

**FORM NO – 4**

**(SEE RULE 11 (1))**

**IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA**

**ORDER SHEET**

**APPLICATION No : O A 1/2011**

APPLICANT (S)

Shri Sahadev Dutta & Anr

RESPONDENT (S)

Union of India & 6 Ors

Legal Practitioner of applicant

Legal Practitioner for Respondent (s)

Mr. Ashok De/Mr. Arjun Kr. Samanta

Mr. Anand Bhandari

NOTES OF THE REGISTRY	<b><u>ORDERS OF THE TRIBUNAL</u></b> Order Sl. No. : <u>79</u> Dated : <u>18.01. 2013</u>
	<p>Mr. Ashok De, Id. adv. leading Mr. Arjun Kumar Samanta, Id. advocate on record appears for the applicants and Mr. Anand Bhandari, Id. adv. appears on behalf of the respondents. The original application is taken up for hearing.</p> <p>This original application has been filed by one Sahadev Dutta, applicant No. 1, who is an ex serviceman along with his son, who has been arrayed as applicant No. 2 in this case. The dispute involved is with regard to issue of service document in favour of the applicant No. 1, which is "Relationship Certificate" based on which he as an ex-serviceman would enjoy the privilege of obtaining a quota for recruitment of his son i.e applicant No. 2.</p> <p>Very briefly stated, the fact of the case is that applicant No. 2 i.e. the son of the ex serviceman (applicant No. 1) was considered for recruitment after due selection in the quota for ex-servicemen's son but since he could not produce the "relationship certificate", his case was not considered at the relevant point of time. However, subsequently, when such certificate was produced, that could not be verified by the</p>

authorities with regard to its authenticity.

As per rules in vogue, 'relationship certificate' is part of service documents of a soldier which are maintained by the Record Office, in this case, Artillery Record, that can be supplied to the ex serviceman at the point of time when it is required for enrolment or for any other related purpose. In the instant case, however, the applicant No. 1, Ex Naik Sahadev Dutta of the Regiment of Artillery, could not convince the authorities that the relationship certificate with regard to his son was genuine. As a result, the authorities went ahead with the process of recruitment held on 9.11.09 -16.11.09, assuming that proper relationship certificate would be furnished before the recruitment process was completed. Even when the common entrance examination was held on 29.11.09 and admit card was sent to the applicant No. 2 on 30.11.09 (annexures-A1 and A2), the relationship certificate could have been authenticated and the recruitment authority could have easily been satisfied from the Artillery Record about the genuineness of the certificate. Unfortunately, none of these was done, as a result of which the recruitment authority could not ascertain that the applicant No. 2 was indeed the son of an ex serviceman for which he was being considered for recruitment. Under such circumstances, his name was dropped from amongst the selected lot of candidates.

The applicant, who is admittedly an ex serviceman, felt aggrieved because his privilege as an ex serviceman and his service document, which in this case is relationship certificate, have been withheld thereby causing great agony and prejudice as his rightful claim to get his son recruited in the quota for Ex-servicemen's son was denied. Accordingly, he has filed this OA praying for quashing of the impugned order at Annexure-A5 dropping the name of his son from the list of successful candidate purely for want of relationship certificate and further

that his son be declared as successful and the privilege of an ex serviceman be restored to him.

During the course of pleading, the respondents had sought some time to verify the authenticity of the relationship certificate. Mr. Anand Bhandari, Id. adv. for the respondents, in all fairness, has confirmed today that the relationship certificate that was issued to the son of the applicant No. 1 was indeed authentic and in order. It is purely on account of error of certain authorities within the Artillery Record that this vital document i.e. relationship certificate could not be produced before the recruitment authorities.

So far as merit of the case is concerned, Mr. Bhandari very fairly admits that there is no defence and it is indeed a case where misunderstanding of certain officials of the Artillery Records that has resulted in denying the privilege to the ex serviceman as he could not get his son recruited.

Mr. Bhandari has, however, during the course of admission had raised the point of maintainability of this application before this Tribunal, which was kept open. Today, he has reiterated that point. He brought to our notice the provision of Sec. 2 of the AFT Act to impress upon us that the candidate whose recruitment is in question is the son of the ex serviceman and he is not governed by the Army Act, and, therefore, his grievance cannot be considered by this Tribunal. He has also pointed out that there are prayers made in this OA seeking recruitment of the son. Therefore, this application is not maintainable before this Tribunal.

Mr. De, Id. adv. for the applicant has submitted that applicant No. 1 is an ex serviceman and he has ventilated his grievance being denied of his due service benefit and therefore, this application is very much maintainable before this Tribunal because his rights with regard to his service conditions and

privileges have been denied by the army authorities. We are impressed by such argument. Here, the main applicant is applicant No. 1, who is admittedly an ex serviceman and the grievances as put forward by him and the prayer made in this application are quite valid for us to consider.

We have heard the Id. advocates for both sides in detail and considered the various documents on record. We are of the view that applicant No.1 is well within his right to pray for the relief against withholding of his service record that has caused hardship to his own dependent son. That besides, as a matter of privilege of an ex serviceman, the son was to be recruited in ex-servicemen's quota which was denied. Therefore, we are of the view that the application can be considered as maintainable as regard applicant No. 1 and we proceed to decide the case on merit accordingly.

The merit of the case, as is discussed above and as conceded by Mr. Bhandari does not stand in the way for the prayers of the applicant to be allowed. Under such circumstances, the application is allowed with the following directions :-

- i) The impugned order at Annexure-A5 be hereby quashed.
- ii) The recruitment to the Indian Army ~~be~~ carried out through the recruitment process that was held in 2009 and concluded on 30.1.10 be considered as valid and absolutely in order. Accordingly, the selection of the applicant No. 2 be held valid.
- iii) Since the applicant could not be recruited in due time for no fault of his, we direct that the applicant No. 2 shall be recruited in the post he was selected with effect from 30.1.10 and due seniority be granted to him with effect from that date. However, he will not be entitled to get any back wages till he actually joins.

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|  | <p>iv) The Chief of Army Staff (COAS) will be at liberty to post the applicant to any training centre and in any suitable grade for which he is eligible as per his present qualification and age.</p> <p>v) Relaxation of age or any selection criteria for enrolment, if required, may be granted by the competent authority in terms of this order, as a special case, which shall not be treated as precedent.</p> <p>vi) This order be implemented within 60 days from the date of <sup>its</sup> communication, <del>of this order</del>.</p> <p>vii) There will be no order as to costs.</p> <p>Let a plain copy of the order duly countersigned by the Tribunal Officer be furnished to both parties on observance of usual procedure.</p> <p>(LT. GEN K.P.D. SAMANTA)<br/>MEMBER(A)</p> <p>(JUSTICE RAGHUNATH RAY)<br/>MEMBER(J)</p> |
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