

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

M.A. No 50 of 2021 Inre O.A. (Nil) of 2021

Ex Gnr (ACP Nk) Sanjeev Kumar
 By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others
 By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>27.01.2021</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p style="text-indent: 40px;">Memo of appearance filed by Shri Devesh Kumar Mishra, learned counsel for the respondents is taken on record. His name shall be shown as learned counsel for the respondents on the next date of listing.</p> <p style="text-indent: 40px;">Heard Col AK Srivastava (Retd), Ld. Counsel for the applicant and Shri Devesh Kumar Mishra, Ld. Counsel for the respondents are present.</p> <p style="text-indent: 40px;">The Original Application has been filed with delay of 07 months and 29 days.</p> <p style="text-indent: 40px;">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 caused in filing of Original Application is not deliberate, but on account of reasons stated in affidavit filed in support of application.</p> <p style="text-indent: 40px;">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, application deserves rejection.</p> <p style="text-indent: 40px;">Considering that in pensionary matters bar of limitation is not applicable, as cause of action in such matters does not accrue on a specific date, but it runs from month to month, and grounds stated in affidavit filed in support of delay condonation application being genuine and sufficient, delay is liable to be condoned.</p> <p style="text-indent: 40px;">Accordingly, delay caused in filing of application is condoned. Delay condonation application stands decided accordingly.</p> <p style="text-indent: 40px;">Let Original Application be registered.</p> <p><u>O.A. No. 83 of 2021</u></p> <p style="text-indent: 40px;">It is a fit case for adjudication.</p> <p style="text-indent: 40px;">Admit.</p> <p style="text-indent: 40px;">Ld. Counsel for the respondents seeks and is allowed four weeks time to file Counter Affidavit. Rejoinder Affidavit, if any, may be filed within two weeks thereafter.</p> <p style="text-indent: 40px;">List on 20.04.2021 before the Registrar Court for exchange of pleadings.</p> <p style="text-indent: 40px;">List the matter before Tribunal on 06.05.2021.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) Member (A)</p> <p style="text-align: center;">(Justice Umesh Chandra Srivastava) Member (J)</p> <p>UKT/-</p>

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

M.A. No 52 of 2021 Inre O.A. (Nil) of 2021

Ex Hav Ishwar Dayal 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>27.01.2021</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 Manu Kumar Srivastava, learned counsel for the respondents is taken on record. His name shall be shown as learned counsel for the respondents on the next date of listing.</p> <p>On the case being taken up for hearing Col AK Srivastava, Ld. Counsel for the applicant and Shri Manu Kumar Srivastava, Ld. Counsel for the respondents are present.</p> <p>The Original Application has been filed with delay of 1 year and 18 days.</p> <p>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 caused in filing of Original Application is not deliberate, but on account of reasons stated in affidavit filed in support of application.</p> <p>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, application deserves rejection.</p> <p>Considering that in pensionary matters bar of limitation is not applicable, as cause of action in such matters does not accrue on a specific date, but it runs from month to month, and grounds stated in affidavit filed in support of delay condonation application being genuine and sufficient, delay is liable to be condoned.</p> <p>Accordingly, delay caused in filing of application is condoned. Delay condonation application stands decided accordingly.</p> <p>Let Original Application be registered.</p> <p><u>O.A. No. 82 of 2021</u></p> <p>It is a fit case for adjudication.</p> <p>Admit.</p> <p>Ld. Counsel for the respondents seeks and is allowed four weeks time to file Counter Affidavit. Rejoinder Affidavit, if any, may be filed within two weeks thereafter.</p> <p>List this case on 20.04.2021 before the Registrar Court for exchange of pleadings.</p> <p>List the matter before Tribunal on 06.05.2021.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)</p> <p>UKT/-</p>

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

M.A. No 49 of 2021 Inre O.A. (Nil) of 2021

Ex Nk Dharampal
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>27.01.2021</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 Dr. SN Pandey, learned counsel for the respondents is taken on record. His name shall be shown as learned counsel for the respondents on the next date of listing.</p> <p>On the case being taken up for hearing Shri Lal Chandra Sahu, Ld. Counsel for the applicant and Dr. SN Pandey, Ld. Counsel for the respondents are present.</p> <p>The Original Application has been filed with delay of 02 years, 02 months and 04 days.</p> <p>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 caused in filing of Original Application is not deliberate, but on account of reasons stated in affidavit filed in support of application.</p> <p>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, application deserves rejection.</p> <p>Considering that in pensionary matters bar of limitation is not applicable, as cause of action in such matters does not accrue on a specific date, but it runs from month to month, and grounds stated in affidavit filed in support of delay condonation application being genuine and sufficient, delay is liable to be condoned.</p> <p>Accordingly, delay caused in filing of application is condoned. Delay condonation application stands decided accordingly.</p> <p>Let Original Application be registered.</p> <p><u>O.A. No. 80 of 2021</u></p> <p>It is a fit case for adjudication.</p> <p>Admit.</p>

Ld. Counsel for the applicant submits that respondents be directed to decide his second appeal dated 20.01.2017 by a speaking and reasoned order. Learned counsel for the respondents has admitted that second appeal of the applicant has not been decided till date.

We therefore direct the respondents to decide the pending appeal of the applicant dated 20.01.2017 within a period of four months from today, if not already decided, by speaking and reasoned order and communicate the decision to the applicant.

With the aforesaid direction this O.A. is **disposed off** finally.

(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)

M.A. No 51 of 2021 Inre O.A. (Nil) of 2021

Ex Rect Brijesh Kumar
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>27.01.2021</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 Devesh Kumar, learned counsel for the respondents is taken on record. His name shall be shown as learned counsel for the respondents on the next date of listing.</p> <p>On the case being taken up for hearing Shri Om Prakash Kushwaha, Ld. Counsel for the applicant and Shri Devesh Kumar, Ld. Counsel for the respondents are present.</p> <p>The Original Application has been filed with delay of 1 month and 6 days.</p> <p>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 caused in filing of Original Application is not deliberate, but on account of reasons stated in affidavit filed in support of application.</p> <p>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, application deserves rejection.</p> <p>Considering that in pensionary matters bar of limitation is not applicable, as cause of action in such matters does not accrue on a specific date, but it runs from month to month, and grounds stated in affidavit filed in support of delay condonation application being genuine and sufficient, delay is liable to be condoned.</p> <p>Accordingly, delay caused in filing of application is condoned. Delay condonation application stands decided accordingly.</p> <p>Let Original Application be registered.</p> <p><u>O.A. No. 81 of 2021</u></p> <p>It is a fit case for adjudication.</p> <p>Admit.</p> <p>Ld. Counsel for the respondents seeks and is allowed four weeks time to file Counter Affidavit. Rejoinder Affidavit, if any, may be filed within two weeks thereafter.</p> <p>List this case on 20.04.2021 before the Registrar Court for exchange of pleadings.</p> <p>List the matter before Tribunal on 10.05.2021.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)</p> <p>UKT/-</p>

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

M.A. No 53 of 2021 with M.A. No 54 of 2021 Inre R.A. No 10 of 2020
Inre O.A. 137 of 2017

Union of India & Others
By Legal Practitioner for the Applicants

Versus

Awadhesh Kumar Pandey
By Legal Practitioner for Respondent

Applicants

Respondent

Notes of the Registry	Orders of the Tribunal
	<p><u>27.01.2021</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p style="text-align: center;">Heard Shri Namit Sharma, Ld. Counsel for the applicants.</p> <p style="text-align: center;"><u>M. A. No. 53 of 2021</u></p> <p>This is an application for condonation of delay in filing application for grant of leave to appeal in O.A. No. 137 of 2017. Admittedly, the application is time barred and has been moved after elapse of 02 years, 08 months and 07 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.</p> <p style="text-align: center;"><u>M.A. No. 54 of 2021</u></p> <p>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.</p> <p>In consequence thereof, the application for leave to appeal is dismissed on the ground of delay as well as on merits.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)</p> <p>UKT/-</p>

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

M.A. No 739 of 2019 Inre O.A. (Nil) of 2019

Km Arti (D/o Late Ex Hav Ram Chander)
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>27.01.2021</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p>Heard Shri Om Prakash Kushwaha, Ld. Counsel for the applicant and Shri Shyam Singh, Ld. Counsel for the respondents are present.</p> <p>The Original Application has been filed with delay of 01 month and 11 days.</p> <p>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 caused in filing of Original Application is not deliberate, but on account of reasons stated in affidavit filed in support of application.</p> <p>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, application deserves rejection.</p> <p>Considering that in pensionary matters bar of limitation is not applicable, as cause of action in such matters does not accrue on a specific date, but it runs from month to month, and grounds stated in affidavit filed in support of delay condonation application being genuine and sufficient, delay is liable to be condoned.</p> <p>Accordingly, delay caused in filing of application is condoned. Delay condonation application stands decided accordingly.</p> <p>Let Original Application be registered.</p> <p><u>O.A. No. 79 of 2021</u></p> <p>It is a fit case for adjudication. Admit. Counter affidavit filed by ld. Counsel for the respondents is taken on record. List on 11.05.2021 for hearing. In the meantime learned counsel for the applicant may file rejoinder affidavit.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)</p> <p>UKT/-</p>

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

O.A. No 66 of 2018

Adesh 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
	<p><u>27.01.2021</u></p> <p><u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p>On the case being taken up for hearing Shri Girish Tiwari, Ld. Counsel for the applicant and Shri RC Shukla, Ld. Counsel for the respondents are present.</p> <p>Learned counsel for the respondents submits that applicant's pension has already been revised and arrears have been paid.</p> <p>Learned counsel for the applicant is directed to seek instructions in the matter from his client and apprise the Tribunal.</p> <p>List on 25.02.2021 for orders.</p> <p style="text-align:center">(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)</p> <p>UKT/-</p>

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

R.A. No 56 of 2019 inre O.A. No 23 of 2019

Ex Sub Umesh Chandra
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>27.01.2021</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p style="text-align: center;">Heard Shri Parijaat Belaura, Ld. Counsel for the applicant and Dr Shailendra Sharma Atal, Ld. Counsel for the respondents.</p> <p style="text-align: center;"><u>R.A. No. 56 of 2019</u></p> <p>This is an application for review of order of this Tribunal dated 30.09.2019 passed in O.A. No 23 of 2019. By means of this review applicant, applicant has prayed to review the percentage of disability. While passing the order dated 30.09.2019 this Tribunal has minutely considered all the points and granted disability pension as per rules. When he was asked about the error apparent on the face of record, he submitted that there is no error on the face of record.</p> <p>We have gone through the order sought to be reviewed. Even from the grounds taken therein, no illegality or irregularity or error apparent on the face of record has been shown to us so as to review the aforesaid order of this Tribunal. We are of the considered view that there is no error apparent on the face of record in the impugned order dated 30.09.2019, which may be reviewed in exercise of review jurisdiction.</p> <p>Accordingly, Review Application No. 56 of 2019 is hereby rejected on merits.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) Member (A)</p> <p style="text-align: center;">(Justice Umesh Chandra Srivastava) Member (J)</p> <p>UKT/-</p>

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

ORDER SHEET

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Court No.1 (E. Court)

Ex. A. No 82 of 2019 Inre O.A. No 258 of 2018

Ex Gnr Ashish Kumar Pandey
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>27.01.2021</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>1. Heard Shri Yashpal Singh, Ld. Counsel for the applicant and Ms. Anju Singh, Ld. Counsel for the respondents.</p> <p>2. Learned counsel for the respondents submitted that on the basis of affidavit of compliance filed in the matter, proceedings in execution application be closed. She further submitted that since there is direction to grant disability element to the applicant @20% for life to be rounded of to 50% for life after discharge only, and PPO has been issued accordingly, application needs to be dismissed in satisfaction.</p> <p>3. Contrarily, learned counsel for the applicant submitted that applicant had filed Original Application for the grant of disability pension and this Tribunal vide order dated 08.01.2019 has allowed that application which includes both the service element and the disability element and has allowed disability pension @20% for life to be rounded off to 50% for life from the date of discharge. He further submitted that it is no where stated in the order that applicant is entitled to disability element only, therefore, even if word 'disability element' in place of disability pension has been mentioned in the final order the same cannot be construed disability element only. He further submitted it is settled in law that disability pension includes both the service element and the disability element.</p> <p>4. We have gone through the facts of the case as well as the judgment passed by this Tribunal and we find that O.A. was filed for grant of disability pension for 3 disabilities mentioned in the report of Invaliding Medical Board. However, this Tribunal while holding disability No 1 i.e. Primary Hypertension only being aggravated by military service allowed the application for that disability only. It has no where stated in the judgment that applicant is entitled to disability element only rather applicant has been held entitled to disability pension @20% for life to be rounded of @20% for life which includes service element also. Therefore, we find that order under execution is not fully</p>

complied with as PPO refers disability element only.

5. We therefore direct respondents to issue corrigendum PPO, including therein service element also, within six weeks from today.

6. List on **19.03.2021** for order.

7. Let copy of this order be served to learned counsel for the respondents to ensure compliance of the order.

(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 214 of 2020

Ex Sgt Jitendra Kumar Pandey
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>27.01.2021</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>O.A. No. 214 of 2020, Ex Sgt Jitendra Kumar Pandey, vs. Union of India and others is allowed.</p> <p>For order, see our judgment passed on separate sheets.</p> <p>Misc. Application, if any, pending for disposal, shall be treated to have been disposed of.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)</p> <p>UKT/-</p>

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

O.A. No 39 of 2020

Dharampal Singh
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>27.01.2021</u> <u>Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p style="text-align: center;">Order pronounced today in the open court.</p> <p>Shri KK Misra, Ld. Counsel for the applicant submits that Original Application may be disposed off with direction to the respondents to revise the pension of applicant in terms of letter No. 1(13)/2016/D(Pen/Policy) dated 21st February, 2020 issued by Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare, New Delhi, to which Shri RC Shukla, Ld. Counsel for the respondents has no objection.</p> <p>With the consent of Ld. 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.</p> <p>Let a copy of this order be provided to the learned Counsel for the parties.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)</p> <p>UKT/-</p>

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

O.A. No 546 of 2019

Ex Sub Brij Bhan Singh
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>27.01.2021</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p>Heard Shri Manoj Kumar Awasthi, learned counsel for the applicant and Shri Anurag Mishra, learned counsel for the respondents.</p> <p>During course of hearing learned counsel for the respondents submitted that applicant has not availed alternate remedy as provided under Section 21 of Armed Forces Tribunal Act, 2007 and directly approached this Tribunal. For convenience sake Section 21 of the Act is reproduced below :-</p> <p style="text-align: center;"><u>"21. Application not to be admitted unless other remedies exhausted.</u></p> <p style="text-align: center;"><i>(1) The Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of the remedies available to him under the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957) or the Air Force Act, 1950 (45 of 1950), as the case may be, and respective rules and regulations made thereunder.</i></p> <p style="text-align: center;"><i>(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957) or the Air Force Act, 1950 (45 of 1950), and respective rules and regulations—</i></p> <p style="text-align: center;"><i>(a) if a final order has been made by the Central Government or other authority or officer or other person competent to pass such order under the said Acts, rules and regulations, rejecting any petition preferred or representation made by such person;</i></p>

(b) where no final order has been made by the Central Government or other authority or officer or other person competent to pass such order with regard to the petition preferred or representation made by such person, if a period of six months from the date on which such petition was preferred or representation was made has expired.”

On perusal of Section 21 of the Act it appears that availing alternate remedy is a pre-requisite requirement before approaching this Tribunal.

Learned counsel for the respondents further submitted that while rejecting the claim for grant of disability pension applicant was advised to prefer appeal for adjudication of his claim but the applicant directly approached this Tribunal through the present application. This aspect has already been upheld by the Hon'ble AFT, Principal Bench, in the judgment dated 05.02.2019 passed in O.A. No 1569 of 2018, Col (Retd) Satinder Singh Vaid Vs UOI & Others, where it has been held that '*we reiterate that the remedy available to the applicant was not resorted to by him and by filing the present O.A, he has merely wasted the precious time of the court and also harassed the respondents. Therefore, the present O.A. is liable to be dismissed with exemplary costs*'.

In view of above, with the consent of Ld. Counsel for the parties we direct the applicant to file a representation/appeal indicating all his grievances within 15 days from today and forward the same to the respondents along with copy of this order.

In case, the applicant submits the same within aforesaid time, respondents shall decide the representation/appeal of the applicant by a speaking and reasoned order in accordance with law, rules and policy within a period of three months from the date of moving such representation and communicate the decision to the applicant.

With the aforesaid directions without entering into the merit of the case, we **dispose off** this Original Application finally.

(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)

M.A. NO. 401 of 2020 Inre O.A. (Nil) of 2020

Ex Sep Omkar	Applicant
By Legal Practitioner for the Applicant	
Versus	
Union of India & Others	Respondents
By Legal Practitioner for Respondents	

Notes of the Registry	Orders of the Tribunal
<p><u>27.01.2021</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p style="text-align: justify;">On the case being taken up for hearing Shri Yashpal Singh, learned counsel for the applicant and Dr. Shailendra Sharma Atal, learned counsel for the respondents are present.</p> <p style="text-align: justify;">Learned counsel for the respondents submitted that one week further time be granted to file objection to delay condonation application as he has received instructions a day before yesterday.</p> <p style="text-align: justify;">Time is allowed, as prayed.</p> <p style="text-align: justify;">List on 19.03.2021.</p> <div style="display: flex; justify-content: space-around; align-items: flex-end;"> <div style="text-align: center;"> <p>(Vice Admiral Abhay Raghunath Karve) Member (A)</p> </div> <div style="text-align: center;"> <p>(Justice Umesh Chandra Srivastava) Member (J)</p> </div> </div> <p>rathore</p>	

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

O.A. No. 32 of 2019

Ratan Lal Singh
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>27.01.2021</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p>Heard Shri KK Misra, learned counsel for the applicant and Shri RC Shukla, learned counsel for the respondents.</p> <p>1. Brief facts giving rise to the present application are that having enrolled in army on 20.04.1995, the applicant was granted 20 days casual leave for the period 25.10.1999 to 13.11.1999 and during the leave at home, on 08.11.1999 he met with an accident while travelling by scooter and sustained injury resulting in 'Fracture Head of Radius (R) (ICD)-S-62'. A court of inquiry (C of I) held on 18.02.2002 for the purpose declared the injury as neither attributable to nor aggravated by military service (NANA) and applicant continued to service in low medical category till his discharge from service. Prior to discharge from Service, Release Medical Board (RMB) was conducted which assessed applicant's disability @ 20% for two years neither attributable to nor aggravated by military service. The applicant is in receipt of service pension vide PPO No. S/010678/2002 (Army) dated 05.02.2002. Claim for grant of disability pension was rejected vide order dated 07.10.2002 with an advice to prefer appeal against rejection of disability pension claim which applicant failed to do so and has filed the present O.A. for grant of disability pension.</p> <p>2. Learned counsel for the applicant submitted that, admittedly, applicant was on casual leave for the period 25.10.1999 to 13.11.1999 when he sustained injury, which ultimately resulted in 20% disability for two years because of 'Fracture Head of Radius (R) (ICD)-S-62'. He 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 casual leave which is treated as duty and the same being not reported earlier at the time of</p>

his enrolment, he is entitled to disability pension. Learned counsel for the applicant has placed reliance on the Hon'ble Apex Court judgment in the case of **Lance Dafedar Joginder Singh vs Union of India & Ors**, (Civil Appeal No 1995, reported in (1995), SCC 9 L & C 1949), and Hon'ble Delhi High Court judgment in Civil Appeal No 1996-39114 PLR 468, reported in (1997) (1) SLR 607 (Pbhry) and submitted that in both these cases casual leave has been regarded as duty, therefore, applicant being on casual leave should also be treated on duty and he should also be held entitled to disability pension.

3. Per contra, learned counsel for the respondents submitted that it is not disputed that applicant sustained injury while riding on scooter on leave resulting in disability, as held in report dated 09.03.2002 of the Medical Board Proceedings. Applicant being on casual leave doing his personal work could not be treated on duty as he was not on any 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 riding scooter to proceed to Bulandshahar, 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) Hon'ble High Court of Punjab & Haryana in the case of **Union of India & Ors vs Amrik Singh** (Civil Appeal No 1794 of 2000 decided on 24.05.2004).

(b) **Union of India & Ors vs. Jujhar Singh**, reported in (2011) 7 SCC 735.

4. We have perused the records i.e. RMB, injury report and C of I proceedings.

5. 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 20.04.1985 and discharged from service on 30.04.2002 after completion of terms of engagement. He met with an accident while on casual leave and downgraded to medical category for disability 'Fracture Head of Radius (R) (ICD)-S-62' vide AFMSF-16 dated 09.03.2002 and his disability was assessed @ 20% for two years neither attributable to nor aggravated by military service. The disability claim of the applicant was rejected on 07.10.2002 with advise to prefer an appeal against the rejection order within six months from the date of rejection letter, if not satisfied, but the applicant did not prefer the same. Learned counsel for the respondents has also conceded, during the course of hearing, that when applicant sustained injury resulting into disability, he was on casual leave.

6. 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 duty, and this being lacking in applicant's case, as there was no causal connection between the disability and military duty, he is not entitled for the same.

7. 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?

8. 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.

9. 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.

10. 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 that 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.

11. 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.”

12. We have considered the applicant's case in view of the above guiding factors and we find that though applicant was on casual leave when he met with accident and sustained injury resulting disability @ 20% for two years on account of 'Fracture Head of Radius (R) (ICD)-S-62, 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.

13. We also take note of rejection of disability pension claim letter dated 07.10.2002 and opinion of court of inquiry report dated 18.02.2002 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.

14. 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**.

15. No order as to costs.

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

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

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

T.A. No. 123 of 2010

Jayant Ram Verma
By Legal Practitioner for the Petitioner

Petitioner

Versus

Union of India & Others
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>27.01.2021</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p>Heard Shri Yashpal Singh, learned counsel for the petitioner and Shri Shyam Singh, learned counsel for the respondents.</p> <p>1. At the very outset it may be observed that C.W.P. No 31676 of 2001 was filed in Hon'ble High Court of Allahabad which on transfer to this Tribunal has been registered as T.A. No. 123 of 2010 vide which the petitioner has sought the following reliefs:-</p> <p>(i) Issue a writ order or direction in the nature of certiorari quashing the order dated 20.12.2000 and order passed in May 2001, affirming the earlier assessment made vide earlier dated 20.12.2000 and rejecting the petitioner's appeal dated 26.02.2001, passed by respondent No 3.</p> <p>(ii) Issue a writ order or direction in the nature of mandamus commanding the respondents to sanction disability pension and disability Army Group Insurance to petitioner.</p> <p>(iii) Issue any other suitable writ order or direction as the Hon'ble Court may deem just and proper in the circumstances of present case.</p> <p>(iv) Award the cost of writ petition in favour of petitioner.</p> <p>2. Briefly stated facts of the case are that the applicant was enrolled in Indian army on 23.04.1980 and was discharged on 29.02.2000 in Low Medical Category 'BEE' (Permanent) on fulfilling the conditions of his enrolment. At the time of retirement from service, the Release Medical Board (RMB) has assessed his disability 'Non Hodgkins Lymphoma' @ 30% for five years but opined the disability to be neither attributable to nor aggravated (NANA) by military service. The initial claim of disability was rejected by the Principal Controller of Defence Accounts (Pensions), Allahabad on 20.12.2000. Appeal against rejection of disability pension was submitted on 21.03.2001 which</p>

seems to be pending.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Indian Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. The disease of the applicant was contacted during the service, hence it is attributable to and aggravated by Military Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension as well as arrears thereof. He further submitted that in similar cases, Hon'ble Apex Court and various Benches of the Armed Forces Tribunals have granted disability pension, as such the applicant is entitled to disability pension and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents conceded that disability of the applicant i.e. 'Non Hodgkins Lymphoma' has been regarded as 30% for five years by RMB. However, since the disability was opined by RMB to be neither attributable to nor aggravated by military service, his claim for grant of disability pension was rightly rejected. He pleaded for dismissal of the O.A.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Invaliding Medical Board proceedings. The questions which need to be answered are of two folds :-

- (a) Whether the disability of applicant attributable to or aggravated by military service?
- (b) Whether the applicant is entitled for the benefit of rounding off of his disability pension, if yes, from which date?

6. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of *Dharamvir Singh Versus Union of India & Others*, reported in (2013) 7 Supreme Court Cases 316. In this case the Apex Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same in the following words.

"29.1. Disability pension to be granted to an individual who is invalided from service on account of a disability which is

attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).

29.2. A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service [Rule 5 read with Rule 14(b)].

29.3. The onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally (Rule 9).

29.4. If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service [Rule 14(c)]. [pic]

29.5. If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service [Rule 14(b)].

29.6. If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons [Rule 14(b)]; and 29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 - "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."

7. In view of the settled position of law on attributability, we find that the RMB has denied attributability/aggravation to the applicant only by endorsing that the disability 'Non Hodgkins Lymphoma' to be neither attributable to nor aggravated (NANA) by military service being constitutional. We are, therefore, of the considered opinion that the reasons given in RMB for declaring disease as NANA are brief and cryptic in nature. Therefore, benefit of doubt in these circumstances should be given to the applicant in view of **Dharamvir Singh** (supra) and the disability of the applicant should be considered as aggravated by military service, as such the applicant is entitled for the disability pension for five years from the date of his discharge i.e. 29.02.2000 (AN).

8. Since the applicant's RMB was valid for five years w.e.f. 29.02.2000, hence, the respondents will now have to conduct a fresh RSMB for him.

9. In view of the above, the Transferred Application No. 123 of 2010 deserves to be partly allowed, hence, partly allowed. The impugned orders are set aside. The disability of the applicant 'Non Hodgkins Lymphoma' is to be considered as aggravated by military service. The applicant is held to be entitled to disability pension @ 30% for five years rounded off to 50% for five years from the date of his discharge i.e. 29.02.2000. The respondents are directed to conduct a Re-Survey Medical Board for the applicant to assess his further entitlement of disability element. Respondents are further directed to give effect to this order within four months from the date of receipt of a certified copy of this order failing which the respondents shall have to pay interest @ 8% per annum till the date of actual payment.

10. No order as to costs.

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

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

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