

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

Ex. A. No. 46 of 2021 Inre : O.A. No. 264 of 2019

Ex. Nk. Raghuraj 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>21.09.2022</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>Case is taken up today through Video Conferencing.</p> <p>Heard Shri Pankaj Kumar Shukla, Ld. Counsel for the applicant and Dr. Shailendra Sharma Atal, Ld. Counsel for the respondents assisted by Shri Rajeev Tiwari, Accounts Officer, PCDA (P), Prayagraj.</p> <p>Lt. Col. Sanjay Singh, Records Officer, Brigade of the Guards is also present through Video Conferencing. He has filed affidavit stating that case file of the applicant was processed to the competent authority for obtaining Government Sanction for the implementation of the order passed by this Tribunal in Original Application and in pursuance thereto Principal Controller of Defence Accounts (Pension), Prayagraj has advised that since applicant was discharged from service in low medical category and discharge order was later set aside and he was notionally reinstated in service and thereafter notionally discharged and paid back wages for the period of notional reinstatement, disability element of disability pension, based on Release Medical Board (RMB) held at the time discharge, cannot be granted to him, a fresh RMB is required for the grant of disability element.</p> <p>It is settled in law that once any order is passed or any direction is issued by a competent Court or Tribunal, in any suit or proceedings, the authority concerned are left with only two options. They can either implement the order or seek variance/review of the order by way of Appeal/Review/Revision, as the case may be. They have no option to deny implementation of the order, based on advice/opinion.</p> <p>In the facts of the case it is established that applicant was initially discharged from service on 31.05.2004 in low medical category for which in addition to service pension disability element @50% from the date of discharge was granted to him. Apprehending his discharge order illegal, he had filed Original Application No. 32 of 2012 in the Tribunal which was allowed on</p> |

21.12.2105 directing the respondents to reinstate him in service in the rank of Naik for pensionary benefits only. Pursuant to that order, he was notionally reinstated in service with effect from 01.06.2004 and was notionally discharged on 31.12.2009. Disability element, which was earlier being paid to the applicant was stopped with effect from 01.01.2016 and recovery was put in motion against which he filed another Original Application being Original Application No.122 of 2017 which was allowed on 20.08.2018 directing stoppage of recovery with further direction to refund the recovery, if any. It was also directed that any payment made during the period from 01.06.2004 to 31.12.2009 towards disability element may be treated as back wages. Liberty was also given to applicant to file Original Application for the grant of disability element. As a result of which he filed Original Application No. 264 of 2019 which was disposed off on 05.04.2021 clarifying that in addition to service pension applicant is entitled to disability element @50% from the next date of his notional discharge i.e. 01.01.2010. It was also directed in the order that since applicant was in receipt of service pension and already granted disability element duly rounded off for the period from 01.06.2004 to 31.12.2015, he is entitled to rounded off disability element @50% with effect from 01.01.2016. Respondents were further directed not to recover amount already paid.

It is surprising that there being clarity in the order respondents are not implementing the same on the premise that disability element of disability pension to the applicant from the date of reinstatement cannot be granted to him based on RMB held at the time of initial discharge i.e. 31.05.2004, more so, when disability is for life. The reason assigned for not implementing the order is absolutely unwarranted, no fresh RMB is required for the grant of disability element. Since respondents have adopted unrealistic approach for not implementing the order, suitable action is required to be taken in the matter.

We are told by the AFT Legal Cell that Chief Record Officer, Brigade of The Guards, Kamptee is responsible for non compliance of the order. Registry is directed to issue notice to him to appear in person on the next date fixed and file personal affidavit why contempt proceedings be not initiated against him.

List on **22.11.2022**.

Copy of order be given to the Ld. Counsel for the respondents/ AFT Legal Cell for compliance.

Copy of order be sent to Chief of the Army Staff for his information and necessary action.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

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

Ex. A. No. 56 of 2018 Inre : O.A. No. 303 of 2016

Suman Mehrotra Sister of Late Rajiv Tondon
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>21.09.2022</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>On the case being taken up for hearing Shri K.K. Misra, Ld. Counsel for the applicant and Dr. Shailendra Sharma Atal, Ld. Counsel for the respondents are present.</p> <p>It is submitted by the Ld. Counsel for the applicant that applicant being out of India the copy of updated pass book of pension account of the deceased applicant cannot be filed. He further submitted that a short date be given to him to apprise the Tribunal regarding present applicant being legal heir and dependent of the deceased applicant and to file copy of the updated pass book.</p> <p>Copy of updated pass book may be filed within three weeks.</p> <p>List on 01.11.2022 on which date the applicant will apprise how she is competent to prosecute the application being legal heir of the deceased applicant.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)</p> <p>AKD/-</p> |

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

Ex. A. No. 33 of 2019 Inre : T.A. No. 92 of 2011

| | | |
|---|---------------|-------------|
| Ex. Sigm. Jayant Bagchi By Legal Practitioner for the Applicant | Versus | Applicant |
| Union of India & Others By Legal Practitioner for Respondents | | Respondents |

| Notes of the Registry | Orders of the Tribunal |
|------------------------------|--|
| | <p><u>21.09.2022</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 R. Chandra, Ld. Counsel for the applicant and Shri R.C. Shukla, Ld. Counsel for the respondents assisted by Shri Rajeev Tiwari, Accounts Officer, PCDA (Pension), Prayagraj.</p> <p style="text-align: center;">Ld. Counsel for the applicant submits that Execution Application may be dismissed being infructuous as order has been complied with.</p> <p style="text-align: center;">Accordingly, Execution Application is dismissed.</p> <p style="display: flex; justify-content: space-around; margin-top: 20px;">(Vice Admiral Abhay Raghunath Karve) Member (A)(Justice Umesh Chandra Srivastava) Member (J)</p> <p style="margin-top: 20px;">AKD/-</p> |

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

Ex. A. No. 4 of 2021 Inre : O.A. No. 590 of 2018

Ex. Rect. Surendar Prasad
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>21.09.2022</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 R. Chandra, Ld. Counsel for the applicant and Ms. Anju Singh, Ld. Counsel for the respondents.</p> <p>Ld. Counsel for the respondents submits that Execution Application may be dismissing being infructuous.</p> <p>In compliance of the order passed in Original Application RAMB of the applicant was held on 16.01.2021 in which applicant has been found suffering with disability @20% for life.</p> <p>Ld. Counsel for the respondents submits that in pursuance to RAMB PPO has been issued.</p> <p>The said PPO has not been filed.</p> <p>Let it be filed by the respondents within two weeks.</p> <p>List on 19.10.2022.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)</p> <p>AKD/-</p> |

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

Ex. A. No. 13 of 2021 Inre : O.A. No. 88 of 2021

Ex. Sep. Sant Ram
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>21.09.2022</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>On the case being taken up for hearing Shri R. Chandra, Ld. Counsel for the applicant and Shri Anurag Mishra, Ld. Counsel for the respondents are present.</p> <p>Affidavit of compliance filed by the respondents is taken on record.</p> <p>Copy of PPO has been filed along with the affidavit of compliance wherein disability element has been given to the applicant @100% for life with effect from the date of Re-Survey Medical Board i.e. 23.12.2021.</p> <p>Ld. Counsel for the applicant submits that applicant was invalidated out from service on 15.05.1988 in Low Medical Category and his disability was assessed @100% for two years which was attributable to military service. However, when disability claim of the applicant was not allowed by the Principal Controller of Defence Accounts (Pension), Prayagraj on the premise of being a case of neither attributable to nor aggravated by military service, the same was challenged in this Tribunal by way of Original Application No. 88 of 2021 which was allowed on 28.01.2021 directing respondents to grant disability pension to the applicant @100% for two years from the date of discharge. The respondents were further directed to hold Re-Survey Medical Board to assess further entitlement of the disability pension. In compliance of the same, Re-Survey Medical Board was held on 23.12.2021 wherein the applicant has been found suffering with the same disability at the same rate. The submission of Ld. Counsel is that since in the Re-Survey Medical Board applicant has been found suffering with the same disability at the same rate, this indicate that applicant's disability remain same during the intervening period and, therefore, applicant should be allowed disability pension @100% with attendant allowance from the date of discharge and not from the date of Re-Survey Medical Board.</p> |

The contention of the Ld. Counsel for the applicant seems correct. Respondents are, therefore, directed to issue a Corrigendum PPO granting disability pension to the applicant @100% from the date of discharge in place of from the date of Re-Survey Medical Board. While issuing PPO, details of family member of the applicant will also be mentioned.

Compliance report be filed within four weeks annexing therewith copy of Corrigendum PPO.

List on **11.11.2022**.

Let copy of this order be given to the Ld. Counsel for the respondents/AFT Legal Cell for compliance.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

AKD/-

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

Ex. A. No. 18 of 2021 Inre : O.A. No. 320 of 2019

Sgt. Rohitash Kumar Sharma
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>21.09.2022</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>On the case being taken up for hearing the Shri Kaushik Chatterjee, Ld. Counsel for the respondents is present and he submits that respondents have filed a Civil Appeal against the decision of the Tribunal wherein an interim application for the grant of stay has also been filed. The said application was taken up for hearing on 29.04.2022 on which date the operation of the impugned order had been stayed for three weeks and interim application was listed for hearing yesterday. The interim application could not be taken up for hearing yesterday due to paucity of time. Thus he submits that hearing of the case be adjourned.</p> <p style="text-align: center;">In view of the aforesaid, list the matter on 04.11.2022.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)</p> <p>AKD/-</p> |

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

O.A. No. 754 of 2022 with M.A. No. 924 of 2022

Sep. (DSC GD) Monghyri Lal (Retd.)
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>21.09.2022</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, Advocate on behalf of the respondents is taken on record. His name be shown as Counsel for the respondents when the case is listed next.</p> <p>Heard Shri Sarvesh Kumar Verma, Ld. Counsel for the applicant and Shri Devesh Kumar, Ld. Counsel for the respondents.</p> <p>This Original Application has been filed for the grant of disability pension.</p> <p>There is a delay of 06 months and 11 days in filing of Original Application.</p> <p>Being a pensionary matter, delay is condoned. Delay condonation application stands disposed off.</p> <p><u>O.A. No. 754 of 2022</u></p> <p>Matter needs 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 the matter before Registrar on 21.11.2022 for exchange of pleadings.</p> <p>List the matter before Tribunal on 19.12.2022.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)</p> <p>AKD/-</p> |

