

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

APPLICATION NO. O. A. No.15/2013

APPELLANT (S)	Sepoy (MP) Sanjib Goswami
RESPONDENT(S)	Union of India & 4 Ors.
LEGAL PRACTITIONER FOR APPELLANT(S)	LEGAL PRACTITIONER FOR RESPONDENT(S)
Mr. Dibashis Basu	Mr. Anand Bhandari

ORDER OF THE TRIBUNAL	
Order No. 12	Dated: 23.03.2015
	<p>Mr. Dibashis Basu, Id. advocate appears on behalf of the applicant and Mr. Anand Bhandari, Id. advocate for the respondents is present. Major Narender Singh, OIC, Legal Cell, HQ Bengal Area is also present.</p> <p>Perused the records. The applicant was discharged from Army on 25.05.1994 on account of over-staying leave with four red-ink entries. He preferred an application before the Tribunal which was decided vide order dated 07.12.2011. At the time when he was discharged he had rendered 13 years and 6 months of service in the Army. While deciding the application finally the Tribunal considered the matter all along vide its order dated 07.12.2011 relevant portion of which is reproduced as under :-</p> <p>“Id. advocates for both the sides are present. The application is taken up for hearing. Heard the Id. advocates for both the sides.</p> <p>It appears that the applicant was discharged from army service due to four red ink entries and he was also not granted pension although he rendered about 13-1/2 years of service with the army. At the time of hearing, Id. adv. for the applicant submits that he is not pressing the prayer for reinstatement at this stage. However, he prays that the prayer for grant of pension should be taken care of. It appears that as per existing rules, pension is not normally to be granted in favour of the applicant. However, since the applicant has rendered more than 13 years of service, we think that it will be appropriate to allow the applicant to submit a fresh representation with the Ministry of Defence mentioning his prayer for pension by way of condonation of the shortfall in service, if any. Mr. Mukherjee, Id. adv. for the respondents submits that if the application is disposed of with such liberty to the applicant, he has got no objection in the matter.</p>

Under such circumstance, the Original Application is disposed of with liberty to the applicant to submit a representation with the Central Government praying for grant of pension in his favour. Such representation is to be submitted within one month from this day, and if such representation is submitted, then the Central Govt. is to take a decision in that respect within four months from the date of receipt of such representation by way of allowing an opportunity of hearing to the applicant. We like to mention that the prayer for grant of pension by way of condoning the shortfall in service, as may be made through the representation, should not be mechanically decided by the Central Govt. on account of shortfall in qualifying service. We hope that the Central Govt. will take into consideration the length of service as already put in by the applicant and also his financial condition. We make it very clear that we have not gone into the merit of the case and it is left absolutely to the discretion of the Central Govt. to take a decision of its own without being influenced by any commend that has been made in this order.

The application stands disposed of accordingly, without any order as to costs.

Let plain copy of the order be handed over to the Id. advocates for both the parties.

Sd/ Lt.Gen. K.P.D.Samanta
Member(Administrative)

Sd/-Justice Sadhan Kr. Gupta
Member (Judicial)"

In pursuance of the aforesaid order of this Tribunal, the applicant made representation before the Chief of Army Staff Secretariat. The said representation was finally decided by the impugned order dated 16.03.2012. While passing the final order it has been noted that the applicant had incurred four red ink entries and three black ink entries . He was habitual in over-staying leave. Accordingly, the army had declined to condone the total shortfall of two years eight months and four days. It is argued by the Id. counsel for the applicant that the impugned order dated 16.03.2012 is unreasonable one and it is also stated that no reasonable opportunity has been given to the applicant. On the other hand, the Id. counsel for the respondents submits that the applicant himself moved the application to the Chief of Army Staff Secretariat and it has been decided by a speaking order. The Id. counsel further submits that the shortfall of two years eight months four days has rightly not been condoned by the army.

We have considered the submissions advanced by the parties at length. The shortfall of two years eight months and four days seems to be a deliberate one on the part of the applicant.

The applicant was habitual in over-staying leave resulting with four red-ink entries as well as three black-ink entries. The absence seems to be not incidental or inadvertent but over-staying leave is a deliberate one without taking care of the duty assigned by the army. Moreover, the applicant was discharged from service on 25.05.1994. He himself did not comply with the order of the Tribunal and had not filed representation to the Govt. of India, rather chose to send representation to the Chief of Army Staff Secretariat. Since he has not complied with the order of this Tribunal dated 07.12.2011 by representing the Govt. of India no illegality may be attributed to the Army by rejecting the application vide their order dated 16.03.2012. More so, the said order seems to be reasoned one. Id. counsel for the applicant prays that fresh opportunity may be given to the applicant so that the applicant may submit his representation to the Govt. of India in pursuance of the order (supra) of this Tribunal. However, we are not inclined to accept the prayer of the applicant after a lapse of almost 20 years. There should be finality to a proceeding. Another opportunity shall amount to review of earlier order which is not permissible.

We do not find any merit in this application. Accordingly the application is rejected. No cost.

Records be handed over to the Id. counsel for the respondents under proper receipt.

(LT. GEN. GAUTAM MOORTHY)
Member (Administrative)

(JUSTICE DEVI PRASAD SINGH)
Member (Judicial)