

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

T.A. No. 1065 of 2010

R N Mishra

By Legal Practitioner for the Petitioner
 Versus

Petitioner

Union of India & Others

By Legal Practitioner for Respondents

Respondents

T.A. No. 1103 of 2010

R N Mishra

By Legal Practitioner for the Petitioner
 Versus

Petitioner

Union of India & Others

By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>17.01.2018</u> <u>Hon'ble Air Marshal BBP Sinha, Member (A)</u></p> <p>In the instant case, oral order was dictated in Court by brother Justice D.P.Singh in which the applicant was directed to be produced before the Resurvey Medical Board for examination vis a vis the accusation against him that he was beset with psychiatric problem.</p> <p>It would appear from the record that this matter was still not ripe for hearing and in this connection, I may refer to the order of the Tribunal dated 20.04.2017 wherein the Tribunal had observed that looking to the seriousness of the allegations, it shall be appropriate that some senior officer not below the rank of Air Marshal may be deputed to look into the matter by the</p>

Chief of the Air Staff in order to ferret out the correctness of the allegation and thereafter, file affidavit containing parawise reply to the affidavit filed by the petitioner. The report of the inquiry or for matter of that, any affidavit is yet to be filed. The relevant portion of the order is quoted below for ready reference.

"A supplementary affidavit has been filed by the petitioner with accompanying Application dated 15.04.2017 during the course of hearing today in the Court. The said affidavit filed alongwith Application betrays serious incriminating materials on some the then Senior officers of the Indian Air Force. The aforesaid Affidavit has been filed in sealed envelope with the avowed object of maintaining confidentiality pursuant to the permission granted by the Tribunal. Wg Cdr Sardul Singh demanded copy of the affidavit submitting that he would require the same in order to be able to file reply. In view of the above, let a copy of the affidavit filed in sealed cover shall be provided to Wg Cdr Sardul Singh, OIC Legal Cell who is present in Court within 48 hours. The reply to the affidavit shall be filed within four weeks from today.

In the facts and circumstances of the case, and looking to the seriousness of the allegations, it shall be appropriate that some senior officer not below the rank of Air Marshal may be deputed to look into the matter by the Chief of the Air Staff in order to ferret out the correctness of the allegations and thereafter, file affidavit containing Parawise reply to the affidavit filed by the petitioner."

Coming to the prayer clause made in the writ petition by the Applicant, it has been specifically prayed that a mandamus be issued not to send the applicant to a service hospital the same being relevant is quoted below.

"(a) issue a writ, order or direction quashing thaward of Censure (Severe Displeasure) dated 15 May (Annexure-2 refers) being in gross violation of

Air Force Act/Air Force Rules/Air Force Regulations, a Severe Displeasure is not a force of law being not part of the Air Force Act/Air Force Rules/Air Force Regulations.

(b) issue a writ, order or direction quashing the award of REPROOF dated 4 Oct 1990 (Annexure-6 filed with this writ petition refers) which is even violative of not only the Air Force Act but also para 28 of the Air Force Order 227 of 1977.

(c) issue a writ, order or direction in the nature of mandamus commanding the respondents to decide the case of promotion of the petitioner.

(d) issue a writ, order or direction in the nature of mandamus commanding the respondents to quash the illegal order of discharge dated 19 Jul. 1993 effective from 30 Sept. 1994 (annexure-11 filed with this writ petition refers).

(e) issue a writ, order or direction in the nature of mandamus commanding the respondents not to send the petitioner to a service hospital in the garb of filing of AFMS 10 or sending him in a Psyche ward of a service hospital in violation of Rule 95 of the Regulations of Armed Forces Medical Services 1983. In the event of any examination required, the same may be ordered to be conducted in All India Institute of Medical Sciences or any other medical Colleges of repute."

Considering the prayers of the applicant in the O.A as quoted above particularly prayer No (e), in my view, it would be appropriate if the applicant is given a chance to amend his prayer so that appropriate order for sending him for being examined by Resurvey Medical Board at a military hospital by respondents may be passed

In the facts and circumstances, it would be

appropriate if the matter is put up for rehearing so that the applicant may be afforded a chance to amend his prayer and he may be sent for being examined by the Resurvey Medical Board, if necessary.

(Air Marshal BBP Sinha)
Member (A)

MH/-