

FORM NO – 4

(SEE RULE 11 (1))

IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

ORDER SHEET

APPLICATION No : O A 5/2013

APPLICANT (S)	Ravindra Kumar Singh
RESPONDENT (S)	<u>Union of India & 4 Ors</u>
Legal Practitioner of applicant	Legal Practitioner for Respondent (s)
Mr. Debraj De	Mr. D.K.Mukherjee

NOTES OF THE REGISTRY	<u>ORDERS OF THE TRIBUNAL</u>	
	<u>Order Sl. No. :</u>	<u>Dated :</u>
	11	09.09.2014
	<p>Mr. Debraj De, Id. advocate appears on behalf of the applicant and Mr. D. K. Mukherjee, Id. advocate is present on behalf of the respondents. The original application is taken up for hearing.</p> <p>2. In this original application filed u/s. 14 of the AFT Act, 2007, the applicant has essentially claimed disability pension on his invalidment from Army service.</p> <p>3. The admitted facts of the case are that the applicant Ravindra Kumar Singh was enrolled in the Army as Sepoy (Clerk) on 18.01.1985. After successful training he was posted to 4/8, Gorkha Rifles with effect from 01.10.1986. On 31.03.2004 the applicant was admitted in 153 General Hospital having been diagnosed as a case of Alcoholic Dependence Syndrome. He was downgraded to medical category SHAPE- 3 temporarily for 24 weeks. Subsequently the applicant was upgraded to SHAPE 1 with effect from 13.04.2005 by a Medical Board held at Command Hospital, Northern Command. However, the applicant was again admitted in 151 Base Hospital for the same diagnosis i.e. Alcoholic Dependence Syndrome on 03.03.2006 and was</p>	

again downgraded to medical category S-3 temporarily for 24 weeks for the period from 03.03.2006 to 16.10.2006. During subsistence of such temporary low medical category, the applicant was again admitted at 158 Base Hospital for the same diagnosis and he was declared in medical category S-5 permanently and accordingly he was recommended to be invalidated out of service by the Invaliding Medical Board (IMB) in medical category SHAPE 5 on 08.08.2006. The Medical Board assessed his percentage of disability as 15-19 per cent for life. His disability was held to be not attributable to nor aggravated by military service. He was ultimately invalidated out of service with effect from 02.09.2006 and struck off from the strength with effect from 03.09.2006 under Army Rule 13(3)III(iii) having been found medically unfit for further service. At that point of time he was holding the rank of Havildar Clerk.

4. Since the disability of the applicant was held as not attributable to nor aggravated by military service and percentage of disability was less than 20, the applicant was not granted any disability pension in terms of Para.173 & 179 of the Pension Regulations for the Army. The applicant preferred an appeal before the MoD seeking grant of disability pension which was rejected on 16.10.2007 (Annex A2) after due consideration. Being dissatisfied, the applicant made a further appeal i.e. 2nd appeal before Defence Minister's Appellate Committee, which too was rejected on 03.02.2009 (Annex.A3) holding that the invaliding disease was neither attributable to nor aggravated by military service and, therefore, he was not entitled to any disability pension as per rules.

5. The applicant, being aggrieved, filed a writ petition before the Hon'ble Patna High Court being Case No.18636 of 2012 which was dismissed being not maintainable on 03.10.2012 with liberty to approach this Tribunal. Accordingly, he has filed

the instant original application praying for directions upon the respondents to grant him disability pension on his invalidment from service as per rules after quashing the appellate orders dated 16.10.2007 and 03.02.2009 as referred to above.

6. We have heard Id. counsel for both sides at length. Id counsel for the respondents has also produced before us the original Medical Board Proceedings which we have carefully gone through.

7. Appearing for the applicant, Mr. Debraj De, Id. counsel has mainly raised three points. His first point is that the applicant was enrolled in the Army in 1985 and was performing his duty without any complaint since then and there was no sign of and disease. However, when he was posted to Shillong, the ibid invaliding disease was manifested in 2004 when he was admitted in 153 General Hospital and was diagnosed as a case of **Alcoholic Dependence Syndrome**. He contends that it is only due to the hazards of military service when the applicant became ill due to consumption of alcohol, perhaps, to relieve him of the stress and strain of service being posted in a cold place. Thus, he became an addict to alcohol. He has, therefore, contended that it is only due to the service condition that has developed the invaliding disease of the applicant. Therefore, it has to be held that the disease was, if not attributable to military service but it has surely aggravated by such service.

8. Mr. D. K. Mukherjee, Id. counsel for the respondents has, however, vehemently disputed such contention contending that many other soldiers are posted at Shillong and all of them are not suffering from such alcohol addiction. It is only the applicant who has developed such disease and as per the specialized Doctor's opinion he was not able to control and went beyond the reasonable limit and consumed excessive alcohol for which the said disease has developed. Mr. Mukherjee, however,

admits that in the army alcohol is supplied to the soldiers but in rationed manner and that too not every day. Therefore, it cannot be said that because of extreme climatic condition of the place where the applicant was posted, it was absolutely necessary for him to consume alcohol for which such disease has developed. On the other hand, it is due to the applicant's own fault that he became such alcohol addict and became a permanently low medical category which has no connection with his service condition as alleged by the Id. adv. for the applicant.

9. Ld counsel for the applicant has next argued that the expert medical opinion was rendered on 03.08.2006 (Annex. A1) but it will appear from the documents annexed by the respondents at page 19 of the counter affidavit. which is a form used for a PBOR proposed to be invalidated out. It would appear that the same was filled in on 04.08.2006 in respect of payment of balance Provident Fund amount etc. Ld. counsel, therefore, contends that even before the medical opinion was finally approved by the competent Medical Board, necessary documentation for final payment of PF amount etc. was done which shows closed and pre-determined mind of the authorities that the applicant would be invalidated out of service.

10. Mr. Mukherjee, Id. counsel for the respondents has, however, countered this contention by stating that whenever a medical opinion is rendered for invalidment, all necessary forms and certificates are simultaneously prepared for ease of documentation. It does not prove that there was any pre-determined mind to invalidate an individual beforehand. All documents are submitted before the IMB or RMB, as the case may be, which has been done in this case as well. This is the usual practice which has also been followed in the case of the applicant.

11. Mr. De, Id. counsel for the applicant lastly contended that

	<p>the appellate authorities while rejecting the appeals of the applicant, have relied on the original Medical Board proceedings without caring to hold a Review Medical Board in respect of the applicant. Therefore, the appellate orders suffered from non-application of mind and have been passed in a mechanical and routine manner.</p> <p>11. Mr. Mukherjee, however, contends that the appellate authorities taking into account exhaustive opinion of the specialist doctor about the origin and development of the invaliding disease of the applicant, did not think it proper to hold any further review medical board. Moreover, it is also not mandatory to hold any review medical board at the time of passing of appellate orders. If there was any doubt or any lacuna in the medical board, only then the appellate authority may direct for holding a review medical board. But in the instant case, there was no such possibility because of very exhaustive and well explained medical opinion rendered by the specialist doctor. Therefore, such contention of the Id. adv. for the applicant does not hold much water.</p> <p>12. We have taken into account the submissions advanced by both sides. We agree with the contention of Mr. Mukherjee that the contention of the Id. adv. for the applicant is totally unacceptable that because of posting at Shillong from 2004 onwards, the applicant became addicted to alcohol and, therefore, his disability is to be treated as attributable to or aggravated by service conditions. Such contention as advanced by the Id. adv. for the applicant is misconceived and misplaced. In army service, soldiers are posted at difficult and isolated places in extreme climatic condition. If the contention of the Id. adv. for the applicant is to be accepted then, in all such cases, the soldiers may become alcohol addict which is an absurd proposition. We have gone through the original medical board</p>
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proceedings. We find that the specialist doctor, who is a graded Specialist in Psychiatry has given a very detailed opinion touching upon all aspects as required under rule 423 of the Guide to Medical Officers (Military Pensions) 2002 as mandated by the Hon'ble Supreme Court in the case of **Dharamvir Singh -vs- UOI & Ors**, 2013 AIR SC 2840. It is clearly opined that the reason of cause of the disease due to is lack of will power and self-control.

13. We have also gone through the service records. We find that he got four red ink entries out of which three were during the period 2005 and 2006, obviously because of his habit of drinking.

14. Under such circumstances, we find no good reason to interfere with the decision of the authorities to invalidate the applicant from service on being placed in an unacceptable low medical category (S-5). We also find the relevant rules have been followed. Otherwise also the applicant has rendered about 21 years of service and as such he has got service pension.

15. For all these reasons, we do not find any merit in the claim of the applicant and accordingly, the OA stands dismissed on contest but without cost.

16. Let original records be returned to the respondents on proper receipt.

17. 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)