

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

M.A. No. 961 of 2019 Inre : O.A. No. (Nil) of 2019

Ex. Sub./Clk. Ram Briksha Singh (Through his Son Pramod Singh) 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>16.02.2021</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 Dharmesh Sinha, Ld. Counsel for the applicant and Dr. Shailendra Sharma Atal, Ld. Counsel for the respondents.</p> <p style="text-align: center;">There is a delay of 42 years, 01 month and 24 days in filing Original Application.</p> <p>Submission of Ld. Counsel for the applicant is that delay in filing Original Application is not deliberate. The applicant was enrolled in the Indian Army in the year 1951 and was dismissed from service vide order dated 15.07.1977. General Court Martial verdict dated 21.04.1977 was confirmed vide order dated 04.06.1977. The General Court Martial convicted the applicant under Section 64 of the Army Act and awarded two years imprisonment and recommended dismissal from service. The applicant preferred Statutory Petition dated 11.08.1977 which was also disposed of vide order dated 06.09.1979. Against the aforesaid proceedings the applicant had preferred Writ Petition No. 2302 of 1978, Ram Briksha Singh Vs. Union of India and Others, before the Hon'ble High Court of Judicature at Allahabad which was partly allowed vide Judgment and order dated 17.02.1992 by Hon'ble Single Judge and a Writ in the nature of Mandamus was issued commanding the opposite parties to pay the entire pension, gratuity and other benefits to the petitioner in accordance with Rule. Against the order dated 17.02.1992 the respondents had preferred Special Appeal No. 265 (S/B) of 1992, Union of India Vs. Ram Briksh Singh, which was allowed and set aside the order passed by the Hon'ble Single Judge in so far it directs the appellant to pay pension and other benefits to the petitioner vide Judgment and Order dated 06.02.1995. Further, submission of Ld. Counsel for the applicant is that the Hon'ble High Court ignored the material facts that due to dismissal the applicant therein was deprived of pensionary benefit. Thus, his submission is that delay is not deliberate, but for the reasons stated above.</p>

Ld. Counsel for the respondents has vehemently opposed the prayer and has submitted that long delay of more than 42 years has not been properly and satisfactorily explained. Further, submission of Ld. Counsel for the respondents is that Hon'ble High Court had considered the all the facts and had decided the Special Appeal. In view of principle of res-judicata, once the matter has been decided by the Hon'ble High Court it can not be agitated again in this Tribunal.

Having heard the submissions of Ld. Counsel of both sides and considering the facts and circumstances of the case, we find that explanation offered by the applicant for delay in filing Original Application is not sufficient. It is settled in law that if any time limit is given for filing application and the same is not filed within that time limit, delay should be explained on day to day basis which applicant has utterly failed to do in the present case. We also find that Hon'ble High Court has already decided the controversy involved in the matter. In case of any grievance the applicant ought to have approached the Hon'ble Apex Court against the order of Hon'ble High Court within the stipulated time. At this stage the applicant cannot challenge the General Court Martial proceedings before this Tribunal again.

In the result, we find that delay is not condonable.

Accordingly, delay condonation application is **dismissed**.

Original Application being time barred and not maintainable is also **dismissed**.

(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)

M.A. No. 111 of 2021 Inre : O.A. No. (Nil) of 2021

Ex. Sub. Maj. (Hony. Lt.) Ram Kishor Dwivedi 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>16.02.2021</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;">Shri D.K. Pandey, Advocate filed power today in Court on behalf of the respondents which is taken on record.</p> <p style="text-align: justify;">Heard Col. R.C. Dixit (Retd.), Ld. Counsel for the applicant and Shri D.K. Pandey, Ld. Counsel for the respondents.</p> <p style="text-align: justify;">The Original Application has been filed with delay of 03 years, 09 months and 05 days.</p> <p style="text-align: justify;">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.</p> <p style="text-align: justify;">Ld. Counsel for the respondents has opposed on the ground that explanation offered for condonation of delay is not satisfactory.</p> <p style="text-align: justify;">We have gone through affidavit filed in support of application for condonation of delay and find that grounds stated therein are genuine and sufficient.</p> <p style="text-align: justify;">As such, delay in filing application is condoned. Application stands decided accordingly.</p> <p style="text-align: justify;">Let Original Application be registered.</p> <p><u>O.A. No. 124 of 2021</u></p> <p style="text-align: justify;">It is a fit case for adjudication.</p> <p style="text-align: justify;">Admit.</p> <p style="text-align: justify;">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: justify;">List the matter before Registrar on 29.04.2021 for exchange of pleadings.</p> <p style="text-align: justify;">List the matter before Tribunal on 19.052021.</p> <p style="text-align: justify;">(Vice Admiral Abhay Raghunath Karve) Member (A) (Justice Umesh Chandra Srivastava) 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)

Ex. A. No. 56 of 2018 Inre : O.A. No. 303 of 2016

Rajiv Tondon

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>16.02.2021</u></p> <p><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.K. Misra, Ld. Counsel for the applicant and Dr. Shailendra Sharma Atal, Ld. Counsel for the respondents are present.</p> <p>As prayed by the Ld. Counsel for the applicant, four weeks further time is granted to file Substitution Application.</p> <p>List on 06.04.2021.</p> <p>(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)

Ex. A. No. 193 of 2018 Inre : O.A. No. 145 of 2013

Satendra 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>16.02.2021</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 Pankaj Kumar Shukla, Ld. Counsel for the applicant is present.</p> <p>Major Tarun, Department Representative is also present from the side of respondents and he submits that respondents are wishing to file Special Leave Petition before the Hon'ble Apex Court against the order under execution, therefore, hearing of the case be adjourned. As regards cost, he submits that the same shall be paid very soon.</p> <p>Considering that order under execution is dated 19.01.2018, and Review Application against it has been dismissed on 24.05.2019, and Leave to Appeal has also been dismissed on 12.10.2020 and even thereafter compliance of the order is being avoided on one or other reason, nor the cost imposed has been paid, respondents are directed to make compliance of order within four weeks from today failing which they will have to pay Rs.25,000/- as cost to the applicant and their non action would be viewed seriously also.</p> <p style="text-align: center;">List on 24.03.2021.</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)

Ex. A. No. 69 of 2019 Inre : O.A. No. 583 of 2017

Ex. Sep. Ajay 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>16.02.2021</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 Col. Rakesh Johri (Retd.), Ld. Counsel for the applicant and Shri Yogesh Kesarwani, Ld. Counsel for the respondents are present.</p> <p style="text-align: center;">With regard to compliance, Counsel for the respondents submitted that exercise regarding payment of salary as well as arrears has been completed and as applicant furnished Bank details on 10.02.2021 only the amount could not be credited. He further submitted that he hopes to get arrears credited by 28.03.2021.</p> <p style="text-align: center;">In view of above, list on 25.03.2021.</p> <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="text-align: center;"> (Vice Admiral Abhay Raghunath Karve) Member (A) </div> <div style="text-align: center;"> (Justice Umesh Chandra Srivastava) Member (J) </div> </div> <p style="margin-top: 10px;">AKD/-</p>

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

Ex. A. No. 12 of 2020 Inre : O.A. No. 457 of 2019

Ex. Nk. Hira 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>16.02.2021</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 Col. H.M. Maheshwari (Retd.), Ld. Counsel for the applicant and Shri Shyam Singh, Ld. Counsel for the respondents are present.</p> <p style="text-align: center;">With regard to compliance of order Shri Shyam Singh, Ld. Counsel for the respondents prays for and is allowed four weeks further time to file affidavit of compliance.</p> <p style="text-align: center;">List on 22.03.2021.</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)

Ex. A. No. 30 of 2020 Inre : O.A. No. 266 of 2018

Ex. Sep. Jadhav Nilesh Dinkar 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>16.02.2021</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 Vinay Pandey, Ld. Counsel for the applicant and Shri Yogesh Kesarwani, Ld. Counsel for the respondents are present.</p> <p>Regarding compliance, Shri Yogesh Kesarwani, Ld. Counsel for the respondents submitted that as per information received order has been complied with. He also sought two weeks time to file affidavit of compliance which is allowed.</p> <p>List on 25.03.2021.</p> <p>(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. 494 of 2019 Inre : O.A. No. (Nil) of 2019

Ex. Hav. Sur Sari Charan 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>16.02.2021</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. Rakesh Johri (Retd.), Ld. Counsel for the applicant and Shri Amit Jaiswal, Ld. Counsel for the respondents.</p> <p style="text-align: center;">The Original Application has been filed with delay of 01 year, 06 months and 24 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. 126 of 2021</u></p> <p style="text-align: center;">Counter affidavit filed by the respondents is taken on record.</p> <p style="text-align: center;">Ld. Counsel for the applicant prays for and is granted four weeks time to file Rejoinder Affidavit.</p> <p style="text-align: center;">List on 22.03.2021 for final hearing.</p> <p style="text-align: center;">In the meantime respondents are directed to file Supplementary Affidavit annexing therewith Medical documents.</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. 424 of 2020 Inre : O.A. No. (Nil) of 2020

Ex. Hav. Raghubansh Chandra 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>16.02.2021</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 Dharmesh Sinha, Ld. Counsel for the applicant and Shri Jai Narayan Mishra, Ld. Counsel for the respondents are present.</p> <p>Objection against delay condonation application filed by the respondents is taken on record.</p> <p>Ld. Counsel for the applicant is directed to give his E. Mail ID to Ld. Counsel for the respondents so that copy of objection may be served to him through E. Mail. On receipt of E. Mail ID, copy will be served to Ld. Counsel for the applicant who may file reply, if any, within a week thereafter.</p> <p>List on 08.04.2021 for hearing.</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. 105 of 2021 Inre : O.A. No. (Nil) of 2019

Ex. Rect. Akshay 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>16.02.2021</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 Wg. Cdr. Ajit Kakkar (Retd.), Ld. Counsel for the applicant and Shri Arun Kumar Sahu, Ld. Counsel for the respondents are present.</p> <p style="text-align: justify;">The Original Application has been filed with delay of 01 year and 28 days.</p> <p style="text-align: justify;">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: justify;">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: justify;">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: justify;">Accordingly, delay in filing application is condoned. Delay condonation application stands decided accordingly.</p> <p style="text-align: justify;">Let Original Application be registered.</p> <p><u>O.A. No. 125 of 2021</u></p> <p style="text-align: justify;">It is a fit case for adjudication.</p> <p style="text-align: justify;">Admit.</p> <p style="text-align: justify;">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: justify;">List the matter before Registrar on 22.03.2021 for exchange of pleadings.</p> <p style="text-align: justify;">List the matter before Tribunal on 05.04.2021.</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. 272 of 2019

Sandeep Kumar Yadav
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>16.02.2021</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 Pratyush Chaube, Ld. Counsel for the applicant and Dr. Shailendra Sharma Atal, Ld. Counsel for the respondents are present.</p> <p>Despite several opportunities the applicant has not filed Rejoinder Affidavit, hence opportunity to file Rejoinder Affidavit is closed.</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>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. 421 of 2019

Ex. Lance Nk. Dharendra 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>16.02.2021</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 Singh, Ld. Counsel for the applicant and Dr. Shailendra Sharma Atal, Ld. Counsel for the respondents are present.</p> <p>On the last date respondents Ld. Counsel was directed to serve copy of objection filed against maintainability of Original Application to the Ld. Counsel for the applicant, but he has not done the same. He is, therefore, directed to serve copy to the Ld. Counsel for the applicant within a week. Thereafter, applicant may file reply to the objection, if any, within two weeks.</p> <p style="text-align: center;">List on 07.04.2021.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) Member (A) (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. 145 of 2020

Hav. Dev Prakash Shukla
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>16.02.2021</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 K.P. Datta, Ld. Counsel for the applicant and Shri Rajiv Pandey, Ld. Counsel for the respondents are present.</p> <p style="text-align: center;">On request made by the Ld. Counsel for the respondents and, as a last chance, two weeks further time is granted to file Counter Affidavit.</p> <p style="text-align: center;">List on 18.03.2021 for final hearing.</p> <p style="text-align: center;"> (Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J) </p> <p>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. 381 of 2018
Along with
C.A. No. 01 of 2019 Inre : O.A. No. 381 of 2018

Dilip Kumar Yadav
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>16.02.2021</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 Parijaat Belaura, Ld. Counsel for the applicant and Ms. Deepti Prasad Bajpai, Ld. Counsel for the respondents.</p> <p style="text-align: center;">As prayed by the Ld. Counsel for the applicant list on 04.03.2021.</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. 505 of 2017

Smt. Jayanti Devi

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>16.02.2021</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 K.K. Singh Bisht, Ld. Counsel for the applicant and Dr. Gyan Singh, Ld. Counsel for the respondent Nos. 1 to 4 and Shri Gyan Singh Chauhan, Ld. Counsel for the respondent No.5 are present.</p> <p style="text-align: center;">List on 22.03.2021.</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. 493 of 2019

Ex Sep (Clk) Pradip 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>16.02.2021</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 Manoj Kumar Awasthi, learned counsel for the applicant and Ms. Amrita Chakraborty, learned counsel for the respondents.</p> <p>1. The instant Original Application has been filed on behalf of applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-</p> <p style="padding-left: 40px;">“(a) Issue/pass an order or direction directing the Respondents to grant of disability pension to the applicant with effect from 01.02.2018 i.e. with effect from the date of discharge.</p> <p style="padding-left: 40px;">(b) Issue/pass an order or direction to Respondents to grant 30% disability pension to 50% for life.</p> <p style="padding-left: 40px;">(c) Any other relief as considered proper by this Hon'ble Tribunal be awarded in favour of the applicant.</p> <p style="padding-left: 40px;">(d) Cost of appeal be awarded to the applicant.</p> <p>2. Briefly stated facts of the case are that applicant was enrolled in the Defence Security Corps (DSC) 23.01.2013 and was invalided out from service on 31.01.2018 in low medical category P2 (Permanent) in terms of Rule 13 (3) III (iv) of the Army Rules, 1954. At the time of invaliding from service, the Invaliding Medical Board (IMB) held at Military Hospital, Meerut on 21.09.2017 assessed his disability 'PRIMARY HYPERTENSION' @ 30% for life and opined the disability as aggravated by military service. The applicant has approached the respondents vide letter dated 03.10.2018 for grant of disability pension but no reply has been received as yet. Thereafter, he preferred First Appeal to the Appellate Authority on 28.02.2019, but the same has also not</p>

been decided. It is in this perspective that the applicant has preferred the present Original Application.

3. Ld. Counsel for the applicant pleaded that the applicant was enrolled in the Army in medically and physically fit condition. It was further pleaded that an individual 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 invalided out from service on medical grounds, any deterioration in his health is to be presumed due to service conditions. He pleaded that the applicant was under stress and strains due to rigors of service conditions which may have led to occurrence of the disability. He further stressed that since the Medical Board has assessed percentage of disability @ 30% for life aggravated by military service, therefore, the applicant should be entitled to 30% disability pension rounded off to 50% disability pension with effect from his date of discharge. Learned counsel for the applicant has relied upon this Tribunal's order dated 04.01.2018 titled **Sepoy Om Prakash Tripathi vs Union of India & Ors**, passed in O.A. No. 15 of 2017 and submitted that the applicant be granted 50% disability pension.

4. On the other hand, Ld. Counsel for the respondents conceded that disability of the applicant has been assessed as @ 30% for life aggravated by military service and since the applicant was discharged from service on non availability of sheltered appointment after rendering more than 05 years of service under the provisions of Army Rule 13 (3) Item III (iv) and has not completed 15 years of pensionable service, he is not entitled to disability pension. He pleaded for dismissal of the O.A.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Medical Board.

6. For adjudication of the controversy involved in the instant case, we need to address three issues; firstly, is the discharge of the applicant a case of discharge or presumed invalidation?; secondly, is the disability attributable to or aggravated by military service or not? and thirdly, if found to be attributable to or aggravated by military service, can the benefit of rounding off be extended to the applicant?

6. For the purpose of first question as to whether the discharge of the applicant by Release Medical Board is a case of discharge or invalidation. In this context, it is clear that the applicant was medically boarded out from service in low medical category before completion of terms of engagement. In this regard, Rule 4 of the Entitlement Rules for Casualty Pensionary Awards, 1982 defines invalidation as follows:

“Invaliding from service is a necessary condition for grant of a disability pension. An individual, who, at the time of his release under the Release Regulations, is in a lower medical category than that in which he was recruited will be treated as invalided from service. JCOs/Ors and equivalent in other services who are placed permanently in a medical category other than ‘A’ and are discharged because no alternative employment suitable to their low medical category can be provided, as well as those who having been retained in alternative employment but are discharged before the completion of their engagement will be deemed to have been invalided out of service.”

7. Thus, in light of above definition, the rules bring out that any individual, such as the applicant, who at the time of his release from service was in a lower medical category than in which he was recruited, is to be considered as invalided from service. Further, benefit of reasonable doubt is to be given to a claimant when considering his case for disability pension. The rules also clarify that any disease which led to an individual’s discharge or death is deemed to have arisen in service, if no note of it was made at the time of initial entry unless it has been specifically stated by the Medical Board that the disease could not have been detected during medical examination prior to entry in service. While that be so, it is observed that Entitlement Rules for Casualty Pensionary Awards were revised in 1982 and promulgated by Ministry of Defence letter No 1 (1)/81/Pen-C dated 22.09.1983 as amended by Corrigendum No 1(1)/81/Pen-C dated 21st August, 1984. It is clear that the applicant was in low medical category as compared to one when he was enrolled and hence his discharge is to be deemed as invalidation out of service.

8. So far as attributability or aggravation effect of disability are concerned, the disability has been regarded as aggravated by military service as the said disability has taken place in High Altitude Area as endorsed in Medical Board

proceedings.

9. Thirdly, since the applicant was discharged from service w.e.f. 31.01.2018, he is entitled to rounding of disability pension from the date of discharge.

10. From the above mentioned Rule on disability pension and ratio of law emerging out of Hon'ble Apex Court's judgment (supra), it is clear that once a person has been recruited in a fit medical category, the benefit of doubt will lean in his favour unless cogent reasons are given by the Medical Board as to why the disease could not be detected at the time of enrolment. In this particular case, we find that the applicant was placed in low medical category due to his disability 'PRIMARY HYPERTENSION' while posted in High Altitude Area. The applicant has worked with the respondents for more than five years with this disability in low medical category. Therefore, the applicant cannot be held blame worthy on this count. Additionally, no meaningful reason as to why the disease could not be detected at the time of his enrolment is mentioned either in the medical board proceedings or in the counter affidavit. Thus, considering all issues involved in this case, we are of the following considered opinion:

(a) The applicant's discharge vide Medical Board held on 21.09.2017 is to be treated as invalidation in terms of Rule 4 of the Entitlement Rules (supra).

(b) Since the applicant has worked as a soldier for more than five years with the respondents in low medical category and has been discharged (now deemed invalidation) with effect from 31.01.2018 due to permanent low medical category 'BEE', therefore, the benefit of doubt will lean towards the applicant and his disability is to be considered as 'aggravated by military service'.

11. It is trite law that any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequences of military service. The benefit of doubt should rightly be extended in favour of the applicant. In the instant case applicant's disability has been regarded as aggravated by military service being

arisen in High Altitude Area.

12. As a result of foregoing discussion, the O.A. is allowed.

13. In view of the above, we are of the view that the applicant is held entitled to 50% disability pension from the date of discharge. The respondents are 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 @ 9% per annum.

14. No order as to costs.

15. Pending applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) 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. 90 of 2018

Umesh Oraon

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>16.02.2021</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 SK Singh, learned counsel for the applicant and Shri Ashish Kumar Singh, learned counsel for the respondents are present.</p> <p>As prayed by learned counsel for the applicant, list on 17.02.2021 for hearing as first case.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)</p> <p>rathore</p>

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

O.A. No. 463 of 2018

Smt Sepawali Ale

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>16.02.2021</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 BB Tripathi, learned counsel for the applicant and Shri Ashish Kumar Singh, learned counsel for the respondents are present.</p> <p>List on 19.03.2021 for hearing.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)</p> <p>rathore</p>

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

O.A. No. 118 of 2019

<p>Prem Sagar By Legal Practitioner for the Applicant</p>	Versus	<p>Applicant</p> <p>Respondents</p>
<p>Union of India & Others By Legal Practitioner for Respondents</p>		

Notes of the Registry	Orders of the Tribunal		
	<p><u>16.02.2021</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 Parijaat Belaura, learned counsel for the applicant and Shri Amit Jaiswal, learned counsel for the respondents are present.</p> <p style="text-align: center;">The case is adjourned sine die.</p> <table style="width: 100%; border: none;"><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>rathore</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. 267 of 2019

Ex Hav Ram Shankar
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>16.02.2021</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 Parijaat Belaura, learned counsel for the applicant and Dr. Shailendra Sharma Atal, learned counsel for the respondents are present.</p> <p>As prayed by learned counsel for the applicant, list on 23.03.2021 for hearing.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)</p> <p>rathore</p>

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

O.A. No. 379 of 2019

Nb Sub Kailash Chandra Bhatt
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>16.02.2021</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 KKS Bisht, learned counsel for the applicant and Shri Ashish Kumar Singh, learned counsel for the respondents are present.</p> <p>List on 08.04.2021 for hearing.</p> <p>(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)</p> <p>rathore</p>

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

O.A. No. 59 of 2020 with M.A. No. 951 of 2019

Ex Spr Raj 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>16.02.2021</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 R Chandra, learned counsel for the applicant and Shri Ashish Kumar Singh, learned counsel for the respondents.</p> <p style="text-align: center;"><u>O.A. No. 59 of 2020 with M.A. No. 951 of 2019</u></p> <p>1. The Original Application has been filed with delay of 30 years, 09 months and 09 days.</p> <p>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 Original Application is not deliberate, but on account of reasons stated in affidavit filed in support of application.</p> <p>3. Per contra, learned counsel for the respondents submits that cause shown by the applicant is not sufficient. He further submitted that applicant had filed Civil Misc Writ Petition No 31777/1995 in the Hon'ble High Court of Judicature at Allahabad which was dismissed vide order dated 14.11.1995 on delay and latches. He further submitted that Special Appeal No 985/1995 filed against order dated 14.11.1995 was also rejected vide order dated 18.12.1995. He submitted that present O.A. is not maintainable as it has been filed for same cause of action which has already been dismissed.</p> <p>4. O.A. has already been registered vide order dated 14.01.2020.</p> <p>5. Thus, considering the facts and circumstances of the case, we find that this O.A. has been filed for grant of disability pension after lapse of more than 30 years for which petition has already been dismissed by the Hon'ble High Court of Judicature at Allahabad, also Special Leave has been dismissed on 18.12.1995. We see no reason to condone the delay at this stage when petition for same cause of action has already been dismissed.</p> <p>6. In view of the above, M.A. No 951 of 2019 is dismissed.</p> <p>7. Accordingly, O.A. is also dismissed.</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>rathore</p>

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

O.A. No. 139 of 2020

JWO Neeraj Kumar Dixit (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>16.02.2021</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 Gyan Singh Chauhan, learned counsel for the applicant and Shri Amit Jaiswal, learned counsel for the respondents are present.</p> <p style="text-align: center;">List on 28.04.2021 for hearing.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)</p> <p>rathore</p>

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

O.A. No. 395 of 2020

Ex AG PO ELAR Syed Musheer Hussain
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>16.02.2021</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 Manoj Kumar Awasthi, learned counsel for the applicant and Shri Amit Jaiswal, learned counsel for the respondents.</p> <p>1. The present O.A. has been filed by applicant in terms of Section 14 of the Armed Forces Tribunal Act, 2007 and has sought following reliefs:-</p> <p>(i) To issue/pass an order or directions to the respondents to grant arrear of benefit of rounding off the disability element of disability pension @ 20% to 50% in light of Hon'ble Apex Court judgment from date of release i.e. 31.01.2007 to 21.12.2015.</p> <p>(ii) To issue/pass any other order or direction as this Hon'ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.</p> <p>(iii) To allow this original application with costs.</p> <p>2. Brief facts of the case are that the applicant was enrolled in the Indian Navy on 05.01.1992 and was discharged from service in low medical category after completion of 15 years and 27 days of service. The applicant is in receipt of service pension granted vide PPO No. 09/97B/S/00590/2007 dated 27.03.2007. The applicant had filed O.A. No. 675 of 2010 before the Hon'ble Armed Forces Tribunal, Principal Bench, New Delhi which was allowed vide order dated 19.04.2012 directing the respondents to pay disability element alongwith arrears with effect from date of discharge. The respondents vide letter dated 26.06.2012 (Annexure No. 4 to O.A.) conveyed to the pension</p>

paying authority to pay said disability element from the date of discharge of applicant, which has not been received by the applicant, hence this O.A. has been filed.

3. Learned counsel pleaded for grant of arrears of disability element w.e.f. 31.01.2007 to 21.12.2015.

4. After perusal of the records, it emanates that letter dated 26.06.2012 was issued to pension paying authority for payment of arrears of disability element to applicant from date of discharge. We also find that counter affidavit in this regard has not been filed. From the facts and circumstances of the case, it seems that rounding off arrears have not been paid to the applicant.

5. In view of the above, applicant is held to be entitled to rounding off arrears @ 50% from the date of discharge i.e. 31.01.2007.

6. With the aforesaid observations, the O.A. is allowed.

7. Respondents are directed to pay arrears of disability element to the applicant as mentioned in letter dated 26.06.2012 within a period of four months from today.

8. Default will invite interest @ 8% p.a.

9. No order as to costs.

10. Pending applications, if any, are disposed off.

(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. 183 of 2018

Arun Kumar Pandey
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>16.02.2021</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 Shailendra Kumar Singh, learned counsel for the applicant and Shri Amit Jaiswal, learned counsel for the respondents are present.</p> <p>List on 23.04.2021 for hearing as prayed by learned counsel for the applicant.</p> <p>On the date fixed, learned counsel for the respondents shall produce original records pertaining to the case for perusal of the Bench.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)</p> <p>rathore</p>

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

O.A. No. 470 of 2018

Uday Shankar Thakur
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>16.02.2021</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 applicant in person and Shri RC Shukla, learned counsel for the respondents are present.</p> <p style="text-align: center;">List on 26.03.2021 for hearing.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)</p> <p>rathore</p>

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

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

O.A. No. 2 of 2019

Naik (Chef/Hosp) Vijay 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>16.02.2021</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 Vijay Kumar Pandey, learned counsel for the applicant and Shri RC Shukla, learned counsel for the respondents are present.</p> <p>List on 04.05.2021 for hearing.</p> <p>(Vice Admiral Abhay Raghunath Karve) Member (A)</p> <p>(Justice Umesh Chandra Srivastava) Member (J)</p> <p>rathore</p>

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

O.A. No. 175 of 2020

Ex Rect Sushant 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>16.02.2021</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 Virat Anand Singh, learned counsel for the applicant and Dr. Shailendra Sharma Atal, learned counsel for the respondents are present.</p> <p>1. The present O.A. has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by which applicant has sought the following reliefs:-</p> <ul style="list-style-type: none">(i) To direct the respondents to take applicant on strength by allowing him to join his artillery centre, Hyderabad.(ii) To direct commandant Artillery centre to conduct an enquiry-a court of inquiry-into alleged torture and subsequent AWL of applicant to further ensure no harassment as to enable applicant complete his military training.(iii) To allow applicant to be taken under military custody by Central Command Military Police Unit.(iv) To pass orders which their lordships may deem fit and proper in the existing facts and circumstances of the case.(v) Allow this application with cost. <p>2. Brief facts of the case are that applicant, having been enrolled in the army on 11.12.2016 was sent to Artillery Centre, Hyderabad to undergo basic military training which was scheduled to commence on 02.01.2017. The applicant absented himself within a week after start of training with the result apprehension roll was issued vide letter dated 09.01.2017. Thereafter, on account of continuous absence of 30 days during training period, a court of inquiry was held in accordance with Section 106 of Army Act, 1950 and applicant was declared deserter w.e.f. 08.01.2017. The applicant had filed O.A. No. 563 of 2017 before this Tribunal for rejoining the duty. This O.A. was</p>

disposed off vide order dated 07.05.2019 with directions to the respondents to allow applicant to join duty within one month and to take disciplinary action in accordance with rules. Accordingly, the applicant was apprehended by Central Command Pro Unit on 13.09.2019 and handed over to Artillery Centre, Hyderabad on 02.11.2019. However, before disciplinary proceedings could take place, on 11.11.2019, the applicant again absented without leave from the unit lines at 0430 hrs. Accordingly, again an apprehension roll was issued and the applicant was declared as deserter w.e.f. 11.11.2019. The records show that he has not been dismissed from service. Now the applicant has filed the instant O.A. to allow him to rejoin duty.

3. Learned counsel for the applicant pleaded that the applicant was handed over to Artillery Centre, Hyderabad on 02.11.2019 and was put in quarter guard without any interview. He further submitted that on 11.11.2019, the applicant was pushed out from gate and asked to run away from the Training Centre and no plea was looked into by any authority. Accordingly, he reached out to his home. Further submission of learned counsel for the applicant is that there being no fault on the part of applicant the authorities concerned be directed to allow him to rejoin the duty forthwith. Further submission of learned counsel for the applicant is that applicant is suffering from PIVD L4-L5 and he has been treated in Rajshree Medical Research Institute, Bareilly for the period from 16.11.2019 to 23.11.2019 for the said disease.

4. Per contra, learned counsel for the respondents submitted that vide this Tribunal's order dated 07.05.2019, the applicant was taken into custody by Military Police in Court premises and was handed over to Artillery Centre Hyderabad on 02.11.2019, but applicant again deserted on 11.11.2019 and thereafter having not joined duty for 30 consecutive days, he was not allowed to rejoin the military training in accordance with Army Headquarters letter dated 28.02.1986 which stipulates that a recruit who is absent without leave/overstaying without leave for a period of 30 consecutive days during his basic military training period will not be allowed to rejoin the training again and such recruits will be discharged from service after necessary disciplinary action.

He pleaded that the applicant being guilty of desertion for two times does not deserve to reliefs claimed.

5. We have heard learned counsel for the parties and have also perused the records.

6. It is an admitted fact that the applicant deserted from Training Centre and after taking him in custody by order of this Tribunal dated 13.09.2019, he was sent to Artillery Centre, Hyderabad for further military training where it is alleged that he was misbehaved. On the point, it is contended by learned counsel for the respondents that applicant was misbehaving with other soldiers who attended him. He was speaking foul language and was threatening to commit suicide. Therefore, in order to prevent any untoward incident and for the safety of the individual, he was detained and put under observation in the quarter guard. We also find that the applicant is not desirous of undergoing military training as he escaped twice from training centre, thereby forcing the respondents to take action as per Section 106 of the Army Act, 1950. We find that the respondents have dealt with the matter as per rules. For convenience sake, Section 106 of Army Act, 1950 is reproduced as under:-

“(1) When any person subject to this Act has been absent from his duty without due authority for a period of thirty days, a court of inquiry shall, as soon as practicable, be assembled, and such court shall, on oath or affirmation administered in the prescribed manner, inquire respecting the absence of the person, and the deficiency, if any, in the property of the Government entrusted to his care, or in any arms, ammunition, equipment, instruments, clothing or necessaries; and if satisfied of the fact of such absence without due authority or other sufficient cause, the court shall declare such absence and the period thereof, and the said deficiency, if any, and the commanding officer of the corps or department to which the person belongs shall enter in the court- martial book of the corps or department a record of the declaration.

(2) If the person declared absent does not afterwards surrender or is not apprehended, he shall, for the purposes of this Act, be deemed to be a deserter”.

7. The contention of learned counsel for the applicant that applicant was suffering from back bone illness and he left the training centre for treatment, is not acceptable as per the alleged illness, he could have been treated in Military Hospital as well, rather than deserting and getting treatment in civil

hospital at Bareilly. The other submission of learned counsel for the applicant that he be allowed to rejoin the military training, is also not acceptable in terms of policy letter dated 28.02.1986, which for convenience sake is reproduced as under:-

“4. A rect who has been absent without leave for a period of 30 consecutive days during basic mil trg period, will not be allowed to rejoin his trg again. The absentees for less than 30 consecutive days may be considered for relegation if otherwise found suitable for retention. However, once the tech trg of a rect has commenced, the discretion to discharge a rect for such absence will be left to the Commandant of the Centre, who may retain or discharge him considering the case on its merits.”

8. From the above policy letter it is clear that a recruit who has been absent for more than 30 consecutive days from training shall not be permitted to rejoin his training.

9. Therefore, keeping in view the aforesaid legal position and after examining the facts and circumstances of the instant case, it is clear that the defence of the applicant, that he was physically ill and got treatment in civil hospital is absolutely without substance. The defence seems to be only an afterthought which does not inspire confidence.

10. Admittedly, after unauthorised absence of the applicant, a Court of Inquiry was held and applicant was declared a deserter from the date of his absence. Hence, we do not find any illegality or irregularity in the action of the respondents. The Army discipline cannot be overlooked in such matters. Therefore, we do not find any substance in the present O.A. which deserves to be dismissed.

10. It is accordingly **dismissed**.

11. No order as to costs.

12. Pending applications, if any, are disposed off.

(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. 588 of 2018

Smt. Shiv Kumari
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>16.02.2021</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 Pankaj Kumar Shukla, learned counsel for the applicant and Ms. Anju Singh, learned counsel for the respondents assisted by Maj Sini Thomas, Departmental Representative.</p> <p style="text-align: center;">Original Application is dismissed.</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) (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. 316 of 2020

Ex Sep Raj Narayan 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>16.02.2021</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 Manoj Kumar Awasthi, learned counsel for the applicant and Dr. Chet Narain Singh, learned counsel for the respondents assisted by Maj Sini Thomas, Departmental Representative.</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> <table style="width: 100%;"><tr><td style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) Member (A)</td><td style="text-align: center;">(Justice Umesh Chandra Srivastava) Member (J)</td></tr></table> <p style="text-align: left; margin-left: 20px;">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)		