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

M.A. No 108 of 2021 Inre O.A. (Nil) of 2021

Ex Hav Vipin Kumar Saxena 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
	18.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** Memo of appearance filed by Dr. SN Pandey, Advocate on behalf of the respondents is taken on record. His name shall be shown in the cause list as Ld. Counsel for the respondents. Heard Shri Vijay Kumar Pandey, Ld. Counsel for the applicant and Dr. SN Pandey, Ld. Counsel for the respondents. The Original Application has been filed with delay of 1 year and 08 days. Regarding delay, submission of Ld. 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, if any, is not deliberate but for the reasons stated in affidavit filed in support of application. Ld. Counsel for the respondents has vehemently opposed the prayer saying no satisfactory explanation has been given for the delay. Upon hearing submissions of learned counsel of the parties and considering the facts and circumstances of the case, we are of the view that cause shown is sufficient. Accordingly, delay condonation application is allowed. Let Original Application be registered. **O.A. No. 134 of 2021** Heard. It is a fit case for adjudication. Admit. Issue notice to respondents. Dr. SN Pandey, learned counsel for the respondents has accepted notice on behalf of respondents. He prays for and is allowed four weeks time to file Counter Affidavit. Rejoinder Affidavit, if any, may be filed within two weeks next thereafter. List this case on **19.04.2021** before the Registrar Court for exchange of pleadings. List before Tribunal on **05.05.2021.** **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** UKT/-

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

Court No.1 (E. Court)

M.A. No 120 of 2021 Inre O.A. (Nil) of 2021

Ex Gnr Ajay Kumar Dubey Applicant

By Legal Practitioner for the Applicant

Versus

Chief of Army Staff & Others Respondents

By Legal Practitioner for Respondents

Notes of the Registry	**Orders of the Tribunal**
	18.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** Memo of appearance filed by Ms Preeti Mala, Advocate on behalf of the respondents is taken on record. His name shall be shown in the cause list as Ld. Counsel for the respondents. On the case being taken up for hearing Shri Shailendra Kumar Singh, Ld. Counsel for the applicant and Ms. Preeti Mala, Ld. Counsel for the respondents are present. Learned counsel for the respondents prays for and is granted two weeks time to file objection. Thereafter, reply, if any, may be filed within a week. List before Tribunal on **25.03.2021.** **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** UKT/-

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

O.A. No 127 of 2021

Ex Sub Hari 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
	18.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** Memo of appearance filed by Shri RKS Chauhan, Advocate on behalf of the respondents is taken on record. His name shall be shown in the cause list as Ld. Counsel for the respondents. On the case being taken up for hearing Shri Parijaat Belaura, Ld. Counsel for the applicant and Shri RKS Chauhan, Ld. Counsel for the respondents are present. Heard. The matter needs adjudication. Admit. Issue notice to respondents. Shri RKS Chauhan, learned counsel for the respondents has accepted notice on behalf of respondent No. 1 to 4. Issue Notice to respondent No 5 returnable by the date fixed. List before Tribunal on **08.04.2021.** **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** UKT/-

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

M.A. No 118 of 2021 with M.A. No 119 of 2021 Inre M.A. No 556 of 2019
Inre Dy No 343 of 2019 Inre O.A. (Nil) of 2019

Mohd Saquib Jawaid 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
	18.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** Memo of appearance filed by Ms. Appoli Srivastava, Advocate on behalf of the respondents is taken on record. His name shall be shown in the cause list as Ld. Counsel for the respondents. On the case being taken up for hearing Shri Rohit Kumar, holding brief of Mohammad Isa Khan, Ld. Counsel for the applicant and Ms. Appoli Srivastava, Ld. Counsel for the respondents are present. Learned counsel for the respondents seeks and is allowed two weeks time to file objection on application for condonation of delay in filing restoration application. List on **03.03.2021**. **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** UKT/-

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

Court No.1 (E. Court)

Dy No 73 of 2020 with M.A. No 109 of 2021, M.A. No 1 of 2021
Inre O.A. (Nil) of 2020

HFO Chandra Sekhar Pathak (Retd) 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
	18.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** Heard Shri Nagendra Bahadur Singh, Ld. Counsel for the applicant and Shri Rajiv Pandey, Ld. Counsel for the respondents. **M.A. No 109 of 2021** This is an amendment application by means of which applicant wants to remove the defects. Learned counsel for the respondents has no objection. Amendment application is allowed. Learned counsel for the applicant shall carry out proposed amendment within a week and provide a copy of amended application to learned counsel for the respondents. **M.A. No 1 of 2021** The Original Application has been filed with delay of 1 year and 03 months. Regarding delay, submission of Ld. Counsel for the applicant is that delay, if any, is not deliberate but for the reasons stated in affidavit filed in support of application. Ld. Counsel for the respondents has vehemently opposed the prayer saying no satisfactory explanation has been given for the delay. Upon hearing submissions of learned counsel of the parties and considering the facts and circumstances of the case, we are of the view that cause shown is sufficient. Accordingly, delay condonation application is allowed. Let Original Application be registered. **O.A. No. 132 of 2021** Heard. It is a fit case for adjudication. Admit. Issue notice to respondents. Dr. SN Pandey, learned counsel for the respondents has accepted notice on behalf of respondents. He prays for and is allowed four weeks time to file Counter Affidavit. Rejoinder Affidavit, if any, may be filed within two weeks next thereafter. List this case on **19.04.2021** before the Registrar Court for exchange of pleadings. List before Tribunal on **05.05.2021.** **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** UKT/-

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

Ex. A. No 88 of 2017 Inre T.A. No 31 of 2012

2 Lt Shatrughan Singh Chauhan 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
	18.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** Heard Shri Virat Anand Singh and Shri Bhanu Pratap Singh Chauhan, Ld. Counsel for the applicant and Ms. Appoli Srivastava, Ld. Counsel for the respondents. Learned counsel for the respondents submits that order under execution has been stayed by the Hon'ble Apex Court in Dy No (s) 15862 of 2017. Copy of the order is also placed on record. Accordingly, proceedings of the execution application are stayed till further order of the Hon'ble Apex Court. **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** UKT/-

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

Ex. A. No 10 of 2018 Inre T.A. No 41 of 2012

Smt Indra Kumari Gurung 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
	18.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Col RC Dixit (Retd), Ld. Counsel for the applicant and Shri Amit Jaiswal, Ld. Counsel for the respondents are present. Learned counsel for the applicant submits that substitution application moved by the present applicant has been allowed on 15.01.2019 however necessary amendments in application could not be made only due to his own fault which be excused and applicant be permitted to carry amendment. Contrarily, learned counsel for the respondent submitted that applicant is mis-leading the Court by not bringing documents/succession certificate on record to show that present applicant is the only legal heir of the deceased soldier. We have gone through the order dated 15.01.2019 and it appears that substitution application was allowed on 01.12.2020 after considering the objection raised by the respondents. Therefore, objection raised today by learned counsel for the respondents is turned out at present with liberty to raise at the time of disposal of application. Applicant is permitted to carryout necessary amendments in the execution application within three days. List on **02.03.2021**. **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** UKT/-

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

Ex. A. No 66 of 2018 Inre T.A. No 467 of 2017

Ex Hav (Hony Nb Sub) Mithlesh Kumar 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
	18.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Shri Parijaat Belaura, Ld. Counsel for the applicant and Ms Anju Singh, Ld. Counsel for the respondents are present. Affidavit of compliance filed by respondents is taken on record. Learned counsel for the applicant seeks and is allowed two weeks time to file objection. List on **04.03.2021**. **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** UKT/-

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

Ex. A. No 37 of 2019 Inre O.A. No 266 of 2012

Ptr Shubhash Chand 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
	18.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Shri Shailendra Kumar Singh, Ld. Counsel for the applicant and Ms. Appoli Srivastava, Ld. Counsel for the respondents are present. As prayed by learned counsel for the applicant, list this matter on **05.03.2021** for physical hearing. **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** UKT/-

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

Ex. A. No 45 of 2019 Inre O.A. No 110 of 2018

Ex Hav Dinesh Pal 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
	18.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Shri Vinay Pandey, Ld. Counsel for the applicant and Ms. Amrita Chakraborty, Ld. Counsel for the respondents are present. As prayed, list on **05.03.2021**. **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** UKT/-

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

Ex. A. No 46 of 2019 with M.A. No 465 of 2020 Inre T.A. No 69 of 2012

Diwan 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
	18.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Col BP Singh (Retd), Ld. Counsel for the applicant and Shri Amit Jaiswal, Ld. Counsel for the respondents along with Shri RK Tiwari, Account Officer, PCDA (P), Allahabad are present. Applicant has made application seeking impleadment of Centralised Pension Payment Centre (CPPC), Punjab National Bank as respondent in execution application. Shri RK Tiwari, Account Officer, PCDA (P), Allahabad submitted that in response to order under execution Rs. 30,61,499 has been credited in applicant's account in December 2020 towards arrears besides applicant getting service pension Rs. 15,510/- and disability element Rs 4,655/- per month. Considering that order has been complied with as stated above we do not see any reason to order for impleadment of CPPC in the execution application and, therefore impleadment application is **rejected**. In view of above, execution application is also **dismissed** being infructuous. **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** UKT/-

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

Ex. A. No 1 of 2021 Inre O.A. No 403 of 2018

Ex Sub Chandreshwar Mishra 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
	18.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Shri R Chandra, Ld. Counsel for the applicant and Shri Arun Kumar Sahu, Ld. Counsel for the respondents are present. On the last date, learned counsel for the respondents was directed to seek instructions from the concerned authority why applicant was allowed benefit of rounding off of disability pension @ 50% w.e.f. 05.07.2015 when the order was to give this benefit from the date of discharge i.e. 01.04.2013. In this regard, submission of learned counsel for the respondents is that since he has just received the instructions, a week's time be given to him to file the reply which is allowed. List on **01.03.2021**. **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** UKT/-

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

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

Mahabir Singh (Convict Prisoner) Applicant
By Legal Practitioner for the Applicant

Versus

Union of India & Others Respondents
By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	18.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Shri Arun Kumar Ojha and Shri Sanjay Shukla, Ld. Counsel for the applicant and Dr. Shailendra Sharma Atal, Ld. Counsel for the respondents are present. List on **25.02.2021**. **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** UKT/-

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

O.A. No 561 of 2018

Raja Ram 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
	18.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** 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 Shailendra Sharma Atal, Ld. Counsel for the respondents has no objection. Accordingly, we 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. Let a copy of this order be provided to the learned Counsel for the parties. **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** UKT/-

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

O.A. No 72 of 2019

Maj Yashvardhan 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
	18.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Shri Yashpal Singh, Ld. Counsel for the applicant and Ms. Anju Singh and Shri Pankaj Shukla, Ld. Counsel for the respondents are present. List on **25.03.2021**. **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** UKT/-

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

O.A. No. 228 of 2019

Ex Hav Bhupendra 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
	18.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** Heard Shri JN Mishra, learned counsel for the applicant and Shri Kaushik Chatterjee, Shri Sharad Kumar Shukla and Shri Vinay Pandey, learned counsel for the respondents. 1. The instant original application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 to seek following reliefs:- (i) To issue/pass an order or directions to the respondent No 4 to 6 to release the arrear payment of disability component of applicant vide Corrigendum PPO No. DE/CORR/10831/2015 on Original PPO No. D/002235/1989, for the period of 01.01.1996 to 30.06.2009 along with @ 18% interest. (ii) To issue/pass an order or directions to the respondent No 5 for compliance of letter dated 05.03.2018 which is annexed as Annexure No A-1 to this original application. (iii) 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. (iv) To allow this original application with costs. 2. Brief facts of the case are that the applicant was enrolled in the Army on 24.07.1970 and was released from service on 28.02.1989 in low medical category 'CEE (permanent)' for disability 'Chronic Duedenal Ulcer (Optd) (Old) V-87 532'. Prior to discharge, his RMB was held on 25.11.1998 at Military Hospital, Namkum (Jhansi) which regarded his disability @ 20% for life aggravated by military service. Applicant is in receipt of service pension and disability element w.e.f. his date of discharge. The disability element has frequently been revised vide various corrigendum PPOs placed on record. The present O.A. has been filed for grant of arrears of disability element for the period from 01.01.1996 to 30.06.2009. 3. Learned counsel for the applicant submitted that though the applicant is in receipt of disability element which has been revised through various PPOs but after protracted correspondence, arrears of disability element for the period

from 01.01.1996 to 30.06.2009 have not been granted till date and the matter is still pending between Chief Manager, Allahabad Bank (CPPC) Lucknow and Allahabad Bank, Burhpur Branch, Farrukhabad (UP). He pleaded for grant of arrears of disability element to the applicant.

4. On the other hand, learned counsel for the respondents submitted that BEG Records, Roorkee has correctly forwarded the PPO of the applicant to CCPC for onward transmission to Allahabad Bank, Burhpur Branch, Farrukhabad (UP). He conceded that the applicant has not been granted arrears of disability element on account of some misunderstanding between CPPC and the paying branch.

5. We have perused the records.

6. We find that the applicant is in receipt of disability element that was frequently revised through PPOs but he has not been paid arrears of disability element for the period 01.01.1996 to 30.06.2009.

7. In view of the above, we direct the Chief Manager, Allahabad Bank (CPPC) Lucknow and Allahabad Bank, Burhpur Branch, Farrukhabad (UP) to remit applicant's arrears of disability element for the period 01.01.1996 to 30.06.2009 within four months from today.

8. Default will invite interest @ 8% per annum.

9. O.A. is **allowed** accordingly.

10. No order as to costs.

11. 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. 282 of 2019

Ex Nb Sub Dharmendra Kumar Upadhyay 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**
	18.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Shri Veer Raghav Choubey and Ashok Shukla, learned counsel for the applicant and Shri RC Shukla, learned counsel for the respondents are present. During the course of hearing, learned counsel for the applicant sought two weeks time to file supplementary affidavit, which was allowed. List on **04.03.2021.** **(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. 460 of 2019

Hav Banwari Lal 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
	18.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Shri Vinay Mishra and Shri Abdul Majid, learned counsel for the applicant and Dr. Shailendra Sharma Atal, learned counsel for the respondents are present. In this case, despite counter affidavit being filed, no rejoinder affidavit has been filed since 01.07.2020, therefore, opportunity to file rejoinder affidavit is closed. List on **03.05.2021** for final hearing. **(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. 578 of 2019

L/Nk Clk Shiv Pratap 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**
	18.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Col BP Singh (Retd), learned counsel for the applicant and Dr. Shailendra Sharma Atal, learned counsel for the respondents are present. Pleadings are complete and the case is ripe for hearing. List on **05.05.2021** for final hearing. **(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. 2 of 2021

Ex Sub Sanjay Kumar Pandey 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
	18.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** Heard Shri R Chandra, learned counsel for the applicant and Mrs Anju Singh, learned counsel for the respondents. Learned counsel for the applicant submitted that applicant was enrolled in the Army on 22.03.2003 as Havildar Instructor 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 71,771/-. Learned counsel for the respondents conceded grant of next increment to applicant with effect from 01.07.2006. Learned counsel for the applicant placed reliance on Armed Forces Tribunal, 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 Armed Forces Tribunal, Lucknow judgment delivered on 04.02.2021 in the case of ***Sub Kuldeep vs Union of India & Ors***, (O.A. No. 48 of 2021), 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 6th 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 costs. **(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)

T.A. No. 284 of 2010

Umesh Kumar Chourasia Petitinor
By Legal Practitioner for the Petitioner

Versus

Union of India & Others Respondents
By Legal Practitioner for Respondents

Notes of the Registry	**Orders of the Tribunal**
	18.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Col YR Sharma (Retd), learned counsel for the petitioner and Shri GS Sikarwar, learned counsel for the respondents are present. Pleadings are complete and the case is ripe for hearing. List on **05.04.2021** for final hearing. **(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. 101 of 2017 alongwith O.A. No. 36 of 2017
alongwith O.A. No. 36 of 2017 alongwith O.A. No. 101 of 2017

Amit Kumar & Venugopal P 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**
	18.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Shri VP Pandey, learned counsel for the applicant and Shri Amit Jaiswal and Shri Asheesh Agnihotri, learned counsel for the respondents are present. Pleadings are complete and the case is ripe for hearing. List on **06.04.2021** for final hearing. **(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. 567 of 2019

Hony Nb Sub Nathuni Prasad 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
	18.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** Heard Col Rakesh Johri (Retd) and Shri Bhanu Pratap Singh Chauhan, learned counsel for the applicant and Shri JN Mishra, learned counsel for the respondents. 1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:- *(I) To issue/pass an order or direction to set aside/quash the arbitrary order of denial of disability pension to the applicant as contained in EME Records letter No 7109232W/DP-2/Pen dated 26.10.2016 (Annexure No A-1).* *(II) To issue/pass an order or direction to the respondents to set aside/quash the arbitrary order of rejection of first appeal preferred by the applicant against denial of the disability pension as contained in The Appellate Committee on First Appeals letter No. B/40502/06/2017/AG/PS-4(Imp-II) dated 18 Apr 2018 which has been communicated by EME Records vide their letter No 7109232/DP-2/Pen dated 17 May 2018. (Annexure-2).* *(III) To issue/pass an order or direction to the respondents to set aside/quash the arbitrary order of rejection of second appeal preferred by the applicant as conveyed by Second Appellate Committee vide Army Headquarters Directorate General of Personnel Services, Adjutant General Branch letter No Second Appellate Committee vide Army Headquarters, Additional Directorate General of Personnel Services, Adjutant Generals Branch letter No B/38046A/452/2018/AG/PS-4(2nd Appeal) dated 06.05.2019 (Annexure A-3.)* *(IV) Issue/pass an order or direction to the respondents to grant him 30% disability pension as assessed by the Medical Board alongwith*

benefits of rounding off 50% being his constitutional right.

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

(VI) Allow this application with cost.

2. Brief facts of the case giving rise to this application are that the applicant was enrolled in the Indian Army on 16.10.1967 and after having completed more than 24 years of service he was discharged from service in low medical category CEE (permt) on 31.10.1991. Prior to discharge from service the applicant was brought before Release Medical Board (RMB) held on 26.08.1991 which assessed the applicant to be suffering from 'INFERIOR WALL MYOCARDIAL INFARCTION 410' @ 30% for two years and opined it to be attributable and aggravated by military service. Disability pension claim preferred by the applicant was rejected vide order dated 26.10.2016. First and Second Appeals were also rejected vide order dated 18.04.2018 and dated 06.05.2019 respectively. Hence this O.A.

3. Ld. Counsel for the applicant submitted that applicant was enrolled in the Indian Army in medically and physically fit condition and there was no note in his service documents with regard to suffering from any disease prior to enrolment, therefore any disability suffered by applicant after joining the service should be considered as attributable to or aggravated by military service and he should be entitled to disability pension. Ld. Counsel for the applicant further submitted that disability pension claim of applicant has been rejected in a cavalier manner without assigning any meaningful reason. Further submission of Ld. Counsel for the applicant is that applicant, in Jan 1991 while posted at Base Hospital Lucknow, was diagnosed to be suffering from 'INFERIOR WALL MYOCARDIAL INFARCTION 410. Accordingly, he was placed in low medical category CEE (permt) and was brought before the RMB in August 1991. This disease he feels is due to stress and strain related to rigors of military service. He concluded by pleading for grant of disability pension to the applicant.

4. On the other hand, Ld. Counsel for the respondents argued that the RMB has declared the applicant's disability as NANA, therefore, the competent authority has

rejected claim of disability pension. The grounds for rejection of the claim is primarily due to opinion of the RMB which classified it constitutional in nature and therefore

NANA.

5. Heard ld. counsel for the parties and perused the material placed on record. We have also gone through the RMB and the rejection order of disability pension claim. The question before us is simple and straight i.e. – is the disability of applicant attributable to or aggravated by military service?

6. The law on attributability of a disability has already been well settled by the Hon'ble Supreme Court in the case of *Dharamvir Singh Vs. Union of India and Ors*, (2013) 7 SCC 213. In this case the Apex Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same in the following words:-

> *"29.1. Disability pension to be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).*
> *29.2. A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service [Rule 5 read with Rule 14(b)].*
> *29.3. The onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally (Rule 9).*
> *29.4. If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service [Rule 14(c)]. [pic]*
> *29.5. If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service [Rule 14(b)].*
> *29.6. If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons [Rule 14(b)]; and 29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 - "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."*

7. In view of the settled position of law on attributability/aggravation, we find that the RMB has denied attributability/aggravation to applicant only by endorsing a cryptic sentence in the proceedings i.e. 'disease is constitutional in nature'. We

donot find this cryptic remark adequate to deny attributability/aggravation to a soldier who was fully fit since his enrolment and the disease in question had first started in 21.01.1991 i.e. after completion of about 23 years of his service. We are, therefore, of the considered opinion that the benefit of doubt should be given to the applicant as per the Hon'ble Supreme Court judgment of *Dharamvir Singh* (supra) and the disability of the applicant should be considered as aggravated by military service.

8. In view of the above applicant is held entitled to 30% disability element for two years from the date of discharge. However, since provision of rounding off of disability pension came into existence with effect from 01.01.1996, the applicant is not entitled to rounding off of disability element.

9. As a result of foregoing discussion, the O.A. is **allowed**. The impugned orders dated 26.10.2016, 18.04.2018 and 06.05.2019 are set aside. The disability of the applicant is to be considered as aggravated by military service. Since applicant's disability was assessed for two years from the date of discharge, he is eligible for disability element for that period only. The respondents are directed to hold applicant's Re-survey Medical Board (RSMB) for re-assessing his present medical condition within a period of three months from the date of receipt of a certified copy of this order. Further entitlement of disability element of pension shall be subject to outcome of RSMB. However, due to law of limitations, the applicant shall be entitled to arrears of disability pension (if any after the RSMB for three years prior to the date of filing of the present application in terms of Hon'ble Apex Court judgment in the case of ***Shiv Dass vs. Union of India,*** reported in 2007 (3) SLR 445. This O.A. was filed on 04.11.2019.

10. No order as to costs.

11. Pending applications, if any, shall be treated as disposed of.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

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

O.A. No. 695 of 2020

Col Sanjeev Agnihotri 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
	18.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** List revised. On the case being taken up for hearing Shri Gyanendra Kumar Pandey and Shri Apoorv Pandey, Ld. Counsel for the applicant and Shri Rajiv Narayan Pandey, Ld. Counsel for the respondents are present. Learned counsel for the applicant submitted that his case is similar to O.A. No. 557 of 2017, decided by this Tribunal. List alongwith record of O.A. No. 557 of 2017 on **23.03.2021** for orders. On the date fixed, a representative of CDA (O) Pune shall remain present to assist the Tribunal. On the date fixed, learned counsel for the respondents shall produce original documents pertaining to the case for perusal of the Bench. **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** SB

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

O.A. No. 151 of 2017

Manish Shukla 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
	18.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Shri Ajit Singh Gaherwar and Shri S.N. Singh Gaherwar, Ld. Counsel for the applicant and Shri Ashish Kumar Singh, Ld. Counsel for the respondents are present. Heard arguments. Judgment reserved. **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** SB

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

O.A. No. 551 of 2018

Vijay Singh Kurmi 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
	18.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Shri Rohitash Kumar Sharma and Shri Ashok Kumar, Ld. Counsel for the applicant and Shri Ashish Kumar Singh, Ld. Counsel for the respondents are present. During the course of hearing learned counsel for the applicant submitted that applicant wants to file a supplementary affidavit annexing therewith documents showing percentage of the disability @ 40% and also that it was aggravated by military service. He seeks and is allowed a week's time to file supplementary affidavit. List this case on **01.03.2021** for further hearing. On the date fixed, learned counsel for the respondents shall produce original documents pertaining to the case for perusal of the Bench. **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** SB

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

O.A. No. 129 of 2019

Raj Kumar 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
	18.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** 1. Heard Shri Anand Yadav, Advocate holding brief of Shri S.G. Singh, Ld. Counsel for the applicant and Ms. Appoli Srivastava, Ld. Counsel for the respondents. 2. Applicant has filed present application under Section 14 of the Armed Forces Tribunal Act, 2007 and has sought following reliefs:- "(a) Issue/pass an order or direction of appropriate nature whereby commanding the respondents for carrying out his Release Medical Board. (b) Issue/pass an order or direction of appropriate nature whereby commanding the respondents to grant disability pension to the applicant forthwith. (c) Allow the application with all consequential benefits with exemplary cost." 3. Brief facts of the case are that applicant was enrolled in the army on 03.07.1983 and was discharged from service on 31.07.2007 in SHAPE-1 under Army Rule 13 (3) III (i) on completion of terms of engagement. The applicant's date of release from service was fixed on 31.07.2007 but he was seriously sick before his release from service. The applicant was under treatment since 25.01.2007 in Command Hospital, Pune and thereafter he was granted six weeks sick leave from 14.06.2007 to 26.07.2007 and was instructed to rejoin directly to Command Hospital, Pune on expiry of sick leave. Instead of reporting at Command Hospital, Pune, the applicant on receipt of instructions from his Commanding Officer, reported to unit from where he was despatched to Rajput Regimental Centre for transfer to pension establishment. After

release from service on 31.07.2007, applicant reported again to Command Hospital, Pune on 08.08.2007 for treatment of his serious ailment. Since applicant was under treatment, hence Command Hospital, Pune wrote a letter dated 21.08.2007 advising the respondents to take up a case for obtaining ex post facto sanction from the Govt for carrying out his Release Medical Board and ascertaining the medical status of the applicant. After waiting for a considerable time, when no reply was received, the applicant was discharged from the hospital advising him to receive further treatment as an ex-serviceman. Thereafter, applicant preferred a letter dated 28.07.2008 to the Records, Rajput Regiment, Fatehgarh for holding of release medical board but no heed was paid. The applicant submitted a representation dated 20.08.2008 and in between he received a letter dated 22.08.2008 from Records advising him to contact with your unit for release medical board but so far no release medical board has been conducted.

4. Learned counsel for the applicant submitted that applicant was diagnosed suffering from disease 'FOURNER's Gangrene' before retirement from service and he has been discharged from service in Shape-1 instead of in low medical category without holding release medical board. Accordingly, applicant is entitled for disability pension and he should be granted disability pension from the date of discharge.

5. On the other hand, learned counsel for the respondents submitted that applicant was discharged from service in Shape-1 and service pension has been notified vide PPO dated 11.04.2007. The applicant was due for superannuation w.e.f. 31.07.2007 vide retirement order dated 04.07.2006. Before discharge from service he was brought before Release Medical Board and was found fit to be discharged from service in medical category SHAPE-1 vide AFMSF dated 31.10.2006. Command Hospital, Pune vide their letter dated 21.08.2007 informed that applicant was admitted with them from 21.01.2007 to 14.06.2007 and was discharged from hospital with 6 weeks sick leave. The RAJPUT Records vide their letter dated 12.09.2007 informed to unit of applicant to obtain sanction from Govt of India for holding belated release medical board after discharge from service in accordance with Army Order 3/89. Thereafter, a lot of correspondence was made between the Records and

unit concerned but neither any Govt. sanction was obtained nor release medical board was held. Learned counsel for the respondents further submitted that since release medical board of the applicant has already been held in October, 2006, before discharge from service as per Army Order 3/89, hence, another release medical board cannot be held.

6. We have perused the records and we find that applicant was under treatment for his ailment in Command Hospital, Pune before being discharged from service and release medical board was held in October, 2006 i.e. before nine months from his due date of retirement, hence, there was a necessity to hold fresh release medical board as per Army Order 3/89, six months prior to discharge from service and not nine months as being done in the present case. In view of above, a Re-survey Medical Board (RSMB) is required to be conducted for the applicant to assess gravity of his disease and medical category from which he was suffering at the time of retirement from service.

7. In view of aforesaid, the respondents are directed to conduct a Re-Survey Medical Board for the applicant to assess his medical condition recommending the percentage of disability, if any. The respondents are directed to inform applicant the place and date where RSMB is to be conducted and give effect to this order positively within a period of four months from the date of receipt of certified copy of the order.

8. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

SB

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

O.A. No. 197 of 2019

Ex JWO Janardan Lal 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
	18.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Shri Pankaj Kumar Shukla, Ld. Counsel for the applicant and Shri Ashish Kumar Singh, Ld. Counsel for the respondents are present. Learned counsel for the applicant submits that applicant wants to withdraw his case with liberty to file afresh. Accordingly, Original Application is **dismissed** as withdrawn with liberty to file afresh. **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** SB

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

O.A. No. 255 of 2020

Ex Rect Anuj Pratap 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
	18.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Shri Manoj Kumar Awasthi, Ld. Counsel for the applicant and Shri Ashish Kumar Singh, Ld. Counsel for the respondents are present. Pleadings are complete and the case is ripe for hearing. List this case on **09.04.2021** for hearing. On the date fixed, learned counsel for the respondents shall produce original documents pertaining to the case for perusal of the Bench. **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** SB

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

O.A. No. 432 of 2020

Ex WO Ganesh Shanker 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
	18.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** Heard Shri R. Chandra, Ld. Counsel for the applicant and Shri R.C. Shukla, Ld. Counsel for the respondents. Original Application is **allowed**. For order, see our judgment passed on separate sheets. Misc. Application, if any, pending for disposal, shall be treated to have been disposed of. **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** SB

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

O.A. No. 438 of 2020

Ex Sub/Clk Kamlesh Rai 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
	18.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Shri Santosh Singh and Shri Shashank Pandey, Ld. Counsel for the applicant and Shri R.C. Shukla, Ld. Counsel for the respondents are present. Heard arguments. Order is reserved. **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** SB

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

O.A. No. 731 of 2020 with M.A. No. 117 of 2021 Alongwith M.A. No. 443 of 2020

Maj Vinay Sharma (Retd) Applicant
By Legal Practitioner for the Applicant

Versus

Secretary GOI MOD & Others Respondents
By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	18.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Col Y.R. Sharma (Retd), Ld. Counsel for the applicant and Maj Sini Thomas, Departmental representative for the respondents are present. List this case on **22.02.2021** for hearing. On the date fixed, learned counsel for the respondents shall produce original documents pertaining to the case for perusal of the Bench. **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** SB

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

R.A. No. 19 of 2019 Inre T.A. No. 1257 of 2010

Ex Hav R.D. Tripathi Petitioner
By Legal Practitioner for the Petitioner

Versus

Union of India & Others Respondents
By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	18.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Col Y.R. Sharma (Retd) and Shri Yashpal Singh, Ld. Counsel for the petitioner and Maj Sini Thomas, Departmental representative for the respondents are present. List this case on **22.02.2021** for hearing. On the date fixed, learned counsel for the respondents shall produce original documents pertaining to the case for perusal of the Bench. **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** SB

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

O.A. No. 45 of 2016

Yogesh Giri 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
	18.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Shri D.S. Kauntae, Ld. Counsel for the applicant and Ms. Appoli Srivastava, Ld. Counsel for the respondents are present. Pleadings are complete and the case is ripe for hearing. List this case on **17.05.2021** for hearing. On the date fixed, learned counsel for the respondents shall produce original documents pertaining to the case for perusal of the Bench. **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** SB

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

O.A. No. 315 of 2019

Col Balraj Sharma, SC Applicant
In Person

Versus

Union of India & Others Respondents
By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	18.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing the applicant in person and Dr. Shailendra Sharma Atal, Ld. Counsel for the respondents are present. Pleadings are complete and the case is ripe for hearing. List this case on **17.03.2021** for physical hearing. On the date fixed, learned counsel for the respondents shall produce original documents pertaining to the case for perusal of the Bench. **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** SB

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

O.A. No. 470 of 2012

Naseebul Hasan Syed Applicant
By Legal Practitioner for the Applicant

Versus

Chief of Army Staff & Others Respondents
By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	18.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Col A.K. Srivastava (Retd), Shri Dharam Raj Singh and Shri Shyam Sunder Bajpai, Ld. Counsel for the applicant and Shri Asheesh Agnihotri, Ld. Counsel for the respondents are present. List this case on **12.03.2021** for physical hearing. On the date fixed, learned counsel for the respondents shall produce original documents pertaining to the case for perusal of the Bench. **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** SB

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

M.A. No. 285 of 2020 Inre O.A. No. (Nil) of 2020

Ex Rect Pankaj Kumar Sahu 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
	18.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** 1. Heard Shri Ravindra Sharma, Ld. Counsel for the applicant and Ms. Appoli Srivastava, Ld. Counsel for the respondents assisted by Maj Sini Thomas, Departmental Representative. 2. Applicant has filed present application under Section 14 of the Armed Forces Tribunal Act, 2007 and has sought following reliefs:- "i) Quash set aside impugned order dated 25.08.2015, 19.09.2015 and 18.04.2016 passed by respondent No. 5 contained in Annexure No.- to this original Application. ii) Pass order or direction directed to opposite parties take the applicant in Military Training Battalion 3 EME Centre Bairagarh Bhopal for completing his training. iii) Pass order direction in the nature mandamus commanding the respondent to pay all the consequential service benefits along with the arrear payable in the favour of the applicant with effect from impugned order up to the final pay time. iv) Pass any other order or direction which this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case. v) Allow present original application and award the cost of application to the applicant." 3. Brief facts of the case are that applicant was enrolled in the Army on 18.03.2015 through Recruiting Office, Amethi and was sent to 3 EME Centre, Bhopal for training where he reported on 21.03.2015 and his training commenced on 21.03.2015. During the training on 21.07.2015, applicant mentally fell ill and when there was no response from his officers for treatment then he went back to his home for taking treatment in civil hospital. An apprehension roll was issued on 29.07.2015 being applicant declared absent without leave (AWL) with effect from 21.07.2015. The applicant sent a letter dated 05.08.2015 to respondent No. 5 to grant medical leave and he will join training after being medically fit on 10.08.2015. By letter dated 13.08.2015, respondent No. 5 directed the applicant to join training centre being better

medical facilities available in the Army hospitals for his ailment. In response to letter dated 13.08.2015, applicant joined duty on 16.08.2015 from where he was sent to training instead of referring him to military hospital for treatment.

4. Learned counsel for the applicant submitted that applicant was suffering mental illness and his treatment was going in Government Hospital, Swaroop Rani Medical College, Allahabad. After joining duty Apprehension Roll issued by the respondents has rendered infructuous. In Para 11 of counter affidavit, respondents had also stated that Apprehension Roll had been cancelled after joining duty by the applicant. The respondents have malafidly declared deserter to the applicant whereas applicant joined duty on 16.08.2015. Learned counsel for the applicant further submitted that respondents have not complied with Section 23, 106, 143, 145, 146 of Army Act, 1950 and pleaded that applicant be allowed to joint duty to complete his training and to be paid all consequential service benefits.

5. On the other hand, learned counsel for the respondents submitted that Ist Apprehension Roll dated 29.07.2015 was issued in respect of applicant being absent from training without grant of leave w.e.f. 21.07.2015. OA No. 606 of 2017 was filed for setting aside Ist Apprehension Roll and to issuing direction to respondents to take applicant in military training. In this O.A., respondents had taken pleas that during 19 weeks military training, applicant absented from training w.e.f. 21.07.2015 without grant of leave, resulting Apprehension Roll was issued on 29.07.2015 being absent without leave. In response to applicant's letter for the grant of medical leave for unauthorised absence from training, applicant was advised to rejoin duty forthwith then applicant voluntarily reported on duty on 16.07.2015 but from the very next date on 17.07.2015 he again went absent without leave and again Apprehension Roll was issued. Therefore, a Court of Inquiry was conducted and applicant was declared deserter and part II Order was published and his account was settled. In response to applicant letter dated 14.09.2015 and 30.03.2016 to rejoin duty he was informed that he cannot rejoin duty being recruit due to being absent from duty for continuous period of 30 days who was liable to be discharged from service.

6. Learned counsel for the respondents further submitted that O.A. 606 of 2017 was dismissed on 27.07.2018 with observation that applicant was a probationer and having absented from duty for continuous period of 30 days was rightly discharged from service. Review application filed against order dated 27.07.2018 was also dismissed on 29.08.2018. Writ petition being Service Bench No. 2495/2019 filed against order dated 27.07.2018 passed in O.A. No. 606 of 2017 and order dated 29.08.2018 passed in R.A. No. 49 of 2018 was dismissed on 28.01.2019 being not maintainable. Application seeking leave to file appeal against order passed in O.A. and R.A. was also dismissed on 27.09.2019 by the Hon'ble Supreme Court. Thereafter, the present Original Application has been filed challenging second Apprehension Roll dated 25.08.2015 and also letter dated 19.09.2015 and 18.04.2016.

7. We are not in agreement with aforesaid submissions. O.A. No. 606 of

2017 was filed in respect of Ist Apprehension Roll dated 29.07.2015 whereas this had been cancelled as respondents themselves had admitted this fact in para 11 of counter affidavit and in view of that O.A. had rendered infructuous and in that case any finding recorded therein including dismissal of O.A. being rendered in an infructuous O.A. has no legal force and implication. On reading judgment delivered in O.A. No. 606 of 2017, we find that this O.A. was filed in respect of the same cause of action and for the same reliefs. In earlier O.A. also applicant had claimed the same relief seeking direction to respondents to take him in military training as in the present O.A. with only difference that wherein earlier O.A. relief was sought to setting aside Ist Apprehension Roll, in the present O.A., relief sought in respect of 2nd Apprehension Roll.

8. Considering submission of learned counsel of the parties and on going through contents of the present O.A. as well as O.A. No. 606 of 2017, it appears that after failing to get desired result from this Tribunal to the Hon'ble Apex Court by means of O.A., Review Application, Writ Petition and SLP, applicant has started second round of litigation in stern misuse of process of the Court. In the earlier O.A. also applicant had claimed the same relief which was deemed after considering that applicant had himself absented from training without grant of leave from 21.07.2015 to 15.07.2015 with the result Apprehension Roll was issued on 21.07.2015 which was challenged in the O.A. Applicant rejoined duty on 16.07.2015 and again absented from duty from the very next day as a result 2nd Apprehension Roll was issued. Applicant's contention that with issue of 2nd Apprehension Roll the Ist Apprehension Roll had rendered cancelled and the earlier O.A. being filed in its respect also stood infructuous due to Ist Apprehension Roll being under challenge in it, any finding recorded in the O.A. has no legal bearing is not acceptable.

9. In view of above, second Original Application for same relief and for same cause of action is not maintainable. It is accordingly **dismissed.**

10. No order as to costs.

11. Pending misc. applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

SB

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

O.A. No. 166 of 2019

Ex Rect Vinod Kumar 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
	18.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** Heard Shri Virat Anand Singh, Ld. Counsel for the applicant and Shri Namit Sharma, Ld. Counsel for the respondents. Original Application is **dismissed**. For order, see our judgment passed on separate sheets. Misc. Application, if any, pending for disposal, shall be treated to have been disposed of. **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** SB