### O.A. No 110 of 2020 with M.A. No 973 of 2019

Ex Sep Badam Singh

Applicant

By Legal Practitioner for the Applicant

Versus

**Union of India & Others** 

Respondents

Notes of	Orders of the Tribunal
the	
Registry	
	02.06.2021
	Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
	Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)
	On the case being taken up for hearing Shri Virat Anand Singh, Ld.
	Counsel for the applicant and Dr. Shailendra Sharma Atal, Ld. Counsel for the
	respondents are present.
	It is submitted by learned counsel for the applicant that since identical
	matters are pending before the Principal Bench, Armed Forced Tribunal, New
	Delhi and applicant was awaiting result of matter which could not be
	disposed of due to Pandemic, therefore, applicant could not file rejoinder
	affidavit. Thus he submitted to grant time to file rejoinder affidavit.
	Rejoinder affidavit be filed within two weeks failing which opportunity
	to file the same shall be closed.
	List on 14.07.2021 for final hearing.
	(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)  Member (A) Member (J)

#### O.A. No 157 of 2020

Ex Nk Shyam Singh

Applicant

By Legal Practitioner for the Applicant

Versus

**Union of India & Others** 

Respondents

Notes of the Registry	Orders of the Tribunal
	02.06.2021 Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J) Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)
	On the case being taken up for hearing Shri Lalit Kumar and Dr. Ashish Asthana, Ld. Counsel for the applicant and Shri Sunil Sharma for Respondents No 1 to 4 and Shri SP Sherawat, Ld. Counsel for the respondents are present.  Learned counsel for the respondents No 1 to 4 submits that a weeks' further time to given to him to file counter affidavit which is allowed. Rejoinder affidavit, if any, may be filed by learned counsel for the applicant within four weeks, next thereafter.  List on 20.07.2021 for hearing along with O.A. No 289 of 2018.
	(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)  Member (A) Member (J)

#### Form No. 4 {See rule 11(1)} **ORDER SHEET**

### ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW Court No.1 (E. Court)

O.A. No 232 of 2020 with M.A. No 164 of 2020

Smt Madhuree Devi, M/o Late Ex Sep Gyanendra Singh

**Applicant** 

By Legal Practitioner for the Applicant

Versus

**Union of India & Others** 

Respondents

By Legal Practitioner for Respondents

Notes of Orders of the Tribunal the Registry

#### 02.06.2021 Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J) Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

On the case being taken up for hearing Shri Virat Anand Singh, Ld. Counsel for the applicant and Shri RC Shukla, Ld. Counsel for the respondents are present.

#### M.A. No 164 of 2020

The Original Application has been filed with delay of 01 year, 01 month and 03 days.

Submission of learned counsel for the applicant is that it is a pensionary matter in which bar of limitation is not applicable. His further submission is that delay in filing Original Application is not deliberate, but for the reasons stated in affidavit filed in support of application.

Per contra, learned counsel for the respondents submits that explanation of delay offered by the applicant is not sufficient for want of day to day explanation.

Considering that in pensionary matters bar of limitation is not applicable and grounds stated in affidavit filed in support of delay condonation application are sufficient, delay is condoned.

Delay condonation application stands decided accordingly.

#### O.A. No. 232 of 2020

Respondents have already filed counter affidavit, therefore, there is no need to issue notice. Counter affidavit is taken on record.

Rejoinder affidavit, if any, may be filed within two weeks.

List on **09.08.2021** for hearing.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A)

Member (J)

UKT/-

#### O.A. No 245 of 2020

Ex Hav (Hony Nb Sub) Ram Sewak

Applicant

By Legal Practitioner for the Applicant

Versus

**Union of India & Others** 

Respondents

Notes of	Orders of the Tribunal
the Registry	
	02.06.2021
	Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
	Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)
	On the case being taken up for hearing none is present for the
	applicant whereas Shri Rajiv Pandey, Ld. Counsel for the respondents is
	present.
	Learned counsel for the respondents submitted that affidavit of
	compliance filed by the respondents be taken on record which is allowed.
	He further submitted that applicant's grievance has been considered
	and redressed as stated in affidavit. ceded.
	We have perused the contents of affidavit and it appears that
	applicant's grievance has been redressed.
	In view of aforesaid, O.A. has rendered infructuous and is dismissed
	as such.
	(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)  Member (A) Member (J)

#### O.A. No 580 of 2020

Ex Nk Deepak Kumar

Applicant

By Legal Practitioner for the Applicant

Versus

**Union of India & Others** 

Respondents

Notes of	Orders of the Tribunal
the Registry	
Registry	
	02.06.2021 Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
	Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)
	On the case being taken up for hearing Shri RN Tripathi, Ld. Counsel
	for the applicant and Shri Ashish Kumar Singh, Ld. Counsel for the
	respondents are present.
	On the request of learned counsel for the respondents a week's time
	is granted to file counter affidavit after serving its copy to learned counsel for
	the applicant through E mail. Hard copy of the counter affidavit shall also be
	filed along with counter affidavit which applicant can obtain from the registry.
	Rejoinder affidavit, if any, may be filed within two weeks, next
	thereafter.
	List on 23.07.2021 for final hearing.
	On the date fixed, learned counsel for the respondents shall produce
	original medical documents pertaining to case for perusal of the Court.
	(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)  Member (A) Member (J)

#### O.A. No 610 of 2020

**Ravinder Kumar Singh** 

Applicant

By Legal Practitioner for the Applicant

Versus

**Union of India & Others** 

Respondents

Notes of the Registry	Orders of the Tribunal
	02.06.2021 Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J) Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)
	On the case being taken up for hearing Shri Virat Anand Singh and
	Shri Ravi Prakash Tripathi , Ld. Counsel for the applicant and Shri Ashish
	Kumar Singh, Ld. Counsel for the respondents are present.
	Counter affidavit filed by learned counsel for the respondents is taken
	on record.
	On the request of learned counsel for the applicant two weeks and no
	more time is granted to file rejoinder affidavit.
	List on <b>06.08.2021</b> for hearing.
	(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)  Member (A) Member (J)  UKT/-

#### O.A. No 611 of 2020

Ex Nb Sub Nageshwar Jha

Applicant

By Legal Practitioner for the Applicant

Versus

**Union of India & Others** 

Respondents

Notes of the Registry	Orders of the Tribunal
	02.06.2021 Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
	Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)
	On the case being taken up for hearing Shri Virat Anand Singh, Shri
	Pankaj Kumar Shukla and Shri Ashish Kumar Singh, Ld. Counsel for the
	applicant and Shri Ashish Kumar Singh, Ld. Counsel for the respondents are present.
	On the request of learned counsel for the applicant two weeks and no
	more time is granted to file rejoinder affidavit.
	List on <b>09.08.2021</b> for hearing.
	(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)  Member (A) Member (J)

#### O.A. No 687 of 2020

**Ex Lance Nk Anil Singh** 

Applicant

By Legal Practitioner for the Applicant

Versus

**Union of India & Others** 

Respondents

Notes of	Orders of the Tribunal
the	
Registry	
	02.06.2021
	Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J) Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)
	On the case being taken up for hearing Shri Virat Anand Singh, Ld.
	Counsel for the applicant and Shri Dr. Chet Narayan Singh, Ld. Counsel for the
	respondents are present.
	Counter affidavit filed by learned counsel for the respondents is taken
	on record.
	It is submitted by learned counsel for the applicant that some defects
	have occurred in the O.A. which can be rectified by filing a fresh O.A. He
	further submitted that applicant be permitted to withdraw the O.A. with liberty to
	file a fresh.
	Learned counsel for the respondents opposed the aforesaid prayer
	and submitted that in the present form O.A. is not maintainable.
	Considering submissions of learned counsel of both parties, we think
	proper to allow the request.
	Accordingly, applicant is permitted to withdraw the application with
	liberty to file a fresh.
	O.A. is dismissed as withdrawn with liberty to file a fresh.
	(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)  Member (A) Member (J)  UKT/-

#### O.A. No 778 of 2020

Ex Sgt Akhilesh Kumar Singh

Applicant

By Legal Practitioner for the Applicant

Versus

**Union of India & Others** 

Respondents

Notes of	Orders of the Tribunal
Notes of the	Orders of the Tribunal
Registry	
Registry	
	02.06.2021
	Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
	Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)
	On the case being taken up for hearing Shri Parijaat Belaura, Ld.
	Counsel for the applicant and Shri Arun Kumar Sahu, Ld. Counsel for the
	respondents are present.
	Learned counsel for the respondents has not yet filed counter
	affidavit. Two weeks time is granted to file counter affidavit failing which
	opportunity to file the same shall be closed. Rejoinder affidavit, if any, may be
	filed within two weeks, next thereafter.
	List on <b>19.07.2021</b> for hearing.
	On the date fixed, learned counsel for the respondents shall produce
	original medical documents pertaining to case for perusal of the Court.
	(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)  Member (A) Member (J)
	UKT/-

#### O.A. No 782 of 2020

Col Soumen Kar (Retd)

Applicant

By Legal Practitioner for the Applicant

Versus

**Union of India & Others** 

Respondents

Notes of	Orders of the Tribunal
Notes of the	Orders of the Tribunal
Registry	
Rogiotiy	
	<u>02.06.2021</u>
	Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
	Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)
	On the case being taken up for hearing Shri KK Misra, Ld. Counsel for
	the applicant and Dr. Shailendra Sharma Atal, Ld. Counsel for the respondents
	are present.
	Learned counsel for the respondents has not yet filed counter
	affidavit. Two weeks time is granted to file counter affidavit failing which
	opportunity to file same shall be closed. Rejoinder affidavit, if any, may be filed
	within two weeks, next thereafter.
	List on <b>19.07.2021</b> for hearing.
	On the date fixed, learned counsel for the respondents shall produce
	original medical documents pertaining to case for perusal of the Court.
	(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)  Member (A) Member (J)
	UKT/-

#### O.A. No 3 of 2021

Ex LAC Amardeep Singh

Applicant

By Legal Practitioner for the Applicant

Versus

**Union of India & Others** 

Respondents

Notes of	Orders of the Tribunal
the	
Registry	
	02.06.2021
	Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
	Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)
	On the case being taken up for hearing Shri Satendra Kumar Singh,
	Ld. Counsel for the applicant and Ms. Appoli Srivastava, Ld. Counsel for the
	respondents are present.
	Learned counsel for the respondents has not yet filed counter
	affidavit. Two weeks time is granted to file counter affidavit failing which
	opportunity to file same shall be closed. Rejoinder affidavit, if any, may be filed
	within two weeks, next thereafter.
	List on <b>19.07.2021</b> for hearing.
	On the date fixed, learned counsel for the respondents shall produce
	original medical documents pertaining to case for perusal of the Court.
	(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)  Member (A) Member (J)

#### O.A. No 4 of 2021

Ex Hav Kalyan Prasad

Applicant

By Legal Practitioner for the Applicant

Versus

**Union of India & Others** 

Respondents

Notes of the Registry	Orders of the Tribunal
	02.06.2021 Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J) Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)
	On the case being taken up for hearing Shri R Chandra, Ld. Counsel
	for the applicant and Ms. Deepti P Bajpai, Ld. Counsel for the respondents are present.
	Learned counsel for the respondents has not yet filed counter affidavit. Two weeks time is granted to file counter affidavit failing which
	opportunity to file same shall be closed. Rejoinder affidavit, if any, may be filed within two weeks, next thereafter.
	List on <b>19.07.2021</b> for hearing.
	On the date fixed, learned counsel for the respondents shall produce original medical documents pertaining to case for perusal of the Court.
	(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)  Member (A) Member (J)

### Form No. 4 {See rule 11(1)} ORDER SHEET

### ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW Court No.1 (E. Court)

#### O.A. No. 58 of 2020 with M.A. No. 19 of 2020

**Ex. Sub. (Hony. Sub. Maj.) Devta Prasad Pandey** By Legal Practitioner for the Applicant

Applicant

**Versus** 

**Union of India & Others** 

Respondents

Notes of the Registry	Orders of the Tribunal
	02.06.2021 Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J) Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)
	Heard Shri Shailendra Kumar Singh and Shri Ravi Kumar Yadav, Ld Counsel for the applicant and Shri D.K. Pandey, Ld. Counsel for the respondents.  The Original Application has been filed with delay of 19 years, 06 months and 01 day.  Submission of learned counsel for the applicant is that it is a pensionary matter in which bar of limitation is not applicable. His further submission is that delay in filing Original Application is not deliberate, but for the reasons stated in affidavit filed in support of application.  Per contra, learned counsel for the respondents submits that explanation of delay offered by the applicant is not sufficient as he has failed to offer day to day explanation of delay.  Considering that in pensionary matters bar of limitation is not applicable and grounds stated in affidavit filed in support of delay condonation application are genuine and sufficient, delay is liable to be condoned.  Accordingly, delay in filing application is condoned. Delay condonation application stands decided accordingly.
	O.A. No. 58 of 2020  Heard Shri Shailendra Kumar Singh and Shri Ravi Kumar Yadav, Ld Counsel for the applicant and Shri D.K. Pandey, Ld. Counsel for the respondents.  Original Application is allowed.  For order, see our Judgment passed on separate sheets.  Misc. Application, if any, pending for disposal, shall be treated to have beer disposed of.
	(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)  Member (A) Member (J)

### ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

#### ORIGINAL APPLICATION No. 58 of 2020

### Wednesday, this the 2<sup>nd</sup> day of June, 2021

"Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)"

JC 187685-M Sub. (Hony. Sub. Man.) Devta Prasad Pandey (Retd.), S/o Shri (Late) Raghu Raj Pandey, R/o House No. 570/S-311, Devalaya, Sainik Nagar, Azad Nagar Road, Post – Alambagh, District – Lucknow (UP)-226005.

..... Applicant

Ld. Counsel for the: Shri Shailendra Kumar Singh, Advocate & Applicant Shri Ravi Kumar Yadav, Advocate

#### **Versus**

- 1. Union of India, through the Secretary, Ministry of Defence, New Delhi-110011.
- 2. The Chief of Army Staff, IHQ, Ministry of Defence (Army), South Block, New Delhi-110011.
- 3. Additional Directorate General, Personnel Services/AG's Branch, Integrated HQ of Ministry of Defence (Army), PIN-900256 C/o 56 APO.
- 4. O IC Records, Army Educational Corps Records, PIN-908777 C/o 5 APO.
- 5. PCDA (Army), Draupadi Ghat, Allahabad (UP)-211014.

.....Respondents

**Ld. Counsel for the** : Shri D.K. Pandey,

Respondents. Central Govt. Counsel

#### ORDER

"Per Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)"

- The instant Original Application has been filed under Section
   of the Armed Forces Tribunal Act, 2007 for the following reliefs.
  - A. to quash and set aside the Respondent No. 5 letter No. G-3/93/34/8/99 dated 05 Jan 2000 (Annexure A-1 of instant OA & Impugned Order) wherein applicant was rejected for grant of disability element.
  - B. to issue/pass an order or directions of appropriate nature to the respondents to grant disability element to the applicant with effect from 01.08.1999 and to pay the arrears along with suitable rate of interest as deeme3d fit and proper by this Hon'ble Tribunal.
  - C. to grant the benefit of rounding off of the disability pension from 20% to 50% in terms of Govt of India letter dated 31 Jan 2000 with effect from 01.08.1999 and to pay the arrears alongwith suitable rate of interest as deemed fit and proper by this Hon'ble Tribunal.
  - D. Any other relief as considered proper by the Hon'ble Tribunal be awarded in favour of the applicant.
- 2. Briefly stated, applicant was enrolled in Army Educational Corps of the Indian Army on 15.07.1971 and was discharged on 31.07.1999 in Low Medical Category on fulfilling the conditions of his enrolment under Rule 13 (3) Item I (i) (a) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board held at Base Hospital, Lucknow 04.03.1999 assessed his disability 'ESSENTIAL HYPERTENSION (401)' @30% for two years and opined that disability was due to stress and strain of military service and aggravated by military service. The claim for grant of disability element was rejected by the Principal Controller of Defence Accounts (Pensions), Allahabad which opined the disability to be neither attributable to nor

aggravated by military service vide letter dated 05.01.2000. Initially applicant's First Appeal dated 14.10.2013 was returned un-actioned being time barred by Army Education Corps vide letter dated 26.10.2013 and suggested to resubmit the same with delay report and supporting documents. Accordingly, the applicant preferred First Appeal dated 09.11.2013 along with delay report and supporting documents. The respondents had waived off the time limit for consideration of time barred Appeal and asked to resubmit the First Appeal along with medical/service documents as intimated vide IHQ of MoD (Army), PS-4 (Imp-II) letter dated 28.01.2014. Subsequently, Office of DGAFMS vide letter dated 17.10.2014 had intimated that sanction of the DGAFMS has been accorded to hold First Appeal Medical Board of the applicant at Base Hospital, Delhi Cantt. Accordingly, First Appeal Medical Board (First AMB) held at Base Hospital, Delhit Cantt. on 10.01.2015 assessed his disability 'ESSENTIAL (PRIMARY) HYPERTENSION' @30% for life and opined the disability to be neither attributable to nor aggravated (NANA) by service. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. The disease of the applicant was contacted during the service, hence it is attributable to and aggravated by Military Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability

pension as well as arrears thereof, as applicant is also entitled to disability pension and its rounding off to 50%.

- 4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant @ 30% for life has been regarded as NANA by the First Appeal Medical Board, hence applicant is not entitled to disability pension. He pleaded for dismissal of the Original Application.
- 5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Release Medical Board and well as First Appeal Medical Board proceedings as well as the records and we find that the questions which need to be answered are of two folds:-
  - (a) Whether the disability of the applicant is attributable to or aggravated by Military Service?
  - (b) Whether the applicant is entitled for the benefit of rounding off the disability pension?
- by the Hon'ble Supreme Court in the case of Dharamvir Singh Versus Union of India & Others, reported in (2013) 7 Supreme Court Cases 316. In this case the Apex Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same in the following words.

<sup>&</sup>quot;29.1. Disability pension to be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).

- 29.2. A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service [Rule 5 read with Rule 14(b)].
- 29.3. The onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally (Rule 9).
- 29.4. If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service [Rule 14(c)]. [pic]
- 29.5. If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service [Rule 14(b)].
- 29.6. If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons [Rule 14(b)]; and 29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."
- 7. In view of the settled position of law on attributability, we find that the First Appeal Medical Board has denied attributability to the applicant only by endorsing that the disability 'ESSENTIAL (PRIMARY) HYPERTENSION' is neither attributable to nor aggravated (NANA) by service on the ground of onset of disability in January, 1995 while posted in Peace location (Secunderabad), therefore, applicant is not entitled to disability pension. However, considering the facts and circumstances of the case, we are of the opinion that this reasoning of First Appeal Medical Board for denying disability pension to

applicant is not convincing and doesn't reflect the complete truth on the matter. Peace Stations have their own pressure of rigorous military training and associated stress and strain of military service. The applicant was enrolled in Indian Army on 15.07.1971 and the disability has started after more than 23 years of Army service i.e. in January, 1995. We are therefore of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant in view of *Dharamvir Singh vs Union of India & Ors* (supra), and the disability of the applicant should be considered as aggravated by military service.

- 8. The law on the point of rounding off of disability pension is no more RES INTEGRA in view of Hon'ble Supreme Court judgment in the case of *Union of India and Ors vs Ram Avtar & ors* (Civil appeal No 418 of 2012 decided on 10<sup>th</sup> December 2014). In this Judgment the Hon'ble Apex Court nodded in disapproval of the policy of the Government of India in granting the benefit of rounding off of disability pension only to the personnel who have been invalided out of service and denying the same to the personnel who have retired on attaining the age of superannuation or on completion of their tenure of engagement. The relevant portion of the decision is excerpted below:-
  - "4. By the present set of appeals, the appellant (s) raise the question, whether or not, an individual, who has retired on attaining the age of superannuation or on completion of his tenure of engagement, if found to be suffering from some disability which is attributable to or aggravated by the military service, is entitled to be granted the benefit of rounding off of disability pension. The appellant(s) herein would contend that, on the basis of Circular No 1(2)/97/D (Pen-C) issued by the Ministry of Defence, Government of India, dated 31.01.2001, the aforesaid benefit is made available only to an Armed Forces Personnel who is invalidated out of service, and not

to any other category of Armed Forces Personnel mentioned hereinabove.

- 5. We have heard Learned Counsel for the parties to the lis.
- 6. We do not see any error in the impugned judgment (s) and order(s) and therefore, all the appeals which pertain to the concept of rounding off of the disability pension are dismissed, with no order as to costs.
- 7. The dismissal of these matters will be taken note of by the High Courts as well as by the Tribunals in granting appropriate relief to the pensioners before them, if any, who are getting or are entitled to the disability pension.
- 8. This Court grants six weeks' time from today to the appellant(s) to comply with the orders and directions passed by us."
- 9. It is also observed that claim for pension is based on continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. In the case of Shiv Dass vs. Union of India, reported in 2007 (3) SLR 445, Hon'ble Apex Court has observed:

"In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone."

- 10. As such, in view of the decision of Hon'ble Supreme Court in the case of Shiv Dass (supra), we are of the considered view that benefit of rounding off of disability pension @ 30% for life to be rounded off to 50% for life may be extended to the applicant from three preceding years from the date of filing of the Original Application.
- 11. In view of the above, the Original Application No. 58 of 2020 deserves to be allowed, hence allowed. The impugned order dated 05.01.2000, annexed as Annexure No. A-1 of Original Application, is

set aside. The disability of the applicant is held as aggravated by The respondents are directed to grant disability Army Service. element to the applicant @30% for life which would stand rounded off to 50% for life w.e.f. three years preceding the date of filing of Original Application. The date of filing of Original Application is 08.01.2020. The respondents are further directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @ 8% per annum till the actual payment.

(Justice Umesh Chandra

Member (J)

#### No order as to costs.

(Vice Admiral Abhay Raghunath Karve) Srivastava) Member (A)

Dated: 02 June, 2021

AKD/-

#### Form No. 4 {See rule 11(1)} ORDER SHEET

### ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW <u>Court No.1 (E. Court)</u>

M.A. No. 272 of 2021 Inre: O.A. No. (Nil) of 2021

Ex. Sep. Khim Bahadur Thapa

Applicant

By Legal Practitioner for the Applicant

**Versus** 

**Union of India & Others** 

Respondents

(Justice Umesh Chandra Srivastava)

Member (J)

By Legal Practitioner for Respondents

the Registry	Orders of the Tribunal
	02.06.2021
	Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
	Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)
	Dr. S.N. Pandey, Advocate filed power today in Court on behalf of the
	respondents which is taken on record.
	Heard Shri R. Chandra, Ld. Counsel for the applicant and Dr. S.N. Pandey
	Ld. Counsel for the respondents.
	The instant Original Application has been filed with delay of 15 years, 10
	months and 03 days.
	Submission of learned counsel for the applicant is that delay in filing Origina
	Application is not deliberate or intentional, but for the reasons stated in affidavit filed in
	support of application. Further submission is that it is pensionary matter in which bar of
	limitation is not applicable.
	Learned counsel for the respondents has vehemently opposed the praye
	and submitted that there is long delay of more than 15 years and the same has no
	been properly and satisfactorily explained.
	Having heard submission of both sides and considering the facts and
	circumstances of the case, we find that it being pensionary matter bar of limitation is
	not applicable. We further find that cause shown is sufficient, delay is liable to be
	condoned.
	Accordingly, delay in filing application is condoned. Delay condonation
	application stands decided accordingly.
	Let Original Application be registered.
	O.A. No. 277 of 2021
	It is a fit case for adjudication.
	Admit.
	Ld. Counsel for the respondents seeks and is allowed four weeks time to file
	Counter Affidavit. Rejoinder Affidavit, if any, may be filed within two weeks thereafter.
	List the matter before Registrar on <b>09.08.2021</b> for exchange of pleadings.
	List the matter before Tribunal on 27.08.2021.

(Vice Admiral Abhay Raghunath Karve)

Member (A)

M.A. No. 273 of 2021 Inre: O.A. No. (Nil) of 2021

#### Ex. LD Devanand Tiwari

Applicant

By Legal Practitioner for the Applicant

Versus

### Union of India & Others

Respondents

	Tacilloner for Respondents
Notes of	Orders of the Tribunal
the Registry	
	02.06.2021
	Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
	Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)
	Shri Shyam Singh, Advocate filed power today in Court on behalf of the
	respondents which is taken on record.
	Heard Shri Vinay Pandey, Ld. Counsel for the applicant and Shri Shyam
	Singh, Ld. Counsel for the respondents.
	The Original Application has been filed with delay of 05 months and 05
	days.
	The submission of Ld. Counsel for the applicant is that delay in filing Original
	Application is not deliberate, but on account of facts stated in affidavit filed in support
	of application.
	Ld. Counsel for the respondents has opposed on the ground that
	explanation offered for condonation of delay is not satisfactory.
	We have gone through affidavit filed in support of application for
	condonation of delay and find that grounds stated therein are genuine and sufficient.
	As such, delay in filing application is condoned. Application stands decided
	accordingly.
	Let Original Application be registered.
	O.A. No. 278 of 2021
	It is a fit case for adjudication.
	Admit.
	Ld. Counsel for the respondents seeks and is allowed four weeks time to file
	Counter Affidavit. Rejoinder Affidavit, if any, may be filed within two weeks thereafter.
	List the matter before Registrar on <b>09.08.2021</b> for exchange of pleadings.
	List the matter before Tribunal on <b>27.08.2021.</b>
	(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
	Member (A) Member (J)

#### O.A. No. 268 of 2021

**Swr. Ram Kumar Yadav** 

Applicant

By Legal Practitioner for the Applicant

Versus

**Union of India & Others** 

Respondents

Notes of the Registry	Orders of the Tribunal
	02.06.2021 Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J) Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)
	Shri G.S. Sikarwar, Advocate filed power today in Court on behalf of
	the respondents which is taken on record.
	Heard Shri Vinay Pandey, Ld. Counsel for the applicant and Shri G.S.
	Sikarwar, Ld. Counsel for the respondents.
	It is a fit case for adjudication.
	Admit.
	Ld. Counsel for the respondents seeks and is allowed four weeks time
	to file Counter Affidavit. Rejoinder Affidavit, if any, may be filed within two
	weeks thereafter.
	List the matter before Registrar on <b>09.08.2021</b> for exchange of pleadings.
	List the matter before Tribunal on 27.08.2021.
	(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)  Member (A) Member (J)

M.A. No. 270 of 2021 Inre: O.A. No. 612 of 2020

**Union of India & Others** 

Applicants-Respondents

By Legal Practitioner for the Applicants

**Versus** 

Ex. Sgt. Kamal Deep Rastogi

By Legal Practitioner for Respondent

Respondent-Applicant

Notes of	Orders of the Tribunal
the	
Registry	
	02.06.2021
	Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J) Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)
	The state of the s
	On the case being taken up for hearing Shri Yogesh Kesarwani, Ld.
	Counsel for the applicants-respondents and Shri P.K. Shukla, Ld. Counsel for
	the respondent-applicant are present.
	This is an application seeking leave to appeal against order passed by
	this Tribunal.
	There is no delay in filing application. The matter needs adjudication.
	Application is admitted for hearing.
	Issue notice to the respondent.
	Shri P.K. Shukla, Advocate has accepted notice on behalf of
	respondent. He seeks and is allowed three weeks time to file objection.
	List on <b>20.07.2021</b> .
	(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)  Member (A) Member (J)

M.A. No. 271 of 2021 Inre: Ex. A. No. 26 of 2018

**Union of India & Others** 

Applicants-Respondents

By Legal Practitioner for the Applicants

Versus

**Sri Ram Pandey** 

Respondent-Applicant

Notes of	Orders of the Tribunal	
the Registry		
	02.06.2021 Hanible Mr. Justice Umach Chandre Srivestave Member (1)	
	Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J) Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)	
	On the case being taken up for hearing Shri Amit Jaiswal, Ld. Counsel	
	for the applicants-respondents and Shri Yashpal Singh, Ld. Counsel for the	
	respondent-applicant are present.	
	The applicant has filed this application to recall order dated	
	09.02.2021 by which directions have been issued to issue Corrigendum PPO	
	to the applicant in respect of service element/disability element within four	
	weeks from the date of receipt of certified copy of the order.	
	Learned counsel for the respondent-applicant submitted that he has	
	received copy of recall application on 28.05.2021 and needs to file objection	
	against it, therefore, time be given for the same.	
	Let objection, if any, be filed within two weeks.	
	List on <b>07.07.2021</b> for orders.	
	(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)  Member (A) Member (J)	

M.A. No. 269 of 2021 Inre: O.A. (A) No. 205 of 2021

Sep. Pawan Chandra Bhatt

Appellant

By Legal Practitioner for the Appellant

Versus

**Union of India & Others** 

Respondents

Notes of	Orders of the Tribunal
the	
Registry	
	02.06.2021
	Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
	Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)
	On the case being taken up for hearing Shri Shailendra Kumar Singh,
	Ld. Counsel for the appellant and Shri Amit Jaiswal, Ld. Counsel for the
	respondents are present.
	This is an application to fix an early date of hearing in bail application.
	Applicant, who has been sentenced to maximum five years
	imprisonment in Court Martial proceedings, is in jail since more than five
	months.
	Learned counsel for the respondents has no objection in early
	hearing. His submission is that complete copy of compilation has not been
	served to him.
	Let complete copy of compilation (spiral binding) be given today to
	respondents' learned counsel to enable him to argue the matter.
	List on <b>04.06.2021</b> for hearing.
	Application stands disposed off.
	(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
	Member (A) Member (J)
	SB

M.A. No. 589 of 2019 with M.A. No. 590 of 2019 Inre : Diary No. 251 of 2013

Kamlesh Singh Applicant

By Legal Practitioner for the Applicant

Versus

**Union of India & Others** 

Respondents

Notes of the Registry	Orders of the Tribunal
	02.06.2021 Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J) Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)
	On the case being taken up for hearing Shri R.N. Tripathi, Ld.
	Counsel for the applicant and Shri Ashish Kumar Singh, Ld. Counsel for the
	respondents are present.
	M.A. No. 589 of 2019 with M.A. No. 590 of 2019
	Cost of Rs. 1000/- has been deposited by the applicant. Accordingly,
	Dy. No. 251 of 2013 is restored to its number. Both the MAs are disposed of
	accordingly.
	Diary No. 251 of 2013
	Learned counsel for the applicant is directed to remove the defects
	within two weeks.
	List on <b>09.07.2021.</b>
	(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)  Member (A) Member (J)

### Form No. 4 {See rule 11(1)} ORDER SHEET

### ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW <u>Court No.1 (E. Court)</u>

M.A. No. 672 of 2019 Inre: O.A. No. (Nil) of 2019

Ex. Nk. Ram Rajya

Applicant

By Legal Practitioner for the Applicant

Versus

**Union of India & Others** 

Respondents

(Justice Umesh Chandra Srivastava)

Member (J)

By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	02.06.2021 Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J) Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)
	Heard Shri J.N. Mishra, Shri Davki Nandan Pandey and Shri Gyanendra
	Kumar Sharma, Ld. Counsel for the applicant and Dr. Shailendra Sharma Atal, Ld Counsel for the respondents.
	The Original Application has been filed with delay of 11 months and 24 days.
	The submission of Ld. Counsel for the applicant is that delay in filing Origina
	Application is not deliberate, but on account of facts stated in affidavit filed in support of application.
	Ld. Counsel for the respondents has opposed on the ground that explanation offered for condonation of delay is not satisfactory.
	We have gone through affidavit filed in support of application for condonation of delay and find that grounds stated therein are genuine and sufficient
	As such, delay in filing application is condoned. Application stands decided accordingly.
	Let Original Application be registered.  O.A. No. 281 of 2021
	It is a fit case for adjudication.  Admit.
	Ld. Counsel for the respondents seeks and is allowed four weeks time to file Counter Affidavit. Rejoinder Affidavit, if any, may be filed within two weeks thereafter.
	List the matter before Registrar on <b>09.08.2021</b> for exchange of pleadings.  List the matter before Tribunal on <b>27.08.2021</b> .

(Vice Admiral Abhay Raghunath Karve)

Member (A)

M.A. No. 740 of 2019 Inre: O.A. No. (Nil) of 2019

Ex. Sep. Mooj Nath Giri

**Applicant** 

By Legal Practitioner for the Applicant

Versus

**Union of India & Others** 

Respondents

Notes of the Registry	Orders of the Tribunal
	02.06.2021 Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J) Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)
	Heard Shri V.P. Pandey and Shri Satyendra Kumar Mishra, Ld. Counsel for the applicant and Dr. Shailendra Sharma Atal, Ld. Counsel for the respondents.  Necessary amendment in O.A. has been carried out vide order dated 04.01.2021 of this Tribunal.  Learned counsel for the respondents seeks and is allowed two weeks time to file objection against delay condonation application.
	List on 13.07.2021 for orders.  (Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)  Member (A) Member (J)

M.A. No. 854 of 2019 Inre : O.A. No. (Nil) of 2019

Smt. Kunwari Kuwar

Applicant

By Legal Practitioner for the Applicant

Versus

**Union of India & Others** 

Respondents

Notes of the Registry	Orders of the Tribunal
	02.06.2021 Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J) Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)
	On the case being taken up for hearing Shri Virat Anand Singh and Shri Pankaj Kumar Shukla, Ld. Counsel for the applicant and Dr. Shailendra Sharma Atal, Ld. Counsel for the respondents are present.  Learned counsel for the applicant submitted that amendment application is available with him and he shall file it by tomorrow in the Registry.  List on 07.07.2021.
	(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)  Member (A) Member (J)

M.A. No. 464 of 2020 Inre: O.A. No. 106 of 2013

**Mahabir Singh (Convict Prisoner)** 

Applicant

By Legal Practitioner for the Applicant

Versus

**Union of India & Others** 

Respondents

Notes of the Registry	Orders of the Tribunal
	02.06.2021 Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J) Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)
	On the case being taken up for hearing none appears on behalf of the applicant.
	Dr. Shailendra Sharma Atal, Ld. Counsel for the respondents is present.
	In the interest of justice, the case is adjourned for the day.  List on 13.07.2021.
	(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)  Member (A) Member (J)

#### Form No. 4 {See rule 11(1)} **ORDER SHEET**

### ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW Court No.1 (E. Court)

M.A. No. 210 of 2021 Inre: O.A. No. (Nil) of 2021

Smt. Sangita Devi W/o Late Ex. Nk. Pravin Kumar Singh By Legal Practitioner for the Applicant

Applicant

Versus

**Union of India & Others** 

Respondents

Notes of the	Orders of the Tribunal
Registry	
	02.06.2021
	Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J) Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)
	On the case being taken up for hearing Shri Om Prakash, Ld. Counsel for
	the applicant and Shri Ashish Kumar Singh, Ld. Counsel for the respondents.
	Objection to delay condonation application filed by the respondents is taken
	on record.
	Heard learned counsel for the parties.
	There is delay of 09 years, 06 months and 22 days in filing Original
	Application which has been filed for grant of liberalised family pension.
	Bar of limitation is not applicable in pensionary matters moreover, grounds
	shown for condonation of delay are also sufficient.
	In view of this, delay in filing application is condoned. Delay condonation
	application stands decided accordingly.
	Let Original Application be registered.
	O.A. No. 280 of 2021
	It is a fit case for adjudication.
	Admit.  Ld. Counsel for the respondents seeks and is allowed four weeks time to file
	Counter Affidavit. Rejoinder Affidavit, if any, may be filed within two weeks thereafter.
	List the matter before Registrar on <b>09.08.2021</b> for exchange of pleadings.
	List the matter before Tribunal on <b>27.08.2021</b> .
	(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)  Member (A) Member (J)

#### O.A. No. 66 of 2018

Adesh Kumar Applicant

By Legal Practitioner for the Applicant

Versus

**Union of India & Others** 

Respondents

Notes of the Registry	Orders of the Tribunal
	02.06.2021 Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J) Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)
	On the case being taken up for hearing Shri V.K. Pandey, Ld. Counsel for the applicant and Shri R.C. Shukla, Ld. Counsel for the respondents are
	present.
	Affidavit of compliance filed by the respondents is taken on record.
	Objection, if any, be filed within three weeks.
	List on <b>14.07.2021</b> .
	(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)  Member (A) Member (J)

### O.A. No. 433 of 2019 along with M.A. No. 770 of 2019

Gp. Capt. B.K.E. Jacob

Applicant

By Legal Practitioner for the Applicant

Versus

**Union of India & Others** 

Respondents

Notes of the Registry	Orders of the Tribunal
	02.06.2021 Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J) Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)
	On the case being taken up for hearing Col. Y.R. Sharma (Retd.), Ld. Counsel for the applicant and Shri Amit Jaiswal, Ld. Counsel for the respondents are present.  On the request of learned counsel for the applicant, the case is adjourned.
	List on 10.08.2021.  (Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
	Member (A) Member (J)

#### O.A. No. 554 of 2019 with M.A. No. 844 of 2019

Ex. Sep. (Tailor) Ram Prakash

Applicant

By Legal Practitioner for the Applicant

**Versus** 

**Union of India & Others** 

Respondents

Member (J)

By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	02.06.2021 Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J) Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)
	On the case being taken up for hearing Shri V.P. Pandey, Ld. Counse
	for the applicant and Shri Arvind Kumar Pandey, Ld. Counsel for the
	respondents are present.
	Heard learned counsel of both parties.
	Applicant has filed this application to grant disability pension to him
	w.e.f. 12.02.2014 in respect of disability occurred during the course of service.
	In Para No. 6, 11 and 27 of the counter affidavit filed by the
	respondents they have not denied the applicant's disability rather have
	admitted the same and have stated that applicant has been granted disability
	pension, as claimed vide PPO No. D/13413/2014 dated 12.11.2014.
	Respondents have annexed copy of PPO alongwith counter affidavi
	also as Annexure R-1 and it shows that it is in respect of grant of disability
	pension to the applicant issued on 12.11.2014. It shows that applicant filed the
	Original Application without verifying the facts which is a very bad practice and
	misuse of process of the Court/Tribunal. Applicant is condemned for his this
	act and warned to be dealt with severely if repeats the same in future.
	With the aforesaid, Original Application alongwith Misc. Application is
	dismissed.
	(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)

Member (A)

O.A. No. 15 of 2021

Ex. Nb Sub Sudhakar Singh Pal

Applicant

By Legal Practitioner for the Applicant

Versus

**Union of India & Others** 

Respondents

Notes of the Registry	Orders of the Tribunal
	02.06.2021 Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J) Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)
	Heard Shri R.N. Tripathi, Ld. Counsel for the applicant and Shri Adesh
	Kumar Gupta, Ld. Counsel for the respondents.
	Original Application is allowed.
	For order, see our judgment passed on separate sheets.
	Misc. Application, if any, pending for disposal, shall be treated to have
	been disposed of.
	(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)  Member (A) Member (J)