

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

ORDER SHEET

APPLICATION No. O.A. No. 38/2010

APPLICANT (S)	Badal Ghosal
RESPONDENT (S)	Union of India & 9 Others
Legal Practitioner for Applicant (s)	Legal practitioner for Respondents
Mr. Sambhu Nath Roy	Mr. Sudipto Panda

		<u>ORDERS OF THE TRIBUNAL</u>
		<div>Order Serial Number: 51</div> <div>Dated : 14.08.2015</div>
		<p>Mr. Sambhu Nath Roy, learned counsel appears for the applicant. Mr. Sudipto Panda, learned counsel assisted by Major Narendra Singh, OIC, Legal Cell, HQ Bengal Area appears for the respondents.</p> <p>Heard the learned counsel from both sides. Perused the records. The learned counsel for the applicant while praying for setting aside of desertion dated 19.10.2010 submits that the order was passed without providing any opportunity to the applicant. The prayer has been made vide paragraph (e) of the prayer portion of the application with a prayer for direction upon the concerned respondents to withdraw, rescind, cancel, quash the impugned office memo No. CF/14403709X/37/A dated 19.10.2010 stating therein that the applicant has been declared deserter by the concerned respondents with dismissal from service. Attention has been invited to Army Regulation 368 under which petitions may be filed by the ex-soldiers to the appropriate authorities on matters relating to their military service. The learned counsel for the applicant admits that the applicant has not filed any such periods. It is submitted by the learned counsel for the applicant that the applicant had to remain absent under some compelling circumstances which had been condoned by the respondents. Whether absence from duty for a period of three years makes out any case to condone the delay or grant exemption to the army personnel should be looked into by the appropriate authorities from the army itself keeping the factual matrix on record.</p>

Accordingly, we direct the applicant to represent his case before the appropriate authorities in terms of Army Regulation 368 within a period of one month from this date. It shall be open for the applicant to submit a copy of the OA along with his representation to the authorities concerned. Upon receipt of such representation from the applicant, the authorities concerned shall decide the representation within a period of three months from the date of receipt of such representation along with a copy of the OA by passing a speaking and reasoned order. The decision taken shall be communicated to the applicant by the authorities concerned immediately.

With the aforesaid directions, we dispose of this application finally. No order as to cost.

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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