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

O.A. No. 162 of 2019

Ex. Sub. Awadhesh Prasad 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
	19.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** Heard Shri V.P. Pandey, Ld. Counsel for the applicant and Shri R.K.S. Chauhan, 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)** AKD/-

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
Court No.1 (E. Court)
M.A. No. 28 of 2021 Inre : O.A. No. (Nil) of 2021

Ex. Nb. Sub. Ram Shiromani 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
	19.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** Shri Ram Saran Awasthi, Advocate filed power today in Court on behalf of the respondents which is taken on record. Heard Shri B.B. Tripathi and Shri Amit Verma, Ld. Counsel for the applicant and Shri Ram Saran Awasthi, Ld. Counsel for the respondents. The Original Application has been filed with delay of 07 years, 10 months and 10 days. Submission of learned counsel for the applicant is that it is a pensionary matter in which bar of limitation is not applicable. His further submission is that delay in filing Original Application is not deliberate, but for the reasons stated in affidavit filed in support of application. Per contra, learned counsel for the respondents submits that explanation of delay offered by the applicant is not sufficient as he has failed to offer day to day explanation of delay. Considering that in pensionary matters bar of limitation is not applicable and grounds stated in affidavit filed in support of delay condonation application are genuine and sufficient, delay is liable to be condoned. Accordingly, delay in filing application is condoned. Delay condonation application stands decided accordingly. Let Original Application be registered. **O.A. No. 58 of 2021** It is a fit case for adjudication. Admit. Ld. Counsel for the respondents seeks and is allowed four weeks time to file Counter Affidavit. Rejoinder Affidavit, if any, may be filed within two weeks thereafter. List the matter before Registrar on **09.04.2021** for exchange of pleadings. List the matter before Tribunal on **20.04.2021.** **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** AKD/-

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

R.A. No. 4 of 2021 Inre : M.A. No. 82 of 2017 Inre : O.A. No. (Nil) of 2017

Shukhvinder Singh Kandari & Others Applicants
By Legal Practitioner for the Applicants

Versus

Union of India & Others Respondents
By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	19.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** Ms. Appoli Srivastava, Advocate filed power today in Court on behalf of the respondents which is taken on record. On the case being taken up for hearing the applicant Shri Sukhvinder Singh Kandari is present in person. Ms. Appoli Srivastava, Ld. Counsel for the respondents is also present and she submits that two weeks time be given to her to file reply/ objection against Review Application which is allowed. Let reply/objection be filed within two weeks, as prayed. List on **22.02.2021**. **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** AKD/-

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

O.A. No. 380 of 2019

Hav. Randhir 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
	19.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing none appears on behalf of the applicant. Dr. Shailendra Sharma Atal, Ld. Counsel for the respondents is present and he submits that Counter Affidavit which respondents have filed on 05.11.2020 be taken on record. . Counter Affidavit is taken on record. List on **03.05.2021** for final hearing**.** In the meantime Rejoinder Affidavit, if any, may be filed. **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** AKD/-

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

Ex. A. No. 132 of 2019 Inre : O.A. No. 332 of 2017

Ex. Sep. (ACP-II) Surendra Yadav Applicant
By Legal Practitioner for the Applicant

Versus

Union of India & Others Respondents
By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	19.01.2021 **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 Ashok Singh, Ld. Counsel for the applicant, Shri Yogesh Kesarwani, Ld. Counsel for the respondents and Shri Rajeev Tiwari, Accounts Officer, Principal Controller of Defence (Pension), Allahabad are present. During the course of hearing, Shri Rajeev Tiwari, Accounts Officer submitted that order under execution has been fully complied with as in addition to disability element @5,865/- per month being paid regularly, Rs.4,48,599/- has also been credited in applicant's account on 12.03.2020. Ld. Counsel for the applicant does not deny the above but submitted that since order has application to A.G.I.F. also but this part is not executed, suitable direction may be issued. Upon hearing submissions of Ld. Counsel of both sides and considering the facts and circumstances of the case, we are of the opinion that order has no concern with A.G.I.F. Further, we find that A.G.I.F. was not a party in the Original Application, therefore applicability of order cannot be extended to it. In view of above, Execution Application is **dismissed** in full and final satisfaction. **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** AKD/-

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

O.A. No. 420 of 2019

Nk/Clk. (SD) Mukesh Kumar Hans 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
	19.01.2021 **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 B.B. Tripathi, Ld. Counsel for the applicant and Shri D.K. Pandey, Ld. Counsel for the respondents are present. In this case despite Counter Affidavit filed on 24.02.2020 applicant has not filed any Rejoinder Affidavit and, therefore, opportunity to file the same is closed. List on **04.05.2021** for final hearing**.** **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **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. 128 of 2018 with R.A. No. 15 of 2018 Inre : O.A. No. 376 of 2017

Rama Kant 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
	19.01.2021 **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 Dharmesh Sinha, Ld. Counsel for the applicant and Ms. Appoli Srivastava, Ld. Counsel for the respondents are present. Ms. Appoli Srivastava, Ld. Counsel for the respondents again requested for four weeks time to make compliance of the order saying matter is pending consideration with Army Headquarters. Considering the facts and circumstances of the case, four weeks further time is granted on payment of Rs.10,000/- as cost payable to applicant. Respondents are directed to deposit entire costs due against them by the next date fixed. List on **23.03.2021**. **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** AKD/-

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 2019 Inre : O.A. No. 239 of 2012

Hav/Clk. Ram Roop 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
	19.01.2021 **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 I.P. Singh, Ld. Counsel for the applicant and Shri Asheesh Agnihotri, Ld. Counsel for the respondents are present. List tomorrow i.e. on **20.01.2021**. **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** AKD/-

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

Ex. A. No. 14 of 2019 Inre : O.A. No. 14 of 2017

Ex. Rect. Jagbir 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
	19.01.2021 **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 K.K. Misra, Ld. Counsel for the applicant, Shri Ashish Kumar Singh, Ld. Counsel for the respondents and Shri Rajiv Tiwari, Senior Accounts Officer, Principal Controller of Defence Accounts (Pension), Allahabad are present. Affidavit of compliance filed by the respondents is taken on record. Shri Rajiv Tiwari, Senior Accounts Officer submits that in compliance of the order Rs.17,12,113/- has been credited in the applicant's account in May, 2019 besides applicant being paid Rs.13,442/- per month regularly as service element. Copy of Re-Survey Medical Board proceedings has been annexed along with the affidavit of compliance and it shows that second part of the order has also been complied with. In the result, we find that order under execution seems to be complied with. Accordingly, Execution Application is **dismissed** in full and final satisfaction. **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** AKD/-

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

Ex. A. No. 11 of 2020 Inre : O.A. No. 593 of 2017

Ex. Dfr. Mehraj Ahmed Khan 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
	19.01.2021 **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 K.K. Misra, Ld. Counsel for the applicant and Shri Rajiv Pandey, Ld. Counsel for the respondents are present. Affidavit of compliance filed by the respondents is taken on record which shows that order under execution has been complied with. Accordingly, Execution Application is **dismissed** in full and final satisfaction. **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **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. 499 of 2019 Inre : O.A. No. (Nil) of 2019

Ex. Hav. Mukesh 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
	19.01.2021 **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 K.K. Misra, Ld. Counsel for the applicant and Dr. Shailendra Sharma Atal, Ld. Counsel for the respondents are present. Shri K.K. Mishra, Ld. Counsel for the applicant submits that applicant has died. Let steps for substitution be taken. List on **03.05.2021.** **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** AKD/-

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

O.A. No. 41 of 2020

Ex. Hav. Triloki Nath Ojha 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
	19.01.2021 **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 K.K. Misra, Ld. Counsel for the applicant and Ms. Amrita Chakraborty, Ld. Counsel for the respondent Nos. 1 to 3 are present. Despite service of notice being held sufficient on respondent No. 4 on 01.07.2020, it has neither put in appearance nor filed any Counter Affidavit, therefore, Original Application is ordered to proceed **exparte** against it. Respondent Nos. 1 to 3 have also not filed Counter Affidavit despite being asked for the same since long, however, in the circumstances, they are directed to file Counter Affidavit, if any, within four weeks failing which opportunity to file Counter Affidavit shall stand closed without any reference. List on **02.03.2021**. **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** AKD/-

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 2019 Inre : O.A. No. 150 of 2018

Hony. Nb. Sub. Indra Mani 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
	19.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Shri Om Prakash Kushwaha, Ld. Counsel for the applicant, Shri Arun Kumar Sahu, Ld. Counsel for the respondents and Shri Rajiv Tiwari, Senior Accounts Officer, Principal Controller of Defence Accounts (Pension), Allahabad are present. Shri Rajiv Tiwari, Senior Accounts Officer, PCDA (P), Allahabad submitted that after revision of applicant's pension as Honorary Naib Subdear Rs.1,20,748/- has been credited in applicant's account on 15.09.2013 and further incompliance of Circular dated 21.02.2020 of Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare, New Delhi Rs.83,190/- has also been credited in applicant's account in August, 2020. He further submitted that besides the aforesaid applicant is getting revised pension of Honorary Naib Subedar @Rs.22,573/- per month regularly. In view of above, order under execution seems to be complied with. Accordingly, Execution Application is **dismissed** in full and final satisfaction. **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** AKD/-

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
Court No.1 (E. Court)
O.A. No. 448 of 2019

Ex Sub Rudra 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**
	19.01.2021 **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, learned counsel for the applicant and Shri Shyam Singh, learned counsel for the respondents are present. Counter affidavit already filed by respondents is taken on record. List on **10.05.2021** for final hearing. In the meantime rejoinder affidavit, if any, may be filed. **(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)
Ex-A/186 of 2018 Inre O.A. No. 340 of 2017

Ex Hav (Hony Nb Sub) Devi Kant 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**
	19.01.2021 **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, learned counsel for the applicant and Shri Ashish Kumar Singh, learned counsel for the respondents are present. Affidavit of compliance filed by respondents is taken on record. Since Larger Bench has been formed at Principal Bench, New Delhi for disposal of similar issues therefore the case is adjourned sine die. **(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)

Ex-A/226 of 2018 Inre R.A. No. 43 of 2017 Inre O.A. No. 170 of 2017

Ex Nb Sub Ram Raj Pathak 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**
	19.01.2021 **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, learned counsel for the applicant and Mrs Amrita Chakaborty, learned counsel for the respondents are present. Affidavit of compliance filed by respondents is taken on record. Since Larger Bench has been formed at Principal Bench, New Delhi for disposal of similar issues therefore the case is adjourned sine die. **(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. 561 of 2019 with M.A. No. 856 of 2019

Ex Nb Sub Manoj Kumar Dwivedi 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
	19.01.2021 **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, learned counsel for the applicant and Shri Ashish Kumar Singh, learned counsel for the respondents are present. **M.A. No. 856 of 2019** There is a delay of 03 months and 25 days in filing application. Submission of learned counsel for the applicant is that delay in filing Original Application is not deliberate, but on account of reasons stated in affidavit filed in support of application. Per contra, learned counsel for the respondents submits that cause shown is not sufficient. Considering the facts and circumstances of the case, we find that cause shown is sufficient. Accordingly, delay is condoned. The case has already been admitted for hearing vide order dated 16.10.2019 and O.A. has been registered. **O.A. No. 561 of 2019** 1. The facts of the case in brief are that the applicant was enrolled in the Army Education Corps as Instructor direct entry Havildar on 22.03.2003 and was discharged from service on 31.10.2019 under Rule 13 (3) III (iv) of the Army Rules, 1954, i.e. before fulfilling the conditions of enrolment / service, at his own

	request. The total service put in by the Applicant is 16 years 07 months and 09 days. 2. Learned counsel for the Applicant submitted that the Government had introduced Assured Career Progression (ACP) Scheme on recommendation of Vth Central Pay Commission. The said Scheme was revised with three financial up-gradations i.e. after 8 years, 16 years and 24 years of service which was also made applicable to direct entry Havildars/JCOs. Subsequently, in May 2011, the Government introduced a Modified Assured Career Progression Scheme (In short, MACPS) for Personnel Below Officer Rank superseding the previous ACP Scheme. The Scheme was made to take effect from 01.09.2008. The crux of grievance of the applicant is that the applicant has been denied the benefits of the said scheme on the erroneous ground that he had expressed his unwillingness on 13.12.2007 to undergo the Urdu Language Course Serial 20 on account of sad demise of his daughter. On 22.04.2015, the applicant submitted application for revocation of permanent unwillingness certificate and requested respondents to detail him in suitable promotion cadre/course so that he could enhance his service limit by picking up the next promotion, which he got on 05.02.2017. On 17.09.2018, applicant submitted a representation requesting for grant of 1st MACP w.e.f. 22.03.2011 i.e. after completion of 08 years service from his enrolment but it was rejected vide order dated 13.12.2018 (Annexure A-1 of O.A.) stating that on account of unwilling to undergo Urdu Language Course, he became eligible for MACP w.e.f. 30.07.2018 and he was granted regular promotion on 05.02.2017. 3. Learned counsel for the applicant further submitted that MACP Scheme had not been introduced when the applicant had given undertaking forgoing the promotion course as the scheme was implemented by letter dated 30.05.2011 and applicant gave unwillingness on 13.12.2007. In essence, submission of learned counsel for the applicant is that an undertaking given prior to implementation of MACP Scheme would not create a hurdle in granting benefits of the Scheme which may accrue to him. It is also submitted that the applicant approached the respondents for

	benefits of the Scheme and also submitted his willingness certificate dated 20.04.2015 for ACP/MACP but the same was not considered by the respondents. 4. The contentions advanced by learned counsel for the respondents, per contra, is that subsequent to issue of MACP, detailed administrative instructions for grant of MACP were issued by the Army Headquarters in June 2011 vide letter dated 13.06.2011. Para 21 of the Instructions clarified that if an individual refuses promotion, MACP will also be denied. Para 15 of the Appendix to the Instructions clarified that unwillingness to attend promotion cadre amounts to unwillingness or refusal for promotion. It is also contended that the applicant was detailed to undergo mandatory Urdu Language Course Serial 20 to meet the criteria for promotion to the next higher rank but instead, he put in a certificate containing his unwillingness to undergo the course. It is also contended that the willingness certificate was given subsequently and he was promoted to the rank of Naib Subedar w.e.f. 05.02.2017 after attaining mandatory qualification. He pleaded that since the applicant had given unwillingness for career course, he was denied MACP on the ground of non qualifying service and by the time applicant became qualified for MACP, he was promoted to the next higher rank prior to that. 5. We have given our anxious considerations to submissions of both the parties as also perused guide lines and rules and regulations on the subject. 6. The applicant has not claimed any benefit from earlier ACP Scheme introduced in the year 2003 being a direct entry Havildar. The applicant was enrolled on 22.03.2003 and MACP was brought into force with effect from 01.09.2008. The applicant was discharged from service w.e.f 31.10.2019 (AN). In the circumstances, there appears to be substance in the submission that the applicant be made eligible for first MACP after 01.09.2008. 7. The contentions of the respondents are two-folds; firstly, that the applicant was discharged from service before completion of terms of engagement and, secondly, that the applicant had

submitted his unwillingness for career course, therefore, he was not eligible for MACP w.e.f. 22.03.2011 as claimed. Attention of the Tribunal was invited to Para 15 of Appendix 'A' to Army Headquarters, Administrative Instructions which postulates that unwillingness to attend promotion cadre course also amounts to unwillingness/refusal for promotion. The applicant had submitted his unwillingness certificate on 13.12.2007 on account of his daughter's death and mental illness of his wife and later submitted an application for its revocation on 22.04.2015. Submission made by learned counsel for the applicant that unwillingness which applicant had expressed earlier to introduction of MACP would not extinguish his right as the applicant did not get an opportunity of promotion till the time of introduction of MACP. This submission seems to be justified.

8. It is worthy of notice here that at the time of submission of certificate containing his unwillingness, there was no MACP Scheme. The earlier ACP scheme which was introduced in August 2003, was not applicable to direct entry Havildars like the applicant. It is also worthy of notice that ACP scheme of 2003 as well as MACP Scheme of 2011 merely envisaged grant of financial benefits to Personnel Below Officer Rank through placement in a higher grade pay scale and was not to be considered for regular promotion. It cannot be said that unwillingness certificate rendered for undergoing career course may become a hurdle for MACP.

9. It may be noted that it is not the first case. Earlier also, the Kochi Bench of Armed Forces Tribunal examined and dealt on this aspect in *O.A No 170 of 2016,* ***Ex Hav Zubair P. vs Union of India and others,*** *decided on 21.02.2017,* converged to the conclusion leaning in favour of the applicant. Hence, the question whether a person who had refused to undergo career course or had given permanent unwillingness for promotion was eligible for MACP is no more res integra. The relevant part of the aforesaid judgment is as under:-

> *"As observed, the applicant had given unwillingness certificate on 20th Jun 2003, in accordance with the provisions of AEC Record Office Instructions specifying mandatory criteria courses for promotion and impact of unwillingness to undergo*

	such courses. The ROI specified that an individual who is unwilling to attend criteria course/promotion cadre, relinquishes his claim for next higher rank as he has not qualified the necessary promotion course. At the stage of signing such a certificate, there was no MACP Scheme which was introduced only in May 2011 to be effective from 01 Sept 2008. Even the earlier ACP was Scheme introduced in August 2003, which, as such was not applicable to direct entry Havildars like the applicant. The ACP Scheme of 2003 as well as the MACP Scheme of 2011 merely envisaged grant of financial benefits to Personnel Below Officer Rank (PBOR) of the three services through placement in a higher pay scale and was not to be considered as functional or regular promotion. It is also observed that the unwillingness certificate rendered in accordance with ROI is not really irrevocable as there were provisions to apply for withdrawal of unwillingness certificate and for subsequent detailment of the course provided the individual made such an application to obtain the sanction of Additional DG AE. The Additional DG AE could then consider the submission made by the individual and grant necessary waiver. The aspect of whether a person who had refused to undergo promotion course or had given permanent unwillingness for promotion was eligible for MACP is no more res integra as this Bench had examined the issue in O.A. No.73/14 and connected cases and more recently in O.A. Nos.26 and 40 of 2015 and O.A.No.25/2016 and connected cases. In our view, the question to be considered is whether the applicants had any opportunity for promotion based on vacancies available from the date of coming into effect of MACP till their retirement. If the applicants had no opportunity for promotion for want of vacancy in the next higher rank, then their claim for MACP could not be denied only on the basis of the undertaking executed by them. While the respondents have also contended that unwillingness to undergo mandatory/criteria course for promotion amounts to unwillingness/refusal for promotion, it is observed that there is no such provision in the Government letters at Annexures A2 and A4 or in the Administrative Instructions issued by Army Headquarters (Annexure R1). The provisions of Para 15 quoted by the respondents is only in Appendix 'A' to the Administrative Instructions which is essentially a compilation of frequently asked questions on MACPS. While the answer to question No. 15 states that unwillingness to attend promotion cadre amounts to unwillingness/refusal for promotion, since there are no enabling provisions in the Policy letters governing the issue, a mere question/ answer in the Appendix cannot be claimed as a provision to deny the benefit of MACPS. Therefore, we do not see any merit in such a contention and the benefit of MACP Scheme could not be denied to the applicant merely on the basis of an unwillingness certificate given by him prior to the introduction of the Scheme, if he had no opportunity for promotion for want of vacancy in the next higher rank. 11. When the MACP Scheme was introduced to be effective from 01 September 2008, the applicant, who had been enrolled on 20 Apr 1990, had a little over 18 years of service. Therefore, in accordance with the provisions, he was eligible by requisite service for second MACP with effect from 01 September 2008 as he had more than 16 years of service as on that date provided he did not have any chance for promotion prior to that date. The respondents have submitted that the immediate senior as well as the immediate junior of the applicant were promoted with effect from 01 Feb 2011 i.e. more than 2 years after the date of introduction of MACP Scheme. Therefore, in our view, the applicant did not have any opportunity for promotion to next

higher rank for want of vacancy prior to 01 Sep 2008 even if he had qualified in the criteria course. Hence, he was eligible for the benefit of second MACP with effect from 01 Sep 2008 provided he was found fit after due screening in accordance with law."

10. Coming to the present case, the moot question which arises for adjudication is, whether the applicant had any opportunity for promotion, based on vacancies available from the date of coming into effect of MACP till his promotion to the next higher rank? If the applicant had no opportunity for promotion for want of a vacancy in the next higher rank, then his claim for MACP could not be denied only on the basis of the undertaking containing his unwillingness which was later revoked and he was promoted on 05.02.2017. The contention that unwillingness to undergo mandatory/criteria course for promotion amounts to unwillingness/refusal for promotion, does not impress inasmuch as there is no such provision in the Administrative Instructions issued by Army Headquarters. The provisions of Para 15 quoted by the respondents is only in Appendix A to the Administrative Instructions, as observed in the case of ***Ex Hav Zubair P*** (supra), is essentially a compilation of frequently asked questions on MACPS. While the answer to question no 15 states that unwillingness to attend promotion cadre amounts to unwillingness/refusal for promotion, since there is no enabling provision in the Policy letters governing the issue, a mere question/answer in the Appendix cannot be claimed as a provision to deny the benefits of MACPS. There appears to be no substance in the contention that benefits of MACP Scheme were not available to the applicant on account of unwillingness certificate given by him prior to introduction of MACP Scheme.

11. It may also be noted here that when MACP Scheme was introduced to be effective from 01.09.2008, the applicant who had been enrolled in the Army on 22.03.2003 had about 05 years of service. Therefore, in accordance with the provisions, he was eligible by requisite service for first MACP with effect from 22.03.2011 provided he did not have any chance for promotion prior to that date. Even if the applicant had opted to undergo the criteria course, he would have no chance for further promotion being no vacancy till his promotion i.e. 05.02.2017.

	12. Thus, since the applicant was not having any opportunity for regular promotion to the next higher rank, therefore the benefit of MACP could not be denied to him merely on the basis of unwillingness certificate which was later revoked by submitting a fresh willingness certificate. The applicant is entitled to grant of first MACP w.e.f. 22.03.2011. 13. As a result of foregoing discussion, the O.A. is **allowed**. Impugned order dated 13.12.2018 is set aside. The respondents are directed to give due consideration to the claim of the applicant for the benefit of first MACP w.e.f 22.03.2011 in accordance with rules by ignoring the unwillingness certificate given by him to undergo career course. The respondents are also directed to grant first MACP to the applicant w.e.f. 22.03.2011 and subsequent benefits within four months from today. 14. Default will invite interest @ 8% p.a. 15. No order 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)

O.A. No. 114 of 2020 with M.A. No. 879 of 2019

Ex Sub Suresh Chandra 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**
	19.01.2021 **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, learned counsel for the applicant and Shri Ashish Kumar Singh, learned counsel for the respondents are present. Judgment. **(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. 52 of 2020 with M.A. No. 1468 of 2018

Hony Nb Sub RB 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
	19.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Shri RN Tripathi, learned counsel for the applicant and Mrs Amrita Chakraborty, learned counsel for the respondents are present. Shri RN Tripathi, learned 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 21.02.2020 issued by Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare, New Delhi, to which Mrs Amrita Chakraborty, learned counsel for the respondents has no objection. With the consent of learned counsel for the parties, we hereby dispose of the Original Application finally with the direction to the respondents to revise the pension of applicant in terms of letter No. 1(13)/2016/D (Pen/Policy) dated 21.02.2020 issued by Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare, New Delhi, within a period of three months from the date of receipt of copy of this order and communicate to the applicant accordingly after verifying the documents. 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)** rathore

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

O.A. No. 85 of 2019 with M.A. No. 362 of 2019 alongwith
O.A. No. 64 of 2014 (Decided)

Ex Nb Sub Ram 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**
	19.01.2021 **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 Anurag Mishra, learned counsel for the respondents are present. As prayed by learned counsel for the applicant, list this matter on **02.02.2021** for hearing on maintainability of O.A. **(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. 162 of 2019

Ex Sub Awadhesh Prasad 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**
	19.01.2021 **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 RKS Chauhan, learned counsel for the respondents are present. Judgment. **(Vice Admiral Abhay Raghunath Karve) Member (A)** **(Justice Umesh Chandra Srivastava) Member (J)** rathore

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

M.A. No. 239 of 2020 Inre O.A. No. 302 of 2011
alongwith
Ex-A/118 of 2018 Inre O.A. No. 302 of 2011

Union of India & Others Applicants
By Legal Practitioner for Applicants
Versus
Brijendra Kumar Singh Respondent
By Legal Practitioner for the Respondent

Notes of the Registry	Orders of the Tribunal
	19.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** **M.A. No. 239 of 2020** Heard Shri Yogesh Kesarwani, learned counsel for the applicants – Union of India & Ors and Shri Virat Anand Singh, learned counsel for the respondent. By means of this application applicants-Union of India & Ors have prayed to modify this order dated 04.12.2017 in the manner stated in para 10 of the application on the premise that respondent had already completed his tenure of service on 04.01.2017 which fact could not be brought to the notice of the Tribunal when the order under execution was passed. We have gone through the order passed by this Tribunal and we find that there is no ambiguity in it. Accordingly, we do not see any merit in the application and the same is **rejected**. **(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)

Ex-A/118 of 2018 Inre O.A. No. 302 of 2011
alongwith
M.A. No. 239 of 2020 Inre O.A. No. 302 of 2011

Brijendra 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
	19.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** **Ex-A/118 of 2018** Heard Shri Virat Anand Singh, learned counsel for the applicant and Shri Yogesh Kesarwani, learned counsel for the respondents. Order under execution passed on 04.12.2017 is yet to be complied. Respondents are directed to ensure compliance of the order within four weeks from today positively failing which they shall be liable to pay Rs 50,000/- as additional cost to the applicant. List on **04.03.2021.** **(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. 24 of 2019

Smt Kaimul Nisha 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
	19.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** Heard Shri VP Pandey, learned counsel for the applicant and Dr. Shailendra Sharma Atal, learned counsel for the respondents. 1. Being aggrieved with denial of family pension, the applicant (widow of a deceased soldier) has filed the present application under Section 14 of the Armed Forces Tribunal Act, 2007, and has sought the following reliefs:- *"(i) to issue the order or directions to command the opposite parties for releasing/granting family pension to the applicant (i.e. the widow of deceased Mohd Ishaq, Ex No. 581 LNk) forthwith without any further delay in pursuance to the policy decision taken by the Government of India, in reference whereof the opposite party No. 3 already issued the circular dated 17th January 2013.* *(ii) to issue the order or direction to direct the opposite parties for releasing/granting the arrears of family pension to the applicant (i.e. the widow of deceased Mohd Ishaq, Ex No. 581 Lnk) alongwith admissible interest on it w.e.f. 24th September 2012.* *(iii) Any other relief as considered proper by this Hon'ble Tribunal be awarded in favour of the applicant.* *(iv) to allow the Original Application with cost in*

favour of the applicant and against the respondents."

2. Brief facts of the case are that applicant is the widow of deceased soldier Mohd Ishaq (Ex No 581 LNk of village-Nakrahi, Post & Tehsil-Sadar, District-Sultanpur) who served in the army (Banaras State Force) prior to independence and retired in the year 1945. The deceased soldier was drawing army pension w.e.f. 03.11.1945 vide PPO No. SM/TI/SF/9/72 dated 05.02.1972. After discharge from army service, the deceased soldier served as Jail Warden in the State of U.P. for the period 1945 to 1968 and after retirement he was drawing pension from the State Department vide PPO No. 306517/OA issued by Central Jail, Naini. Thus, the deceased soldier was drawing service pension from two departments prior to his death i.e. 08.07.1997. The applicant, widow of the deceased soldier opted to draw family pension from State Department but after demise of her husband, army authorities did not grant her family pension for which present O.A. has been filed.

3. Learned counsel for the applicant submitted that applicant is in receipt of family pension from the State Department. Further submission of learned counsel for the applicant is that the applicant being widow of deceased soldier is also entitled to receive family pension from army w.e.f. 24.09.2012 in accordance with Govt of India, Ministry of Defence letter dated 17.01.2013 and PCDA (P), Prayagraj Circular No 504 dated 17.01.2013. He concluded for grant of family pension to applicant.

4. On the other hand learned counsel for the respondents submitted that Part II Order with regard to marriage of applicant with deceased soldier is not available with respondents as papers related to the deceased soldier have been destroyed after expiry of retention period as per policy. He further submitted that only Long Roll is available on record which shows that the deceased soldier was discharged from service on 10.07.1945 but it does not show that the deceased soldier was in receipt of any type of pension. He submitted that the O.A. be dismissed on account of non availability of relevant record.

	5. We have gone through the available records as also documents related to family pension being drawn by applicant from the State Department and army PPO No SM/TI/SF/9/72 dated 05.02.1972. The documents placed on record completely makes it clear that the deceased soldier was in receipt of service pension from army till his death and his widow (the applicant) is entitled to family pension since documents placed on record indicate that the applicant is legally wedded wife of the deceased soldier. 6. It is submitted that prior to 2012, according to rule, only one family pension was applicable after demise of pensioner. After her husband's death, applicant opted to draw family pension from the State Department being more than that of army pension. 7. Since the deceased soldier was in receipt of service pension, therefore his wife i.e. the applicant is entitled to receive family pension after demise of the deceased soldier w.e.f. 08.07.1997. Previously dual family pension was not applicable and entitlement of dual family pension came into existence w.e.f. 24.09.2012, therefore the applicant is entitled to family pension w.e.f. 24.09.2012. 8. In view of the above, applicant is held entitled to family pension w.e.f. 24.09.2012 alongwith arrears. 9. Respondents are directed to release applicant's pension alongwith arrears within four months from today. 10. Default will invite interest @ 8% per annum. 11. No order as to costs. **(Vice Admiral Abhay Raghunath Karve) Member (A)** **(Justice Umesh Chandra Srivastava) Member (J)** rathore

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

M.A. No 1102 of 2018 Inre O.A. (Nil) of 2018

Ashok Kumar 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
	19.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** The instant Original Application has been filed against order dated 10.05.1996 of the respondents by which the applicant has been discharged from service on account of being undesirable soldier. Heard Shri Satendra Kumar Singh, Ld. Counsel for the applicant and Shri Asheesh Agnohotri, Ld. Counsel for the respondents. There is delay of 21 years, 05 months and 05 days in filing O.A. Regarding delay, submission of learned counsel for the applicant is that while being posted in J&K in the year 1992, an FIR was lodged in respect of death of a criminal at Police Station- Roja in District – Sahjanhpur, U.P. in which applicant was required by the local police for investigation purposes. Consequently, 14 days casual leave was granted to the applicant to go to his native place to attend investigation proceedings. However, on account of investigations being prolonged, the applicant could not return to his place of work on the required date and he was punished for the over stay. Applicant was arrested in the said criminal case on 11.08.1992 and was released on bail on 21.01.1994 and thereafter, being detained on account of illness of his father he could not join the duties immediately for which the applicant was again punished. The said criminal case remained pending for a long time in a criminal court at Sahajanpur wherein the applicant's acquittal was recorded on 31.05.2003 and on account of that also the applicant could not report to duties

and ultimately was discharged from service on 10.05.1996 vide order dated 19.04.1996. Further submission is after discharge applicant approached a counsel at Allahabad for doing needful in his matter who assured him for the same, but when he not taken any action till 2016, he approached the present counsel for readdressal of his grievances and the present O.A. was filed. Thus, his submission is that delay in filing O.A. is not deliberate, but for the reasons stated above.

Learned counsel for the respondents has vehementally opposed the prayer and has submitted that there is long delay of more than 21 years and the same has not been properly and satisfactorily explained.

Upon hearing submissions of learned counsel both sides and considering the facts and circumstances of the case, we find that applicant has not assigned any cogent and satisfactory explanation for long delay of more than 21 years in filing application. He has admitted in affidavit filed in support of delay condonation application that he was acquitted in criminal case on 31. 05.2003. Despite the same he has not explained why did he not challenged the discharge order then and there after acquittal. He has approached the Tribunal after expiry of about 14 years after his acquittal.

In view of above, we find that delay in filing application has not been properly and sufficiently explained.

In the result, delay is not liable to be condoned.

Accordingly, delay condonation application is **rejected** and O.A. being barred by time is also **dismissed**.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

UKT/-

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

Court No.1 (E. Court)

O.A. No. 581 of 2018

Vikram Singh Bhandari 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
	19.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** 1. Heard Shri R Chandra, Ld. Counsel for the applicant and Shri Anurag Mishra, Ld. Counsel for the respondents. 2. 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:- "(I) The Hon'ble Tribunal may kindly be pleased direct the respondents to grant benefit of rounding of the disability pension to the applicant from 20% to 50% w.e.f. 01/09/2010 alongwith the arrears including interest at the rate of 24 percent per annum. (II) Any other appropriate order or direction which the Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case." 3. Briefly stated facts of the case are that the applicant was enrolled in Indian Army on 17.12.1994 and was discharged with effect from 31.08.2010 (AN) in low medical category. The Release Medical Board identified his disability "**BIMALLEOLAR FRACTURE LT ANKLE (OPTD)**" and assessed aggravated by military service @ 20% for life. Accordingly, P.P.O. was issued by the Principal Controller of Defence Account (Pension), Allahabad. Presently the applicant is in receipt of 20% disability pension for life and has moved this Original Application for grant of benefit of rounding of disability pension w.e.f. 01.09.2010 from 20% to 50%. 4. Learned counsel for the applicant argued that since the applicant is already in receipt of 20% disability element for life, therefore, in view of the Hon'ble Apex Court judgment in the case of ***Union of India and Ors vs Ram Avtar & ors*** (Civil appeal No. 418 of 2012 decided on 10th December 2014), the applicant is also entitled to benefit of rounding off of disability element @ 50% for life.

5. On the other hand, though Ld. Counsel for the respondents conceded receipt of 20% disability pension by the applicant but contended that the applicant is not entitled to the benefit of rounding off of disability pension on the ground that the applicant's services were not cut short as he was not invalided out on account of his disability. In the instant case the applicant was discharged from service before the fulfilling the conditions of enrolment/service at his own request on extreme compassionate grounds, hence, he is not eligible for the benefit of rounding off in terms of Additional Directorate General of personnel Services, Army Headquarters letter dated 19.09.2014.

6. The law on the point of rounding off of disability pension is no more RES INTEGRA in view of the Hon'ble Supreme Court judgment in the case of ***Union of India and Ors vs Ram Avtar & ors*** (Civil appeal No 418 of 2012 decided on 10th December 2014) wherein the Hon'ble Apex Court has nodded in disapproval of the policy of the Government of India in granting the benefit of rounding off of disability pension only to the personnel who have been invalided out of service and denying the same to the personnel who have retired on attaining the age of superannuation or on completion of their tenure of engagement. The relevant portion of the decision is excerpted below:-

> *"4. By the present set of appeals, the appellant (s) raise the question, whether or not, an individual, who has retired on attaining the age of superannuation or on completion of his tenure of engagement, if found to be suffering from some disability which is attributable to or aggravated by the military service, is entitled to be granted the benefit of rounding off of disability pension. The appellant(s) herein would contend that, on the basis of Circular No 1(2)/97/D (Pen-C) issued by the Ministry of Defence, Government of India, dated 31.01.2001, the aforesaid benefit is made available only to an Armed Forces Personnel who is invalidated out of service, and not to any other category of Armed Forces Personnel mentioned hereinabove.*
>
> *5. We have heard Learned Counsel for the parties to the lis.*
>
> *6. We do not see any error in the impugned judgment (s) and order(s) and therefore, all the appeals which pertain to the concept of rounding off of the disability pension are dismissed, with no order as to costs.*
>
> *7. The dismissal of these matters will be taken note of by the High Courts as well as by the Tribunals in granting appropriate relief to the pensioners before them, if any, who are getting or are entitled to the disability pension.*
>
> *8. This Court grants six weeks' time from today to the appellant(s) to comply with the orders and directions passed by us."*

7. In the instant case, there is no dispute that applicant is in receipt of 20% disability element for life as this fact has been accepted by the respondents. In view of the settled law on this matter, we are of the considered opinion that the applicant is entitled to the benefit of rounding off to 50% for life from the date of discharge.

	8. In view of the above, the Original Application is allowed. The applicant is entitled to the benefit of rounding off of disability element from 20% for life to 50% for life from the date of discharge. However, as per PCDA (P), Allahabad Circular No. 596 dated 09.02.2018, arrears will be paid from 01.01.2016 only. The respondents are directed to give effect to this order within a period of four months from the date of receipt of certified copy of the order. Default will invite interest @ 8% per annum till actual payment. 9. No order as to costs. **(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)

Ex. A. No 19 of 2019 Inre T.A. No 34 of 2010

Vinay Kumar 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
	19.01.2021 **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 Sachindra Pratap Singh and Shri Yashpal Singh, Ld. Counsel for the petitioner and Shri Asheesh Agnihotri, Ld. Counsel for the respondents are present. During the course of hearing Shri Asheesh Agnihotri appearing on behalf of the respondents submitted that this is a second round of litigation regarding execution of the order. He further submitted that most part of the order has been complied with and that respondents need time to file objection against calculation chart submitted by the applicant alongwith Execution Application. Let objection be filed within two weeks. List on **25.02.2021** for orders. **(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)

Ex. A. No 87 of 2019 Inre O.A. No 471 of 2017

Ex Hav Chet 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
	19.01.2021 **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 Vishwash Kumar, Ld. Counsel for the applicant and Dr. S.N. Pandey, Ld. Counsel for the respondents are present. Objection to the affidavit of compliance filed by the applicant is taken on record. We have heard learned counsel for the parties and have also perused the affidavit of compliance. On perusal of affidavit, we find that order under execution has been complied with. Accordingly, Execution Application is **dismissed** in full and final satisfaction. **(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 679 of 2020 alongwith M.A. No 422 of 2020

Sub Sanath Kumar Naidu 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
	19.01.2021 **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 Wg Cdr SN Dwivedi (Retd), Ld. Counsel for the applicant and Shri Devesh Kumar Mishra, Ld. Counsel for the respondents are present. Learned counsel for the respondents submitted for more time to file counter affidavit against objection stating that objection against interim relief application could not be filed for no instructions being received from the respondents. A discharge order has already been issued to the applicant to be discharged from service w.e.f. 31.01.2021. In the circumstances, respondents are allowed four weeks further time to file counter affidavit/objection. List on **03.03.2021** for orders. In the meantime, discharge order dated 19.08.2020 shall not be given effect. **(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)

Ex. A. No 26 of 2018 with M.A. No 31 of 2021 Inre T.A. No 178 of 2009

Sriram Pandey Petitioner
By Legal Practitioner for the Petitioner

Versus

Defence Secretary, Ministry of Def, Govt of India Respondents
By Legal Practitioner for Respondents

Notes of the Registry	**Orders of the Tribunal**
	19.01.2021 **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 and Shri Sachindra Pratap Singh, Ld. Counsel for the petitioner and Shri Amit Jaiswal, Ld. Counsel for the respondents are present. As prayed, list on **22.01.2021** for orders. **(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 210 of 2019

Vijay 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
	19.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Shri Om Prakash Kushwaha, Ld. Counsel for the applicant and Shri Amit Jaiswal, Ld. Counsel for the respondents are present. As prayed, list on **22.01.2021** for hearing. **(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 16 of 2018

Shishu Pal 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
	19.01.2021 **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 Yogesh Kesarwani, Ld. Counsel for the respondents are present. List on **23.02.2021** for hearing. **(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 220 of 2018

Jagvir 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
	19.01.2021 **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 Yogesh Kesarwani, Ld. Counsel for the respondents are present. List on **25.02.2021** for hearing. **(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 543 of 2019 with M.A. No 438 of 2020, M.A. No 839 of 2019

Ex Sep Gadadhar Prasad Sinha 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
	19.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** Ms. Amrita Chakraborty, Ld. Counsel for the respondents is present. None appears on behalf of the applicant to represent his cause nor is there any mention made on his behalf to pass over or adjourn the case. Accordingly, we **dismiss** amendment application as well as Original Application for non prosecution. **(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 24 of 2019

Smt Kaimul Nisha 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
	19.01.2021 **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, Ld. Counsel for the applicant and Dr. Shailendra Sharma Atal, Ld. Counsel for the respondents are present. Heard. 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 3 of 2018

Vijay 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
	19.01.2021 **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 Shri Sunil Sharma, Ld. Counsel for the respondents are present. List on **01.03.2021** for hearing. **(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 78 of 2019

Smt Usha 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
	19.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Shri Virat Anand Singh, Ld. Counsel for the applicant and Shri Shyam Singh, Ld. Counsel for the respondents are present. List on **03.03.2021** for hearing. **(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 521 of 2019

Ex Nk Sandeep 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
	19.01.2021 **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 Shri Anurag Mishra, Ld. Counsel for the respondents are present. Counter affidavit filed by the respondents is taken on record. The matter pertains to grant of disability pension where neither in Original Application nor in counter affidavit it has been made clear as to how applicant sustained injuries resulting into disability in respect of which he has filed the present O.A. With regard to above, learned counsel for the applicant submits that two weeks time be given to him to file supplementary affidavit stating therein the reasons for inflicting injury which is allowed. Let supplementary affidavit be filed within two weeks, as prayed. List on **04.03.2021** 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 73 of 2016

Hukum 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
	19.01.2021 **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 Dr. Shailendra Sharma Atal and Shri Yogesh Kesarwani, Ld. Counsel for the respondents are present. List on **03.03.2021** for hearing. **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** SB