

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
Court No.1 (E. Court)

O.A. No. 312 of 2021

Lt Col Mukesh Baboo through his cousin sister Gulnaz Hussain Applicant
By Legal Practitioner for the Applicant

Versus

Union of India & Others Respondents
By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>28.09.2021</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p>1. Heard Shri Satendra Kumar Singh, Ld. Counsel for the applicant and Shri Asheesh Agnihotri, Ld. Counsel for the respondents.</p> <p>2. Applicant has filed present application through his sister under Section 14 & 15 of the Armed Forces Tribunal Act, 2007 and has sought following reliefs:-</p> <p>“(i) Issue order or direction to the opposite party to release deponent brother from military custody since 18.05.2021 unlawfully without adopting legal provision as prescribed in army act and army rule and not followed army act U/S 102, 103 & 106 by the opposite party for that may please to be release on bail by the Hon'ble Court.</p> <p>(ii) issue order or direction to the opposite party deponent brother who is in age of retirement for superannuation which is due on dated 30.06.2021 inspite of to provide to relief comforts proper care before retirement and to provide all the require dues and complete service record even though authorities of the army are unnecessary ill-treating and misbehaving without rhyme and reason which has to be observed by the Hon'ble Court in interest of justice.</p> <p>(iii) Any such other order or direction which this Hon'ble Court may deem fit and proper may also be passed on the basis of circumstances of the case.</p> <p>(iv) To allow the Original Application with cost in favour of the applicant.”</p> <p>3. Brief facts of the case are that Lt Col Mukesh Baboo was commissioned in the Army on 16.12.1989. Lt Col Mukesh Baboo filed O.A. No. 60 of 2016 before this Tribunal which was disposed of vide order dated 08.02.2021 with</p>

directions that "The applicant is directed to report back/surrender, himself to his unit. Thereafter, the respondents are directed to constitute a re-survey medical board (RSMB) to assess the present medical category of the applicant within one month and intimate the date and time to applicant so that he can be present for the same. The respondents are further directed to take action as per rule position pertaining to his AWL as also dues payable to him and return his personal items, if held. With these directions, Original Application No. 60 of 2016 is disposed of finally."

4. Now his real sister has filed this O.A. stating that Lt Col Mukesh Baboo has been unlawfully solitary confined in military custody and arrested on 18.05.2021 by unknown persons in civil dress having gun forcefully dragging her brother from his house without showing any documents as well as threatened him of dire consequences for disobeying the order of this Tribunal dated 08.02.2021.

5. Learned counsel for the applicant submitted that authorities concerned have not followed provisions of Army Act, Section 101 to 106 and arrested Lt Col Mukesh Baboo on 04.03.2021 and unlawfully confined him in military custody on 18.05.2021. On 05.03.2021 applicant was brought back to Bareilly by the military police and handed over to JAT Regiment for further proceedings as mentioned in this Tribunal's order dated 08.02.2021. From 05.03.2021 to 24.03.2021 authorities concerned had not provided proper day to day requirements as well as medical assistance to the officer. On 25.03.2021 respondents had forcefully taken the officer to hospital for RSMB and forcefully admitted him in hospital as a psychiatric patient. Learned counsel for the applicant pleaded for release of Lt Col Mukesh Baboo from unlawful solitary confinement in military custody.

6. On the other hand, learned counsel for the respondents raised objection against the maintainability of the O.A. stating that present O.A. has been filed by sister of the applicant which is not maintainable.

7. Learned counsel for the respondents further submitted that Lt Col

Mukesh Baboo was apprehended on 05.03.2021 and was attached with Jat Regimental Centre, Bareilly in compliance with the order of this Tribunal dated 08.02.2021. His personal belongings were handed over to him through a Board of Officer (BOO) on 19.03.2021. Lt Col Mukesh Baboo was again AWL on 23.03.2021 from Jat Regimental Centre (JRC) vide letter dated 31.03.2021 and was re-apprehended on 18.05.2021 at Agra and was brought to Bareilly on 26.05.2021. The applicant was placed under close arrest at Shishupal Institute in JRC, Bareilly vide their letter dated 26.05.2021. While strongly opposing release of applicant the learned respondents' counsel submitted that if release is allowed, applicant would run away as he has done on past several occasions and in that event disciplinary proceedings against him would be held up indefinitely.

8. Having heard submissions of both sides, we find that present O.A. has been filed by sister of Lt Col Mukesh Baboo who is in military custody. Since, he is in custody, the applicant being real sister has right to make application before this Tribunal, hence, application is maintainable and objection of the respondents is rejected.

9. We also find that Lt Col Mukesh Baboo is habitual offender in the habit of absconding and if he is released on bail, he will again abscond as he has already done several times in past. During the arguments in previous O.A., the applicant (Lt Col Mukesh Baboo), submitted that he himself will surrender, if required, but did not do so and he was apprehended by the civil police and was handed over to Army authorities but he again absconded and now he is kept in close military custody for completion of disciplinary proceedings. RSMB of Lt Col Mukesh Baboo has been conducted on 25.08.2021 and Summary of Evidence proceedings is in progress. Keeping in view his present and past conduct being a habitual absconder, the prayer of the applicant Lt Col Mukesh Baboo to release him from military custody is rejected.

10. In view of aforesaid, the respondents are directed to complete disciplinary proceedings against the officer (Lt Col Mukesh Baboo) and

recording of Summary of Evidence positively within a period of three months from today. It is clarified that if, Summary of Evidence proceedings are not completed within three months without any justifiable reason then the applicant will have right to move a fresh application for grant of bail.

11. With the aforesaid direction, Original Application stands **disposed of**.

12. No order as to costs.

13. Misc. Application(s), if any, pending for disposal, shall be treated to have been disposed of.

14. Let a copy of the order be provided to learned counsel for the respondents/Departmental Representative within 48 hours, free of cost, for compliance.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

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