

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

Ex. A. No. 73 of 2019 with M.A. No. 110 of 2021, M.A. No. 588 of 2019
Inre : O.A. No. 612 of 2017

Ex. Gnr. C.K. Shrivastava
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>05.04.2021</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>Heard Shri Thakur Balram Ji Srivastava, Ld. Counsel for the applicant and Shri Amit Jaiswal, Ld. Counsel for the respondents.</p> <p>Vide order dated 28.08.2018 in O.A. No. 612 of 2017, titled Ex. Gnr. (OFC) C.K. Shrivastava Versus Union of India and Others, the Original Application was allowed treating applicant's disability @15-19% to 20% with direction to respondents to grant disability element of disability pension to the applicant @20% for two years from the date of his discharge i.e. 12.02.1981. The respondents were also directed to conduct Re-Survey Medical Board for re-assessing the present medical condition of the applicant for his future entitlement of disability element of disability pension, if any, and to grant service element of disability pension to the applicant with effect from his date of discharge which payment was restricted to three years prior to filing of Original Application i.e. 28.09.2017.</p> <p>In compliance of the aforesaid directions, the Re-Survey Medical Board was held on 09.01.2021 to re-assess the disability of the applicant and his disability was again assessed between 15-19%.</p> <p>After Re-Survey Medical Board no disability element is being given to the applicant by the respondents on the premise that percentage of disability of the applicant being below 20% he is not entitled to it as per rules.</p> <p>The reason assigned for not granting disability element to the applicant after Re-Survey Medical Board being contrary to law as well as order passed by this Tribunal in O.A. No. 612 of 2017 is not acceptable. The disability of the applicant being assessed @15-19% in Re-Survey Medical Board proceedings and the said disability being for life, the applicant is entitled to get disability element of disability pension @20% to be rounded off to 50% from the date the Re-Survey Medical Board was held as per settled law as well as observation made in order passed in Original Application and the same</p>

cannot be denied on the premise being not permissible under rule.

Respondents are, therefore, directed to grant disability element to applicant @20% to be rounded off to 50% for life from the date Re-Survey Medical Board was held i.e. 09.01.2021 and issue Corrigendum P.P.O. accordingly within six weeks from today.

Default will invite interest @9% from the date of entitlement.

List on **24.05.2021**.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

AKD/-

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

O.A. No. 107 of 2020 with M.A. No. 968 of 2019

Ex. M.W.O. Amar Nath Rai
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>05.04.2021</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 style="text-align: center;">Heard Shri Virat Anand Singh and Shri Pankaj Kumar Shukla, Ld. Counsel for the applicant and Shri D.K. Pandey, Ld. Counsel for the respondents.</p> <p style="text-align: center;">The Original Application has been filed with delay of 10 years, 08 months and 15 days.</p> <p style="text-align: center;">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.</p> <p style="text-align: center;">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.</p> <p style="text-align: center;">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.</p> <p style="text-align: center;">Accordingly, delay in filing application is condoned. Delay condonation application stands decided accordingly.</p> <p><u>O.A. No. 107 of 2020</u></p> <p style="text-align: center;">Heard.</p> <p style="text-align: center;">Original Application is allowed.</p> <p style="text-align: center;">For order, see our Judgment passed on separate sheets.</p> <p style="text-align: center;">Misc. Application, if any, pending for disposal, shall be treated to have been disposed of.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) Member (A)</p> <p style="text-align: center;">(Justice Umesh Chandra Srivastava) Member (J)</p> <p>AKD/-</p>

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

R.A. No 25 of 2021 alongwith M.A. No 235 of 2021 Inre O.A. No 320 of 2019

Union of India & Others
By Legal Practitioner for the Applicant

Applicant

Versus

Ex Sgt Rohitash Kumar Sharma
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>05.04.2021</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><u>M.A. No 235 of 2021</u></p> <p>1. This is an application for condonation of delay in filing review application. As per Hon'ble Apex Court order dated 08.03.2021, there is no delay in filing review application. However, application for condonation of delay in filing review application is allowed.</p> <p><u>R.A. No 25 of 2021</u></p> <p>1. The matter came up before us by way of Circulation as per provisions of Rule 18 (3) of the Armed Forces Tribunal (Procedure) Rules, 2008, whereby the applicant has prayed for review of the order dated 18.01.2021 passed in O.A No. 320 of 2019 and pass a fresh and final order. In the aforesaid O.A., following order was passed:-</p> <p style="text-align: center;"><i>“13. In view of the above, the Original Application No 320 of 2019 deserves to be allowed, hence allowed. The impugned orders dated 27.09.2016 and 19.01.2018 rejecting claim for grant of disability element are set aside. The applicant is already in receipt of service element hence respondents are directed to grant disability element of the pension @ 15-19% to the applicant, which shall stand rounded off to 50% from the date of discharge. The entire exercise shall be completed by the respondents within four</i></p>

months from the date of production of a certified copy of this order, failing which the respondents shall be liable to pay interest at the rate of 9% to the applicant on the amount accrued till the date of actual payment .”

2. We have gone through the grounds and reasons indicated in the affidavit filed in support of the application and have also gone through the judgment and order sought to be reviewed. The judgment and order sought to be reviewed was passed in proper prospective after considering all the facts and circumstances. No illegality or irregularity or error apparent on the face of record has been shown to us so as to review the aforesaid judgment of this Court.

3. It is settled proposition of law that the scope of the review is limited and the applicant has to show that there is error apparent on the face of the record. For ready reference the Order 47 Rule 1 Sub Rule (1) of the Code of Civil Procedure is reproduced below :-

“1. Application for review of judgment.- (1) any person considering himself aggrieved---

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed by this Code, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record , or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment of the Court which passed the decree or made the order.”

4. In view of the principles of law laid down by the Hon'ble

Supreme Court in various decisions, it is settled that the scope of review jurisdiction is very limited and re-hearing is not permissible. Hon'ble the Supreme Court in Para 9 of its judgment in the case of Parsion Devi and Others vs. Sumitri Devi and others reported in (1997) 8 Supreme Court Cases 715, has observed as under :-

"9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction. A review petition has a limited purpose and cannot be allowed to be "an appeal in disguise."

5. In the instant case, the details mentioned in the review application had already been taken into consideration and discussed in detail and thereafter the order was passed. In view of the principle of law laid down by Hon'ble the Apex Court in the case of Parsion Devi and Others (supra), we are of the considered view that there is no error apparent on the face of record in the impugned order dated 18.01.2021, which may be corrected in exercise of review jurisdiction.

6. Accordingly, the Review Application No. 25 of 2021 is rejected. There shall be no order as to costs. The applicant may be informed accordingly.

7. Misc. Application, if any, pending for disposal, shall be treated to have been disposed of.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

UKT/-

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

O.A. No. 46 of 2020 with M.A. No. 554 of 2019

Ex Sub Kunj Vihari Singh
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>05.04.2021</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>Heard Col Rakesh Johri (Retd) and Shri Bhanu Pratap Singh Chauhan, learned counsel for the applicant and Shri Ashish Kumar Singh, learned counsel for the respondents.</p> <p><u>M.A. No. 554 of 2019</u></p> <p>There is delay of 15 days only in filing Original Application.</p> <p>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.</p> <p>Considering that in pensionary matters bar of limitation is not applicable and cause shown for the delay, if any, is sufficient, delay is liable to be condoned.</p> <p>Accordingly, delay in filing application is condoned. Delay condonation application stands decided accordingly.</p> <p><u>O.A. No. 46 of 2020</u></p> <p>1. Applicant has filed present application under Section 14 of the Armed Forces Tribunal Act, 2007 and has sought following reliefs:-</p> <p>“(a) To issue/pass an order or direction to the respondents to set aside/quash the arbitrary order of denial of Post Discharge Claim of the Applicant for disability pension (Annexure A-1).</p> <p>(b) To issue/pass an order or direction to the respondents to get the applicant examined by a Medical Board to assess his condition and percentage of disability.</p>

(c) To issue/pass an order or direction to grant disability pension to the Applicant for his Post Discharge Claim.

(d) Issue/pass an order or direction to the respondents to grant benefits of broad banding/rounding off.

(e) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

(f) Allow this application with cost."

2. Brief facts of the case are that applicant was enrolled in the army on 08.09.1981 and was discharged from service on 30.09.2011 in SHAPE-1 by Release Medical Board (RMB) on completion of terms of engagement after serving more than 30 years of service. On 27.10.2011, just after 26 days of discharge from service, the applicant had a severe heart attack and was admitted to Command hospital, Central Command Lucknow. He was diagnosed/treated as a case of Coronary Artery Disease (CAD). The applicant submitted an application dated 21.09.2018 for conduct of Medical Board for Post Discharge Claim to respondent Nos. 3 to 6. The applicant was informed by the office of DGAFMS, Ministry of Defence vide their letter dated 28.09.2018 that "**2. That Post Discharge Claims in terms of Entitlement Rules 2008 are processed when received from respective Record office with comments duly endorsed and not a personal applications directly as the record office is the custodian of all medical and service documents.**" Thereafter, the applicant resubmitted his Post Discharge Claim to respondent No. 4 Officer-in-charge EME Records vide letter dated 02.11.2018. The claim of the applicant was rejected by DGAFMS vide letter dated 13.11.2018 which was intimated to the applicant by EME Records vide letter dated 30.11.2018. The Post Discharge Claim of the applicant was rejected without physical medical examination of the applicant by the Medical Board. The reason given for rejection of Post Discharge Claim was that "**.....attributability to service can be established by the competent medical authority that it is a delayed manifestation of a pathological process set in motion by service conditions obtaining prior to discharge in terms of ER 2008.**" Aggrieved by denial of Post Discharge Claim for grant of disability pension, the applicant has filed the present Original Application.

3. Learned counsel for the applicant submitted that applicant was

discharged from service on 30.09.2011 in SHAPE-1 by holding a Release Medical Board (RMB) on completion of terms of engagement after serving more than 30 years of service. The applicant, just after 26 days of discharge from service, had a severe heart attack and was admitted to Command Hospital, Lucknow where he was diagnosed as a case of Coronary Artery Disease (CAD). His Post Discharge Claim for grant of disability pension has been denied by the respondents. He pleaded that a Medical Board to be conducted to assess the condition and percentage of disability and accordingly, applicant be granted disability pension.

4. On the other hand, learned counsel for the respondents submitted that applicant was discharged from service in Shape-1 on completion of terms and condition of service and service pension has been notified vide PPO dated 05.07.2011. The applicant was admitted in Command Hospital, Lucknow and was diagnosed/treated for CAD. The applicant submitted an application dated NIL of 2018 to Command Hospital, Lucknow for holding medical board for post discharge claim. Accordingly, he was informed that Post Discharge Claim is to be held at Base Hospital, Delhi Cantt. Applicant was also suitably replied by DGAFMS vide their letter dated 28.09.2018. Thereafter, applicant submitted petition dated 09.10.2018 and 02.11.2018 which were rejected by DGAFMS vide letter dated 13.11.2018. Learned counsel for the respondents further submitted that applicant is not entitled for disability pension as his case has been rejected rightly by the competent authority i.e. DGAFMS, as such, Original Application is devoid of merits and may be dismissed.

5. We have perused the records and we find that applicant was discharged from service in Shape-1 after serving more than 30 years of service. He was admitted in Command Hospital, Lucknow, just after 26 days from discharge from service for his disease Coronary Artery Disease (CAD) but his Post Discharge Claim has been denied by DGAFMS. In view of above, a Re-survey Medical Board (RSMB) is required to be conducted for the applicant to assess gravity of his disease and medical condition.

6. In view of aforesaid, the respondents are directed to conduct a Re-Survey Medical Board for the applicant to assess his medical condition

recommending the percentage of disability, if any. The respondents are directed to inform applicant the place and date where RSMB is to be conducted and give effect to this order positively within a period of four months from the date of receipt of certified copy of the order.

7. No order as to costs.

8. Misc. Application, if any, pending for disposal, shall be treated to have been disposed of.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

SB

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

O.A. No. 57 of 2020 with M.A. No. 877 of 2019

Ex Hav Paras Nath Tiwari By Legal Practitioner for the Applicant	Applicant
Versus	
Union of India & Others By Legal Practitioner for Respondents	Respondents

Notes of the Registry	Orders of the Tribunal		
	<p><u>05.04.2021</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 style="text-align:center">On the case being taken up for hearing Shri R. Chandra, learned counsel for the applicant and Shri Rajiv Pandey and Shri Vinod Kumar Singh, learned counsel for the respondents are present.</p> <p style="text-align:center">List this case on 27.05.2021 alongwith AGIF matters for hearing.</p> <table style="width:100%;"><tr><td style="width:50%; text-align:center">(Vice Admiral Abhay Raghunath Karve) Member (A)</td><td style="width:50%; text-align:center">(Justice Umesh Chandra Srivastava) Member (J)</td></tr></table> <p>SB</p>	(Vice Admiral Abhay Raghunath Karve) Member (A)	(Justice Umesh Chandra Srivastava) Member (J)
(Vice Admiral Abhay Raghunath Karve) Member (A)	(Justice Umesh Chandra Srivastava) 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. 164 of 2020

Ex Hav Basdeo Rampal 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>05.04.2021</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>On the case being taken up for hearing Shri K.P. Datta, learned counsel for the applicant and Ms. Amrita Chakraborty, learned counsel for the respondents are present.</p> <p>This Original Application has been filed by the applicant with prayer to decide his appeal dated 11.11.2019 for grant of promotion.</p> <p>Learned counsel for the respondents submitted that applicant's appeal dated 11.11.2019 has not yet been received by AMC Records.</p> <p>In view of above, applicant is directed to prefer an appeal/representation to the respondents within two weeks from today to resolve his grievances.</p> <p>The respondents are directed to decide the appeal/representation of the applicant by a speaking and reasoned order in accordance with law within a period of two months from the date of receipt of appeal/representation from applicant and communicate the decision to the applicant accordingly.</p> <p>With the aforesaid direction, the Original Application is disposed of finally.</p> <p>Let a copy of this order be provided to learned counsel for the parties within 48 hours, free of cost.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)</p> <p>SB</p>

