE) at the time of his discharge as per RMB proceedings that have been annexed as annexure-R3. Therefore, the applicant is also not entitled to any disability pension. Under such circumstances, Mr. Bhandari reiterates that there is no case made out to grant any pension in favour of the applicant even as a compassionate ground case because rules prohibit the Govt.

to sanction any such pension to a person who is not entitled to. He further submits that on his discharge, the applicant was granted terminal gratuity and other relevant dues and the applicant has no grievance in that regard. Therefore, Mr. Bhandari is of the view that the application should be dismissed being devoid of any merit.

On being queried by this Tribunal, the applicant has produced his discharge book in original which has been perused by us. We observe from the ibid discharge book that it has been endorsed in para 4 of the said discharge book that the applicant was discharged on compassionate ground on his own request under Army Rule 13(3)(III)(iv). The fact is not disputed that the applicant was aware of the circumstances of discharge which was "on compassionate ground on his own request" from the time when he was handed over with this discharge book in November 1985 and he never challenged his discharge thereafter. However, as clarified by Mr. Bairagi the applicant being from a rural area and with illiterate background could only understand the consequence of such discharge at a much later stage and then he filed the writ application before the Hon'ble Calcutta High Court seeking at least pension since it was too late for him to be reinstated in service. Be that as it may, Mr. Bairagi prayed that for the survival of the applicant as well as to save the poor family, the Tribunal should grant him some means of livelihood by way of grant of pension.

We have perused the averments made in the application and the A/O and carefully considered the submissions of the Id. advocates for both sides. We have also gone through the decisions relied on by the Id. adv. for the applicant.

We have already observed that the contention made by the Id. adv. for the applicant very strongly that the applicant was discharged by deceit by making a ground for compassionate

discharge, could not be substantiated with any documentary evidence and has been totally denied by the respondents in their A/O. Therefore, at this stage, we cannot but notice that the applicant was fully aware of the fact that he was discharged on compassionate ground on voluntary basis at his own request, as is evident from the discharge book, which was issued to him at the time of his discharge at the training centre. Therefore, it is quite reasonable to assume that the applicant was satisfied with the reason as endorsed in his discharge book, for which he did not complain about it for more than 24 years. However, It is pointed out by the Mr. Bairagi that the applicant did make representations before the authorities but did not get any response. Be that as it may, in the absence of any documentary evidence we are not in a position to go by the averments made by the applicant in para 3 of his TA which has been very strongly denied by the respondents in their A/O and further clarified by Mr. Bhandari during oral submission.

As regards rule position, it is quite clear that reg. 132 of pension Regulations, which is quoted below, clearly stipulates that minimum period of qualifying service for earning service pension is 15 years.

“ 132. The Minimum period of qualifying service (without weightage) actually rendered and required for earning service pension shall be 15 years. “

In this case, the total service rendered by the applicant is 5 years. Even if two years of reserve liability was to be granted, the total service comes to 7 years. Therefore, under no circumstances, the applicant was eligible for pension.

So far as decisions cited by the Id. adv. for the applicant are concerned, we find that none of these decisions is of any avail to the applicant.

In the case of Prtap Singh (supra), the Hon'ble Rajasthan

High Court, Jaipur Bench, has held that reserve military service is also countable towards pension. In that case, the shortfall period was for one year and six months of qualifying service. We have already observed that even if 2 years reserve liability of the applicant was taken into consideration, he could not have rendered 15 years of minimum service to earn pension because even by combining both his colour service and reserve liability, he would have rendered only about 7 years of service which is much less than 15 years of service.

So far as the case of Bashir Ahmed (supra) is concerned, the facts are totally different and the ratio of the decision of the Hon'ble Apex Court in that case does not squarely apply to the facts of the present case.

In view of our foregoing discussion, we find no merit in the claim of the applicant and accordingly, the TA stands dismissed without any cost.

The discharge book produced by the applicant be returned to him on proper receipt.

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)