

FORM NO – 4

(SEE RULE 11 (1))

IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

ORDER SHEET

APPLICATION No : T A 43/2011 (CWJC 5278/2007)

APPLICANT (S)	Sunil Prasad Singh
RESPONDENT (S)	<u>Union of India & 4 Ors</u>
Legal Practitioner of applicant	Legal Practitioner for Respondent (s)
Mr. B.P.Subba	Mr. S.K.Bhattacharyya

NOTES OF THE REGISTRY	<u>ORDERS OF THE TRIBUNAL</u>	
	Order Sl. No. : 18	Dated : 12.02.2014
	<p>Mr. B.P.Subba, Id. adv. is present for the applicant. Mrs. S.K.Bhattacharyya, Id. adv. appears for the respondents. Original documents relating to the Release Medical Board proceeding that was held on 5.4.05 was produced by the respondents on 8.8.13 and has been kept in the safe custody since then. Mr. Subba, on our permission, has inspected the documents in open court today. The respondents have also submitted the original copy of the AFMSI-2A which is the initial medical examination report of the applicant held at the time of recruitment. Let it also be kept with the record.</p> <p>In this particular case we find that the applicant who was enrolled in the Regiment of Artillery 290 Medium Regiment on 23.3.84 was discharged from service on 1.8.05 after completion of approximately 21 years of service which well below the prescribed span of service of a Havildar which is 22 years extendable by 2 years. Under the circumstances, at the outset, we are of the view that this is a case where the service of the applicant has been curtailed for being in a lower medical category than SHAPE 1 in accordance with provision of Army</p>	

Order 46 of 1980 read in conjunction with Army Rule 13(3)(III)(v). Be that as it may, it would appear that in the case of invalidment, the applicant ought to have been discharged under rule 13(3)(III)(iii) through an Invalidment medical board and not to be treated as discharged on a generic condition like Army Rule 13(3)(III)(v) which is actually meant for "all other classes of discharge". Therefore, this is the first question which the respondents are required to clarify through a supplementary affidavit by the next date.

The second issue is with regard to manner in which the applicant was placed before the RMB at the time of discharge and not before a Invalidating Medical Board (IMB) which should have taken place because the applicant was invalidated out of service before completion of his terms of service. Moreover, when a person is to be put before the RMB, then the impression that the medical board gets that the person is to be released on normal completion of terms of engagement; but it is routine for him to be brought before a RMB for the purpose of ascertaining with regard to attributability/aggravation aspect and percentage of disablement. The medical authorities in the instant case could never been under the impression that this particular applicant was actually being invalidated out of service for being in a S₁H₁A₁P₁E₂. Had this been made clear to them, then the medical authorities would have opined whether purely on medical condition the applicant was fit to be invalidated out or be retained.

This aspect gets further magnified when we consider that the medical category of the applicant was actually E2 (P); implying that he is fit in all other categories of S₁H₁A₁P₁ but only with regard to visual acuity he is placed in a very minimal category of E2 on account of cataract development that was operated upon. We also observe from the records that this

applicant, who had barely 21 years of service and below the age of 45 years has developed such cataract in his eyes without any history of injury or disease as is evident from the record placed before us. Therefore, it definitely needs special investigation by the medical authorities as to how can cataract develop at such early age if not aggravated due to exterior conditions of service or having suffered from any disease on account of service or injury on that account. This aspect also needs to be clarified in the S/A with appropriate medical advice by the respondents by the next date.

We, however, are of the view that this is a case where a trained Ophthalmologist from the Army should be present before the court to explain the possible reason why a person with E2 category on account of cataract is unfit for further service in the army and his possible employability restrictions since RMB does not indicate any restriction in the instant case. In the normal course, a person with E2 is considered fit for service. In fact E-2 is a promotable category as per rules. This aspect also needs to be clarified, since usually, as submitted by Mr. Subba, persons with E2 category are considered fit for duties not requiring good visual acuity by both eyes. The applicant, as per him, was fit for all duties and was also discharging such duties very well both in field and peace.

We also observe from the A/O that a show cause notice was issued to the applicant before his discharge on 19.2.05 to which the applicant is stated to have given his reply. However, this statement is not supported by any documents. The respondents are directed to produce supporting documents in original by the next date.

Having discussed all the above aspects with regard to discharge/invalidment of the applicant; other issues with regard to entitlement on disability pension shall be decided after the

next day's hearing when the issues as raised today are clarified through S/A and appropriate submission made by an expert as indicated above. We direct the respondents to ensure presence of an Ophthalmologist on the next date to explain the technical aspects.

Let the matter be fixed for hearing on 23.4.14.

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

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

(JUSTICE RAGHUNATH RAY)
MEMBER(J)