

FORM NO.4
(SEE RULE 11 (1))
IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

ORDER SHEET

APPLICATION No. O.A. No. 21/2014

APPLICANT (S)	Col. Arun Dattaji Patole
RESPONDENT (S)	Union of India & 5 Others
Legal Practitioner for Applicant (s)	Legal practitioner for Respondents
Miss Manika Roy	Mr. Anand Bhandari

	<p style="text-align:center"><u>ORDERS OF THE TRIBUNAL</u></p> <p><u>Order Serial Number:</u> 1. Dated : 08.04.2014</p>
	<p>Miss Manika Roy, learned Advocate on Record led by Mr. Shiv Shankar Banerjee, learned Advocate appears for the applicant. The applicant's wife, who is settled in Kolkata residing in the house of her mother is also present. Mr. Anand Bhandari, learned counsel appears for the respondents and files his memo of appearance which may be kept with the record.</p> <p>At the outset, Mr. Bhandari, learned counsel for the respondents raises objection to admission of this matter on the ground of jurisdiction. He submits that the applicant, as per the records available, is ordinarily a resident of Pune. All correspondences that have emanated from him to the Army HQ have indicated the address of Pune. Therefore, the applicant cannot be a resident of any of the State within the jurisdiction of this Bench of the Tribunal. On the ground of violation of Rule 6 of the Armed Forces Tribunal (Procedure) Rules, 2008, this application cannot be entertained by this Tribunal.</p>

Mr. Banerjee, learned counsel appearing for the applicant draws our attention to a letter bearing No. A/20001/1060/40/AOC/559/MS Legal dated 16.01.2014 (annex. J to the OA) from MS Branch addressed to the applicant at his Kolkata address to substantiate that the applicant is a resident of Kolkata and the respondents are well aware of this fact that the applicant's permanent address is still at Kolkata. Therefore, such a communication was made to the applicant by the respondents and the said communication was received by the applicant at Kolkata. Mr. Banerjee further clarifies that to earn for his living, the applicant goes to various places within the country and abroad including Pune where he is staying for a longer period than any other places. That should not change the status of his permanent residency in Kolkata at the given address. Mr. Banerjee is prepared to authenticate this version by filing an affidavit to that effect. The matter is thus left open at this stage.

However, at this stage, we observe that this matter relates to grievances which have arisen because of a Special Review (Fresh) Board (Col. to Brig.) that was conducted for the applicant based on this Tribunal order dated 28.02.2011 passed in TA No. 14/2010. The applicant submits that he could not be selected for promotion in the ibid Board. Further, the First Review Board was entitled to him which is said to have been held in which also he was not selected. The applicant further submits that he is unsure as to whether final review as promised to him has been held to him. In view of the above grievances, this application has arisen. Therefore, we are of the view that a promotion board for a retired officer, if held as a special review fresh case, based on a court order, then such boards would conduct a normal course by adopting the rules and regulations including approval of the Ministry of Defence being SB No. 2. Therefore, in case the applicant has any grievance with regard to the ibid promotion board(s) then he should

ordinarily seek redress of such grievances from the Ministry of Defence through a formal complaint. We find that the Ministry of Defence, who is a party in this application, has not been given a chance to go into the issues relating to the grievances of the applicant with regard to the conduct of the promotion board (s). Therefore, this application attracts violation of Section 21(1) of the Armed Forces Tribunal Act, 2007 as per which 'other remedies' should have been exhausted before filing any application before the Tribunal. For ease of understanding we quote Section 21 (1) of the Armed Forces Tribunal Act, 2007 as below:-

“ 21. Application not be admitted unless other remedies exhausted. – (1) The Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of the remedies available to him under the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957) or the Air Force Act, 1950 (45 of 1950), as the case may be, and respective rules and regulations made thereunder. ”

Mr. Bhandari, learned counsel for the respondents prays for two weeks time to file his affidavit-in-opposition (A/O) to the admission of this application on the ground of jurisdiction. Upon receipt of the A/O, Mr. Banerjee, learned counsel for the applicant prays for two weeks time thereafter to file his affidavit-in-reply (A/R) to the A/O of the respondents where he will clarify his position with regard to the jurisdiction issue as well as the queries as raised by the Court. Such prayers of the learned counsel stand granted.

Let the matter appear for admission on 09.05.2014. A/O and A/R be filed and exchanged in the meantime.

A plain copy of the order, duly countersigned by the Tribunal Officer, be given to the parties upon observance of all usual formalities.

(Lt Gen K.P.D. Samanta)
Member (Administrative)

(Justice Raghunath Ray)
Member (Judicial)