

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

APPLICATION No. O.A. No. 23/2013

APPLICANT (S)	Maj Rajesh Kumar Kar
RESPONDENT (S)	Union of India & 4 Others
Legal Practitioner for Applicant (s)	Legal practitioner for Respondents
Mr. Aniruddha Datta Mrs. Maitrayee Trivedi Dasgupta	Anand Bhandari

<u>ORDERS OF THE TRIBUNAL</u>	
	Order Serial Number: 1 Dated : 18.04.2013
	<p>Mr. Aniruddha Datta led by Mrs. Maitrayee Trivedi Dasgupta, learned counsel appears for the applicant. The applicant is also present in person. Mr. Anand Bhandari, learned counsel appears for the respondents and files his memo of appearance which may be kept with the record.</p> <p>Mrs. Dasgupta, while presenting the case seeking admission of the application as well as relief on her interim prayer as submitted in the ibid application, briefly submits that the applicant, who is a medical officer in the AMC presently posted in 8 Battalion, Assam at Barrackpore was low medical category {S-2 (Temporary)} was due for his re-categorization on 17.11.2012. As submitted by Mrs. Dasgupta in the ibid application, due to absence of the Senior Advisor (Psychology) at Command Hospital, Kolkata, the medical board could not be completed. This re-categorization medical board was ultimately held on 10.01.2013 at Barrackpore as per the annexed copies of the re-categorization medical board proceedings in Annexure A-3 which has been approved by the office of the DGMS on 20.02.2013 and perused by DGAFFMS on 01.03.2013. As per the ibid re-categorization medical board, the applicant has been upgraded to medical category S₁ H₁ A₁ P₁ E₁.</p> <p>Mrs. Dasgupta further submits that in the meantime without awaiting the result of the re-categorization medical board proceedings, the authorities issued the impugned order dated 04.12.2012 (Annexure</p>

A-1) and vide para 5 (a) of the impugned order, the applicant has not been considered for further extension of service for being in low medical category as is evident from the ibid order and he is to be released from the Army on 25.04.2013. On receipt of the impugned order, the Commanding Officer of the applicant (CO 8, Assam) has been making representations to obtain clarification but no such clarification has been received except that the authorities had continued to insist that the order dated 04.12.2012 must be abided by and the applicant to^{be} discharged by 24.04.2013 in all circumstances.

Being aggrieved and due to paucity of time as explained by Mrs. Dasgupta during her oral submission, the applicant has filed this OA before this Tribunal on 15.04.2013 which has been registered as O.A.No. 23/2013.

Mrs. Dasgupta further submits that the interim prayer is sought for in this matter since the applicant is due to be released from the Army on 25.04.2013 and unless the interim prayer as sought in para 9 of the OA is granted by this Tribunal, the whole application would be infructuous. As per the interim prayer, the applicant prays stay of the operation of the impugned order dated 04.12.2012 with regard to the para as applicable to the applicant and the applicant be allowed to continue in service and not discharged on 25.04.2013. Mrs. Dasgupta concluded her argument with the submission reiterating that in case the interim prayer is not granted at this point of time or before the effective date of 25.04.2013, the entire efforts to obtain justice will become infructuous so far as the applicant is concerned. In this regard she prays our intervention and also an early hearing of this application.

Mr. Bhandari, at the outset, objects to the admission of this application as well for the grant of interim prayer on the ground ; firstly, he has had no opportunity to even file his objection affidavit in this matter; and secondly, the applicant has not exhausted all the available remedies/resources that are available before him to obtain redressal of his grievances before coming to this Tribunal as required under Section 21(1) of the AFT Act, 2007. He further justifies his argument for its non-maintainability by submitting that the matter cannot be taken up by the AFT unless the applicant exhausts all other remedies for redress. It is very much relevant in this matter since he has been served with the

discharge order on 04.12.2012 and it is nearly four months thereafter that the applicant has still chosen not to agitate against such discharge order before the appropriate authorities. Mr. Bhandari further submits that although the Commanding Officer of the applicant has made representation but the rules provide that the applicant should seek redress personally from the appropriate authorities of Army HQ as well as Union of India, Ministry of Defence. The Commanding Officer cannot step into the shoes of the applicant in this regard in accordance with Section 21(1) of the AFT Act, 2007. Besides the point of maintainability, Mr. Bhandari submits that he has certain documents to justify the release of the applicant as has been ordered vide order dated 04.12.2012 (Annexure A-1) which he would submit in his objection affidavit. He is prepared to submit his objection within a short period and hence there is no hurry in granting any interim prayer as prayed for at this stage. Moreover, as submitted by Mr. Bhandari, the applicant could be discharged on the due date which is 25.04.2013 but the authorities could still be asked to abide by the decision of the Tribunal if and when it is heard once it becomes maintainable. Under such circumstances he very fervently prays that the application should not be admitted at the first place and the interim prayer should not be granted. Mr. Bhandari further submits that he has instruction to submit that the applicant was not in merit for grant of extension but he would like to submit all the relevant documents in this regard by next date through a proper affidavit. At this point, Mrs. Dasgupta strongly contested this submission and submits that such an oral submission is extremely in contravention to the context of the respondent's letter dated 04.12.2012 (Annex. A-1). She drew our attention to the ibid letter which clearly segregates officers who are approved for extension; who are not approved for extension for different reasons including some who have not been approved for want of merit and some who have not been approved for being in low medical category and a few others are not given extension due to various different reasons such as ACRs etc. Therefore, at this stage, an oral submission to this effect actually stands in contravention to their earlier discharge order. She would contest all these aspects in her written reply affidavit once she is served with relevant documents by Mr. Bhandari through his A/O.

We have heard both sides and the contentions made by them. We are of the view that the some ^{interim} orders need to be passed by this Court at this stage so that justice is not delayed and the matter does not become infructuous, in case the matter is not admitted. Under such circumstances, we direct the respondents to file their A/O with regard to the admission of the matter as well as interim prayer if they are so advised within 10 days from the date of this order. Mrs. Dasgupta prays for 10 days time thereafter to file the A/R on behalf of the applicant. Let it be granted. Accordingly, let the matter be fixed for hearing for admission on 09.05.2013.

In the meantime, the respondents are hereby restrained from giving effect to the impugned order dated 04.12.2012 so far as it relates to the applicant only i.e. para 5(a) of the ibid order till 09.05.2013.

A plain copy of the order, countersigned by the Tribunal Officer, be given to the parties upon observance of all usual formalities.

(Lt Gen K.P.D. Saranta)
Member (Administrative)

(Justice Raghunath Ray)
Member (Judicial)