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

Court No. 1

O.A. No. 443 of 2019

Ex Nk Pandu Kumar Reddy Applicant
By Legal Practitioner for Applicant

Versus

Union of India & Others Respondents
By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	19.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** O.A. No. 443 of 2019, Ex Nk Pandu Kumar Reddy, vs. Union of India and others 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)** ukt

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

M.A. No 121 of 2021 Inre O.A. (Nil) of 2021

Ex Sub Maj Narayan Singh Khadwal 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
	19.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** Memo of appearance filed by Shri Vishvesh Kumar ,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 Vijay Kumar Pandey, Ld. Counsel for the applicant and Shri Vishvesh Kumar, Ld. Counsel for the respondents are present. The Original Application has been filed with delay of 14 years, 07 months and 20 days. Regarding delay the submission of the 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 applicant has explained the delay in affidavit filed in support of application and, in view of this, delay is liable to be condoned. Ld. Counsel for the respondents has vehemently opposed the prayer saying there being inordinate delay in filing the Original Application and explanation for day to day delay offered by the applicant being not sufficient, application should be dismissed. Undisputedly, it is a pensionary matter in which cause of action does not accrue on a fixed date. The matter being a case of continuing wrong, cause of action accrues from month to month. Considering this aspect and explanation of delay offered by the applicant, being sufficient, as seems, delay deserves to be condoned. In the result, delay condonation application is allowed. Let the Original Application be registered. **O.A. No. 131 of 2020** 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 **03.05.2021** for exchange of pleadings. List the matter before Tribunal on **17.05.2021**. **(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 122 of 2021 with MA. No 123 of 2021 Inre O.A. 46 of 2017

Union of India & Others Applicants
By Legal Practitioner for the Applicants

Versus

Maj (Retd) BS Rawat Respondent
By Legal Practitioner for Respondent

Notes of the Registry	Orders of the Tribunal
	19.02.2021 **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 Namit Sharma, Ld. Counsel for the applicants is present. **M. A. No. 122 of 2021** This is an application for condonation of delay in filing application for grant of leave to appeal in O.A. No. 46 of 2017. Admittedly, the application is time barred and has been moved after elapse of 03 years, 02 months and 17 days which is beyond statutory period. The Tribunal lacks jurisdiction to condone the delay under the Armed Forces Tribunal Act, 2007. It is well settled proposition of law that the Tribunal is not empowered to condone delay in moving application for leave to appeal. Accordingly application for condonation of delay in moving application for grant of leave to appeal is not maintainable and is rejected. **M.A. No. 123 of 2021** This is an application for grant of leave to appeal which has been filed beyond the statutory period of limitation. Application for condonation of delay has been rejected. Only argument of learned counsel for the applicant is that it is barred by time. No question of law of general public importance could be brought to our notice. In consequence thereof, the application for leave to appeal is **dismissed** on the ground of delay as well as on merits. **(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)

R.A. No 9 of 2021 Inre O.A. No 580 of 2019

Smt Neelam Singh, W/O Ex Rfn (Late) Jitendra 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
	19.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** Memo of appearance filed by Shri Yogesh Kesarwani, Advocate on behalf of the respondents is taken on record. On the case being taken up for hearing Shri Angrej Nath Shukla, Ld. Counsel for the applicant and Shri Yogesh Kesarwani, Ld. Counsel for the respondents are present. This is an application for review of order of this Tribunal dated 04.02.2021 passed in O.A. No 580 of 2019. Learned counsel for the applicant submits that he wants to make certain submission and wants to bring on record some rules and certain documents before this Tribunal. When he was asked about the error apparent on the face of record, he submitted that findings returned by the Tribunal as per law. The judgment and order sought to be reviewed has been passed in proper prospective after considering all the facts and circumstances of the case. We have gone through the order sought to be reviewed and we are of the considered view that there is no error apparent on the face of record in the impugned order, which may be corrected in exercise of review jurisdiction. Accordingly, the Review Application No. 09 of 2021 is rejected. There shall be no order as to costs. The Applicant may be informed accordingly. **(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)

T.A. No 37 of 2016

KN Dwivedi 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
	19.02.2021 **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 KKS Bisht, Ld. Counsel for the petitioner and Shri Ashish Kumar Singh and Shri DC Lohumi, Ld. Counsel for the respondents are present. Amended copy of T.A. filed by petitioner is taken on record. Supplementary counter affidavit to the amended T.A. may be filed within two weeks. List on **09.04.2021** for 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)

Dy No 62 of 2021 Inre M.A. No 42 of 2020 Inre O.A. (Nil) of 2020

Sep Sunil Kumar Tiwari 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
	19.02.2021 **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 Namit Sharma, Ld. Counsel for the respondents is present. Maj RD Singh (Retd), learned counsel for the applicant has prayed for adjournment of the case as he is out of station. As prayed, list on **12.04.2021**. **(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)

Ex. A. No 143 of 2017 Inre O.A. No 166 of 2017

Smt Neelam 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
	19.02.2021 **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 Angrej Nath Shukla, Ld. Counsel for the applicant and Ms Anju Singh, Ld. Counsel for the respondents are present. Rejoinder affidavit filed by learned counsel for the applicant is taken on record. A copy of the same has been served to learned counsel for the respondents today in the court. Learned counsel for the respondents prays for and is granted two weeks time to seek instructions from authority concerned and apprise the Court by the next date fixed, how many candidates were there in waiting list for compassionate appointment in the year 2014, how many candidates were selected and at that time what was the position of the applicant. List on **13.04.2021**. **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh C handra 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 33 of 2019 Inre T.A. No 92 of 2011

Ex Sigmn Jayant Bagchi 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
	19.02.2021 **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 RC Shukla, Ld. Counsel for the respondents along with Shri RK Tiwari, Account Officer, PCDA (P) Allahabad. Supplementary affidavit of compliance filed by learned counsel for the respondents is taken on record. Learned counsel for the applicant submitted that on perusal of Annexure- 1, filed along with supplementary counter affidavit, it only appears that Govt has accorded sanction to amend earlier sanction and this cannot be treated as compliance of the order passed by this Tribunal. Learned counsel for the respondents submitted that with sanction of disability pension order stands complied with therefore application may be dismissed being rendered infructuous. Upon hearing the submissions of the parties we are of the view that principly order stands complied with. However, as corrigendum PPO is yet to be issued and it may take two weeks more to be issued, as said by Shri RK Tiwari, Account Officer, PCDA (P), Allahabad, we think it proper to close the matter after issue of PPO. Accordingly, 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 70 of 2019 Inre O.A. No 626 of 2017

Ex Naik Rajbir Singh Bhadouria 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
	19.02.2021 **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 Dr Shailendra Sharma Atal, Ld. Counsel for the respondents are present. Learned counsel for the applicant prays for and is granted a week's further time to file substitution application. List on **02.03.2021**. **(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)

Ex. A. No 107 of 2019 Inre O.A. No 226 of 2014

Ex Sub Radhey Shyam Upadhya 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
	19.02.2021 **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 on **18.03.2021**. **(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 576 of 2019 Inre O.A. (Nil) of 2019

Ex Nb Sub Mahipal 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
	19.02.2021 **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 Dr Shailendra Sharma Atal, Ld. Counsel for the respondents is present. None appears to present the case of the applicant, nor is there any mention made on his behalf to pass over or adjourn the case. Accordingly, we **dismiss** the application for non prosecution. Interim order, if any, shall stand vacated. **(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 429 of 2017

Pramod 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
	19.02.2021 **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 Shri Rajiv Pandey, Ld. Counsel for the respondents are present. Learned counsel for the applicant prays for and is granted a week's further time to file rejoinder affidavit. List on **14.04.2021** for 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)

O.A. No 306 of 2019

Ex Hav (Hony Nb Sub) Sohan 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
	19.02.2021 **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 Shri Anurag Mishra, Ld. Counsel for the respondents are present. Since larger bench has been formed at AFT, Principal Bench, New Delhi for disposal of similar issues, therefore, the case is adjourned **sine die**. **(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 365 of 2019 with M.A. No 47 of 2020

Ex L/ Nk Ranveer 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
	19.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** Heard Shri Rohit Kumar, Ld. Counsel for the applicant and Shri Shyam Singh, Ld. Counsel for the respondents. **M.A. No 47 of 2020** There is delay of more than 17 years in filing the O.A. Regarding delay the submission of the Ld. Counsel for the applicant is that by means of this applicant has challenged the order of dismissal and applicant has explained the delay in affidavit filed in support of application and, in view of this, delay is liable to be condoned. Ld. Counsel for the respondents has vehemently opposed the prayer saying there being inordinate delay in filing the Original Application and explanation for day to day delay offered by the applicant being not sufficient, application should be dismissed. Undisputedly, it is a pensionary matter in which cause of action does not accrue on a fixed date. The matter being a case of continuing wrong, cause of action accrues from month to month. Considering this aspect and explanation of delay offered by the applicant, being sufficient, as seems, delay deserves to be condoned. In the result, delay condonation application is allowed. **O.A. No. 365 of 2019** This Original Application has been filed by the applicant with the prayer to decide his statutory complaint dated 31.05.2018 which is pending with the respondents. With the consent of learned counsel for the parties, we hereby dispose of the O.A. finally with the direction to the respondents to decide the statutory complaint of the applicant dated 31.05.2018 by a speaking and reasoned order in accordance with law, if not already decided, within a period of three months from the date of receipt of copy of this order and communicate the decision to the applicant. With the aforesaid direction, the Original Application is **disposed of** finally. Let a copy of this order be provided to learned counsel for the respondents within 48 hours, free of cost for onward transmission. **(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 577 of 2019

Ex Sep Kamble Ganesh Chhabila 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
	19.02.2021 **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 Nand Kishore, Ld. Counsel for the applicant and Shri Ashish Kumar Singh, Ld. Counsel for the respondents are present. This Original Application has been filed by the applicant for grant of disability pension and second appeal dated 09.09.2019 filed by the applicant is pending with the respondents. With the consent of learned counsel for the parties, we hereby dispose of the O.A. finally with the direction to the respondents to decide the second appeal of the applicant dated 09.09.2019 by a speaking and reasoned order in accordance with law, if not already decided, within a period of three months from the date of receipt of copy of this order and communicate the decision to the applicant. With the aforesaid direction, the Original Application is **disposed of** finally. Let a copy of this order be provided to learned counsel for the respondents within 48 hours, free of cost for onward transmission. **(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 453 of 2020 Inre O.A. (A) No 29 of 2021

Ex Nk Shankar Ingali Appellant
By Legal Practitioner for the Appellant

Versus

Union of India & Others Respondents
By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	19.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** 1. Hear Shri Vinay Pandey and Shri Prasoon Kumar Anjor, Ld. Counsel for the appellant and Shri Sunil Sharma, Ld. Counsel for the respondents. **M.A No. 453 of 2020** 2. Supplementary affidavit annexing copy of certificate dated 01.01.2021 issued by District Jail Jhansi filed by learned counsel for the appellant is taken record. 3. Heard learned counsel for the parties. 4. This application has been filed by the appellant for grant of bail in the O.A. preferred against the punishment inflicted by the General Court Martial (GCM). Appellant was convicted under Section 69 of the Army Act read with Section 10 of the POSCO Act, 2012 and sentenced to be reduced to the ranks, to suffer rigorous imprisonment for five years and to be dismissed from service. Appellant was in custody since 30.04.2018. The appellant preferred his bail application under Section 15 (3) of the Armed Forces Tribunal Act 2007 read with Section 389 of Code of Criminal Procedure 1973 for seeking enlargement on bail and suspension of sentence, before the Principal bench of this Tribunal. Hon'ble Principal Bench had enlarged the appellant on bail and suspended the sentence. Later Hon'ble Principal Bench vide order dated

19.08.2020 cancelled the bail order dated 15.06.2020 due to reasons that applicant had already been released on parole with effect from 02.04.2020, in terms of Hon'ble Supreme Court order dated 23.03.2020, passed in SUO MOTU WRIT PETITION (CIVIL) NO. 1 OF 2020 IN RE: CONTAGION OF COVID 19 VIRUS IN PRISONS. At present appellant is confined in District Jail Jhansi.

5. Ld. Counsel for the respondents submitted that under Section 15 of the Armed Forces Tribunal Act, 2007 the Tribunal has jurisdiction to consider bail of accused persons only. Since the appellant is a convict, hence, this Tribunal lacks jurisdiction to entertain the Bail Application.

6. We do not find any substance in the submission made by the Ld. Counsel for the respondents. When the Appeal is maintainable under Section 15 of the Armed Forces Tribunal Act, 2007 the provisions for Bail has also been embodied in Section 15 of the said Act. An Appeal is preferred by convicted person only and bail has to be considered during pendency of Appeal. Moreover, appellant was granted bail by the Principal Bench. The submission of respondents is against the settled basic principles of criminal law.

7. Accordingly, the appellant's prayer to release him on bail during pendency of appeal is allowed.

8. Let appellant Shankar Ingali be released on bail on his furnishing a personal bond of Rs.50,000/- (Fifty Thousand) with two sureties each in the like amount to the satisfaction of the Registrar of this Tribunal.

9. After the release of the appellant, the bail bonds furnished for his release, shall be kept on record of this Original Application.

10. M.A. stands disposed of accordingly.

	<u>O.A. (A) 29 of 2021</u> Learned counsel for the respondents submitted that respondents do not want to file counter affidavit as appeal has to be decided on the basis of material collected during GCM proceedings. List this case on **13.05.2021.** **(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)

O.A. No. 344 of 2019

Satya Narayan Dubey 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
	19.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** Heard Shri Lal Chandra Sahu, learned counsel for the applicant and Dr. Shailendra Sharma Atal, 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) Hon'ble Tribunal may please to set aside the order dated 12.08.2011 passed by the respondent No 3 (Officer-in-Charge Record, AMC, Lucknow) Record (Annexure No 2 to the Compilation).* *(II) Hon'ble Tribunal may please to set aside the order dated 15.05.2017 passed by respondent No 4 on the first appeal filed by the applicant.* *(III) Hon'ble Tribunal may please to set aside the order dated 25.06.2018 passed by respondent No 1 on the second appeal filed by the applicant (Annexure No 1 to compilation-I).* *(IV) The Hon'ble Tribunal may please to round off the disability pension of the applicant and grant the disability pension from the date of discharge.* *(V) This Hon'ble Tribunal may please to issue order or direction which this Hon'ble Court may deem fit and proper under circumstances of the case.* 2. Brief facts of the case giving rise to this application are that

the applicant was enrolled in the Indian Army on 17.11.1965 and was invalided

out of service w.e.f. 27.07.1973 (AN) being in low medical category and has rendered 07 years, 08 months and 10 days service. Being a non pensioner, his service documents have been destroyed in terms of para 595 of Regulations for the Army, 1987 (Revised Edition). The records reveal that applicant was invalided out of service and no sheltered appointment was offered to him. Disability pension claim was rejected vide order dated 08.01.1974 Thereafter petition preferred against rejection of disability pension claim was replied vide letter dated 23.07.1987 stating that since applicant's disability pension claim has already been rejected, hence he is not entitled to disability pension. This O.A. has been filed for grant of disability pension.

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 any disease prior to enrolment, therefore any disability of the 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 an inconsiderate manner without assigning any meaningful reason. Further submission of learned counsel for the applicant is that the applicant was not provided with any sheltered appointment and was

invalided out of service without assigning any reasons.

4. On the other hand, Ld. Counsel for the respondents submitted

that applicant was invalided out of service on 27.07.1973 being medically unit for further service under Rule 13 (3) III (iv) of Army Rules, 1954 after completion of 07 years, 08 months and 10 days of service. He further submitted that service/medical documents of the applicant have been destroyed by burning on 29.05.2005 being more than 25 years in terms of para 595 of Regulations for the Army, 1987. Only sheet roll is available which indicates that the applicant was invalided out of service. Further submission of learned counsel for the respondents is that since the applicant has not rendered pensionable service, he is not entitled to service element. He pleaded for dismissal of O.A.

5. Heard ld. counsel for the parties and perused the material placed on record.

6. Having scrutinized relevant papers we find that the applicant was invalided out of service in low medical category and documents related to him have been destroyed in terms of Para 595 of Defence Service Regulations, 1987. We also find that in absence of medical papers we are unable to decide percentage of disability of the applicant at the time of discharge. We are clear that even if on invalidation the applicant cannot be granted disability element on account of non availability of medical documents, he is entitled to service element in terms of para 186 of Pension Regulations for the Army, 1961. For convenience sake, relevant para is excerpted below:-

> *"186. (1) An individual who is **invalided out** of service with a disability attributable to or aggravated by service but assessed at below 20% shall be entitled to service element only.*
>
> *(2) An individual who was initially granted disability*

pension but whose disability is re-assessed at below 20% subsequently shall cease to draw disability element of disability pension from the date it falls below 20%. He shall however continue to draw the service element of disability pension.

7. Thus, in the facts and circumstances of the case, we find that the applicant is entitled to service element of disability pension with effect from his date of discharge.

8. In view of the above, the O.A. is **partly allowed**.

9. Accordingly, respondents are directed to issue PPO to this effect and release service pension to the applicant within four months from the date of receipt of a certified copy of this order. However, due to law of limitations the arrears to this effect shall be restricted to three years prior to filing of the present application in terms of the Hon'ble Apex Court judgment delivered in the case of ***Shiv Dass vs. Union of India***, reported in 2007 (3) SLR 445. This O.A. was filed on 08.03.2018.

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)

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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. 43 of 2020 with M.A. No. 14 of 2020

Ex Hav Ganesh 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
	19.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** 1. Heard Shri VP Pandey and Shri Madan Mohan Singh Bhandari, learned counsel for the applicant and Shri Arun Kumar Sahu, learned counsel for the respondents. **M.A. No. 14 of 2020** 2. The Original Application has been filed with delay of 21 years, 06 months and 12 days. 3. Submission of learned counsel for the applicant is that it is a pensionary matter in which bar of limitation is not applicable. His further submission is that delay in filing Original Application is not deliberate, but on account of reasons stated in affidavit filed in support of application. 4. Per contra, learned counsel for the respondents submits that cause shown by the applicant is not sufficient. 5. 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. 6. Accordingly, delay in filing of application is condoned. Application stands decided accordingly. 7. O.A. has already been registered vide order dated 14.01.2020. **O.A. No. 43 of 2020** 8. 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 set aside/quash the order dated 22 Dec 1997 (Annexure No A-1) passed by Defence Security Corps Records being illegal and

arbitrary.

(ii) To issue/pass an order or direction to the respondents to grant disability pension to the applicant from 18 Aug 1997.

(iii) Any other relief as considered proper by this Hon'ble Tribunal be awarded in favour of the applicant.

(iv) Cost of the O.A. be awarded to the applicant.

9. Brief facts of the case giving rise to this application are that applicant was enrolled in the Indian army on 03.06.1972 and after completion of terms of engagement, he was discharged from service in low medical category 'CEE (permt)' on 30.06.1989 in terms of Rule 13 (3) III (i) of Army Rules, 1954. Applicant suffered disability 'Fracture Both Bones (Lt) Fore Arm N-813, E-819'. At the time of discharge, the applicant was brought before Release Medical Board (RMB) which assessed the applicant's disability @ 11-14% for two years attributable to military service. However, PCDA (P), Allahabad accepted disability percentage @ 20% for two years and granted disability element vide PPO No. D/298/90 dated 16.02.1990. Applicant's RSMB was held on 18.08.1992 which assessed disability percentage @ 20% for five years but PCDA (P), Allahabad reduced his disability percentage @ 11-14% for five years vide letter dated 24.12.1992 and discontinued disability element w.e.f. 28.11.1990 intimating applicant to prefer first appeal within six months but applicant did not prefer the appeal within the stipulated period. After expiry of five years applicant was brought before RSMB on 31.03.1997 and RSMB assessed his disability @ 20% for ten years. The aforesaid disability percentage was again reduced to 11-14% by PCDA (P), Allahabad vide letter dated 01.12.1997. Again the applicant did not prefer any appeal against this rejection order and has filed the present O.A. for grant of disability pension.

10. Learned counsel for the applicant submitted that the applicant was enrolled in the Army in medically and physically fit condition and there is no note in his service documents with regard to suffering from any disease prior to enrolment, therefore, any disability suffered by the applicant after joining the service should be considered as attributable to or aggravated by military

service and the applicant should be entitled to disability pension. Learned counsel for the applicant further submitted that disability pension claim of the applicant has been rejected in a cavalier manner without assigning any

meaningful reason. Further submission of learned counsel for the applicant is that since the aforesaid disability is due to injury suffered while on military service, therefore RMB has conceded the disability as attributable to military service. He pleaded for grant of disability element to applicant.

11. On the other hand, learned counsel for the respondents submitted that since PCDA (P), Allahabad has assessed applicant's disability element @ 11-14% i.e. below 20%, he is not entitled to disability element and his claim has rightly been rejected by the pension sanctioning authority. He pleaded for dismissal of O.A.

12. Heard learned counsel for the parties and perused the records including RMB and RSMB.

13. We have perused the medical board proceedings wherein at column 2 (b) of page 3, it has been clearly mentioned that the injury was sustained while doing Govt duties in military service, therefore the disability is conceded as attributable to military service at column 2(a) of the said proceedings. However, the opinion of RMB and RSMB has been overruled by the competent authority by reducing disability percentage from 20% to 11-14%, thereby debarring applicant to receive disability element w.e.f. 28.11.1990 onwards.

14. In this context the issue of primacy of the opinion of a Medical Board is no more RES INTEGRA. The same has been upheld by the decision of the Hon'ble Apex Court in the case of ***Ex. Sapper Mohinder Singh vs Union of India & Ors***, Civil Appeal No 164 of 1993 decided on 14.01.1993. The observation made in the decision of ***Mohinder Singh*** (supra) being relevant is quoted below:

> *"From the above narrated facts and the stand taken by the parties before us, the controversy that falls for determination by us is in a very narrow compass viz. whether the Chief Controller of Defence Accounts (Pension) has any jurisdiction to sit over the opinion of the experts (Medical Board) while dealing with the case of grant of disability pension, in regard to the percentage of the*
>
> *disability pension, or not. In the present case, it is nowhere stated that the Applicant was subjected to any higher medical Board before the Chief Controller of Defence Accounts (Pension) decided to decline the disability pension to the Applicant. We are unable to see as to how the accounts branch dealing with the pension can sit over the judgment of the experts in the medical line without making*

any reference to a detailed or higher Medical Board which can be constituted under the relevant instructions and rules by the Director General of Army Medical Core."

15. Thus, in light of the law settled by the Hon'ble Apex Court, we agree with findings of RMB which has conceded 'Fracture Both Bones (Lt) Fore Arm N-813, E-819' of applicant as attributable to Military service @ 20% disability with effect from date of discharge and we set aside the impugned orders of PCDA (P) Allahabad dated 24.12.1992 and 01.12.1997 rejecting disability element claim of the applicant. The applicant shall be entitled to disability element w.e.f. 28.11.1990 @ 20% till holding of fresh RSMB. However, due to law of limitations, applicant shall be entitled to disability element three years prior to filing of this O.A. The O.A. was filed on 06.01.2020. The arrears shall be allowed to the applicant only after holding of fresh RSMB and subject to its outcome.

16. In view of the above we direct the respondents to hold RSMB of the applicant afresh to decide his future disability element percentage within four months from today.

17. O.A. is **partly allowed**.

18. No order as to costs.

19. 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. 82 of 2020 with M.A. No. 949 of 2019

Ex Hav (Hony Nb Sub) Desh Bahadur 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
	19.02.2021 **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, learned counsel for the applicant and Shri Anurag Mishra, learned counsel for the respondents are present. **M.A. No. 949 of 2019** The Original Application has been filed with delay of 09 years, 11 months and 16 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 on account of reasons stated in affidavit filed in support of application. Per contra, learned counsel for the respondents submits that cause shown by the applicant is not sufficient. 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 of application is condoned Original Application has already been admitted vide order dated 04.01.2022. **O.A. No. 82 of 2020** Shri Parijaat Belaura, 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 Shri Anurag Mishra, 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. 112 of 2020 with M.A. No. 975 of 2019

Smt Santosh Dwivedi W/O
Ex Nk Rama Shankar 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
	19.02.2021 **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, learned counsel for the applicant and Shri DK Pandey, learned counsel for the respondents are present. During course of hearing, learned counsel for the respondents submitted that respondents want to bring certain facts on record by way of supplementary affidavit, therefore, a reasonable time be given for the same. Let Supplementary counter affidavit be filed within a week. Supplementary rejoinder affidavit, if any, may be filed within one week next thereafter. List on **24.03.2021** for final hearing. On the date fixed, learned counsel for the respondents shall file original documents pertaining to the case for perusal of the Bench. **(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. (A) No. 391 of 2018 with M.A. No. 121 of 2019

Ravinder Singh
(Through Smt Surekha, legally wedded wife) 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**
	19.02.2021 **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 Rohit Kumar, learned counsel for the applicant and Shri Kaushik Chatterjee, learned counsel for the respondents are present. **M.A. No. 121 of 2019** Amendment application is allowed. Let amendment be carried out within a week. Learned counsel for the respondents seeks and is allowed two weeks time to file objection on amendment application. **O.A. (A) No. 391 of 2018** List on **03.03.2021**. **(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. (A) No. 29 of 2021 with M.A. No. 453 of 2020

Ex Nk Shankar Ingali 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**
	19.02.2021 **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 and Shri Prasoon Anjor, learned counsel for the applicant and Shri Sunil Sharma, learned counsel for the respondents are present. **Bail application to be made by PPS Tiwari** **Ld. Counsel for the respondents submitted that there is no need to file counter affidavit, hence the same is not 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)

R.A. No. 17 of 2020 Inre M.A. No. 505 of 2019 Inre O.A. No. Nil of 2019

Smt Prabhavati W/O Ex Hav
(Hony Nb Sub) Late Ram Narain 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**
	19.02.2021 **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 Vijay Kumar Pandey, learned counsel for the applicant is present. Dr. Gyan Singh, learned counsel for the respondents is reported to be out of station. List on **17.03.2021**. **(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)

R.A. No. 3 of 2021 Inre O.A. No. 219 of 2019

Brig Yatindra Mohan Tewari, SM (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**
	19.02.2021 **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 applicant and Shri Rajiv Pandey, learned counsel for the respondents are present. Objection to Review Application filed by the respondents is taken on record. Learned counsel for the applicant seeks and is allowed two weeks time to file reply. List on **18.03.2021**. **(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)

R.A. No. 7 of 2021 Inre O.A. No. 1 of 2021

Nk Ali Anwarali Manwarali **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**
	19.02.2021 **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 Virat Anand Singh, learned counsel for the applicant and Shri Sunil Sharma, learned counsel for the respondents are present. Shri Sunil Sharma, Advocate appearing on behalf of the respondents drew our attention to Rule 18 (3) of Armed Forces Tribunal (Procedure) Rules, 2008 and submitted that application for review shall be disposed of by circulation where the Bench may either dismiss the application or direct issue of notice to opposite parties and since review application has been admitted for hearing without following the said procedure, therefore, either the application be dismissed or objection be filed for disposal of application. Considering that the review application has been entertained for disposal on merit, we direct the respondents to file objection within two weeks from today. List on **22.03.2021**. **(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)

T.A. No. 11 of 2018

Shatrughan Kumar Pande 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**
	19.02.2021 **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 Virat Anand Singh, learned counsel for the petitioner and Shri Amit Jaiswal, learned counsel for the respondents are present. Supplementary counter affidavit filed by the respondents is taken on record. List on **01.03.2021** for 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. 285 of 2013

Smt Sunita Devi 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**
	19.02.2021 **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 Dr. Shailendra Sharma Atal, learned counsel for the respondents are present. Judgment reserved. **(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. 165 of 2016

Ajit 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
	19.02.2021 **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, learned counsel for the applicant and Dr. SN Pandey, learned counsel for the respondents are present. Pleadings are complete and the case is ripe for hearing. List on **13.04.2021** for final hearing. On the date fixed, learned counsel for the respondents shall file original IMB proceedings and connected documents pertaining to the case for perusal of the Bench. **(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. 258 of 2017

Akil Ahmed Ansari 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**
	19.02.2021 **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 RC Shukla, learned counsel for the respondents are present. Pleadings are complete and the case is ripe for hearing. List on **14.04.2021** for final hearing. On the date fixed, learned counsel for the respondents shall file original records pertaining to the case for perusal of the Bench. **(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. 96 of 2018

Hibju Rahman 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
	19.02.2021 **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, learned counsel for the applicant and Shri Adesh Kumar Gupta, learned counsel for the respondents are present. Pleadings are complete and the case is ripe for hearing. List on **15.04.2021** for final hearing. On the date fixed, learned counsel for the respondents shall file original records pertaining to the case for perusal of the Bench. **(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. 377 of 2018

Mahananda Rath 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
	19.02.2021 **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 Virat Anand Singh, learned counsel for the applicant and Shri Yogesh Kesarwani, learned counsel for the respondents are present. Pleadings are complete and the case is ripe for hearing. List on **16.04.2021** for final hearing. On the date fixed, learned counsel for the respondents shall file original records pertaining to the case for perusal of the Bench. **(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. 65 of 2019

Ex Hav (Hony Nb Sub) Shyam Bux 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
	19.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** Heard Shri Vinod Mishra, learned counsel for the applicant and Mrs Anju Singh, learned counsel for the respondents are present. Shri Vinod Mishra,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 Anju Singh, 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. 96 of 2020 with M.A. No. 910 of 2019

Ex Hav Razu 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
	19.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** Heard Shri Lal Chandra Sahu, learned counsel for the applicant and Shri Yogesh Kesarwani, learned counsel for the respondents. **M.A. No. 910 of 2019** 1. The Original Application has been filed with delay of 10 months and 17 days. 2. Submission of learned counsel for the applicant is that it is a pensionary matter in which bar of limitation is not applicable. His further submission is that delay in filing Original Application is not deliberate, but on account of reasons stated in affidavit filed in support of application. 3. Per contra, learned counsel for the respondents submits that cause shown by the applicant is not sufficient. 4. Considering that in pensionary matters bar of limitation is not applicable and grounds stated in affidavit filed in support of delay condonation application are genuine and sufficient, delay is liable to be condoned. 5. Accordingly, delay in filing of application is condoned. Application stands decided accordingly. 6. O.A. has already been registered vide order dated 14.01.2020. **O.A. No. 96 of 2020** 7. Brief facts giving rise to the present application is that having enrolled in army on 18.03.1985, the applicant was granted part of annual leave for the period 10.02.2010 to 11.03.2010 and during the leave at home, he sustained injury on 02.03.2010 resulting in 'Fracture Shaft Humerus Left (Optd)'. A court of inquiry (C of I) held on 30.10.2010 for the purpose declared the injury as neither attributable to nor aggravated by military service (NANA). Medical category of the applicant was downgraded and he served in low medical category till his discharge from service on 01.04.2011. Prior to discharge from service, Release Medical Board (RMB) was conducted which assessed applicant's disability @ 20% for life neither attributable to nor aggravated by military service. Disability pension claim was rejected vide order

dated 12.08.2011. Thereafter, first and second appeals were also rejected vide order dated 15.05.2017 and 25.06.2018 respectively. Feeling aggrieved for denial of disability pension, applicant has filed the instant O.A.

8. Learned counsel for the applicant submitted that, admittedly, applicant was on part of annual leave for the period 10.02.2010 to 11.03.2010 when he sustained injury, which ultimately resulted in 20% permanent disability because of 'Fracture Shaft Humerus left (Optd)'. He submitted that since the RMB has assessed applicant's disability @ 20% for life, applicant is entitled to disability pension with rounded off to 50%. He also submitted that various Benches of AFT, Hon'ble High Courts and the Hon'ble Apex Court, in the matter of disability, has held that if an armed forces personnel suffers with disability during the course of service, which was never reported earlier when he/she was enrolled/recruited in the Armed Forces, the said disability would be treated to be attributable to or aggravated by military service and he/she should be entitled to the disability pension. Thus, he submitted that applicant's case being fully covered with above, as he also suffered injury while on leave which is treated as duty and the same being not reported earlier at the time of his enrolment, he is entitled to disability pension.

9. Per contra, learned counsel for the respondents submitted that it is not disputed that applicant sustained injury resulting in disability, as held in C of I report dated 30.10.2010 and Medical Board Proceedings dated 26.02.2011, applicant being on leave doing his personal work could be treated on duty as he was not on military duty. However, for grant of disability pension it is not only required that armed forces personnel should be on duty, but there must be some causal connection also between the injury and military service. He further submitted that unless injury sustained has causal connection with military service, armed forces personnel cannot be allowed disability pension merely on the reason of being on casual leave. He further submitted that in the given facts, applicant being on leave met with an accident while cutting hay at home, there was no causal connection between the injury sustained and military service and, therefore, applicant is not entitled to disability pension, as he is claiming. In support, learned counsel for the respondents has placed reliance on the following case laws of the Hon'ble Apex Court :-

(a) ***Union of India vs Ex Nk Vijay Kumar*** (civil appeal No 6583 decided on 26.08.2015-It was held by the Hon'ble Apex Court that injury suffered by the respondent has no causal connection with the military service.

(b) ***Union of India & ors* vs. *Jujhar Singh*,** reported in (2011) 7 SCC 735-It was held that applicant was not on military at the time of accident in terms of para 12 (d) of Entitlement Rules, 1982 as clarified vide Govt of India, Ministry of Defence letter No 1(1)/81(Pen)C/Vol II dated 27 Oct 1998.

10. We have perused the records i.e. RMB and the injury report.

11. After having heard the submissions of learned counsel of both sides, we find that there are certain facts admitted to both the parties, i.e., applicant was enrolled in the army on 18.03.1985 and discharged from service on 01.04.2011 after completion of terms of engagement. He met with an accident while on part of annual leave and downgraded to medical category for disability 'Fracture Shaft Humerus Left (Optd)' vide AFMSF-16 dated 26.02.2011 and his disability was assessed @ 20% for life neither attributable to nor aggravated by military service. The disability claim of the applicant was rejected on 12.08.2011. Thereafter first and second appeals were also rejected. Learned counsel for the respondents has also conceded, during the course of hearing, that when applicant sustained injury resulting into disability, he was not on military duty.

12. The respondents have denied disability pension to applicant on the reason that for getting disability pension, in respect of injury sustained during the course of employment, there must be some causal connection between the disability and military service, and this being lacking in applicant's case, as there was no causal connection between the disability and military service, he is not entitled for the same.

13. This question has been considered time and again not only by the various Benches of AFT, but by the Hon'ble High Courts and the Hon'ble Apex Court also. In a more or less similar matter, ***Secretary Govt of India & Others vs Dharamveer Singh***, decided on 20th September 2019 in Civil Appeal No 4981 of 2012, the facts of the case were that respondent of that case met with an accident during the leave period, while riding a scooter and suffered head injury with 'Faciomaxillary and compound fracture 1/3 Femur (Lt)'. A court of inquiry was conducted in that matter to investigate into the circumstances under which the respondent sustained injuries. The Brigade Commander gave report dated August 18, 1999 to the effect that injuries, occurred in peace area, were attributable to military service. One of the findings of the report recorded under column 3(c) was that 'No one was to be blamed for the accident. In fact respondent lost control of his own scooter'. In this case the respondent was discharged from service after rendering pensionable service of 17

years and 225 days. In pursuance to report of the Medical Board dated November 29, 1999, which held his disability to be 30%, the claim for disability pension was rejected by the Medical Board on the ground that the disability was neither attributable to nor aggravated by military service. An appeal filed by the respondent against the rejection of his claim for the disability pension was rejected by the Additional Directorate General, Personal Services. Respondent then filed an O.A. in Armed Forces Tribunal against the order of denial of disability pension which after relying upon the judgment of Hon'ble Apex Court in the case of ***Madan Singh Shekhawat vs Union of India & Ors***, decided on 17.08.1999 was allowed holding that respondent was entitled to disability pension. Aggrieved by the same, a Civil Appeal was filed in which the Hon'ble Apex Court framed following 3 points for consideration:-

(a) Whether, when armed forces personnel proceeds on casual leave or annual leave or leave of any kind, he is to be treated on duty?

(b) Whether the injury or death caused if any, the armed forces personnel is on duty, has to have some causal connection with military service so as to hold that such injury or death is either attributable to or aggravated by military service?

(c) What is the effect and purpose of court of inquiry into an injury suffered by armed forces personnel?

14. The Hon'ble Apex Court decided the question number 1 in affirmative holding that when armed forces personnel is availing casual leave or annual leave, is to be treated on duty.

15. While deciding the second question the Hon'ble Apex Court held that while deciding the question of admissibility of disability pension, it has to be seen that there must be some causal connection between the injury or death and military service. The injury or death must be connected with military service. The injury or death must be intervention of armed forces service and not an accident which could be attributable to risk common to human being. When a person is going on a scooter to purchase house hold articles, such activity, even remotely, has no causal connection with the military service. In the present case there seems to be no causal connection of accident with military duty.

16. Regarding question number 3, the Hon'ble Apex Court held that if any causal connection has not been found between the disabilities and military service, applicant would not be entitled to the disability pension. While deciding this issue, the Hon'ble

Apex Court has discussed several cases decided by itself as well as the various Benches of the Armed Forces Tribunal and Hon'ble High Courts and has held thatg when armed forces personnel suffers injury while returning from or going to leave, it shall be treated to have causal connection with military service and for such injury, resulting in disability, the injury would be considered as attributable to or aggravated by military service.

17. The Hon'ble Apex Court while summing up has also taken note of the guiding factors of the Armed Forces Tribunal, in the case of ***Jagtar Singh vs Union of India & Ors***, decided on November 02, 2010 in T.A. No. 60 of 2010, approved in the case of ***Sukhwant Singh and Vijay Kumar*** case, and held that they do not warrant any modification and the claim of disability is to be required to be dealt accordingly. Those guiding factors are reproduced below for the ready reference:-

> *"(a) The mere fact of a person being on 'duty' or otherwise, at the place of posting or on leave, is not the sole criteria for deciding attributability of disability/death. There has to be a relevant and reasonable causal connection, howsoever remote, between the incident resulting in such disability/death and military service for it to be attributable. This conditionality applies even when a person is posted and present in his unit. It should similarly apply when he is on leave; notwithstanding both being considered as 'duty'.*
>
> *(b) If the injury suffered by the member of the armed force is the result of an act alien to the sphere of military service or is in no way connected to his being on duty as understood in the sense contemplated by Rule 12 of the Entitlement Rules, 1982, it would neither be the legislative intention nor to our mind would it be the permissible approach to generalise the statement that every injury suffered during such period of leave would necessarily be attributable.*
>
> *(c) The act, omission or commission of which results in injury to the member of the force and consequent disability or fatality must relate to military service in some manner or the other, in other words, the act must flow as a matter of necessity from military service.*
>
> *(d) A person doing some act at home, which even remotely does not fall within the scope of his duties and functions as a member of the force, nor is remotely connected with the functions of military service, cannot be termed as injury or disability attributable to military service. An accident or injury suffered by a member of the armed force must have some causal connection with military service and at least should arise from such activity of the member of the force as he is expected to maintain or do in his day-to-day life as a member of the force.*

(e) The hazards of army service cannot be stretched to the extent of unlawful and entirely unconnected acts or omissions on the part of the member of the force even when he is on leave. A fine line of distinction has to be drawn between the matters connected, aggravated or attributable to military service, and the matter entirely alien to such service. What falls ex facie in the domain of an entirely private act cannot be treated as a legitimate basis for claiming the relief under these provisions. At best, the member of the force can claim disability pension if he suffers disability from an injury while on casual leave even if it arises from some negligence or misconduct on the part of the member of the force, so far it has some connection and nexus to the nature of the force. At least remote attributability to service would be the condition precedent to claim under Rule 173. The act of omission and commission on the part of the member of the force must satisfy the test of prudence, reasonableness and expected standards of behaviour.

(f) The disability should not be the result of an accident which could be attributed to risk common to human existence in modern conditions in India, unless such risk is enhanced in kind or degree by nature, conditions, obligations or incidents of military service."

18. We have considered the applicant's case in view of the above guiding factors and we find that though applicant was on part of annual leave when he met with accident and sustained injury resulting disability of permanent nature to the extent of 20% for life on account of 'Fracture Shaft Humerus Left (Optd), the activity in which injury was sustained being not connected with his military service in any manner, applicant is not entitled to the disability pension for the same.

19. We also take note of rejection of disability pension claim letter dated 30.03.2011 and opinion of court of inquiry report dated 30.10.2010 wherein it is clearly mentioned that the injury sustained by applicant is not attributable to military service. Since the disability has no causal connection with military duty, applicant is not entitled to disability pension.

20. In the result, we hold that the claim of applicant's disability pension has rightly been rejected by the respondents which needs no interference. Resultantly, O.A. is **dismissed**.

21. No order as to costs.

22. Pending applications, if any, are disposed of.

	(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. 173 of 2020

Ex JWO Mahesh Pratap Tiwari 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
	19.02.2021 **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 Shyam Singh, Ld. Counsel for the respondents. Original Application is **allowed**. For order, see our judgment passed on separate sheets. Misc. Application, if any, pending for disposal, shall be treated to have been disposed of. **(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. 344 of 2019

Satya Narayan Dubey 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
	19.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** Heard Shri Lal Chandra Sahu, Ld. Counsel for the applicant and Dr. Shailendra Sharma Atal, 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. 347 of 2019

Smt Reena Devi 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
	19.02.2021 **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 Chaubey, Ld. Counsel for the applicant 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 **24.03.2021** 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. 549 of 2019 with M.A. No. 837 of 2019

Ex L Nk Kapil Deo 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
	19.02.2021 **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 Dr. Ashish Asthana, Ld. Counsel for the applicant and Shri Arun Kumar Sahu, Ld. Counsel for the respondents are present. Pleadings are complete and the case is ripe for hearing. List this case on **05.04.2021** 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. 35 of 2020 with M.A. No. 733 of 2019

Ex Rect Narendra Kumar 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
	19.02.2021 **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 and Shri Ravi Kumar Yadav, Ld. Counsel for the applicant and Shri Ashish Kumar Singh, Ld. Counsel for the respondents are present. Supplementary counter affidavit filed by the respondents is taken on record. Learned counsel for the applicant prays for adjournment. As prayed, list this case on **15.03.2021** 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. 38 of 2020 with M.A. No. 36 of 2020

Ex Sub (Hony Capt) Paramhans Yadava 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
	19.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** Heard Shri Manoj Kumar Awasthi, Ld. Counsel for the applicant and Shri Shyam Singh, Ld. Counsel for the respondents. Original Application is **allowed**. For order, see our judgment passed on separate sheets. Misc. Application, if any, pending for disposal, shall be treated to have been disposed of. **(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. (A) No. 191 of 2014

Ravi Shankar 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
	19.02.2021 **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 K.K.S. Bisht, Ld. Counsel for the applicant and Shri Asheesh Agnihotri, Ld. Counsel for the respondents are present. Pleadings are complete and the case is ripe for hearing. List this case on **06.04.2021** 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)

M.A. No. 145 of 2020 Inre O.A. No. Nil of 2020

Ex Sub Maj Jagdish 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
	19.02.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** Heard Shri K.P. Datta, Ld. Counsel for the applicant and Shri Namit Sharma, Ld. Counsel for the respondents. **M.A. No. 145 of 2020** The applicant has filed this application for grant of promotion to the rank of Hony Lieutenant and then Hony Captain on active list of service. There is delay of 14 years, 03 months & 14 days in filing Original Application. Submission of learned counsel for the applicant is that applicant was a patient of cardiology and was under treatment for the same while in service and even after discharge from service. His physical condition deteriorated for years due to his ill health. Besides, his wife, daughter and son also suffered ill health. His wife was under treatment for years at different hospitals and after retirement of applicant, she died. His unmarried daughter and son also suffered with various ailments for long years and so he was busy in treatment of himself and his family members for a very long time and was unable to take up his grievance of promotion and could not file the case in time. 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 submited that explanation of delay offered by the applicant is not sufficient as he has failed to offer day to day explanation. We have considered the cause of delay in light of medical documents filed and we find that it appears sufficient to condone the delay. Accordingly, delay in filing application is condoned. Delay condonation application stands decided accordingly. Let Original Application be registered. **O.A. No. 141 of 2021** 1. Applicant has filed present application under Section 14 of the Armed Forces Tribunal Act, 2007 and has sought following reliefs:- "A. To issue/pass an order or directions to set-aside/quash the illegal rejection order passed by Army Medical Corps Records, Lucknow vide

letter No. 359007-C/Gen/2020 dated 29.02.2020, in which the Respondent No. 3 has been unjustly denied his promotion to the rank of Hony Lt, subsequently Capt on active list of service same to his batchmates, in the same periods of service, before discharge on 31.01.2005, which is annexed as Annexure No. A-1 to this Original Application.

B. To issue/pass an order or directions to the respondents to consider the applicant, and grant him promotion to the rank of Honorary Lieutenant, subsequently Hony Captain on active list of service, as per seniority of promotion roster along with his batch mates during the same period of service, with retrospective effects of pay & allowances & arrears with interest @ 18% p.a., and grant him the enhance rate of pension as per 6th & 7th CPC from the date of discharge wef 01.02.2005, with detailed due drawn audit report issued from PCDA (P) Allahabad.

C. To issue/pass an order or directions to the respondents to set aside/quash the ACR for 2001-2002, subsequently reassessment.

D. To issue/pass an order or directions to the respondents for including the points of Field Service at 2014 Field Ambulance (OP RAKSHAK) during the year 1992, points of Instructor at AFMC Pune after publishing Pt II Order from 2001 to 2003 being Category 'A' Establishment, and points of GOC-in-C (CC) Commendation for 2003-04, while preparing Master Sheet for Hony Lt in Dec 2003 onward in active list of service.

E. 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.

F. To allow this original application with costs.

2. Brief facts of the case are that applicant was enrolled in the Army on 27.08.1971. He was promoted to the rank of Naik, Hav, Nb Sub, Subedar and Subedar Major as per his seniority and was discharged from service after rendering more than 33 years of service on 31.01.2005. After retirement, applicant was granted honorary rank of Lieutenant on the occasion of Independence Day (15 August 2005). Being aggrieved, the applicant has filed present Original Application for grant of Hony Lt. and Capt on active list of service.

3. Learned counsel for the applicant emphasised on the following points in support of his claim for grant of honorary rank of Lieutenant and Captain on active list :-

(a) Applicant was deployed in 'OP RAKSHAK' in the year 1992 and 1993 but the points allotted for OP RAKSHAK have not been included in the Master Sheet prepared for honorary rank for Lieutenant during active service by AMC Records in December, 2003.

(b) Applicant successfully completed potential Subedar Major course on leadership, motivation and human resource development conducted

at Junior Leader Academy, Bareilly from 27.11.2000 to 23.12.2000 and obtained 'B' Grading.

(c) DO Part II Order for performing Instructor duty has not been published by AFMC, Pune being Category 'A' Establishment for the period from 2001 to 2003.

(d) ACRs in the rank of Subedar and Subedar Major were outstanding while serving in different level of various units during active service.

(e) The applicant has also been complimented by Adm Officer and Deputy Commandant of AFMC, Pune in the year 2002.

(f) GOC-in-C Central Command commendation has been awarded during the year 2003-04.

4. Learned counsel for the applicant further submitted that applicant's representation dated 21.10.2019 has been rejected by Respondent No. 3 in arbitrarily manner on 29.02.2020. He was hopeful for consideration of his name for the promotion to the rank of Hony Lt. And subsequently Hony Capt. in active list of service before discharge from service on 31.01.2005 but has been denied unjustly and arbitrarily by the respondents, hence this original Application has been filed.

5. On the other hand, learned counsel for the respondents submitted that honorary commission is granted to Junior Commissioned Officers (JCOs) of the Army on active list on the occasion of Republic Day and Independence Day on the basis of entire service profile and performance. As per Army Headquarters letter dated 30.09.1996, the grant of honorary commission is not a statutory right of a JCO and it is not possible that all retiring JCOs to get honorary commission in active list as only 12 vacancies of Honorary Lieutenant are authorised against the strength of 1000 JCOs in a Corps (Army Medical Corps). As such, award of honorary commission is totally based on comparative merit list finalised at Army Headquarters (Ceremonial & Welfare Directorate) as per the vacancies authorised on the basis of merit based on their complete service profile and performance during the entire service. Since, the name of applicant has not come in the merit during the particular period, hence he was not awarded honorary rank of Lieutenant in the active list but he was awarded honorary rank of Lt. on 15 August 2005 after retirement.

6. We have perused the records and analysed the submissions of both the counsels and find that applicant has not come in the merit as per criteria laid

	down in Army Headquarters letter dated 30.09.1996, hence, his prayer has no force. 7. In view of above, Original Application is devoid of merit and is liable to be dismissed. It is accordingly **dismissed.** 8. No order as to costs. 9. Pending misc. applications, if any, are disposed off. **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** SB