

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

O.A. No. 865 of 2022 with M.A. No. 1069 of 2022

Smt. Munni Devi W/o Late Ex. L/Nk. Mohan Lal
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>31.10.2022</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>Shri Ashish Kumar Singh, Advocate has appeared on behalf of the respondents and filed memo of appearance, which is taken on record.</p> <p>Heard Shri Veer Raghav Chaubey, Ld. Counsel for the applicant and Shri Ashish Kumar Singh, Ld. Counsel for the respondents.</p> <p>This is the second Original Application filed by the applicant for the grant of family pension.</p> <p>It is submitted by learned counsel for the applicant that late L/Nk Mohan Lal was enrolled in the Indian Army on 13.09.1965 and was discharged from service on 01.10.1981 on completing the term of enrolment. Late L/Nk Mohan Lal was married to Smt Thanzuali at Silchar, Mizoram in the year 1973. Smt Thanzuali divorced Late L/Nk Mohan Lal in the year 1974 and remarried to one Khumlian in 1988. Late Nk Mohan Lal married to the applicant on 22.06.1978 and four children were born from their wedlock. Late L/Nk Mohan Lal died on 25.06.1997 whereafter applicant wrote several letters to the respondents for the grant of family pension but of no use. Applicant filed application (Original Application No. 627 of 2020) in the Tribunal which was dismissed being applicant not NOK of late L/Nk of Mohan Lal.</p> <p>Learned counsel for the applicant submits that the first Original Application filed by the applicant was dismissed because applicant had failed to produce documentary proof regarding divorce between Late L/Nk Mohan Lal and his first wife Smt Thanzuali but now has got the proof giving a fresh cause of action to file application for the grant of family pension, hence this Original Application.</p> <p>Learned counsel for the respondents, on the other hand, submits that this application has been filed on the same cause of action on which the first application was filed, hence it is barred by res judicata. He submits that finding</p>

a proof of divorce after the dismissal of first application may be a ground for review of the order but in any case it can not become a fresh cause of action for filing second Original Application. Thus he submits that second Original Application being barred by Res judicata it should be dismissed as such.

Section 11 of the Civil Procedure Code speaks about res judicata and it reads as under-

*“11. **Res jidicata.** - No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.*

Explanation I.- The expression “former suit” shall denote a suit which has been decided prior to a suit in question whether or not it was instituted prior thereto.

Explanation II.- For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.- The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.-- Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.-- Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.

Explanation VI.- Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating .

Explanation VII.- The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII.- An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.”

On reading of the above section it is clear that if the matter in issue in a suit was directly and substantially in issue in another suit between the same

parties or their representatives or between the parties claiming through them and was finally decided by a court competent to decide the issue, no court shall decide the issue being barred by Res judicata.

It is not disputed that present Original Application which has been filed for the grant of family pension has been filed after the dismissal of first Original Application which was also filed for the same relief. The cause of action in the first Original Application was denial to grant family pension to the applicant by the respondents which is the same in the present Original Application. The cause behind dismissal of the first application was lack of being NOK of the late L/Nk Mohan Lal which in no case can be said to be fresh cause of action as it is denial of the respondents and not the proof of divorce. Thus applicant's contention that a new cause of action has accrued after the finding of documentary proof of divorce between late L/Nk Mohan Lal and his first wife Thanzuali is absolutely incorrect. The subject matter and cause of action in both applications being the same and the order passed in first Original Application being final as no appeal was filed against it, the order has attained finality with the result second Original Application can not be tried being barred by Res judicata.

In view of the above, Original Application deserves to be dismissed being barred by Res judicata and is therefore, **dismissed** as such.

(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

O.A. No. 869 of 2022 with M.A. No. 1074 of 2022

Smt. Sheela Devi
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>31.10.2022</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>Dr. Shailendra Sharma Atal, Advocate has appeared on behalf of the respondents and filed memo of appearance which is taken on record.</p> <p>Heard Shri Veer Raghav Chaubey, Ld. Counsel for the applicant and Dr Shailendra Sharma Atal, Ld. Counsel for the respondents.</p> <p>This Original Application has been filed by the applicant under section 14 of the Armed Forces Tribunal Act, 2007 for the grant of family pension to her.</p> <p>It is submitted by Ld. Counsel for the applicant that applicant is an old lady aged about 75 years. Her husband No 338007M Ex Hav/Gnr Late Ram Singh was enrolled in the Territorial Army on 19.09.1960 and was discharged from service on 19.09.1963 after having rendered three years of service. He was paid service pension @ Rs 14/= per month. He died on 24.01.2009. In between 12.07.2021 to 12.05.2022 applicant wrote several letters to various army authorities seeking queries regarding her late husband and for the grant of family pension to her after the death of her husband but the same were not suitably replied, hence this Original Application.</p> <p>Regarding delay in filing the application, Ld. Counsel for the applicant submitted that it is not deliberate and limitation is not applicable in pensionary matters, therefore, delay, if any, in filing the application should be condoned.</p> <p>Per contra, Ld. Counsel for the respondents submitted that application being filed after 59 years from the date of alleged discharge and thirteen years from the date of death of husband of the applicant and no plausible reasons being assigned for the delay, the same should be dismissed on this score alone.</p> <p>Regarding claim for the grant of family pension, Ld. Counsel submitted that Original Application is misconceived on it's face as no service</p>

pension is payable after rendering only three years of service in the Army. The minimum qualifying service for the grant of service pension is fifteen years and not three years wherefore no service pension was paid to the husband of the applicant and in that event no question for the grant of family pension to the applicant does arise.

Admittedly, this Original Application is highly belated being filed after more than fifty nine years from the date of discharge and thirteen years from the date of death of the husband of the applicant. No explanation what to say a satisfactory explanation has been offered by the applicant for such a long delay rather has only been said that applicant is an elderly poor lady who knew nothing about law, therefore, delay, if any, in filing the Original Application being not deliberate should be condoned. However, such a plea is not acceptable because if it is accepted No application can be dismissed on the ground of delay. It is rule that if any time frame is there for filing an application and the application is not filed within that time frame, delay should be explained on day to day basis rather giving a cut short reply it is not deliberate. This being the position of law regarding delay, we are of the considered view that application should be dismissed on the ground of delay alone as a long delay in filing the application has at all not been explained by the applicant.

As regards merit, it is settled in Pension Regulations for the Army that minimum qualifying service for the grant of service pension is fifteen years and not three years, therefore, at no stretch of imagination it is believable that applicant's husband was in receipt of service pension @ Rs 14/= per month as submitted by Ld. Counsel for the applicant. Nothing has been filed on record to suggest that he was in receipt of any pension. It appears that it has been purposely stated that applicant's husband was in receipt of service pension to make the application admissible in Tribunal which in fact is nothing but used as fishing net. Since no service pension is payable after rendering only three years service, this is a strong reason to believe that he (applicant's husband) was not in receipt of service pension and, in that event, Original Application filed by the applicant for the grant of family pension is not maintainable as family pension would only be payable if applicant's husband was paid service pension.

In view of what has been stated above, Original Application deserves to be dismissed being barred by time and also on merit. It is accordingly **dismissed.**

(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

T.A. No. 11 of 2022

Ex. MWO Tripti Kumar Mishra
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>31.10.2022</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>Counter Affidavit filed by the respondents is taken on record. Heard Shri R. Chandra, Ld. Counsel for the applicant and Shri Ashish Kumar Singh, Ld. Counsel for the respondents. Transferred 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.</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. 855 of 2022 with M.A. No. 1064 of 2022

Ex. Sep. (ACP-1) Sanjay 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>31.10.2022</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>Shri J.N. Mishra, Advocate has appeared on behalf of the respondents and filed Memo of Appearance, which is taken on record.</p> <p>Heard Shri Veer Raghav Chaubey, Ld. Counsel for the applicant and Shri J.N. Mishra, Ld. Counsel for the respondents.</p> <p><u>M.A. No. 1064 of 2022</u></p> <p>This application has been filed for condoning the delay of 03 years, 08 months and 24 days in filing of Original Application.</p> <p>It is submitted by the Ld. Counsel for the applicant that law of limitation is not applicable in pensionary matters.</p> <p>Being a pensionary matter, delay is condoned. Delay condonation application stands disposed off.</p> <p><u>O.A. No. 855 of 2022</u></p> <p>Learned counsel for the applicant submits that applicant was enrolled in Rajputana Rifles Regiment of Indian Army on 05.07.1999 and was discharged from service on 31.07.2016 with disability "PATENT FURAMEN OVALE (RBBB) (I 45.1)". The Release Medical Board held at the time of discharge assessed the disability being not connected with service with the result disability claim raised by the applicant was rejected. Applicant has preferred an appeal dated 16.05.2022 against the order rejecting the claim which the respondents have not decided yet.</p> <p>Learned counsel for the respondents submits that present application has been filed before the expiry of six months from the date appeal was filed hence the same is not liable to be admitted in view of section 21(2)(b) of the Armed Forces Tribunal Act,2007. Even otherwise, applicant's alleged disability being neither attributable to nor aggravated by the military service the claim was rightly rejected.</p> <p>He further submits that he has no idea about appeal being preferred by the applicant, however, if any such appeal has been filed the respondents have no objection in deciding the same as per rules.</p>

In view of the aforesaid, we direct the respondents to decide the appeal dated 16.05.2022, preferred by the applicant, as per rules within a period of four months from the date of receipt of copy of the order along with copy of appeal by a reasoned and speaking order under intimation to the applicant.

With above, Original Application stands **disposed of**.

(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

O.A. No. 856 of 2022 with M.A. No. 1065 of 2022

Smt. Khutta Devi W/o Late Ex. Nk. Rajpal 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>31.10.2022</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>Ms. Deepti Prasad Bajpai, Advocate has appeared on behalf of the respondents and filed Memo of Appearance, which is taken on record.</p> <p>Heard Shri Veer Raghav Chaubey, Ld. Counsel for the applicant and Ms. Deepti Prasad Bajpai, Ld. Counsel for the respondents.</p> <p><u>M.A. No. 1065 of 2022</u></p> <p>This application has been filed for condoning the delay of 01 month and 11 days in filing of Original Application.</p> <p>It is submitted that law of limitation is not applicable in pensionary matters.</p> <p>Cause shown is sufficient. Accordingly, delay is condoned. Delay condonation application stands disposed off.</p> <p><u>O.A. No. 856 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 16.12.2022 for exchange of pleadings.</p> <p>List the matter before Tribunal on 03.02.2023.</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. 857 of 2022

Hav. (ORA) Amit 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>31.10.2022</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;">Memo of Appearance filed by Ms. Appoli Srivastava, Advocate on behalf of the respondents is taken on record.</p> <p style="text-align: center;">Heard Shri Veer Raghav Chaubey, Ld. Counsel for the applicant and Ms. Appoli Srivastava, Ld. Counsel for the respondents.</p> <p style="text-align: center;">This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 seeking pre-mature discharge from service on compassionate ground.</p> <p style="text-align: center;">It is submitted by the Ld. Counsel for the applicant that applicant was enrolled in the Army Medical Corps as O.R.A. on 28.04.2003. In the year 2017 applicant has proceeded on Casual Leave, during which he sustained severe fracture [Fracture Shaft of Femur (Left) (OPTD)] on 14.06.2017 and on account of which he was placed in low medical category. Due to fracture sustained applicant wanted to be discharged from service on compassionate ground for which he has made applications dated 11.09.2021, 13.10.2021, 04.01.2022 and 03.05.2022 to the competent authority for the grant of pre-mature discharge from service on extreme compassionate ground, but the same did not find favour. It is further submitted that applicant has again now made a representation dated 05.05.2022 to the competent authority for pre-mature discharge from service on compassionate ground, but the same has not yet been disposed off.</p> <p style="text-align: center;">Per contra, Ld. Counsel for the respondents submitted that pre-mature discharge from service cannot be sought as a matter of right.</p> <p style="text-align: center;">After having heard the submissions of Ld. Counsel of both sides and considering the facts and circumstances of the case, we find that since the applicant has made representation dated 05.05.2022 seeking pre-mature discharge from service on compassionate ground and the same has not been decided as yet, Original Application should be disposed of with direction to the respondents to decide the aforesaid representation within a period of four</p>

months from the date of receipt of order by speaking and reasoned order under intimation to the applicant.

Accordingly, Original Application is **disposed off**. Respondents are directed to decide the representation dated 05.05.2022 of the applicant seeking pre-mature discharge from service on compassionate ground within a period of four months from the date of receipt of copy of order by speaking and reasoned order under intimation to the applicant.

Let copy of this order be provided to the learned Counsel for the parties.

(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

O.A. No. 859 of 2022

Cdr. Mohan Pal (Retd.) 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>31.10.2022</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>Shri Rajiv Pandey, Advocate has appeared on behalf of the respondents and filed Memo of Appearance, which is taken on record. His name be shown as Counsel for the respondents when the case is listed next.</p> <p>Heard Shri Veer Raghav Chaubey, Ld. Counsel for the applicant and Shri Rajiv Pandey, Ld. Counsel for the respondents.</p> <p>This Original Application has been filed for the grant of disability element of disability pension to the applicant.</p> <p>It is submitted by the Ld. Counsel for the applicant that applicant has been discharged from Indian Navy after having put in more than 36 years of service. At the time of discharge from service applicant was in low medical category in respect of which Release Medical Board was held which found applicant was suffering with Diabetes Mellitus, however, his claim for the grant of disability element of disability pension has been rejected on the premise that disability was neither attributable to nor aggravated by military service.</p> <p>Case 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 16.12.2022 for exchange of pleadings.</p> <p>List the matter before Tribunal on 03.02.2023.</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. 863 of 2022 with M.A. No. 1094 of 2022

Smt. Hemlata W/o Late Ex. Sep. Manoj 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>31.10.2022</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>Shri Ramesh Chadnra Shukla, Advocate has appeared on behalf of the respondent Nos. 1 to 3 and filed Memo of Appearance which is taken on record. His name be shown as Counsel for the respondent Nos. 1 to 3 when the case is listed next.</p> <p>Heard Shri Veer Raghav Chaubey, Ld. Counsel for the applicant and Shri Ramesh Chadnra Shukla, Ld. Counsel for the respondents Nos. 1 to 3.</p> <p>Smt. Hemlata Widow of Late Ex. Sep. Manoj Kumar has filed this Original Application for directing the respondents to pay the Personal Accident Insurance claim to the applicant.</p> <p>Ld. Counsel for the respondent Nos. 1 to 3 has raised a preliminary objection saying subject matter in the Original Application does not constitute a "service matter" as defined in Section 3(o) of the Armed Forces Tribunal Act, 2007, time be granted to file objection against maintainability of the Original Application.</p> <p>Ld. Counsel for the applicant submits that husband of the applicant had taken Personal Accident Insurance (PAI) from Defence Salary Package (DSP) Account, which was maintained by State Bank of India through respondent Nos. 1 to 3, therefore, subject matter falls within the definition of "service matters" given under Section 3(o) of the Armed Forces Tribunal Act, 2007. In support, Ld. Counsel has placed reliance upon letter dated 18.12.2021 issued by the Officiating Adjutant for Commanding Officer to the United India Insurance Company Limited requesting the later to intimate the present position of the subject claim stating that applicant's claim for the grant of Personal Accident Insurance in respect of her husband was forwarded to the Insurance Company by the respondent Nos. 1 to 3.</p> <p>From the above, it appears that subject matter falls within the purview of "service matters" defined under Section 3(o) of the Armed Forces Tribunal Act, 2007, therefore, the same is cognizable by this Tribunal.</p>

Case needs adjudication.

Admit.

Issue notice to respondent Nos. 1 to 3.

Shri Ramesh Chandra Shukla, Advocate has notice on behalf of the respondent Nos. 1 to 3, hence, service of notice is waived. He prays for and is granted four weeks time to file Counter Affidavit.

Issue notice to respondent Nos. 4 and 5 returnable within four weeks.

Steps for notice be taken within a week.

List on **06.02.2023**.

(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

O.A. No. 864 of 2022 with M.A. No. 1068 of 2022

Ex. SWR Shaukat Ali
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>31.10.2022</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;">Memo of Appearance filed by Shri Amit Jaiswal, Advocate on behalf of the respondents is taken on record.</p> <p style="text-align: center;">Heard Shri Veer Raghav Chaubey, Ld. Counsel for the applicant and Shri Amit Jaiswal, Ld. Counsel for the respondents.</p> <p style="text-align: center;">There is a delay of 03 years, 03 months and 19 days in filing of Original Application.</p> <p style="text-align: center;">Being a pensionary matter, delay is condoned. Delay condonation application stands disposed off.</p> <p><u>O.A. No. 864 of 2022</u></p> <p style="text-align: center;">The innocuous prayer of the applicant is that to direct the respondents to decide the applicant's Mercy Petitions dated 17.06.2022 and 24.07.2022, which are pending with the respondents.</p> <p style="text-align: center;">With the consent of Ld. Counsel for the parties, we hereby dispose of the Original Application finally with the direction to the respondents to decide the applicant's Mercy Petitions dated 17.06.2022 and 24.07.2022, annexed as Annexure Nos. 4 and 5 of Original Application, by a speaking and reasoned order in accordance with law, if not already decided, within a period of three months from the date of receipt of copy of this order and communicate the decision to the applicant accordingly.</p> <p style="text-align: center;">Let copy of this order be provided to the learned Counsel for the parties.</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>AKD/-</p>

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

O.A. No. 868 of 2022 with M.A. No. 1072 of 2022

Cdr. Satish 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>31.10.2022</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>Shri Amit Jaiswal, Advocate has appeared on behalf of the respondents and filed Memo of Appearance, which is taken on record. His name be shown as Counsel for the respondents when the case is listed next.</p> <p>Heard Shri Veer Raghav Chaubey, Ld. Counsel for the applicant and Shri Amit Jaiswal, Ld. Counsel for the respondents.</p> <p>This Original Application has been filed for the grant of disability pension.</p> <p>It is submitted by the Ld. Counsel for the applicant that claim for the grant of disability pension has been wrongly denied by the respondents.</p> <p>In view of order dated 10.01.2022 of the Hon'ble Apex Court in Miscellaneous Application No. 21/2022 in MA 665/2021 in Suo Motu Writ Petition (C) No.3/2020, there is no delay in filing of Original Application, however, an application for condonation of delay has been moved which being not required is dismissed.</p> <p>Case 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 20.12.2022 for exchange of pleadings.</p> <p>List the matter before Tribunal on 07.02.2023.</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. 331 of 2022 Inre : O.A. No. 868 of 2021

Ex. Sep. Bhopal 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>31.10.2022</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 Sudhir Kumar Singh, Ld. Counsel for the applicant and Maj. Sini Thomas, Departmental Representative for the respondents.</p> <p style="text-align: center;">This application has been filed for implementation of order dated 17.05.2022 of this Tribunal in Original Application No. 868 of 2021 by which respondents have been directed to grant service pension to the applicant from the next date of discharge from service.</p> <p style="text-align: center;">It is submitted by the Ld. Counsel for the applicant that vide the aforesaid order the respondents were directed to grant service pension to the applicant within four months from the date of passing of the order, however, the same has not been implemented yet.</p> <p style="text-align: center;">Maj. Sini Thomas, Departmental Representative for the respondents seeks and is allowed four weeks time to file affidavit of compliance after seeing instruction.</p> <p style="text-align: center;">List on 13.12.2022.</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>AKD/-</p>

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

Ex. A. No. 231 of 2022 Ine : T.A. No. 6 of 2021

Ex. Sgt. Somdatt Awasthi
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>31.10.2022</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;">On the case being taken up for hearing Shri Shailendra Kumar Singh, Ld. Counsel for the applicant and Ms. Appoli Srivastava, Ld. Counsel for the respondents are present.</p> <p style="text-align: center;">On the request of Ld. Counsel for the respondents, four weeks further time is granted to file affidavit of compliance.</p> <p style="text-align: center;">List on 28.11.2022.</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. 175 of 2022 with M.A. No. 1038 of 2022

Hony Nb Sub Mahboob Ali
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>31.10.2022</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 Pankaj Kumar Shukla, Ld. Counsel for the applicant and Shri Vishwesh Kumar, Ld. Counsel for the respondents.</p> <p>Submission of learned counsel for the applicant is that applicant was discharged from service on 31.03.2006 in the rank of Havildar after rendering 24 years and 06 days of service and he was conferred Hony Naib Subedar rank on 17.08.2006 after retirement from service. Therefore, applicant is entitled pension of Hony Nb Sub rank w.e.f. 01.04.2006 but respondents (Bank) is crediting Rs. 21460/- per month (as reflected in the statement of account) instead of Rs. 21653/- to which applicant is entitled and applicant is getting pension @ Rs. 21460/- w.e.f. March 2020 only which is less than he is entitled. The revised rate of pension in the rank of Hony Nb Sub from the date of retirement i.e. w.e.f. 01.04.2006 to Feb 2020 has also not been paid to the applicant.</p> <p>He further submitted that applicant be paid his complete arrears of pension in the rank of Hony Nb Sub from the next date of retirement i.e. w.e.f. 01.04.2006 to Feb. 2020 and difference of Rs. 193/- (21653 - 21460 = 193) from March 2020 till date in terms of Circular No. 555, 570 and 631 and interest thereon.</p> <p>Learned counsel for the respondents No. 1 to 3 & 4 submitted that applicant's pension in the rank of Hony Nb Sub has been revised as per 6th and 7th CPC and Govt. of India, Ministry of Defence letter dated 21.02.2020 correctly and applicant has not been deprived of any benefits as per prevailing policies. The applicant has been issued Corrigendum PPO accordingly and he is entitled service pension @ Rs. 21653/- per month in the rank of Hony Nb Sub. However, it is the responsibility of PDA to make correct rate of pension to the applicant. He also submitted that PCDA Circular No. 631 dated 05.03.2020 is not applicable in the case of applicant being post 0101.2006 retiree.</p> <p>We find that since, applicant has not been paid revised rate of pension from 01.04.2006 to Feb. 2020, he is entitled to arrears of difference of pension from the next date of retirement, i.e. 01.04.2006 till Feb 2020 as per Circular</p>

No. 555 and also difference of running pension @ Rs. 193/- per month from Mar 2020 onwards.

In view of above, we hereby **dispose of** the Original Application finally with the direction to respondents No. 5 & 6 (Bank) to pay difference of pension to the applicant from the next date of retirement, i.e. 01.04.2006 till Feb 2020 as per Circular No. 555 and difference of running pension @ Rs. 193/- per month w.e.f. March 2020 onwards. The respondents No. 5 & 6 (Bank) will take action to pay/credit complete amount of arrears to the applicant at the earliest, if not already paid, preferably within three months from the receipt of copy of this order and communicate to the applicant accordingly. Default will invite interest @ 8% per annum till the actual payment.

Let a copy of this order be provided to learned counsel for the parties, free of cost for compliance.

Early hearing application (**MA No. 1038 of 2022**) also stands disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

SB

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

E-Court

O.A. No. 861 of 2022 with M.A. No. 1066 of 2022

Ex Nk. (TS) Sul Khan
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>31.10.2022</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 Dr. Shailendra Sharma Atal, Advocate on behalf of the respondents is taken on record.</p> <p>Heard Shri Ravi Kumar Yadav, Advocate holding brief of Shri Pankaj Kumar Shukla, Ld. Counsel for the applicant and Dr. Shailendra Sharma Atal, Ld. Counsel for the respondents.</p> <p>There is a delay of 17 years, 1 month and 24 days in filing of Original Application.</p> <p>Being a pensionary mater, delay is condoned. Delay condonation application (MA No. 1066 of 2022) stands disposed off.</p> <p style="text-align: center;"><u>O.A. No. 861 of 2022</u></p> <p>Submission of learned counsel for the applicant is that applicant was enrolled in the Indian Army on 23.02.1987. The applicant was promoted to the rank of Naik (TS) on 23.02.2003 and he was discharged from service on 28.02.2003 in the rank of Naik (TS) on medical grounds after rendering more than 16 years of service. The applicant was granted service pension in the rank of Sepoy instead of Naik (TS) vide PPO dated 05.03.2003 and his pension was further revised in the rank of Sepoy vide Corrigendum PPO dated 06.05.2019. The applicant made a representation dated 29.12.2016 to the respondents for grant of pension in the last rank held by the applicant i.e. Naik (TS) but the same was rejected by the respondents vide letter dated 21.09.2020 arbitrarily and unlawfully stating that applicant has not completed 10 months of qualifying service for grant of pension for the rank of Naik (TS).</p> <p>He further submitted that since the applicant was retired from service in the rank of Nk (TS), he is entitled pension of Naik rank in view of judgment passed by the Hon'ble AFT (PB) New Delhi in OA No. 1038 of 2017, Ex JWO Krishna Moorthy K & Others vs. Union of India and Ors, decided on 23.08.2017 and AFT (RB), Lucknow judgment in OA No. 474 of 2020, Ex MWO Chaman Prakash vs. Union of India & Ors, decided on 28.09.2021 in accordance with Govt. of India, Ministry of Defence order dated 09.02.2001.</p> <p>Learned counsel for the respondents raised preliminary objection that</p>

there is delay of more than 17 years. In the case, neither delay has been condoned nor the case has been admitted for hearing. However, learned counsel for the respondents submitted that applicant was promoted to the rank of Naik (TS) on 23.02.2003 and he was discharged from service on 28.02.2003 on medical grounds, thus he served in the rank of Nk (TS) for 06 days only, therefore, he has not served 10 months continuously in the rank of Nk (TS) at the time of discharge from service, hence, he has been granted pension in the rank of Sepoy as per rules and therefore, he is not entitled for service pension in the rank of Naik (TS).

We find that there are enormous judgments of various Benches of the Armed Forces Tribunals on this issue. Consequently the fact, that the applicant is entitled to pension in the last rank held by him, even if he has held it for a duration less than ten months, stands clearly established. In AFT (PB) New Delhi judgment in **Ex JWO Krishna Moorthy K** (supra), the Tribunal has held in para 11 that applicant is entitled to service pension of the last rank held irrespective of lengths of service. Para 11 is quoted below :-

“11. Having regard to the fact that the present applicants had retired from service while they were in the rank of JWO, they are entitled to pension in the rank of JWO irrespective of the period for which they were in the rank, in view of the Government of India order dated 09.02.2001, and preceding AFT orders on this issue.”

We have come to a conclusion that the Tribunals have considered the scope of order dated 09.02.2001 issued by the Government of India, Ministry of Defence, governing the matter. We find no reason to deviate from the findings and conclusions arrived at by the other Tribunals while allowing the claim of the applicants therein who were similarly placed like the applicant herein. We follow those decisions and the said Government order for allowing the relief of pension claimed in the Original Application. Thus, we find that the applicant is entitled to revised pension from the date of discharge in the last rank of MWO in accordance with Govt. of India, Ministry of Defence order dated 09.02.2001.

Resultantly, Original Application is **allowed**. The impugned order passed by the respondents is set aside. Subject to verification, the respondents are directed to calculate the pension of the applicant based on the last rank held by him before retirement i.e. Naik (TS) in consonance with the principles of calculation that has been upheld in AFT (PB) judgment in **Ex JWO Krishna Moorthy K & Ors** (supra). The respondents are directed to issue a fresh Corrigendum PPO in the last rank held (Naik TS) granting arrears from the date of discharge from service. However, due to law of limitations settled by the Hon'ble Supreme Court in the case of **Shiv Dass v. Union of India and others** (2007 (3) SLR 445), *the arrears of service pension in the rank of Naik (TS) will be restricted to three years preceding the date of filing of the instant O.A. The date of filing of the O.A is 12.10.2022.* The respondents are directed to give effect to this order within a period of four months from the date of receipt of certified copy of this order. Default will invite interest @ 8% per

annum till actual payment.

No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

SB