

FORM NO – 4

(SEE RULE 11 (1))

IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

ORDER SHEET

APPLICATION No : O A 45/2012

APPLICANT (S) Bashuki Nath Rai
RESPONDENT (S) Union of India & 3 Ors
Legal Practitioner of applicant Legal Practitioner for Respondent (s)
Mr. Jatinder Singh Dhatt Mr. S.K.Bhattacharyya

NOTES OF THE REGISTRY	<u>ORDERS OF THE TRIBUNAL</u>
	<p>Order Sl. No. : <u>23</u> Dated : <u>09.07.2014</u></p> <p>Mr. Jatinder Singh Dhatt, Id. adv. appears for the applicant and Mr. S.K.Bhattacharyya, Id. adv. is present on behalf of the respondents. The application is taken up for hearing.</p> <p>2. The applicant, through this OA has raised a grievance that even though he had put in pensionable service in the Indian Army, counting both colour service and reserve service, he was entitled to pension and other benefits but the respondents have illegally withheld the same.</p> <p>3. The brief facts of the case are that the applicant was enrolled in the Indian Army on 7.5.1963 in 604 Battalion Unit of EME Corps in the trade of Driver (MT). His term of appointment was 10 + 10 as is evident from the only document that the applicant has annexed vide Annexure-A, which is an extract from a page of the duplicate copy of discharge book, the full document is at annexure-B1. The case of the applicant is that since he was engaged on condition of 10 years colour service plus 10 years reserve liability, therefore, the total effective service would always work out to be more than 15 years, which is the minimum qualifying service required for being eligible to get pension, as per Pension Regulations for the Army. Therefore,</p>

the respondents be directed to grant him pension and other benefits as are admissible according to rules.

4. In order to strengthen the case, Mr. Dhatt, Id. adv. for the applicant has brought to our notice the relevant column at annexure-A1 and B1. It has been endorsed against column 9 of the discharge book i.e. "Reasons for Release/Discharge/Dismissal" as "NO LONGER REQUIRED". He further submits that in the said column against the remarks, "Reasons for Release/Discharge/Dismissal", no tick mark is given. He, therefore, submits that there is no way of dismissal or discharge on such ground for a serving soldier. As such, the only conclusion is that he was released from service and not otherwise.

5. Mr. Dhatt has also placed reliance on an unreported decision of this Tribunal in OA 53 of 2011 (**Ganesh Chander Singh –vs- UOI & Ors**) decided on 23rd March 2012. He submits that this is a similar case where both colour service and reserve service were counted to determine the total pensionable service and accordingly, the applicant therein was granted pension. He submits that since the present applicant is similarly situated, same decision may also be passed in his case so that he can get pension and other benefits.

6. However, in the instant case the facts are totally different. According to applicant's own document i.e. duplicate discharge book it is clearly mentioned that he was discharged as service "no longer required."

7. Mr. S.K.Bhattacharyya, Id. adv. for the respondents submits a supplementary affidavit today in which it has been averred that all relevant documents in respect of the applicant have been destroyed after the stipulated period of 25 years in accordance with para 595 of Regulations for the Army. It is further submitted that as per long roll that is available the applicant was enrolled on 7th May 1963 with the terms and conditions of 10/10 i.e. 10

years colour and 10 years reserve service. He was discharged on 24 Sep 1974 under Army Rule 134(3)(III)(v) i.e. "service no longer required.". It is also stated that the applicant has served for more than 10 years but less than 15 years including colour and reserve and, therefore, he was not entitled to pension in terms of para 132 of Pension Regulations.

8. Mr. Bhattacharyya is not, however, in a position to authenticate annexure-A or B1 i.e. duplicate copy of discharge book. But his contention is that since the endorsement made therein clearly indicates that he was discharged on the ground that his service was no longer required, it is amply clear that his reserve liability was also terminated. Drawing our attention to page 3 of the counter affidavit, Mr. Bhattacharyya further submits that the applicant rendered 10 years and 322 days of total qualifying service after deduction of 183 days of non-qualifying service from total 11 years 4 months and 17 days of service tenure. This is because the applicant had overstayed leave and also incurred two red ink entries in the short spell of service. It is also submitted by Mr. Bhattacharyya that after his discharge the applicant was paid all his dues as per details given at page 4 of the counter affidavit. So far as the case cited by the Id. adv. for the applicant is concerned, Mr. Bhattacharyya submits that the facts are clearly distinguishable and therefore that decision is not applicable to the case of the applicant.

9. Having heard the submissions of the Id. advocates for both sides and having perused whatever documents have been produced before us, we find that there is no dispute that the applicant was enrolled on terms and condition of 10 years colour service and 10 years reserve liability. He having been enrolled on 7th May 1963, his term of 10 years expired on 6th May 1973, but he was actually discharged on 24th Sept 1974. Therefore, it is quite apparent that the period beyond the first 10 years of

colour service, he continued for more than a year i.e. from 6th May 1973 upto 24th Sept 1974, which period must be as reservist. Thereafter he was discharged with the endorsement "service no longer required". It only means that his reserve liability of 10 years, after 10 years of colour service, ended and he was no longer in reserve list. In the absence of any other documents we have no other alternative than to arrive at this conclusion based on the only document that has been produced by the applicant himself. In that event, he did not complete 15 years of service counting both colour and reserve service and hence was not entitled to pension in accordance with regulation 155 of Pension Regulations.

10. We have gone through the decision in **Ganesh Chander Singh's case** as referred to by the Id. adv. for the applicant, a copy of which is annexed with the rejoinder of applicant. It appears that the applicant of that case was engaged for 9 years colour service with 6 years reserve liability. The respondents in that case did not dispute about the length of colour service which was 9 years and 126 days but they disputed about the reserve liability. However, as is evident from para 14 of the judgement, it was revealed from the discharge book that it was clearly indicated therein that the applicant was liable to be inducted into reserve service at any time during the period of reserve liability. From page 17 of the discharge book it also revealed that the applicant was discharged on completion of regular service with the rider that "discharge with gratuity otherwise than at his request." Relying on earlier decision of the Principal Bench, this Tribunal granted the benefit of counting both regular service and reserve serve for earning pension. In the present case, the facts are different. Here, as per applicant's own document, he was discharged with the endorsement that service "no longer required". Therefore, this decision is of no

avail to the applicant.

11. We also notice that at the relevant point of time, i.e. 1971 onwards, there was war and possibly, therefore, the applicant did not want to remain in reserve. Normally reserve liability is terminated on the individual's own request or if the individual does not turn up even though called to serve during reserve liability period. May be to avoid the hazards of war, the applicant did not want to continue and that is why he was discharged from reserve liability with such endorsement as "service no longer required." It is also to be noted that the applicant was a driver and he might have got any other employment at that point of time. But all these are presumption and assumption. In the absence of any documents, no definite inference can be drawn. It is also to be noted that the applicant has approached this Tribunal in 2012 i.e. long 37 years after his discharge in 1974. Therefore, in the normal course the respondents have destroyed the records as per rules. The applicant cannot be permitted to take advantage of this position to the prejudice of the respondents because he himself was not vigilant and diligent enough in enforcing his legal right, if any, at appropriate time.

12 On a consideration of the facts and circumstances of the case, we do not find any merit in this OA which is liable to be dismissed. Accordingly, the OA stands dismissed on contest but without any costs.

13. 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)