

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

ORDER SHEET

APPLICATION No. O.A. No. 36/2014

APPLICANT (S)	Ex-Rect. Amit Kumar
RESPONDENT (S)	Union of India & 6 Others
Legal Practitioner for Applicant (s)	Legal practitioner for Respondents
Miss Manika Roy	Mr. Anup Kumar Biswas (Resp. Nos. 1-4, 6 & 7) Mr. Rajib Mukherjee (Resp. No. 5)

	<p style="text-align: center;"><u>ORDERS OF THE TRIBUNAL</u></p> <p><u>Order Serial Number:</u> 12Dated : 13.08.2015</p>
	<p>Miss Manika Roy, learned counsel appearing for the applicant prays for inspection of the original records submitted by the respondents. She is permitted to inspect the records in accordance with the rules of the Tribunal. Mr. Anup Kumar Biswas, learned counsel assisted by Major Narendra Singh, OIC, Legal Cell, HQ Bengal Area appears for the respondents. In accordance with our earlier order dated 31.07.2015, Col. Jyoti Prakash, Senior Advisor Psychiatry, Command Hospital, Eastern Command, Kolkata appears along with a copy of amendment to Chapter VI and VII – Guide to Medical Officers (Military Pensions) issued by the Ministry of Defence and a copy of blank Medical Board proceedings to assist the Tribunal.</p> <p>We have heard Col. Jyoti Prakash. According to him, the categorization of medical disability is done in accordance with Chapter VI and VII of Guide to Medical Officers and instructions issued by the Ministry of Defence. He further submits that different members of the Medical Board express their view with regard to the percentage of</p>

disability with duration in the prescribed format and accordingly net assessment is done while taking a final decision. It has been stated by Col. Jyoti that disorder mania with psychiatric symptom is a disease which results from a complex interplay of endogenous (genetic/biological) and exogenous (environmental, psychosocial as well as physical) factors. On enquiry made by the court as to whether the disease in question is genetic disorder, Col. Jyoti submits that it cannot be ascertained at this stage. He also submits that family history of the applicant including the DNA test has not been done. Attention has been invited by Col. Jyoti that development of genetic disorder has proceeded much ahead where under DNA test it can be found out whether the disease is carried on because of genetic disorder. It has been admitted by Col. Jyoti that no DNA test has been done and his percentage of disability has been assessed as per the norms and guidelines of the Ministry of Defence and individual assessment of the disease by the members of the Medical Board. On further enquiry from the Tribunal as to why a person with less than 20% disability has been invalidated from the Army services; more so when he or she may not be entitled to any disability benefits, no satisfactory reply has been given for the reasons that it is an admitted fact that the applicant has got less than 2 years of service and there is high chance of relapse of the disease and he is young enough to search for any other alternative employment. It is for the interest of the applicant as well as for the organization. We, however, feel that merely because the applicant is having only two years of service, it may not be fair for the Army to discharge such person for disablement of less than 20%. However, Col. Jyoti submits that the applicant has not completed his training period and during the course of training the disease has been detected so it was felt better to discharge him. All these aspects of the matter shall be considered during the course of hearing.

We have read before Col. Jyoti the report dated 26.03.2005, the relevant portion of which is reproduced below:-

“Case discussed with Senior Advisory in psychiatry. The young soldier had a major psychiatric illness. Which is known to be recurrent in nature. If remained in service, he has to be put in LMC for a minimum period of 4 years. Considering the early onset and severity of the illness, chances of recurrence is high and in that case he may not be able to serve as a fit soldier at all. This will grossly impair in his performing the primary duties of a soldier as he will not be allowed to handle firearms/ammunition. He is thus recommended for invalidment at this stage. The same has been explained to him and his father and they also accepted the same. Plans to work in his father shop after release from service. “

In response to the aforesaid observations made in the report (supra), Col. Jyoti submits that in case the applicant is kept in Army the disease may further aggravate and there may be recurrence. Still we are prima facie not satisfied that in the case of severity of the disease why it has been assessed to less than 20%. In case the magnitude of disease is so high, then why the percentage of disability is less than 20% depriving the applicant from disability pension. Relationship is major and for the purpose of pension it shall be looked into in accordance with the rules but the fact remains that in the Army Regulation disability of less than 20% disentitles the army personnel to receive disability pension. The report also indicates that there is no family history which may affect the applicant to suffer from genetic disorder.

Let the matter be posted for further hearing on 04.09.2015. The personal appearance of Col. Jyoti is exempted. However, it is open for him to produce any other relevant materials on the subject to assist the court in adjudicating the matter.

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 Gautam Moorthy)
Member (Administrative)

(Justice Devi Prasad Singh)
Member (Judicial)

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