

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

O.A. No. 633 of 2021 with M.A. No. 705 of 2021

Ex. Cpl. Ram Sewak Yadav
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>22.10.2021</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p>Memo of Appearance filed by Shri Shyam Singh, Advocate on behalf of the respondents is taken on record.</p> <p>Heard Shri Ashok Kumar, Ld. Counsel for the applicant and Shri Shyam Singh, Ld. Counsel for the respondents.</p> <p>The present Original Application has been filed for the grant of disability pension with delay of more than 38 years.</p> <p>It is submitted by the Ld. Counsel for the applicant that delay in filing of Original Application is not deliberate, but for the reasons stated in affidavit filed in support of delay condonation application.</p> <p>In reply, Ld. Counsel for the respondents submitted that there being a long delay of more than 38 years and the same being not properly explained, delay in filing Original Application should not be condoned.</p> <p>Ld. Counsel for the respondents further submitted that this being the second Original Application for the grant of disability pension should be dismissed being not maintainable. He further submitted that in respect of same reliefs based on the same cause of action applicant had filed the first Original Application being Original Application No. 315 of 2011, titled Ram Sewak Yadav Versus Union of India & Others, in Regional Bench, Chandigarh of Armed Forces Tribunal which was dismissed on 08.12.2014 with observation that "<i>There are no medical documents either with the petitioner or with the respondents regarding his disability as claimed by the petitioner to be given in his Invaliding Medical Board which can be placed before this court. In view of this and also that Re-assessment Medical Board dated 08.01.2013 has found the petitioner to be "reasonably functional at home and carrying out all his social responsibilities and tending to his farms as well as no significant active/residual/negative psychotic symptoms" and assessed his disability at only 5%, we have no alternative but to go by the assessment of the Re-assessment Medical Board</i>".</p> <p>It is submitted by the Ld. Counsel for the respondents that first Original Application filed by the applicant being based on same cause of action and for same relief being dismissed by Regional Bench, Chandigarh of Armed Forces Tribunal, the second Original Application for the same relief on the same cause of action cannot be entertained being not maintainable.</p>

During the course of hearing, Ld. Counsel for the applicant admitted that this is the second Original Application for the grant of disability pension on the same cause of action on which the first Original Application was filed in Regional Bench, Chandigarh of Armed Forces Tribunal, which was dismissed on 08.12.2014 with observations stated above.

In view of the fact that present Original Application is the second Original Application for the grant of disability pension based on the same cause of action on which the first Original Application has been dismissed by a Regional Bench with observation that due to non-availability of medical documents it is not possible to decide the disability claim, we are of the firm view that present Original Application is liable to be dismissed being not maintainable.

We are also of the view that there being a delay of more than 38 years and the same being not properly explained, Original Application is liable to be dismissed on the ground of delay also.

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

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

AKD/-

