

FORM NO – 4

(SEE RULE 11 (1))

IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

ORDER SHEET

APPLICATION No : O A 29/2011

APPLICANT (S)

Col. H.S.Jha

RESPONDENT (S)

Union of India & 5 Ors

Legal Practitioner of applicant

Legal Practitioner for Respondent (s)

Mr. Suman Basu

Mr. Mintu Kr. Goswami (Res. 1-3)

NOTES OF THE REGISTRY	<u>ORDERS OF THE TRIBUNAL</u> Order Sl. No. : 25 Dated : 04.06.2014
	<p>Mr. Suman Basu, Id. adv. appears for the applicant. Mr. Mintu Kumar Goswami, Id. adv. is present on behalf of respondents 1 to 3. None appears for private respondents 4 and 5. The application is taken up for hearing.</p> <p>The applicant is A serving Colonel from Infantry (JAKLI), who was posted in Kolkata when he filed this application. Presently, he has been posted out of Kolakta but is pursuing the case since it was filed in this Kolkata Bench of AFT before leaving and in such circumstance, this application is quite in order with regard to territorial jurisdiction.</p> <p>The case in brief is that the applicant did not get his promotion to the rank of Brigadier and being aggrieved he filed a non-statutory complaint on 03.09.2009 (annexure-B) which was rejected by the Chief of the Army Staff vide order dt. 3rd Sept 2009 (annexure-B). Being dissatisfied, the applicant preferred a statutory complaint on 24 Mar 2010 (annexure-D) before the Central Govt. in the MoD, which too was rejected vide order dt. 18 Oct 2010 (annexure-E) on the ground that he could not be empanelled for promotion being low in comparative merit.</p>

The applicant was not satisfied with these replies from both the COAS and Central Govt. and carried out introspection and came down to one ACR covering the period 25 Mar 2005 to 27 Jun 2005. The applicant, as it appears from the averments made in the OA, was of the view that he had reasons to believe that the ibid ACR was not in accordance with his overall profile and, therefore, needed to be interfered with since in a very competitive environment of promotion within the Army, especially in higher ranks, even a depression of box grading from 9 to 8 or 8 to 7 in ACR would make a huge difference. Be that as it may, the applicant filed another statutory complaint on 25 Nov 2010 (annexure-F) to the Govt. of India in the MoD challenging the ibid ACR for the period from 25 Mar 05 to 27 Jun 05.

We find from the records that the said statutory complaint was returned by the MS Branch vide their letter dt. 8.12.2010 (Annexure-A) on the ground that since the grievance of the applicant was based on apprehension it was not tenable. Accordingly, the complaint was not further processed. Thus, merit of this complaint was not gone into either by the MS Branch or by the MoD as it appears from the record. At this stage, we observe that this letter dt. 8.12.2010 at annexure-A, by which the applicant's statutory complaint, which was addressed to the MoD, was rejected by MS Branch, does not appear to be in order since MS Branch i.e. Military Secretary's Branch is an intermediary authority representing the COAS. In our considered opinion, the statutory complaint should have gone to the MOD with whatever comments from MS Branch or CAB (Complaint Advisory Board) working under the COAS and thereafter a decision whether to reject it on technical ground or on merit should have been left to the MOD to whom the complaint was addressed to being statutory in nature, as per provision of law. Therefore, rejection of the complaint at intermediary stage by

improper authority, has caused immense grievance to the applicant, as emphasized by Mr. Suman Basu during his oral submission as well. With all doors closed, the applicant has approached this Tribunal to seek relief and getting the ibid ACR expunged or removed on the grounds as mentioned in the OA.

Before we go into the merit of the case, we are quite convinced that the UOI (MoD) has not had a fair opportunity to look into the statutory complaint made by the applicant challenging the ibid CR for the period 25 Mar 05 to 27 Jun 05. Beside apprehension, as opined by the MS Branch vide annexure-A, we find from the records that there is a document dt. 01.06.05 (annexure-I) which is a counseling letter by the Reviewing Officer (GOC -Maj Gen. P.C.Kharbanda) addressed to the applicant, which though advisory in nature with regard to his official functions, but the contents also communicated displeasure of the GOC as is seen from the ibid letter. That should be considered as enough documentary evidence to give rise to the grievance since the ibid ACR was initiated only on 27 Jun 2005 whereas this letter was issued on 1st Jun 2005.

Be that as it may, Mr. Goswami submits that the applicant has not prayed for quashing of this letter of MS Branch dt. 10.12.2010 (annexure-A). Therefore, it will not be appropriate for the Tribunal to interfere with the same.

Having heard the Id. advocates for both sides and having gone through the documents placed on record including the original ACRs that have been produced before us, we are of the considered view that for rendering holistic justice to the applicant, it will be fit and proper to allow the MoD to examine the case treating this OA as a statutory complaint and dispose of the same within a specified time frame since the applicant is a serving Colonel and as submitted by Mr. Basu, the Id. adv. for the applicant that this impugned ACR would affect his promotion

	<p>and future career prospects. Keeping this aspect in mind, we are not inclined to interfere with this ACR on merit at this stage unless the MoD in the first instance consider the matter in the manner stated above and dispose of the statutory complaint in a fair and judicious manner in accordance with rules. Summary dismissal of the complaint by an intermediary authority only on the ground that it is based on apprehension is not proper since the complaint, in our view, is well supported by material which is available at annexure-I as indicated above.</p> <p>Although, the applicant has not challenged the order dt. 08 Dec 2010 (annexure-A), but for the sake of justice and in view of our foregoing observation, it is necessary to quash this order.</p> <p>In the result, the application is allowed in part on contest by issuing the following directions :-</p> <ol style="list-style-type: none">i) The order dt. 08 Dec 2010 (annexure-A) be hereby set aside.ii) Respondent No. 1 i.e. Secretary, MoD is directed to treat the present OA as a statutory complaint of the applicant and dispose it of within 90 days from the date of receipt of a copy of this order, in accordance with rules.iii) For the purpose, the applicant is directed to submit a representation along with copy of the application including all annexures, replies etc. together with a copy of this order to the respondent No. 1 within two weeks from date. He is also at liberty to submit any other materials as may be deemed fit and proper along with his representation to respondent No. 1. A copy of his representation shall also be furnished to the OIC, Legal Cell, HQ, Bengal Area, for onward transmission to respondent No. 1 for timely compliance of the order.
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	<p>iv) After considering the statutory complaint as per our direction at (i) above, the decision arrived thereon be also communicated to the applicant immediately.</p> <p>v) Be it noted that we have not gone into the merit of the case.</p> <p>vi) There will be no order as to costs.</p> <p>The original ACRs etc. be returned to the respondents in a sealed cover on proper receipt.</p> <p>Let a plain copy of the order duly countersigned by the Tribunal Officer be furnished to both sides on observance of due formalities.</p> <p>(LT. GEN K.P.D.SAMANTA) MEMBER(A)</p> <p>(JUSTICE RAGHUNATH RAY) MEMBER(J)</p>
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