

FORM NO – 4

(SEE RULE 11 (1))

IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

ORDER SHEET

APPLICATION No : O A 41/2011

APPLICANT (S)	Sujit Kumar Das
RESPONDENT (S)	<u>Union of India & 2 Ors</u>
Legal Practitioner of applicant	Legal Practitioner for Respondent (s)
Mr. Jatinder Singh Dhatt	Mr. D.K.Mukherjee

NOTES OF THE REGISTRY	<u>ORDERS OF THE TRIBUNAL</u> Order Sl. No. : <u>27</u> Dated : 09.07.2014
	<p>Mr. Jatinder Singh Dhatt, Id. adv. appears for the applicant and Mr. D.K.Mukherjee, Id. adv. is present on behalf of the respondents. Wing Commander H.D.Singh, OIC, Legal Cell, Advance Air HQ, Kolkata is also present to assist the court. The application is taken up for hearing.</p> <p>2. The brief facts of the case are that the applicant was enrolled in the Indian Air Force on 3rd Feb 1983 as Airman and was discharged on 15th May 1998 in the rank of Sergeant on medical ground. He was brought before an Invalidating Medical Board which was held on 17.4.98 at AF Command Hospital, Bangalore which, opined that he was not medically fit for further service. He was diagnosed as a case of (i) <i>Affective Psychosis (old)</i> V-67 and (ii) <i>Intermittent Rectal Intussecuption (old)</i> V-67. His composite disablement was assessed at 40%. However, the ibid disabilities were held to be neither attributable to nor aggravated by Air Force Service; rather it was held as constitutional disease. Accordingly, he was invalidated out of service on the ground of being medically unfit for further service. He had rendered total 15 years and 103 days of service and was</p>

	<p>sanctioned service pension and other benefits. However, no disability pension was sanctioned as per PCDA order dt. 31 Jan 2000. The applicant preferred an appeal on 17 Apr 2000 against non-grant of disability pension which was rejected by MoD letter dt. 16 Mar 2001 holding that he was not entitled for disability pension.</p> <p>3. The applicant submits that his discharge on medical ground was not proper as he was not treated properly by the concerned medical authorities. According to him, he was suffering from constipation problem since 1993-94 for which he was treated very casually. During that period he was placed in medical category CEE(Temp). Ultimately in 1996 his condition deteriorated and he was admitted in the Command Hospital and eventually he was invalidated out on 15 May 1998 for the diseases indicated above. The applicant alleges that his was a clear case of medical negligence for which his condition deteriorated. Subsequent to his invalidment from Air Force service, he got himself treated in civil hospital till the end of 2007 and was under high doses of anti-psychotic drugs. In Feb 2010 he was admitted in the Command Hospital again for treatment. According to the applicant his actual disease was IBS(CP) which was not properly treated and subsequently the symptoms of psychiatric disease arose. The applicant made a representation on 23.12.2010 to the Chief of Air Staff (annexure-A6) praying for his reinstatement at an early date. Having failed to get any favourable redress, he has filed the instant original application in the year 2011 praying for a direction to the respondents to reinstate him in service as SGT.</p> <p>4. The respondents have contested the application by filing a counter affidavit wherein they have stated that the applicant was under periodical treatment by medical specialists since long and he was placed in LMC i.e. CEE (T24) from 24 April 1996 and</p>
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finally he was invalidated out of service through an IMB w.e.f. 15 May 1998 after rendering 15 years and 103 days of service. He was accordingly granted service pension. However, his disability was considered as neither attributable to nor aggravated by air force service by the IMB and, therefore, he was not granted any disability pension by the PCDA(P). His appeal against non-grant of such disability pension was also considered by the MOD and rejected as he was not entitled to such benefit.

5. Mr. Jatindra Nath Dhatt, Id. adv. for the applicant has made an allegation against the medical authorities for wrong treatment as according to him, due to medical negligence, the applicant's condition deteriorated. His submission is that the applicant had been suffering from constipation problem since 1993 for which only medicine that was prescribed was Ishabgul. Initially he was placed in LMC (CEE) temporarily but was subsequently upgraded to AYE. It is, therefore clear that he was fit in all respects. Thereafter all on a sudden in 1996 he had to be admitted in hospital where also he was not treated properly. All these medical negligence led to the invalidment of the applicant.

6. He has also submitted that the Invalidment medical board proceedings that have been submitted by the respondents in original and have been inspected by him, are false, fabricated and manipulated. Therefore, no reliance is to be placed on such fake medical documents and the concerned authorities should be adequately punished for producing such tampered and manipulated documents before the Court. He in open court singled out the Wg Commander, who is the OIC, Legal Cell, accusing him of manipulating documents and making false affidavits He has also raised a grievance that copies of the medical documents have not been supplied to him.

7. Making all such allegations during oral arguments, Mr. Dhatt has submitted that this Tribunal has inherent power to

mould the relief. Taking into consideration the prayers made at para 8(b) & (c) i.e. for passing such order or further order as this Tribunal may deem fit. Mr. Dhatt has prayed for reinstatement in service and in his oral submission has also prayed for grant of disability pension in favour of the applicant even though no such prayer has been made specifically in the OA.

8. Mr. Dhatt further submits that when the applicant was enrolled in the Air Force service he was fully fit and healthy and there was no indication of the disease. It was during the course of service that the disability for which he was invalidated out, had cropped up and, therefore, it should be assumed that the same was attributable to or aggravated by Air Force service. The composite disability being assessed at 40%, the applicant is entitled to disability pension which was wrongly denied to him. He further contends that the medical opinion that the ibid disability was constitutional in nature is totally wrong and arbitrary without any reason.

9. Mr. D.K.Mukherjee, Id. adv. for the respondents forcefully denies all the allegations levelled against the respondent authorities and personally against the OIC, Legal Cell, a serving Air Force officer by the Id. adv. for the applicant. Mr. Mukherjee further submitted that such un-substantiated allegations should not be taken note of. He has referred to the averments made in the counter affidavit and submitted that it will be clear from the original medical board proceedings that the disability of the applicant was constitutional in nature and has no connection with the conditions of service. He has denied the allegation that there was any medical negligence on the part of the attending specialist doctors. He further submits that the Id. adv. for the applicant is making all such wild allegations without placing on record any single evidence. Therefore, such allegations are without any substance and should be discarded at threshold. He

has further submitted that the medical documents being confidential in nature can not be handed over to the applicant's counsel unless specifically asked for or there is any specific order of the Court. In this case, Id. adv. never made any application seeking copies of such documents. Therefore, he cannot be permitted to raise such allegation at this stage.

10. Having heard the submissions of Id. advocates for both sides and having gone through the records produced including the original Invalidment medical board proceedings, we are of the clear opinion that the Id. adv. for the applicant has not been able to substantiate his allegations in any manner. We find that the medical board proceedings are absolutely in order and the board was held according to rules. There was no erasing or overwriting in the opinion of the board. The specialist has also given a detailed opinion. Under such circumstances, we reject the allegations as made by the Id. adv. for the applicant. We also observe that being an officer of the Court, Id. adv. for the applicant ought not to have made such wild allegations against a serving commissioned officers of the Indian Air Force without any evidence. Such allegation made by the Id. adv. is totally unjustified and uncalled for and deserves to be rejected with contempt.

11. As regards his prayer for reinstatement in service, we do not find any merit in the argument put forth by the applicant in his OA or other averments. Even during oral submission Mr. Dhatt, the Id. advocate for the applicant, could not impress with any law point or citation to justify that his discharge on medical invalidment was in any way illegal. We also find that the discharge of the applicant on medical invalidment was absolutely in order and within rules. Therefore, such prayer is liable to be rejected.

12. As regards his oral submission praying for disability

pension, we find that the applicant during the course of his service had developed some kind of mental disease i.e. Affective Psychosis (old) which was treated in the Command Hospital. However, since the medical condition of the applicant did not improve and he was placed in low medical category EEE, there was no other alternative than to discharge him on medical ground in accordance with Air Force Rules. We find no arbitrariness or illegality in the action taken by the respondents. A soldier with an unacceptable low medical category cannot be retained in Air Force or Indian Army as per extant rules. On his invalidment, the applicant was granted his due service pension. However, since his disability was considered as neither attributable to nor aggravated by air force service, he was not entitled to any disability pension even though his percentage of disablement was 40%. Therefore, disability pension was correctly denied to him.

13. Having considered the matter from all angles 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 cost.

14. Let the original records be returned to the respondents on proper receipt.

15. 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)