

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

M.A. No. 481 of 2020 Inre : O.A. No. (Nil) of 2020

Ex. Hav. Satish Kumar
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>06.01.2021</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-indent: 40px;">Shri Namit Sharma, Advocate filed power today in Court on behalf of the respondents which is taken on record.</p> <p style="text-indent: 40px;">Heard Shri D.K. Sharma, Ld. Counsel for the applicant and Shri Namit Sharma, Ld. Counsel for the respondents.</p> <p style="text-indent: 40px;">The Original Application has been filed with delay of 05 months and 07 days.</p> <p style="text-indent: 40px;">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-indent: 40px;">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-indent: 40px;">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-indent: 40px;">Accordingly, delay in filing application is condoned. Delay condonation application stands decided accordingly.</p> <p style="text-indent: 40px;">Let Original Application be registered.</p> <p><u>O.A. No. 16 of 2021</u></p> <p style="text-indent: 40px;">It is a fit case for adjudication.</p> <p style="text-indent: 40px;">Admit.</p> <p style="text-indent: 40px;">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.</p> <p style="text-indent: 40px;">List the matter before Registrar on 23.03.2021 for exchange of pleadings.</p> <p style="text-indent: 40px;">List the matter before Tribunal on 01.04.2021.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)</p> <p style="text-align: left;">AKD/-</p>

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

Diary No. 1568 of 2020 Inre : M.A. No. 881 of 2017 Inre : O.A. No. (Nil) of 2017

Kudratullah & Others
By Legal Practitioner for the Applicants

Applicants

Versus

Union of India & Others
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>06.01.2021</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 Ashok Kumar, Ld. Counsel for the applicants and Shri D.K. Pandey, Ld. Counsel for the respondents.</p> <p><u>Diary No. 1568 of 2020</u></p> <p style="text-align: center;">Defects have been removed.</p> <p style="text-align: center;">For the reason stated in affidavit filed in support of Recall Application, Recall Application is allowed and order dated 13.11.2020 is recalled.</p> <p style="text-align: center;">Accordingly, M.A. No. 881 of 2017 as well as O.A. No. (Nil) of 2017 are restored to its number.</p> <p><u>M.A. No. 881 of 2017 Inre : O.A. No. (Nil) of 2017</u></p> <p style="text-align: center;">Applicant is directed to file Supplementary Affidavit, if any, within two weeks positively.</p> <p style="text-align: center;">List on 10.02.2021.</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)

O.A. No. 320 of 2020

Ex. Sep. Anil Kumar Singh Gaur
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>06.01.2021</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 Manoj Kumar Awasthi, Advocate holding brief of Shri J.N. Mishra, Ld. Counsel for the applicant and Shri Rajiv Pandey, Ld. Counsel for the respondents are present.</p> <p>Ld. Counsel for the respondents seeks and is allowed two weeks further time to file Counter Affidavit.</p> <p>Issue notice to respondent No. 4 returnable within four weeks.</p> <p>List on 03.03.2021.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) 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)
O.A. No. 545 of 2019 with M.A. No. 848 of 2019

Ex. Hav. (Hony. Nb. Sub.) Rambir 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>06.01.2021</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 Om Prakash Kushwaha, Ld. Counsel for the applicant and Shri Adesh Kumar Gupta, Ld. Counsel for the respondents are present.</p> <p><u>M.A. No. 848 of 2019</u></p> <p>The Original Application has been filed with delay of 09 years, 09 months and 20 days.</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>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>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>Accordingly, delay in filing application is condoned. Delay condonation application stands decided accordingly.</p> <p><u>O.A. No. 545 of 2019</u></p> <p>Ld. Counsel for the applicant submits that Original Application may be disposed off with direction to the respondents to revise the pension of applicant in terms of letter No. 1(13)/2016/D(Pen/Policy) dated 21st February, 2020 issued by Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare, New Delhi, to which Ld. Counsel for the respondents has no objection.</p> <p>With the consent of Ld. Counsel for the parties, we hereby dispose of the Original Application finally with the direction to the respondents to revise the pension of applicant in terms of letter No. 1(13)/2016/D(Pen/Policy) dated 21.02.2020 issued by Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare, New Delhi, within a period of three months from the date of receipt of copy of this order and communicate to the applicant accordingly after verifying the documents.</p> <p>Let a copy of this order be provided to the learned Counsel for the parties.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) 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)

M.A. No. 1913 of 2018 Inre : O.A. No. (Nil) of 2018

Ex. Nb. Sub. **Sudhakar Singh Pal**
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>06.01.2021</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 R.N. Tripathi, Ld. Counsel for the applicant and Shri Adesh Kumar Gupta, Ld. Counsel for the respondents.</p> <p style="text-align: center;">The Original Application has been filed with delay of 24 years, 10 months and 20 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 style="text-align: center;">Let Original Application be registered.</p> <p><u>O.A. No. 15 of 2021</u></p> <p style="text-align: center;">It is a fit case for adjudication.</p> <p style="text-align: center;">Admit.</p> <p style="text-align: center;">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.</p> <p style="text-align: center;">List the matter before Registrar on 26.03.2021 for exchange of pleadings.</p> <p style="text-align: center;">List the matter before Tribunal on 09.04.2021.</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)

M.A. No. 266 of 2020 Inre O.A. (Nil) of 2020

Sub Manoj Kumar Yadav (Retd)
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>06.01.2021</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 R Chandra, learned counsel for the applicant and Shri Yogesh Kesarwani, learned counsel for the respondents are present.</p> <p style="text-align: center;"><u>M.A. No. 266 of 2020</u></p> <p>The Original Application has been filed with delay of 13 years, 11 months and 28 days.</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 of Original Application is not deliberate, but on account of reasons stated in affidavit filed in support of application.</p> <p>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.</p> <p>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>Accordingly, delay in filing application is condoned. Application stands decided accordingly.</p> <p>Let Original Application be registered.</p> <p style="text-align: center;"><u>O.A. No. 17 of 2021</u></p> <p>Learned counsel for the applicant submitted that applicant was enrolled in the Army Education Corps on 22.03.2003 as an Instructor Havildar and as per recommendations of 6th Central Pay Commission he was granted next increment on 01.07.2007 instead of 01.07.2006, thereby resulting in huge loss to the applicant and recovery of Rs 78,162/-.</p> <p>Learned counsel for the respondents conceded grant of next increment to applicant with effect from 01.07.2006.</p>

Learned counsel for the applicant placed reliance on AFT, Principal Bench, New Delhi judgment delivered on 15.10.2014 in the case of Ex Hav **Manoj Kumar vs Union of India & Ors** (O.A. No. 94 of 2013) and AFT, Lucknow judgment delivered on 01.12.2020 in the case of **Ex Sub Ravi Kumar Mishra vs Union of India & Ors** (O.A. No. 651 of 2020), and prayed for benefits to be granted to applicant.

We have perused the records and SAI 1/S/2008, according to para 9 the applicant is eligible for grant of next increment with effect from 01.07.2006 instead of 01.07.2007.

Thus in light of the aforesaid judgments the present O.A. is **allowed**.

In view of the above, the applicant's pay scale be re-fixed as on 01.01.2006 as per 7th CPC recommendations and he is allowed to avail of consequential benefits that accrue. Due arrears to be paid within the next four months, failing which, it shall carry interest @ 8% per annum.

No orders as to cost.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

rathore

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

M.A. No. 270 of 2019 Inre O.A. (Nil) of 2019

Ex Nb Sub Ayodhya Prasad
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>06.01.2021</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 R Chandra, learned counsel for the applicant and Shri Arun Kumar Sahu, learned counsel for the respondents are present.</p> <p style="text-align: center;"><u>M.A. No. 270 of 2019</u></p> <ol style="list-style-type: none">1. The Original Application has been filed with delay of 11 years, 11 months and 10 days.2. 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 of Original Application is not deliberate, but on account of reasons stated in affidavit filed in support of application.3. 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.4. 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.5. Accordingly, delay in filing application is condoned. Application stands decided accordingly.6. Let Original Application be registered. <p style="text-align: center;"><u>O.A. No. 18 of 2021</u></p> <ol style="list-style-type: none">7. Brief facts of the case are that the applicant was enrolled in army on 22.08.1980 and superannuated on 31.08.2006 in low medical category for disability 'Acute Gouty Arthritis' having rendered more than 26 years of service. Prior to discharge his Release Medical Board (RMB) was conducted on 13.03.2006 which assessed his disability @ 15-19% for life neither attributable to nor aggravated by military service (NANA). The applicant is in receipt of service pension vide PPO No. S/017218/2006 dated 21.03.2006. Disability pension claim was rejected by the competent authority and communicated to applicant vide letter dated 20.12.2006. A legal notice dated

22.10.2018 was served by applicant which was replied vide letter dated 16.12.2018 with the remarks that he is not entitled to disability pension. It is in this perspective that this O.A. has been filed.

8. Learned counsel for the applicant pleaded that applicant was enrolled in the army in medically and physically fit condition. It was further pleaded that a member is to be presumed in sound physical and mental condition upon entering service if there is no note or record to the contrary at the time of entry. 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 conditions. He further pleaded that on account of rigors of military service the applicant has suffered this disability. Relying upon judgments delivered on 30.09.2019 in O.A. No. 58 of 2019 in the case of *Gp Capt Deepak Bana vs Union of India & Ors* and another judgment delivered on 03.05.2012 in T.A. No. 92 of 2011 in the case of *Signalman Jayant Bagchi vs Union of India & Ors*, he pleaded for disability pension to be granted to applicant.

9. On the other hand, learned counsel for the respondents submitted that applicant is not entitled to disability pension as per para 173 of Pension Regulations for the Army, 1961 (Part-I) which lays down that disability pension is granted to an individual provided his disability is viewed either attributable to or aggravated by military service and percentage of disablement is assessed @ 20% or more. In case of applicant the RMB has assessed his disability @ 15-19% neither attributable to nor aggravated by military service, he is not entitled to disability pension. Learned counsel for the respondents further contended that since the medical board has recommended the disability to be NANA, the pension sanctioning authority has rejected disability pension claim on the grounds of disability being neither attributable to nor aggravated by military service. He pleaded the O.A. to be dismissed.

10. We have given our considerable thoughts to both sides and have carefully perused the records. The question in front of us is straight; whether the disability is attributable to/aggravated by military service and, if so, whether it is above or below 20% and also whether applicant was invalidated out of service on account of the disability?

11. It is undisputed case of the parties that applicant was discharged from service on 31.08.2006 in low medical category after having completed more than 26 years of service. The RMB was conducted on 13.03.2006 which assessed his disability @ 15-19% for life neither attributable to nor aggravated by military service.

12. As per para 90 of Pension Regulations for the Army, 2008, disability element of pension is eligible only when the disability is assessed @ 20% or more and accepted as attributable to or aggravated by military service. Since, applicant's disability element is 15-19% for life, applicant does not fulfil the requirement of para 90 of the Pension Regulations for the Army, 2008.

13. Since applicant has served more than 26 years in army and is in receipt of service pension, his case does not fall within the category of invalidation in which

circumstance he would have become eligible for grant of disability element of pension @ 20% (rounded off to 50%) in terms of reported judgment in the case of *Sukhvinder Singh vs Union of India & Ors*, (2014) STPL (WEB) 468.

14. Further, the applicant seems to be not entitled to disability pension in terms of Hon'ble Apex Court judgment in the case of *Bachchan Singh vs Union of India & Ors*, Civil Appeal Dy. No. 2259 of 2012 decided on 04th September, 2019 wherein their Lordships have held as under:-

“..... After examining the material on record and appreciating the submissions made on behalf of the parties, we are unable to agree with the submissions made by the learned Additional Solicitor General that the disability of the appellant is not attributable to Air Force Service. The appellant worked in the Air Force for a period of 30 years. He was working as a flight Engineer and was travelling on non pressurized aircrafts. Therefore, it cannot be said that his health problem is not attributable to Air Force Service. However, we cannot find fault with the opinion of the Medical Board that the disability is less than 20%.”

(underlined by us)

15. In light of the above judgment, inference may be drawn that Medical Board is a duly constituted body and findings of the board should be given due weightage and credence.

16. In addition to above, a bare reading of para 53 (a) of Pension Regulations for the Army, 2008 (Part-I) makes it abundantly clear that an individual being assessed disability below 20% is not entitled to disability element irrespective of disability being attributable to or aggravated by the military service. The Hon'ble Supreme Court in Civil Appeal No 10870 of 2018 *Union of India & Ors vs Wing Commander SP Rathore*, has made it clear vide order dated 11.12.2019 that disability element is inadmissible when disability percentage is below 20%. Para 9 of the aforesaid judgment being relevant is quoted as under:-

“9. As pointed out above, both Regulation 37 (a) and Para 8.2 clearly provide that the disability element is not admissible if the disability is less than 20%. In that view of the matter, the question of rounding off would not apply if the disability is less than 20%. If a person is not entitled to the disability pension, there would be no question of rounding off.”

17. Citations given by learned counsel for the applicant in para 8 aforesaid are of no use to applicant as those cases are based on another grounds.

18. In view of the discussions made above, O.A. lacks merit and same is accordingly **dismissed**.

19. Pending application, if any, stands disposed of.

20. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

rathore

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

O.A. No. 507 of 2019

Ex MWO Awdhesh Kumar 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>06.01.2021</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 R. Chandra, Ld. Counsel for the applicant and Ms. Anju Singh, 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.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)</p> <p>SB</p>

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

O.A. No. 491 of 2019

Ex Nk Poonam 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>06.01.2021</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 Col A.K. Srivastava (Retd), Ld. Counsel for the applicant and Shri Amit Jaiswal, Ld. Counsel for the respondents alongwith Maj Tejas, Departmental Representative.</p> <p style="text-align: center;">Arguments concluded.</p> <p style="text-align: center;">Order is reserved.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)</p> <p>SB</p>

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

M.A. No. 1336 of 2018 with M.A. No. 1337 of 2018
Inre : M.A. No. 1789 of 2016 Inre : O.A. No. (Nil) of 2016

Arvind Kumar
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>06.01.2021</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 Ram Kumar Verma, Ld. Counsel for the applicant and Shri Ashish Agnihotri, Ld. Counsel for the respondents.</p> <p style="text-align: center;"><u>M.A. No. 1336 of 2018</u></p> <p>This is an application for recall of order dated 01.11.2017 passed in O.A. (Nil) of 2016 by which the application was dismissed for non-prosecution.</p> <p>The application has been made with a delay of 7 months and 10 days. Submission of learned counsel for the applicant is that delay in filing application is not intentional but on account of facts stated in affidavit filed in support of recall application.</p> <p>Ld. Counsel for the respondents has vehemently opposed the prayer submitting that the delay has not been satisfactorily explained, hence delay should not be condoned.</p> <p>We have gone through affidavit filed in support of application for condonation of delay and we find that grounds stated therein are genuine and sufficient. Therefore we condone the delay in filing recall application and allow recall application on payment of cost of Rs. 1,000/- (Rupees one thousand only) as cost payable to AFT Bar Association Library.</p> <p>Let M.A. No 1789 of 2016 Inre O.A. (Nil) of 2016 be restored to its original number on payment of cost only.</p> <p>List on 25.02.2021 for orders.</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>UKT/-</p>

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

M.A. No 1895 of 2018 alongwith 1896 of 2018
O.A. No. 100 of 2018
Along with
O.A. No. 211 of 2018

Surendra Pal Verma
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>06.01.2021</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 Vinay Pandey, Ld. Counsel for the applicant and Dr. Gyan Singh, Ld. Counsel for the respondents.</p> <p style="text-align: center;"><u>M.A. No 1895 of 2018 alongwith 1896 of 2018</u></p> <p>This is an application to allow legal heirs of deceased applicant to be substituted in his place in the O.A. This application being filed after 90 days from the death of applicant, a separate application for setting aside abatement has also been filed.</p> <p>Grounds mentioned in affidavit filed in support of application being sufficient, abatement is set aside and, consequently, substitution application is also allowed.</p> <p style="text-align: center;">Let substitution in O.A. be made during the course of the day.</p> <p style="text-align: center;"><u>O.A. No. 100 of 2018 Along with O.A. No. 211 of 2018</u></p> <p>Two Original Applications being O.A. No 100 of 2018 and O.A. No 211 of 2018 have been filed by the deceased applicant Surendra Pal Verma for grant of disability pension. Both above mentioned applications being in respect of the same cause of action and documents concerning dispute being filed in the O.A. filed subsequently, the same is allowed to continue and the earlier instituted being O.A. No. 100 of 2018 is dismissed.</p> <p style="text-align: center;">List on 08.01.2021.</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>UKT/-</p>

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

Diary No. 494 of 2020 Inre : O.A. No. (Nil) of 2020

Ex. Nk. Ranjeet Yadav	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>06.01.2021</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: justify;">On the case being taken up for hearing Shri Virat Anand Singh, Ld. Counsel for the applicant and Shri Arun Kumar Sahu, Ld. Counsel for the respondents are present.</p> <p style="text-align: justify;">Learned counsel for the applicant submits that he has removed the defects pointed out by the registry by filing delay condonation application today in the Registry. The said delay condonation application is not available on record.</p> <p style="text-align: justify;">Registry is directed to place the same on record.</p> <p style="text-align: justify;">List on 12.01.2021 for orders.</p> <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="text-align: center;"> <p>(Vice Admiral Abhay Raghunath Karve) Member (A)</p> </div> <div style="text-align: center;"> <p>(Justice Umesh Chandra Srivastava) Member (J)</p> </div> </div> <p style="margin-top: 10px;">UKT/-</p>

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

Diary No. 496 of 2020 Inre : O.A. No. (Nil) of 2020

Rect. Brij Bhushan 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>06.01.2021</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 Virat Anand Singh, Ld. Counsel for the applicant and Shri G.S. Sikarwar, Ld. Counsel for the respondents are present.</p> <p style="text-align: center;">List on 12.01.2021 for orders.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)</p> <p>UKT/-</p>

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

M.A. No. 239 of 2020 Inre : O.A. No. 302 of 2011
Along with
Ex. A. No. 118 of 2018 Inre : O.A. No. 302 of 2011

Union of India & Others
By Legal Practitioner for the Applicants

Applicants

Versus

Brijendra Kumar Singh
By Legal Practitioner for Respondent

Respondent

Notes of the Registry	Orders of the Tribunal
	<p><u>06.01.2021</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 Yogesh Kesarwani, Ld. Counsel for the applicants and Shri Virat Anand Singh, Ld. Counsel for the respondent.</p> <p style="text-align: center;">Learned counsel for the applicants submit that he has received copy of objection hardly a day before. His further submission is that he needs some time to go through the case.</p> <p style="text-align: center;">List on 19.01.2021 for orders.</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>UKT/-</p>

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

O.A. No. 31 of 2020 with M.A. No. 899 of 2019

Ex. Hav. (Hony. Nb. Sub.) Ranbir 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>06.01.2021</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:justify">On the case being taken up for hearing Shri Virendra Kumar Gupta, Ld. Counsel for the applicant and Shri Adesh Kumar Gupta, Ld. Counsel for the respondents are present.</p> <p style="text-align:justify">Shri Virendra Kumar Gupta, Ld. Counsel for the applicant submits that Original Application may be disposed off with direction to the respondents to revise the pension of applicant in terms of letter No. 1(13)/2016/D(Pen/Policy) dated 21st February, 2020 issued by Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare, New Delhi, to which Shri Adesh Kumar Gupta, Ld. Counsel for the respondents has no objection.</p> <p style="text-align:justify">With the consent of Ld. Counsel for the parties, we hereby dispose of the Original Application finally with the direction to the respondents to revise the pension of applicant in terms of letter No. 1(13)/2016/D(Pen/Policy) dated 21.02.2020 issued by Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare, New Delhi, within a period of three months from the date of receipt of copy of this order and communicate to the applicant accordingly after verifying the documents.</p> <p style="text-align:justify">Let a copy of this order be provided to the learned Counsel for the parties.</p> <p style="text-align:center">(Vice Admiral Abhay Raghunath Karve) Member (A) (Justice Umesh Chandra Srivastava) Member (J)</p> <p>UKT/-</p>

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

Ex. A. No. 209 of 2017 Inre : T.A. No. 888 of 2010

Ranbir Singh By Legal Practitioner for the Applicant	Versus	Applicant
Union of India & Others By Legal Practitioner for Respondents		Respondents

Notes of the Registry	Orders of the Tribunal		
	<p><u>06.01.2021</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 Yashpal Singh, Ld. Counsel for the applicant and Shri Yogesh Kesarwani, Ld. Counsel for the respondents are present.</p> <p style="text-align: center;">Learned counsel for the respondents submits that he has to file copy of Corrigendum PPO issued in the matter wherefore two weeks time be given to him.</p> <p style="text-align: center;">Let Corrigendum PPO be filed within two weeks.</p> <p style="text-align: center;">List on 05.02.2021 for orders.</p> <table style="width: 100%; margin-top: 20px;"><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 style="margin-top: 10px;">UKT/-</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)**

Ex. A. No. 100 of 2018 Inre : O.A. No. 438 of 2012

m Kumar 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>06.01.2021</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 Yashpal Singh, Ld. Counsel for the applicant and Shri Namit Sharma, Ld. Counsel for the respondents are present.</p> <p>Learned counsel for the respondents submits that order under execution has been complied with, He prays for and is granted two weeks time to file affidavit of compliance. Respondents are also directed to deposit the cost Rs. 55,000/- imposed upon them within aforesaid period of time.</p> <p>List on 08.02.2021 for orders.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)</p> <p>UKT/-</p>

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

O.A. No. 182 of 2016

Lt Col Manish Mishra
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>06.01.2021</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 Col YR Sharma (Retd), learned counsel for the applicant and Shri Yogesh Kesarwani, learned counsel for the respondents are present.</p> <p>Pleadings are complete and the case is ripe for hearing.</p> <p>List on 15.03.2021 for final hearing.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)</p> <p>UKT/-</p>

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

O.A. No. 471 of 2018

Ex Nk Sunil Kumar 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>06.01.2021</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 Gyan Singh Chauhan and Shri Kunwar Bahadur Singh, learned counsel for the applicant and Ms Appoli Srivastava, learned counsel for the respondents are present.</p> <p>List on 18.03.2021 for hearing.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)</p> <p>UKT/-</p>

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

O.A. No. 432 of 2018

Ex Hav (Hony Nb Sub) Bharat 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>06.01.2021</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 JN Mishra, learned counsel for the applicant and Shri Adesh Kumar Gupta, learned counsel for the respondents are present.</p> <p style="text-align: center;">Pleadings are complete and the case is ripe for hearing.</p> <p style="text-align: center;">List on 19.03.2021 for final hearing.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)</p> <p>UKT/-</p>

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

O.A. No. 281 of 2016

Ravinder 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>06.01.2021</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 KK Misra, learned counsel for the applicant and Dr. Shailendra Sharma Atal, learned counsel for the respondents are present.</p> <p>Pleadings are complete and the case is ripe for hearing.</p> <p>List on 22.03.2021 for final hearing.</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>UKT/-</p>

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

O.A. No. 1 of 2021

Nk Ali Anwarali Manwarali
 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>06.01.2021</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. Memo of appearance filed by Shri Sunil Sharma, Advocate on behalf of the respondents is taken on record.</p> <p>2. Heard Shri Virat Anand Singh, learned counsel for the applicant and Shri Sunil Sharma, learned counsel for the respondents.</p> <p>3. This application has been filed under Section 15 of the Armed Forces Tribunal Act, 2007 for setting aside the TRIAL- District Court Martial (DCM) initiated against the applicant on account of the same being barred by limitation under Section 122 (1) of the Army Act, 1950.</p> <p>4. The applicant is facing trial for allegedly using criminal force against his superior officer. As per charge sheet, the alleged incident had taken place on 05.01.2017, in respect of which trial has commenced by convening District Court Martial on 02.11.2020.</p> <p>5. Shri Virat Anand Singh, learned counsel appearing for the applicant submitted that for initiating trial for an offence committed by an army personnel the provision for limitation has been laid down in Section 122 of the Army Act, 1950. He further submitted that according to sub- section (1) of the said section, no trial of any person subject to this Act for any offence shall be commenced after the expiration of a period of three years and such period shall commence:-</p>

- (a) *On the date of the offence; or*
- (b) *Where the commission of the offence was not known to the person aggrieved by the offence or to the authority competent to initiate action, the first day on which such offence comes to the knowledge of such person or authority, whichever is earlier; or*
- (c) *Whether it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the authority competent to initiate action, whichever is earlier.*

6. Learned counsel for the applicant submitted that it is not the case of respondents that the person against whom the offence was committed was not aware about the commission of the offence nor it is the case that he did not know the person by whom the offence was committed, as it is clearly indicated in the charge sheet served to the applicant that victim's statement was recorded in which he had stated that he had reported the incident to his Dy Comdt Col Rohit Bhartarya on the day of incident itself, on account of which court of inquiry was ordered. Thus, learned counsel for the applicant submitted that when victim was aware about the offence as well as the person who committed it, on the day of the incident itself, i.e. 05.01.2017, trial by court martial against applicant could be initiated within three years from the date of offence i.e. 05.01.2017 only, and not beyond that. He further submitted that applicant had raised this plea before the court- martial praying that trial being time barred under Section 122 of the Army Act, 1950, it should not be proceeded, but the plea was overruled without any cogent reason, hence this application.

7. Per contra, Shri Sunil Sharma, learned counsel appearing for the respondents submitted that O.A. being not filed against any final order passed by the court martial after the same being confirmed, as provided under Section 153 of the Army Act, 1950, the same is not maintainable. In support, he has placed reliance on the decision of AFT, Principal Bench, New Delhi in **O.A. No**

176 of 2015 titled **Hav Sham Das D Vs. Union of India and Others**, decided

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on 07.04.2015, wherein it has been held that provisions of appeal provided under sub section (1) of the Armed Forces Tribunal Act, 2007, is applicable to a final order only, not to any order. The relevant para 25 reads as under:-

“25. Having thus considered all the relevant aspects of the matter, including the legislative history, object, basic scheme and the provisions of the Act and the nature of Court Martial Proceedings we are not inclined to accept the argument that that any order passed by the court Martial would be appealable under sub-section (1) of Section 15 of the Act. The provision is applicable to a final order only as any contrary interpretation would not only frustrate the purpose of the Act but also make the entire system of administration of justice in the Armed Forces unworkable.”

8. Learned counsel for the respondents also submitted that applicant in the above mentioned O.A. had preferred a Criminal Appeal of 2015, arising out of **Crl A.D. No 16040 of 2015, Hav Sham Das D vs Union of India and Others**, in the Hon'ble Apex Court and the same was dismissed, which indicates that order passed by the Armed Forces Tribunal has attained finality.

9. Learned counsel for the respondents further submitted that even after the plea in bar taken by the accused has been rejected and the court has proceeded with trial, accused cannot claim for setting aside the proceedings of trial merely on the reason that plea in bar has been wrongly rejected until the order rejecting the plea in bar is affirmed by the competent authority, as provided under Rule 53 (5) of the Army Rules, 1954. He further submitted that in view of what sub-rule (5) of Rule 53 says, finding rejecting the plea in bar cannot be challenged by way of filing Original Application under section 15 (1) of the Armed Forces Act, 2007, until the said finding is confirmed by the competent authority under section 153 of the Army Act 1950, and the same being not done in the present case, application deserves to be dismissed being

not maintainable.

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10. Section 15 of the Armed Forces Tribunal Act, 2007, deals with jurisdiction, powers and authority in matters of appeal against court-martial.

Sub-section (1), (2) and (3) of this Section relevant for the disposal of present application are reproduced as below:-

(1) *Save as otherwise expressly provided in this Act, the Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable under this Act in relation to appeal against any order, decision, finding or sentence passed by a court-martial or any matter connected therewith or incidental thereto.*

(2) *Any person aggrieved by an order, decision, finding or sentence passed by a court-martial may prefer an appeal in such form, manner and within such time as may be prescribed.*

(3) *The Tribunal shall have power to grant bail to any person accused of an offence and in military custody, with or without any conditions which it considers necessary.*

Provided that no accused person shall be so released if there appears reasonable ground for believing that he has been guilty of any offence punishable with death or imprisonment for life.

11. Section 153 of the Army Act, 1950, which is also relevant for the disposal of controversy in application is reproduced as below:

Finding and sentence not valid, unless confirmed. *No finding or sentence of a general, district or summary general, court-martial shall be valid except so far as it may be confirmed as provided by this Act.*

12. Section 154 of the Army Act, 1950, which is also relevant for the disposal of controversy in application is also reproduced as below:

Power to confirm finding and sentence of general court-martial. *The findings and sentences of general courts-martial may be confirmed by the Central Government, or by any officer empowered in this behalf*

by warrant of the Central Government.

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13. On reading sub- sections (1), (2) and (3) of Section 15 of the Armed Forces Tribunal Act, 2007, it appears that any person aggrieved by an order, decision, finding of sentence passed by a court- martial may prefer an appeal in such form, manner and within such time it may be prescribed before the Armed Forces Tribunal. However, there being no clarity whether 'any order' means any interlocutory order, or only final order, against which an appeal may be filed under sub- section (1), this matter was raised before the Principal Bench of the Armed Forces Tribunal, New Delhi, in **O.A. No 176 of 2015**, titled **Hav Sham Das D vs Union of India and Others**. In this O.A. order appealed was one by which plea of jurisdiction raised by the accused under Rule 51 of the Army Rules, 1954, was rejected by the court-martial.

14. Principal Bench, AFT, New Delhi, in this case after considering all relevant aspects of the matter, various sections and rules of the Army Act, 1950, Army Rules, 1954, as well as Section 15 of the Armed Forces Tribunal Act, 2007, opined that 'any order' referred to in sub-section (1) of Section 15 of the Armed Forces Tribunal Act, 2007, does not mean any order but it means final order only, i.e. order having attained finality as provided under Sections 153 of the Army Act, 1950.

15. The view regarding non maintainability of an appeal preferred against an interlocutory order, passed during pendency of court martial proceedings, expressed by the Armed Forces Tribunal, Principal Bench, New Delhi, in the case of **Hav Sham Das D vs Union of India and Others**, has attained finality, as criminal appeal filed against the order has been dismissed by the Hon'ble Apex Court. Thus, now it is settled in law that only a final order passed by a court martial is appealable under Section 15 of the Armed Forces Tribunal Act , 2007, and not every order including interlocutory order.

16. This application also has been filed against an interlocutory order passed by the DCM, whereby plea of limitation raised by the applicant has been rejected by the DCM. The order rejecting plea of limitation being not a final order, and also being not affirmed as provided in Section 153 of the AFT

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Act, 2007, is not appealable at this stage. Thus, without affecting the merits of contentions raised, we find that present O.A. is not maintainable and is, therefore, liable to be dismissed.

17. Accordingly, O.A. is **dismissed**.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Ukt/-