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

Court No.1

O.A. No. 264 of 2018

Smt. Vinita 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
	29.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** O.A. No. 264 of 2018, Smt. Vinita Singh 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)** SB

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
Court No.1 (E. Court)
M.A. No. 55 of 2021 Inre O.A. No. (Nil) of 2021

Hav/PA Babban Chauhan Applicant
By Legal Practitioner for the Applicant

Versus

Union of India & Others Respondents
By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	29.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** Shri Namit Sharma, Advocate filed power today in Court on behalf of the respondents which is taken on record. On the case being taken up for hearing Wg Cdr S.N. Dwivedi, Ld. Counsel for the applicant and Shri Namit Sharma, Ld. Counsel for the respondents are present. There is delay of 11 years, 06 months & 15 days in filing Original Application. We have gone through affidavit filed in support of delay condonation application and are of the view that grounds are genuine and sufficient. As such, delay caused in filing of application is condoned. Application stands decided accordingly. Let Original Application be registered. **O.A. No. 87 of 2021** Heard. Admit. This Original Application has been filed by the applicant with prayer to grant difference of pay and allowances. Learned counsel for the respondents submitted that applicant has not availed alternate remedy to resolve his grievances before filing the present O.A. In view of above, applicant is directed to prefer an appeal/representation to the respondents within 30 days from today to resolve his grievances. The respondents are directed to decide the appeal/representation of the applicant by a speaking and reasoned order in accordance with law within a period of three months from the date of receipt of appeal/representation from applicant and communicate the decision to the applicant accordingly. With the aforesaid direction, the Original Application is **disposed of** finally. Let a copy of this order be provided to learned counsel for the parties within 48 hours, free of cost. **(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. 57 of 2021 with M.A. No. 60 of 2021 Inre O.A. No. 627 of 2017

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

Versus

Ex Nk Satya Kumar Pandey Respondent
By Legal Practitioner for Respondent

Notes of the Registry	Orders of the Tribunal
	29.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Ms. Appoli Srivastava, Ld. Counsel for the applicants is present. This is an application for condonation of delay in filing application for grant of leave to appeal in O.A. No. 627 of 2017. Admittedly, the application is time barred and has been moved 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**. In consequence thereof application for leave to appeal is also **rejected**. **(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. 56 of 2021 with M.A. No. 59 of 2021 Inre T.A. No. 133 of 2010

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

Versus

Yogendra Singh Tomar Respondent
By Legal Practitioner for Respondent

Notes of the Registry	Orders of the Tribunal
	29.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Shri Namit Sharma, Ld. Counsel for the petitioners is present. This is an application for condonation of delay in filing application for grant of leave to appeal in T.A. No. 133 of 2010. Admittedly, the application is time barred and has been moved 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**. In consequence thereof application for leave to appeal is also **rejected**. **(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. 58 of 2021 with M.A. No. 61 of 2021 Inre O.A. No. 453 of 2017

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

Versus

Ex Sep Bhag Bahadur Tamang Respondent
By Legal Practitioner for Respondent

Notes of the Registry	Orders of the Tribunal
	29.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Shri Namit Sharma, Ld. Counsel for the applicants is present. This is an application for condonation of delay in filing application for grant of leave to appeal in O.A. No. 453 of 2017. Admittedly, the application is time barred and has been moved 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**. In consequence thereof application for leave to appeal is also **rejected**. **(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. 63 of 2021 with M.A. No. 64 of 2021 Inre M.A. No. 1796 of 2017
Inre O.A. No. (Nil) of 2017

Surendra 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
	29.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** Shri G.S. Sikarwar, Advocate filed power today in Court on behalf of the respondents which is taken on record. On the case being taken up for hearing Shri Om Prakash Kushwaha, Ld. Counsel for the applicant and Shri G.S. Sikarwar, Ld. Counsel for the respondents are present. **M.A. No. 63 of 2021** This is an application for condonation of delay in filing recall application which is delayed by 20 days. The grounds shown in the affidavit filed in support of the application seems sufficient. Accordingly, application is allowed and the delay in filing recall application is condoned. **M.A. No. 64 of 2021** This is an application for recall of order dated 24.11.2020 passed in M.A. No. 1796 of 2017 by which the Original Application was dismissed for non-prosecution. The grounds shown in the recall application seem to be sufficient. Accordingly, the application is allowed and the order dated 24.11.2020 passed by this Tribunal is hereby recalled. Let the Original Application be restored to its number. **M.A. No. 1796 of 2017 Inre O.A. No. (Nil) of 2017** List on **04.03.2021** for hearing. **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** SB

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

M.A. No. 1551 of 2018 Inre O.A. No. (Nil) of 2018

Ex Sgt Pius Kumar Chaubey 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
	29.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing none appears on behalf of the applicant. Shri Namit Sharma, Ld. Counsel for the respondents is present. The name of applicant's counsel has not been shown in the cause list. List on **09.02.2021** showing the name of Shri Rishabh Tripathi as counsel for the applicant. **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** SB

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

EX.A. No. 74 of 2019 Inre O.A. No. 446 of 2017

Smt Meera 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
	29.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Shri Ashok Kumar, Ld. Counsel for the applicant and Shri Amit Jaiswal, Ld. Counsel for the respondents are present. Learned counsel for the respondents submitted that respondents have filed affidavit of compliance in the Registry on 06.01.2021, however, the said affidavit is not on record. Office is directed to search the same and place it on record. List on **12.02.2021** for orders. **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** SB

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

O.A. No. 473 of 2017

Amit 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
	29.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Shri Ashok Kumar, Ld. Counsel for the applicant and Shri Kaushik Chatterji, Ld. Counsel for the respondents are present. List alongwith cases of maintenance allowance on **15.03.2021.** **(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)

T.A. No. 6 of 2013

Zamir Ahmad 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
	29.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Shri Bhanu Pratap Singh Chauhan and Shri Virat Anand Singh, Ld. Counsel for the petitioner and Shri Asheesh Agnihotri, Ld. Counsel for the respondents are present. Pleadings are complete and the case is ripe for hearing. List on **12.04.2021** for hearing. On the date fixed, learned counsel for the respondents shall produce all 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)

Ex.A. No. 71 of 2019 Inre O.A. No. 591 of 2018

Ex Gnr Ratan Maity Applicant
By Legal Practitioner for the Applicant

Versus

The CO, 152 AD Regt & Others Respondents
By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	29.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Shri Rohit Kumar, Ld. Counsel for the applicant and Shri Ashish Kumar Singh, Ld. Counsel for the respondents are present. On the request of learned counsel for the respondents four weeks further time is granted to file affidavit of compliance. List on **04.03.2021** for orders. **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** SB

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

M.A. No. 1864 of 2018 with M.A. No. 1865 of 2018 Inre M.A. No. 101 and 102 of 2018 Inre O.A. No. 49 of 2014

Ex Sep Mahendra 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
	29.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Col B.P. Singh (Retd), Ld. Counsel for the applicant and Dr. Shailendra Sharma Atal, Ld. Counsel for the respondents are present. On the request of learned counsel for the respondents a week further time is granted to file objection to the application for condonation of delay. List on **23.02.2021** for orders. **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** SB

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

O.A. No. 394 of 2018

Ex Naik Amit 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
	29.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Shri D.S. Kauntae, Ld. Counsel for the applicant and Dr. Shailendra Sharma Atal, Ld. Counsel for the respondents are present. On the request of learned counsel for the applicant, list this case on **28.04.2021** for orders. **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** SB

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

O.A. No. 108 of 2019

Ex L Nk Rajender Singh Indolia 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
	29.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Shri D.S. Kauntae, Ld. Counsel for the applicant and Ms. Appoli Srivastava, Ld. Counsel for the respondents are present. On the request of learned counsel for the applicant, list this case on **28.04.2021** for orders. **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** SB

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

O.A. No. 320 of 2020

Ex Sep Anil Kumar Singh Gaur 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
	29.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Shri Manoj Kumar Awasthi, Advocate holding brief of Shri J.N. Mishra, Ld. Counsel for the applicant and Shri Rajiv Pandey, Ld. Counsel for the respondents. Learned counsel holding brief seeks and is allowed a week's further time to take steps. Learned counsel for the respondents seeks and is allowed two weeks further time to file counter affidavit. List on **12.02.2021** for orders. **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** SB

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

O.A. No. 192 of 2018

Lt Col Inder Jeet Pathak (Retd) Applicant
By Legal Practitioner for the Applicant

Versus

Union of India & Others Respondents
By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	29.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Shri K.K.S. Bisht, Ld. Counsel for the applicant and Shri Shyam Singh, Ld. Counsel for the respondents are present. Learned counsel for the applicant submits that applicant died on 07.10.2020. He further submitted that legal heirs of the applicant are not in touch with him nor they intend to continue the case further. Accordingly, Original Application is **dismissed** being abated. **(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. 751 of 2019 Inre O.A. No. (Nil) of 2019

Ex Sep Sant 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
	29.01.2021 **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 Anurag Mishra, Ld. Counsel for the respondents. **M.A. No. 751 of 2019** There is delay of 30 years, 09 months & 02 days in filing Original Application. Submission of learned counsel for the applicant is that it is a pensionary matter in which bar of limitation is not applicable. His further submission is that delay in filing Original Application is not deliberate, but for the reasons stated in affidavit filed in support of application. Per contra, learned counsel for the respondents submits that explanation of delay offered by the applicant is not sufficient as he has failed to offer day to day explanation. Considering that in pensionary matters bar of limitation is not applicable and cause shown for the delay, if any, is sufficient, delay is liable to be condoned. Accordingly, delay in filing application is condoned. Delay condonation application stands decided accordingly. Let Original Application be registered. **O.A. No. 88 of 2021** Heard. 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)

M.A. No. 754 of 2019 Inre O.A (Nil) of 2019

Sep Navghare Sudhakar Vishvas 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**
	29.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Shri Md Iqrar, learned counsel for the applicant and Dr. Shailendra Sharma Atal, learned counsel for the respondents are present. On the request made by learned counsel for the applicant, the case is adjourned. List on **12.02.2021**. **(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)

Ex-A/130 of 2019 Inre O.A. No. 259 of 2018

Ex Guardsman Chintamani 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
	29.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Shri Om Prakash Kushwaha, learned counsel for the applicant and Dr. Gyan Singh, learned counsel for the respondents are present. No objection has been filed against affidavit of compliance. We have gone through affidavit of compliance and we found that order has been complied with. Accordingly, execution application is dismissed in full and final satisfaction. **(Vice Admiral Abhay Raghunath Karve) Member (A)** **(Justice Umesh Chandra Srivastava) Member (J)** rathore

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

M.A. No. 1986 of 2018 with M.A. No. 1987 of 2018
Inre EX-A/66 of 2018 Inre O.A. No. 467 of 2017

Ex Hav (Hony Nb Sub) Mithilesh 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**
	29.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Shri Parijaat Belaura, learned counsel for the applicant and Mrs Anju Singh, learned counsel for the respondents are present. **M.A. No. 1986 of 2018** This is an application for condonation of delay in filing recall application which is delayed by five months only. The grounds shown in affidavit filed in support of the application seems sufficient. Accordingly, application is allowed and delay in filing recall application is condoned. **M.A. No. 1987 of 2018** This is an application for recall of order dated 04.07.2018 passed in Ex-A/66 of 2018 by which the Application was dismissed for non-prosecution. The grounds shown in the recall application seem to be sufficient. Accordingly, the application is allowed and the order dated 04.07.2018 passed by this Tribunal is hereby recalled. Let the Original Application be restored to its number. **EX-A/66 of 2018** Learned counsel for the respondents submitted that order has been complied with. However, she has not filed the affidavit of compliance. Let affidavit of compliance be filed within two weeks. List on **18.02.2021**. **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** rathore

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

O.A. No. 83 of 2020 with M.A. No. 939 of 2019

Ex JWO Prem 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
	29.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Shri R Chandra, learned counsel for the applicant and Shri Anurag Mishra, learned counsel for the respondents are present. **M.A. No. 939 of 2019** The Original Application has been filed with delay of 19 years, 08 months and 26 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. Application stands decided accordingly. O.A. has already been admitted and registered vide order dated 14.01.2020. **O.A. No. 83 of 2019** Learned counsel for the respondents submitted that counter affidavit is almost ready and she shall be able to get it filed within a week. Let counter affidavit be filed within a week, as prayed. List on **03.03.2021** 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. 466 of 2019

Ex Hav Muneshwar 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**
	29.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Shri Rahul Singh, learned counsel for the applicant and Shri Shyam Singh, learned counsel for the respondents are present. Judgment. **(Vice Admiral Abhay Raghunath Karve) Member (A)** **(Justice Umesh Chandra Srivastava) Member (J)** rathore

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

O.A. No. 474 of 2019

Ex Hav (Hony Nb Sub) Ram Vilas Dixit 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
	29.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Shri SG Singh, learned counsel for the applicant and Mrs Amrita Chakraborty, learned counsel for the respondents are present. Shri SG Singh, learned counsel for the applicant submits that Original Application may be disposed off with direction to the respondents to revise the pension of applicant in terms of letter No.1(13)/2016/D (Pen/Policy) dated 21.02.2020 issued by Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare, New Delhi, to which Mrs Amrita Chakraborty, learned counsel for the respondents has no objection. With the consent of learned counsel for the parties, we hereby dispose of the Original Application finally with the direction to the respondents to revise the pension of applicant in terms of letter No. 1(13)/2016/D (Pen/Policy) dated 21.02.2020 issued by Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare, New Delhi, within a period of three months from the date of receipt of copy of this order and communicate to the applicant accordingly after verifying the documents. Let a copy of this order be provided to the learned counsel for the parties. **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** rathore

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

Ex-A/108 of 2019 Inre O.A. No. 182 of 2019

Ex Gdr Narendra Singh Applicant
By Legal Practitioner for the Applicanrt

Versus

Union of India & Others Respondents
By Legal Practitioner for Respondents

Notes of the Registry	**Orders of the Tribunal**
	29.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Shri Shiv Dayal Singh, learned counsel for the petitioner and Shri Shyam Singh, learned counsel for the respondents are present. As prayed by learned counsel for the respondents, list on **15.02.2021**. **(Vice Admiral Abhay Raghunath Karve) Member (A)** **(Justice Umesh Chandra Srivastava) Member (J)** rathore

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

Ex-A/24 of 2019 Inre O.A. No. 266 of 2015

Ex L/Nk Hari 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**
	29.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Shri VP Pandey, learned counsel for the petitioner and Shri Asheesh Agnihotri, learned counsel for the respondents are present. One week time is granted to learned counsel for the respondents, as prayed. List on **09.02.2021**. **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** rathore

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

O.A. No. 206 of 2020 with M.A. No. 64 of 2020

Ex Hav (Hony Nb Sub) Rama Shankar 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**
	29.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Shri Vijay Kumar Pandey, learned counsel for the applicant and Shri Ashish Kumar Singh, learned counsel for the respondents are present. Application for disposal of the case in terms of letter dated 21.02.2020 filed by the respondents is taken on record. Shri Vijay Kumar Pandey, 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 Ashish Kumar 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. 354 of 2019

Ex Hav (Hony Nb Sub) Vishwanath Rai Applicant
By Legal Practitioner for the Applicant

Versus

Union of India & Others Respondents
By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	29.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Shri Vijay Kumar Pandey, learned counsel for the applicant and Dr. Chet Narain Singh, learned counsel for the respondents are present. Shri Vijay Kumar Pandey, 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 Dr. Chet Narain 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. 528 of 2019 with M.A. No. 359 of 2019,
M.A. No. 488 of 2019

Ex AC Naresh Chandra Nigam 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**
	29.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Shri Virat Anand Singh, learned counsel for the applicant and Shri Shyam Singh, learned counsel for the respondents are present. Learned counsel for the applicant submitted that applicant has died on 28.01.2021. Steps for substitution be taken. List on **04.03.2021**. **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** rathore

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

Dy. No. 2304 of 2019 Inre O.A. (Nil) of 2019

Ex Rect Akshay 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
	29.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Ms Tanya, Advocate holding brief for Wg Cdr Ajit Kakkar (Retd), learned counsel for the applicant and Shri Arun Kumar Sahu, learned counsel for the respondents are present. Ms Tanya, Advocate holding brief for learned counsel for the applicant prays for one week time to remove defects, which is allowed. List on **09.02.2021**. **(Vice Admiral Abhay Raghunath Karve) Member (A)** **(Justice Umesh Chandra Srivastava) Member (J)** rathore

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

M.A. No. 83 of 2019 Inre O.A. (A) (Nil) of 2019

Ex LAC Balveer Dineshbhai Dhadal 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**
	29.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Ms Tanya, Advocate holding brief for Wg Cdr Ajit Kakkar (Retd), learned counsel for the applicant and Dr. Shailendra Sharma Atal, learned counsel for the respondents are present. As prayed by Ms Tanya, Advocate holding brief for learned counsel for the applicant, list the case on **09.02.2021.** **(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)** **Member (A)** **Member (J)** rathore

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

O.A. No. 307 of 2017

Smt Maya Thapa 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
	29.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** Heard Shri Rohit Kumar, 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) To order the respondents to grant family pension to the applicant who is legally wedded wife of No 5048355X Rfn Dhan Bahadur Thapa Magar who has not been not seen/whereabouts not known/heard of since 04 Sept 2011 (relying on the provisions of section 108 of the Indian Evidence Act) with all the consequential benefits to the applicant.* *(ii) To order the respondents to decide the statutory representation of the applicant preferred under paragraph 368 of the Defence Service Regulations (Regulations for Army) 1987 dated 31 Jan 2017 with a timeframe to be fixed by this Hon'ble Tribunal preferably two months.* *(iii) To issue any other order or direction considered expedient and in the interest of justice and equality* *(iv) Award cost of petition.* 2. The factual matrix as agreed by learned counsel for both the sides is that applicant's husband (No 5048355X Ex Rfn Dhan Bahadur Thapa Magar) was enrolled in the Indian army (1st Gorkha Rifles) on 06.06.2000. While serving with 3/1 Gorkha Rifles, he was granted 30 days part of annual leave with effect from 30.07.2011 to 28.08.2011 with 07 days preparatory leave from 29.08.2011 to

04.09.2011 and after expiry of aforesaid leave including preparatory leave he was to report to his new place of posting but he failed to join duty on due date i.e. on 04.09.2011 (AN). Applicant's husband was declared deserter by receiving army unit/formation w.e.f. 05.09.2011 and subsequently after expiry of three years desertion period, he was dismissed from service w.e.f. 05.09.2014 under the provisions of Section 20 (3) of the Army Act, 1950 and AO 43/2001/DV.

3. Applicant forwarded series of representations to District Administration Authorities at Nepal and army authorities to enquire where about of her husband but all in vain. She also made correspondence with Records, 14 Gorkha Rifles and Chief of the Army staff for grant of family pension. Records vide letter dated 03 Mar 2016 intimated that her husband being a deserter has been dismissed from service w.e.f. 05.09.2014 and all dues (Army Group Insurance and Provident Fund) have been remitted to Record Office Indian Embassy, Kathmandu. It was also intimated that she is not entitled to family pension as her husband has been dismissed from service being a deserter.

4. Submission of learned counsel for the applicant is that despite the applicant as wife of the missing soldier, repeatedly kept pleading with respondents to trace her missing husband since July 2011, the respondents have taken no meaningful action on her complaint and to establish the facts of her missing husband as per extant Govt orders on the issue of declaring a soldier 'missing presumed dead'. Learned counsel for the applicant contended that earlier in such cases, the families had to wait for seven years to declare a person 'missing presumed dead' for family pension, but the Govt of India as per its benevolent provisions, introduced a policy vide Ministry of Defence letter dated 03.06.1988 amended from time to time stating that family/NOK of missing soldier should not have to wait for seven years and based on an enquiry, the family of 'missing presumed dead' could start receiving family pension within six months of 'missing presumed dead' case. He pleaded for husband of the applicant to be declared 'missing presumed dead' under Section 108 of the Indian Evidence Act and prevailing Govt orders on the subject and grant family pension to applicant. Learned counsel for the applicant has relied upon O.A. No. 01 of 2013, ***Sangita Das vs Union of India & Ors***, decided on 06.12.2013 by Hon'ble

AFT, Guwahati, O.A. No. 145 of 2014, ***R Anusuya vs Union of india & Ors***, decided on 22.07.2016 by Hon'ble AFT, Chhennai, T.A. No. 1093 of 2010, ***Smt Prasandi Devi vs Union of India & Ors***, decided on 21.02.2017 by Hon'ble AFT, Lucknow and T.A. No. 86 of 2013, ***Smt Jai Devi vs Union of India & Ors***, decided on 21.12.2017 by Hon'ble AFT, Lucknow and pleaded that the instant case is squarely covered by the aforesaid pronouncements, therefore, applicant is entitled to family pension.

5. Per contra, the contention of learned counsel for the respondents is that husband of the applicant had absented himself and did not join duty at his new place of posting after expiry of leave, as such apprehension roll was issued and after conducting a court of inquiry dated 15.10.2011, he was declared deserter w.e.f. 05.09.2011 (AN). He further submitted that after waiting period of three years, applicant's husband was dismissed from service w.e.f. 05.09.2014. He admitted that applicant, who is wife of the dismissed soldier, was corresponding with the Records repeatedly for the last few years for grant of family pension but was denied the same on account of her husband's dismissal from service. He concluded for dismissal of O.A. on the ground that her husband has not been declared 'missing presumed dead'.

6. We have heard learned counsel for the parties at length and have perused the record in detail.

7. In the backdrop of the case as narrated above, the questions which arise for determination in this case are of twofold:-

(i) Whether the case of husband of the applicant, who is missing since 2011, is a case of 'missing presumed dead' in view of Section 108 of the Indian Evidence Act or a case of a desertion?

(ii) If it emerges that he is a missing case, then what is the date of his 'missing presumed dead'?

8. From the facts explained above, it is established that applicant's husband was granted leave while he was proceeding on posting to new unit but neither he reached to home nor at new duty place resulting in missing enroute. On this point, the Govt of India, Ministry of defence letter dated 03.06.1998 has issued following

benevolent orders:-

"*1. A number of cases have been referred to this Ministry for grant of terminal and other pensionary benefits to the families of service personnel who have suddenly disappeared while operational and non-operational service and whose whereabouts are not known. At present all such cases are considered on merits. In the normal course unless a period of 7 years has elapsed from the date of disappearance of the employee, he cannot be deemed to be dead and therefore the retirement benefits cannot be paid to the family. This principle is based on Section 108 of the Indian Evidence Act which provides that when the question is whether the man is alive or dead and it is proved that he has not been heard of fir 7 years by those who would naturally have heard of him had he been alive, the burden of proving that he is alive is shifted to the person who affirms it. This has resulted in great hardship and distress to the families who have to wait for 7 years before any terminal benefits could be paid to them.*

2. The President is therefore pleased to decide that when a member of the Indian Armed Forces is declared missing while in service the family will be paid the following benefits subject to adjustment of outstanding dues in respect to the missing personnel, if any:-

(a) Immediately after the date of declaration of disappearance, the amount of salary due, leave encashment due and DSOP/AFPP Fund amount subject to nomination made by the missing personnel.

(b) After the lapse of one year from the date of declaration of disappearance/presumption of death Family pension/DCRT etc. as admissible in normal conditions.

3. The above benefits may be sanctioned after observing following formalities:-

(i) The family must lodge a report with the concerned police station and obtain a report that the employee has not been traced after all efforts had been made by the police.

(ii) The claimant will be required to furnish an indemnity bond with two solvent sureties to the effect that all payments thus made will be recovered from the amount due to the person if he/she reappears and makes any claims.

4. The family can apply to the concerned authority for grant of family pension and DCR Gratuity after one year from the date of declaration of disappearance of the service personnel in accordance with the procedure for sanction of family pension and DCR Gratuity. In case the disbursement of DCR Gratuity is not effected within 3 months of the date of applicant, the interest shall be paid at the rates applicable and responsibility for the delay fixed.

5. In the case of officers, the respective Branch/Dte at Service HQrs and in the case of JCOs/OR and equivalent in Navy and Air Force, their respective Records Offices will process such cases with CDA (P)/PAO(Navy)/CDA(Air Force).

6. The provisions of this letter take effect from 29th August 1986.

7. This issues with the concurrence of the Finance Division of this Ministry vide their U.O. No. 802-Pen of 1988."

9. We have also noted that the Govt has improved upon the beneficial nature of the initial policy issued in 1988 through subsequent amendments whereby the period of waiting for family pension has been reduced to 06 months from one year and it has been clarified that 'In the case of a missing armed forces personnel/pensioner/family pensioner, the family can apply for grant of family pension, amount of salary due, leave encashment due and the amount of

DSOP/AFPP fund and gratuity (whatever has not already been received) to the IHQ/Record Office concerned, where the officers and JCOs/ORs in Army and equivalent in Navy and Air Force, have last served, six months after lodging of police report.' In the instant case the applicant had lodged number of complaints to District Administration Officer and police authorities which are placed on record.

10. We find that there was no meaningful response from the respondents as per the guidelines issued by the Govt of India on 'missing presumed dead' policy of 1988, 1998 and subsequent amendments. The respondents have continuously stated that the husband of the applicant has been declared a deserter and dismissed from service w.e.f. 05.09.2014 after three years of desertion. However, they have failed to extend any initiative to find out whether it is a case of 'missing presumed dead'. In the instant case, the applicant admittedly gave information to all concerned that her husband is missing. So the requirement with regard to police complaint stands fulfilled. We have also noted that the applicant is an illiterate lady who can barely write her name. In this situation, no meaningful advice has been given to the lady by the Record Office concerned and all correspondence lacks clarity and empathy.

11. We have also taken note of the fact that the respondents have taken no immediate action in the matter of disappearance of applicant's husband, instead they have simply conducted a court of inquiry and dismissed him from service after three years from the date of declaring deserter. As per pleadings on record, there is hard evidence that the lady has approached concerned authorities to enquire about the where about of her husband, but we are constrained to note with concern that the respondents have failed to provide any meaningful guidance or help to the distressed lady. Therefore, in accordance with policy laid down, respondents should presume death of applicant's husband after expiry of a period of one year or six months, as the case may be, as per their own policy, but instead of taking action to extend benefit of welfare policy, the respondents have dismissed applicant's husband from service after lapse of three years from the date of desertion, and therefore, the husband of the applicant must be 'missing presumed dead' when the order of dismissal was passed which renders the order of dismissal unsustainable in

the eyes of law. Further, it is specifically clear before us that the husband of the applicant has never been seen or heard by anyone after 30.07.2011 when he reported to 213 Transit Camp located in Jammu on 29.07.2011 and left the Transit Camp on 30.07.2011. Exhibit R-2 clearly indicates that he reported to the Transit Camp a day prior to date of missing and he was to travel by train w.e.f. 30.09.2011.

12. Thus, considering the specific evidence in this case and the fact that the applicant's husband, as a soldier, was away from home on military duty, we are of the considered opinion that in the interest of substantive justice, and under the provisions of Section 108 of the Indian Evidence Act and prevailing Govt of India orders on the subject, the husband of the applicant is to be 'missing presumed dead' six months after the date of missing i.e. 30 January 2012 and the 'missing presumed dead' soldier being dismissed on 05.09.2014 is null and void because it would tantamount as action taken against a dead person. Consequently the applicant is entitled to receive family pension with effect from 30 January 2012.

13. In view of the above, we are of the view that the case is liable to be allowed.

14. The O.A. is **allowed**, accordingly. The impugned orders are set aside. The husband of the applicant is held to be 'missing presumed dead' with effect from 30 January 2012 and applicant is entitled to ordinary family pension and all other consequential benefits with effect from 30 January 2012, but due to law of limitation, she is entitled to receive arrears of ordinary family pension from three years prior to the filing of the O.A. The O.A. was filed on 14.08.2017. The respondents are directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @ 8% p.a.

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)

rathore

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

O.A. No. 302 of 2017 alongwith O.A. No. 146 of 2017 (decided)

Nb Sub Devendra 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**
	29.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Shri Shailendra Kumar Singh, learned counsel for the applicant and Dr. Shailendra Sharma Atal, learned counsel for the respondents are present. Pleadings are complete and the case is ripe for hearing. List on **24.03.2021** 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. 320 of 2017

Smt Saroj 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**
	29.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Shri Shailendra Kumar Singh, learned counsel for the applicant and Shri Namit Sharma, learned counsel for the respondents are present. Pleadings are complete and the case is ripe for hearing. List on **25.03.2021** 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. 127 of 2017

Jham Prasad Yadav Applicant
By Legal Practitioner for the Applicant

Versus

Union of India & Others Respondents
By Legal Practitioner for Respondents

Notes of the Registry	**Orders of the Tribunal**
	29.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Shri Veer Raghav Chaubey, learned counsel for the applicant and Dr. Shailendra Sharma Atal, learned counsel for the respondents are present. Pleadings are complete and the case is ripe for hearing. List on **26.03.2021** 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. 504 of 2017

Ghanshyam Shukla Applicant
By Legal Practitioner for the Applicant

Versus

Union of India & Others Respondents
By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	29.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** Heard Shri Veer Raghav Chaubey, learned counsel for the applicant and Dr. Shailendra Sharma Atal, learned counsel for the respondents. 1. Present application has been filed by applicant under Section 14 of the Armed Forces Tribunal Act, 2007 and applicant has sought following reliefs:- "(i) To pass an order or direction to the opposite parties to provide the disability pension and other consequential benefits in regard to discharge from the service on 01.10.1985. (ii) Issue/pass order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case. (iii) The cost of this original application may also be awarded to the applicant from the opposite parties." 2. Brief facts of the case are that the applicant was enrolled in Army on 17.09.1977 and was discharged from service on 01.10.1985 at his own request on compassionate grounds in terms of Rule 13 (3) III (iv) of Army Rules, 1954. The applicant has rendered 08 years and 27 days of service and he was in medical category S1H1A1P1E1 at the time of discharge. 3. Learned counsel for the applicant pleaded that applicant could not raise this issue earlier being mentally ill. He further pleaded that since the applicant has been issued discharge book in which he has been shown as an ex-serviceman, he should be granted disability pension and other benefits applicable to ex-servicemen being discharged from service prior to completion of terms of engagement. 4. On the other hand, learned counsel for the respondents submitted that for earning pension, an incumbent should have rendered minimum 15 years qualifying

service in terms of para 132 of Pension Regulations for the Army, 1961 (Part-I). Further submission of learned counsel for the respondents is that since the applicant has served for about 08 years in army and was discharged from service in medical category SHAPE-I on his own request on compassionate grounds, he is neither entitled to service pension nor disability pension. He pleaded the O.A. to be dismissed.

5. While filing this O.A., learned counsel for the applicant had prayed for service pension, but later vide application dated 18.01.2021 he preferred an amendment application seeking disability pension which was allowed vide order dated 05.01.2021 and amendment incorporated on 18.01.2021.

6. We have gone through the records and find that the applicant has served in army for 08 years and 27 days which is inadequate to earn service pension in terms of Rule 132 of Pension Regulations for the Army, 1961 (Part-I), which stipulates that- '*the minimum period of qualifying service actually rendered and required for earning service pension shall be 15 years.'* Further, since the applicant is in medical category SHAPE-I, he is not entitled to disability pension.

7. In view of the above, this O.A. has no merits and liable to be summarily rejected. It is accordingly, **rejected**.

8. No order as to costs.

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

(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. 166 of 2019

Ex Rect Vinod Kumar Applicant
By Legal Practitioner for the Applicant

Versus

Union of India & Others Respondents
By Legal Practitioner for Respondents

Notes of the Registry	**Orders of the Tribunal**
	29.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Shri Virat Anand Singh, learned counsel for the applicant and Shri Namit Sharma, learned counsel for the respondents are present. As prayed by learned counsel for the respondents, list on **01.02.2021** 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. 214 of 2018

Dilip 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**
	29.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Shri Virendra Kumar Gupta, learned counsel for the applicant and Shri Amit Jaiswal, learned counsel for the respondents are present. Pleadings are complete and the case is ripe for hearing. List on **05.04.2021** 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. 472 of 2017

Dilip 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**
	29.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Shri VK Pandey, learned counsel for the applicant and Shri Amit Jaiswal, learned counsel for the respondents are present. Pleadings are complete and the case is ripe for hearing. List on **06.04.2021** 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. 357 of 2019

Ex Hav Suresh 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**
	29.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** On the case being taken up for hearing Shri Yashpal Singh, learned counsel for the applicant and Shri Arun Kumar Sahu, learned counsel for the respondents are present. Pleadings are complete and the case is ripe for hearing. List on **10.02.2021** 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)

M. A. No 419 of 2020 Inre O.A. No 593 of 2020

Lt Col Balram 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
	29.01.2021 **Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)** **Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)** 1. Heard Shri Ajai Kumar Pandey, learned counsel for the applicant and Shri Sunil Sharma, learned counsel for the respondents. 2. By means of this application, the applicant prays that date of his retirement 31.01.2021 be quashed treating age of retirement of AMC (NT) officers 57 years, and not 56 years as respondents say. 3. Briefly stated, the applicant was enrolled as Sepoy/Nursing Assistant in Army and on completion of 18 years service was commissioned on 24.04.2002 as Non Technical Officer, AMC (NT). Thereafter, he was given time bound promotions and is presently working in the rank of Lt Col. 4. It is submitted that since 1947 till 1998 the age of retirement of AMC (NT) All officers was 55 years. Later with increase in age of retirement of officers in all ranks and cadres, the age of retirement of AMC (NT) officers was also raised from 55 years to 57 years. However, some discrepancy having crept into the circular issued in this regard it was clarified/rectified by issuing letter dated 07.09.1998, Annexure-10, which clearly indicates that age of retirement of officers for Army Medical Corps is 57 years, not 56 years. It is further submitted that letter dated 07.09.1998 is still in effect and force, but respondents are forcing applicant to retire on 31.01.2021 treating his age of retirement 56 years and have also issued letters dated 12.05.2020 and 06.07.2020 in this regard Annexure 1 and 2, whereas they have extended the benefit of letter dated 07.09.1998 Annexure 10 to Lt Col SL Mehta, Lt Col HS

Ahlawat and Col Mohan Das C, they need to be stopped in doing this by staying implementation of the letters dated 12.05.2020 and 06.07.2020, Annexure 1 & 2.

5. Learned counsel for the respondents, in reply, submitted that applicant was commissioned as Non Technical Officer in Army Medical Corps on 24.04.2002, and by then laid down policy regarding age of retirement of officers AMC (NT) was contained in Govt of India, Min of Def, letter dated 1 May 2000, Annexure R-4, which stipulates age of retirement of officers in the rank of Lt Col and equivalent and below in AMC (NT) as 56 years, Colonel and equivalent 58 years, Brigadiers & equivalent 59 years and Major General & equivalent 60 years. The said policy is still in effect and if applicant was aggrieved by it he should have challenged it in 2002 itself when he was commissioned and not at the fag end when he is due to retire in few days.

6. He further submitted that letter dated 07.09.1998, Annexure 10, on which applicant heavily relies does not lay down policy regarding age of retirement of officers in various ranks in AMC (NT) nor on account of this communication some officers mentioned in O.A., who have been chosen selectively, were given benefit treating their age of retirement 57 years. He submitted that with two years increase in the age of retirement of Central Government employees in 1998, a case was also taken up for increase in retirement age of AFMS Officers along with other army personnel. But, as matter needed detailed deliberations and was time consuming, an interim order was issued on 30th May 1998 deferring retirement of officers of all defence services, including those of the AMC. As a result services of officers mentioned in O.A. along with other similarly situated officers were extended upto 31.05.2000. Thus, he submitted that officers mentioned in O.A. were not allowed to continue in service on account of communication dated 07.09.1998 treating their age of retirement 57 years but for the reason stated above.

7. Learned counsel for the applicant, during the course of hearing, did not dispute that when applicant was given commission as AMC (NT) officer, the laid down policy with regard to age of retirement of officers in the rank of Lt Col and, equivalent and below was 56 years as contained in Annexure R-4. He

also admitted that except two officers, Lt Col SL Mehta and Lt Col HS Ahlawat who have been retired from service on 31.05.2000 on attaining age of 57 years and Col Mohan Das C who retired under order of AFT, all other officers in AMC (NT) are retiring as per policy contained in Govt of India, Min of Def, letter dated 1 May 2000, Annexure R-4.

8. The Govt of India communication regarding age of retirement of AMC (NT) officers contained in Annexure R-4 stipulates the age of retirement of all officers in the rank of Lt Col, equivalent and below as 56 years, and not 57 years as applicant claims. This policy was in existence not only when the applicant was commissioned in AMC as Non Technical Officer but is in force even today and has also reference of the communication contained in letter dated 07.09.1998, Annexure 10, on which applicant relies. In view of what has been said in communication dated 1 May 2000, applicant being in the rank of Lt Col will also retire on attaining the age of 56 years like others and not at the age of 57 years.

9. Applicant cannot link his case with officers mentioned in O.A. claiming benefit of communication dated 07.09.1998, Annexure 10, as they have not been given the benefit of this communication rather they were given the benefits pending consideration of matter relating to increament in age of retirement of army personnel and Col Mohan Das C was given the benefit of being in rank of Colonel and as such was entitled to retire at the age of 57 years as per communication dated 1 May 2000.

10. In view of aforesaid, we do not see any merit in applicant's submission. Accordingly, applicant's request of interim relief is **not accepted**.

11. List on **18.05.2021** for final hearing.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

UKT/-