

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

**M.A. No. 35 of 2022 Inre O.A. No. 271 of 2021**

**Nb Sub Kaushlendra Pratap 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><b><u>18.01.2022</u></b> <b><u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u></b> <b><u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></b></p> <p>Heard Shri Vinay Pandey, Ld. Counsel for the applicant and Dr. Shailendra Sharma Atal, Ld. Counsel for the respondents assisted by Maj Sini Thomas, Departmental Representative of the respondents.</p> <p>Counter affidavit filed by the respondents is taken on record.</p> <p>Learned counsel for the applicant submits that in re-categorization medical board held on 29.06.2021, applicant has been upgraded to SHAPE-1, which is a promotable category and, in view of this, applicant is entitled to promotion in the rank of Subedar.</p> <p>In reply, learned counsel for the respondents submits that after applicant being awarded punishment of severe reprimand in the year 2016 a fresh summary trial was held in this case in which he has been awarded severe reprimand in May 2021 and, in view of this, he is not entitled to promotion.</p> <p>The facts regarding applicant being awarded punishment of severe reprimand in May 2021 has not been brought on record.</p> <p>The respondents are therefore, directed to file supplementary counter affidavit with regard to above facts within two weeks.</p> <p>List on <b>10.02.2022</b> for hearing.</p> <p>A copy of the order be provided to learned counsel for the respondents/Legal Cell for compliance.</p>

**Court No. 1**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**ORIGINAL APPLICATION No. 214 of 2016**

Monday, this the 17<sup>th</sup> day of January, 2022

**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

Smt. Rajni Verma  
 Widow of Late Sapper (Sepoy) Manoj Kumar Verma  
 of 102 Engineer Regiment  
 R/o 221/2, Sector C, Shantipuram, Phaphamau, Post Office –  
 Phaphamau, District – Allahabad (UP) – 211013  
 ..... Applicant

Counsel for the Applicant: **Col BP Singh (Retd)**, Advocate  
**Versus**

1. Chief of the Army Staff, Integrated HQ of Ministry of Defence (Army), South Block, New Delhi – 110011.
2. Sundari Verma, Village – Nandav ka pura, Post – Mukundpur, Tehsil – Soram, District – Allahabad.
3. Principal Controller Defence Accounts (Pension), Draupadi Ghat, Allahabad.
4. State Bank of India, Shantipuram Branch – 14577 661, Basant Vihar Colony, Near Lal Bahadur Shastri Homeopathic Medical Collage, Allahabad – 211013 through its Branch Manager.

.....Respondents

Counsel for the Respondents: **Shri Sunil Sharma**,  
 Central Govt. Counsel  
**Shri Himanshu Vaish &**  
**Shri Alok Saxena**,  
 Ld. Counsel for Private Respondent  
 Nos. 2 & 4

**ORDER (Oral)**

1. The instant Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 with the following prayers:

- “(a) Quash/set aside the Pension Payment Order No: f/010159/2009 dated 18.06.2009 in favour of Smt. Sundari Verma, mother-in-law of the applicant as the latter is entitled to full Special Family Pension and other pensionary benefits as a matter of right.*
- (b) To set aside the investigation done by the Army Recruiting Office Amethi, District; Sultanpur, who illegally and in non-compliance of the principle of nature justice recommended the division of pension which was ultimately given to her vide Annexure No: 3 to the application.*
- (c) Allow application with costs.”*

2. Facts giving rise to Original Application in brief are that husband of applicant was enrolled in the Army on 28.02.2000. While he was on out-pass for rail reservation he met with a train accident and died on 01.07.2004. His death was considered as attributable to military service. Therefore, Special Family Pension (SFP) @ Rs. 3825/- was sanctioned to the applicant vide PCDA (P) Allahabad PPO dated 01.03.2005. Subsequently, the respondent No. 2 (Smt. Sundari Verma – mother of the deceased soldier and mother-in-law of the applicant) submitted an affidavit dated 13.10.2006 to records office in BEG Kirkee for division of SFP, stating therein that the applicant has left her in-laws house after drawing all terminal/pensionary benefits. The matter was referred to Army Recruiting Office, Amethi for re-investigation who after investigation recommended vide letter dated 03.12.2006 for division of SFP between the applicant and respondent No. 2 @ 70% and 30% respectively. Consequently, PCDA (P) Allahabad notified 70% share in favour of the applicant and 30% share in favour of respondent No. 2 (mother of the deceased soldier) vide



PPOs dated 18.06.2009. The applicant represented her case to respondents but she was denied 100% share of LFP in her favour in view of para 228 (a) of Pension Regulations for the Army, 1961. Being aggrieved, the applicant has filed this Original Application.

3. Learned counsel for the applicant submitted that applicant's husband died on 01.07.2004 while on duty and therefore, applicant was granted Special Family Pension (SFP) being nominee. Subsequently, mother-in-law of the applicant started treating her in most atrocious and cruel manner for taking share in terminal and pensionary benefits so applicant left her in-laws house on 26.06.2004. On a representation sent by mother-in-law, division of SFP was recommended by ARO, Amethi and 30% share of SFP has been granted to mother-in-law from applicant's deserved and entitled SFP which is illegal and against the principles of natural justice.

4. The applicant by filing a supplementary rejoinder affidavit has objected division of SFP in favour of mother-in-law stating therein that mother of deceased soldier is having share in agricultural land/parental properties and getting old age pension and thus, she was not dependent on her son's income and therefore, division of pension under the provisions of Regulation 228 of Pension Regulations for the Army, 1961 was improper and unjust.

5. Learned counsel for the applicant further submitted that applicant submitted a petition dated 10.04.2012 to Engineer-in-Chief Branch, Army Headquarters with a copy to Record Office for grant of full pension to the applicant but it was rejected vide letter dated



26.04.2012 stating division of SFP has been done between the applicant and her mother-in-law under the provisions of para 228 of Pension Regulations for the Army, 1961 (Part-1). He further submitted that applicant is entitled for full SFP and mother-in-law has no right to seek division of pension and respondents have wrongly issued PPO granting 30% share to applicant's mother-in-law against the Pension Regulations. He pleaded for grant of full share i.e. 100% LFP in favour of the applicant.

6. In reply, learned counsel for the respondents for Union of India submitted that husband of applicant was enrolled in the Army on 28.02.2000. While he was on out-pass for rail reservation he met with a train accident and died on 01.07.2004 near Kalyani Railway station. His death was considered as attributable to military service. Therefore, Special Family Pension @ Rs. 3825/- was sanctioned to the applicant vide PCDA (P) Allahabad PPO dated 01.03.2005. Subsequently, respondent No. 2 (Smt. Sundari Verma – mother of the deceased soldier and mother-in-law of the applicant) submitted a representation/affidavit dated 13.10.2006 to Record Office, BEG Kirkee for division of SFP, stating therein that the applicant has left her in-laws house after drawing all terminal/pensionary benefits. The matter was referred to Army Recruiting Office, Amethi for investigation who after reinvestigation recommended vide letter dated 03.12.2006 for division of SFP between the applicant and respondent No. 2 @ 70% and 30% respectively. Consequently, PCDA (P) Allahabad notified 70% share in favour of the applicant and 30% share in favour

of respondent No. 2 (mother of the deceased soldier) vide PPOs dated 18.06.2009.

7. Learned counsel for the respondents further submitted that applicant feeling aggrieved submitted a petition dated 10.04.2012 directly to Engineer-in-Chief Branch, Army Headquarters with copy of Record Office. After due consideration, Record Office informed the applicant vide letter dated 26.04.2012 that as per para 228 of Pension Regulations for the Army, 1961 (Part-1) the SFP is granted to support of other family members of the deceased also and in view of the dispute, the family pension was divided between the applicant and her mother-in-law.

8. Learned counsel for the respondents further submitted that it cannot be a reason for restoration of 100% share of SFP in favour of the applicant that mother of the deceased soldier having share in agricultural land was not dependent on her son. The applicant is not eligible for restoration of 100% SFP in her favour and division between the applicant and mother of the deceased soldier has been done as per rules. Therefore, the applicant is not entitled for restoration of 100% SFP in her favour as per rules on the subject. He pleaded for dismissal of O.A.

9. Learned counsel for respondent No. 2 submitted that Special Family Pension has been given by the department for the purpose of welfare and fulfillment of the needs of all eligible legal heirs of the deceased soldier's family as per Regulation 216 of Pension Regulations, 1961 which were dependent upon the deceased and as

per provision of Regulation 228 (a), only one of among eligible heirs can be nominated as Nominee/recipient to the SFP, who take care of all other eligible heirs and in case, if the recipient of the SFP refused/denied to contribute proportionately towards the support of other eligible heirs in the family who were dependent on deceased soldier, the competent authority may divide at his discretion the SFP between the legal heirs of deceased soldier. As such, there is no illegality in the order passed by the official respondents for division of pension.

10. We have heard learned counsel for the parties and have also perused the record.

11. Para 228 (a) of Pension Regulations for the Army, 1961 (Part-1) is reproduced below :-

*"228. (a) If the recipient of special family pension refuses to contribute proportionately towards the support of other eligible heirs in the family who were dependent upon the deceased soldier or non-combatant, or if the pension is in the name of a child but is not devoted to the interest of the family generally, a competent authority may, on the basis of the verification/ investigation report rendered by the Recruiting Organization and attested or countersigned by any one of the under mentioned local civil authorities, divide, at his discretion, the special family pension among the eligible heirs of the deceased soldier or non-combatant."*

12. We find that initially Special Family Pension was sanctioned to the applicant vide PCDA (P) Allahabad PPO dated 01.03.2005 being legal heir/nominee for receipt of full terminal and pensionary benefits. Subsequently, the respondent No. 2 (Smt. Sundari Verma – mother of the deceased soldier and mother-in-law of the applicant) submitted a petition/affidavit dated 13.10.2006 to Record Office, BEG Kirkee for



division of SFP, stating that the applicant has left her in-laws house after drawing all terminal/pensionary benefits leaving them alone without any financial assistance and therefore, she should also be given share in pension for her livelihood. Therefore, matter was reinvestigated by Army Recruiting Office, Amethi and division of SFP between the applicant and respondent No. 2 @ 70% and 30% was recommended. Accordingly, PCDA (P) Allahabad notified 70% share in favour of the applicant and 30% share in favour of respondent No. 2 (mother of the deceased soldier) as per para 228 (a) of Pension Regulations for the Army, 1961 (Part-1) which is as per rules.

13. In the result, we hold that claim of full share of LFP (100%) in favour of the applicant after disallowing to mother-in-law from her 30% share has rightly been rejected by the respondents as per rules which need no interference. Resultantly, O.A. is **dismissed**.

14. No order as to costs.

15. Pending Misc. Application(s), if any, shall be treated to have been disposed off.

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

O.A. No. 548 of 2017

**Satyapal 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><b><u>17.01.2022</u></b> <b><u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u></b> <b><u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></b></p> <p>Heard Shri KKS Bisht, Ld. Counsel for the applicant and Shri Anurag Mishra, learned counsel for respondents No 1 to 3 and Shri DC Lohumi, Ld. Counsel for the respondents No 5 and 6.</p> <p>Learned counsel for respondent No 1 to 3 submits that during the pendency of the applicant, the grievances raised by the applicant have been redressed and PPO has been generated on 07.01.2022. He further submits that copy of PPO has been forwarded to the applicant.</p> <p>In reply, learned counsel for the applicant submits that copy of PPO has been received by the applicant. However his submission is that since pension disbursing authorities i.e. Respondent No 5 and 6 are party and they have to comply the PPO, therefore, directions be issued to them to file affidavit of compliance regarding payment.</p> <p>Upon hearing submissions we find that since grievances raised in the O.A. have been redressed and in compliance PPO has been issued, there could be no reason for respondent No 4 and 5 not to comply the same. Thus, O.A. may be <del>deemed</del> <sup>dismissed</sup> being infructuous.</p> <p>Accordingly. O.A. is <b>dismissed</b> being infructuous.</p>

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

O.A. No. 348 of 2019

**Ex. Cadet Rajeev R U**  
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>17.01.2022</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 SSL Srivastava, Ld. Counsel for the applicant and Shri Amit Jaiswal, Ld. Counsel for the respondents.</p> <p>List on <b>11.03.2022</b> for physical hearing.</p> <p>On the date fixed, learned counsel for the respondents shall produce original documents pertaining to case for perusal of the Bench.</p>



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

**O.A. No. 426 of 2019**

**Ex. Sep Sankatha 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><b><u>17.01.2022</u></b> <b><u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u></b> <b><u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></b></p> <p>Heard Shri Kapil Dev Srivastava, Ld. Counsel for the applicant and Shri Jai Narayan Mishra, Ld. Counsel for the respondents.</p> <p>The applicant was enrolled in the Army on 12.11.1962 and discharged from service on 19.11.1976. The applicant further joined UP Electricity Board on 22.03.1978 and retired from UP Electricity Board service on 31.12.2012. In the year 2015 applicant filed petition before Hon'ble High Court Lucknow Bench for clubbing of his earlier service rendered in the army and Hon'ble High Court Lucknow Bench passed the order dated 05.02.2016 in favour of the applicant. UP Electricity Board demanded documents of applicant related to earlier service in army. Applicant approached army authorities for providing documents relating to retiral benefits and last pay certificate. In reply, respondents informed that all documents of the applicant have been destroyed being non pensioner except sheet roll. Clubbing of earlier service of the applicant is pending for want of above mentioned documents. Being aggrieved, the applicant has filed instant O.A. with the prayer to issue directions to army authorities to submit his service details to UP Electricity Board.</p> <p>Learned counsel for the respondents submits that applicant was enrolled in the army for 10 years colour service and 10 years of reserve service. He was discharged from service under the clause as 'service no longer required'. He did not render pensionable service. Applicant is asking for providing details of retiral benefits i.e. PF gratuity and last pay certificate. The service documents of the applicant have been destroyed in terms of Para 595 of Regulations for the Army 1987 after retention for mandatory 25 years from the date of discharge being a non pensioner. As per long roll applicant has been provided following consequential benefits:-</p> <p style="margin-left: 40px;">(a) AFPP Fund                      - Rs 1609.00</p> <p style="margin-left: 40px;">(b) Credit Balance                - Rs 4871.50</p>

(c) Death cum retirement Gratuity – Rs 1770.50

(d) Service Gratuity - Rs 2917.50

In the instant case, applicant filed petition before Hon'ble High Court Lucknow Bench which was allowed and army authorities were directed to provide certain information to enable UP Electricity Board to club army service of the applicant with UP Electricity Board service. Applicant forwarded his service particulars with photocopy of his pay book to record office but service details of the applicant has not been forwarded to UP Electricity Board.

Respondents are directed to provide last pay certificate, detail of gratuity and PF including information regarding total service rendered by the applicant, date of discharge and post from which he was retired with reason why pension was not granted to him to UP Electricity Board to club services rendered by the applicant in the army with UP Electricity Board within three month from the date of production of certified copy of this order.

With aforesaid directions, O.A. is **disposed of** finally.

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW****ORIGINAL APPLICATION No. 671 of 2020**

Monday, this the 17<sup>th</sup> day of January, 2022

**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

Pramod Kumar, son of Sri Udai Singh, R/o House No-2A,  
Banke Biharipuram Colony, Sakhipuram, Dahtora, Sikandara,  
District-Agra.

..... Applicant

Ld. Counsel for the : **Shri Anand Dubey**, Advocate.  
Applicant

Versus

1. Union of India through Secretary, Ministry of Defence,  
D.H.Q., Post Office-New Delhi.
2. The Chief of Army Staff, Army Staff, D.H.Q. Post-New  
Delhi.
3. Centre Commandant, Rajputana Rifles Regimental  
Centre, Cantt-10, New Delhi.
4. The Commanding Officer, 20 Rajputana Rifles, 167  
Infantry Brigade, Shahjahanpur (23), Infantry Division.
5. Officer-in-Charge, Records, the Rajputana Rifles, PIN-  
900106, C/o 56 APO.
6. PCDA (Pensions) (Army), Draupadi Ghat, Allahabad (UP)-  
211014.

.....Respondents

Ld. Counsel for the  
Respondents.

**Dr. Shailendra Sharma Atal**,  
Central Govt. Standing Counsel



**ORDER (Oral)**

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

(a) That this Hon'ble Tribunal may kindly be pleased to direct the opposite parties to allow the petitioner to join his services with effect from 26 April 2016 on the post of Rifle Man before opposite party No-4 or the opposite parties may be directed to sanction pension to the petitioner as his retirement is due in the month of 26<sup>th</sup> March, 2018.

(b) That any other orders which this Hon'ble Tribunal deems fit and proper in the circumstances of the case may also be passed in favour of the petitioner.

(c) That this Hon'ble Tribunal may graciously be pleased to allow the claim petition with all consequential benefits and with directions to the respondents to award the cost of the claim petition.

2. Applicant, No 16011550L Rifleman Pramod Kumar was enrolled in the Indian Army on 26.03.2001. During the course of service he was granted 15 days casual leave for the period 11.04.2016 to 25.04.2016. He was to report back for duty on 26.04.2016 but he failed to do so. An apprehension roll was issued on 27.04.2016 (annexure 'D'). Thereafter, a Court of Inquiry under Section 106 of Army Act, 1950 was held on 25.05.2016 which declared him deserter w.e.f. 26.04.2016. Since applicant neither rejoined his unit nor reported anywhere including his Training Centre, he was dismissed from service w.e.f. 20.10.2019 i.e. after 03 years from the date of desertion, being a peace area deserter, under the provisions of Army Act Section 20 (3) read with Rule 17 of Army Rules, 1954. Applicant has filed this O.A. for issuing

directions to the respondents to allow him to join the service and thereafter grant of service pension

3. Learned counsel for the applicant submitted that the applicant has worked in the Army with full devotion and dedication and his conduct was always appreciated by the higher authorities. He further submitted that while serving with 35 Infantry Brigade his Deputy Commandant was annoyed with him as he refused illegal orders given by him. He further submitted that due to the above reason, he was harassed frequently by conducting certain Court of Inquiries against him, however no punishment was awarded to him. His other submission is that after expiry of leave when he reported the unit, he was not allowed to join the duty. He further submitted that applicant has written three letters dated 15.03.2017 and 22.12.2017 to various authorities for his joining the service but no response has yet been received. He pleaded for issuing direction to the respondents to allow the applicant to join the Army and grant service pension as he has completed pensionable service.

4. On the other hand submission of learned counsel for the respondents is that the applicant while posted with 35 Infantry Brigade was involved in misbehaviour with seniors, drunken brawls and constant request for leave extension. He further submitted that despite repeated counselling, there was no improvement in his behaviour and discipline. His further

averment is that the applicant was a habitual offender who was punished several times on account of his overstaying leave and misbehaviour. He asserted that in the year 2016 when the unit was about to move for Exercise With Troops (EWT) the applicant preferred to proceed on 45 days part of annual leave to avoid moving with the Battalion. His other submission is that he was to report back for duty on 26.04.2016 but he never reported back and deserted from service. Accordingly, an apprehension roll was issued followed by a Court of Inquiry which declared him as a deserter. Learned counsel for the respondents further submitted that case under civil offences (IPC) 384 (offence of extortion), 377 (disgraceful conduct of an unnatural kind) and 511 is pending/subjudice against the applicant at the Learned Metropolitan Magistrate, Dwarka, Delhi for the offences committed by him on 21.06.2004. Besides the aforesaid offences, an FIR No 86/12 has also been lodged against him under IPC 342, 323, 504 and 509 and the case is pending at District Court, Mathura. He pleaded for dismissal of O.A. on the ground that since the applicant has never reported back to the unit from leave w.e.f. 26.04.2016, he was dismissed from service w.e.f. 26.04.2016 in terms of Section 20 (3) of Army Act, 1950 and a dismissed Army person is not entitled to gratuity and pension.



5. We have heard learned counsel for the parties and perused the material placed on record.

6. Admittedly, the applicant overstayed leave w.e.f. 26.04.2016 and never returned from leave granted to him on 11.04.2016. An apprehension roll was issued and after clear 30 days of absence, a Court of Inquiry was held and he was declared a deserter. After expiry of three years, he was dismissed from service. In absence of any reliable explanation for absence, the only conclusion was that applicant deserted the service voluntarily and intentionally.

7. In this regard para 22 of Army Order 43/2001/DV is relevant which for convenience sake is reproduced as under:-

*"22. A person subject to the Army Act or a reservist subject to Indian Reserve Forces Act, who does not surrender or is not apprehended, will be dismissed from the service under Army Act Section 19 read with Army Rule 14 or Army Act Section 20 read with Army Rule 17, as the case may be, in accordance with instructions given below :-*

*(a) After 10 years of absence/desertion in the following cases :-*

*(i) Those who desert while on active service, in the forward areas specified in Extra Ordinary Gazette SRO 172 dated 05 Sep 77 (reproduced on page 751 of MML Part III) or while serving with a force engaged in operations, or in order to avoid such service.*

*(ii) Those who desert with arms or*

*(iii) Those who desert due to subversive/espionage activities.*

*(iv) Those who commit any other serious offence in addition to desertion.*

*(v) Officers and JCOs/WOs (including Reservist officers and JCOs, who fail to report when required).*

*(vi) Those who have proceeded abroad after desertion.*

*(b) After 3 years of absence/desertion in other cases.*

*(c) The period of 10 years mentioned at sub-para (a) above may be reduced with specific approval of the COAS in special cases."*

8. Thus, the aforesaid Army Order clearly provides that an individual, who deserts from service when serving in peace area, can be dismissed from service after three years of desertion.

9. Contention of learned counsel for the respondents that applicant is not entitled to pensionary benefits as per para 41 (a) of Pension Regulations for the Army, 2008 (Part-I) is sustainable as it provides that an individual who is dismissed from service under the provisions of Army Act, is ineligible for pension or gratuity in respect of all previous service. For convenience sake, aforesaid para 41 (a) is reproduced as under:-

*"41 (a). An individual who is dismissed under the provisions of Army Act, 1950 or removed under the Rules made thereunder as a measure of penalty, will be ineligible for pension or gratuity in respect of all previous service. In exceptional case, however, the competent*

authority on submission of an appeal to that effect may at its discretion sanction pension/gratuity or both at a rate not exceeding that which would be otherwise admissible had he been retired/discharged on the same date in the normal manner."

10. In the case reported in (1986) 2 SCC 217, **Capt Virender Singh vs. Chief of the Army Staff**, the Hon'ble Apex Court has held as under:-

"Sections 38 and 39, and Sections 104 and 105 make a clear distinction between 'desertion' and 'absence without leave', and Section 106 prescribes the procedure to be followed when a person absent without leave is to be deemed to be deserter. Clearly every absence without leave is not treated as desertion but absence without leave may be deemed to be desertion if the procedure prescribed by Section 106 is followed. Since every desertion necessarily implies absence without leave the distinction between desertion and absence without leave must necessarily depend on the animus. If there is animus deserendi the absence is straightaway desertion.

13. As we mentioned earlier neither the expression 'deserter' nor the expression 'desertion' is defined in the Army Act. However we find paragraph 418 of the Artillery Records Instructions, 1981 refers to the distinction between desertion and absence without leave. It says:

418. A person is guilty of the offence of absence without leave when he is voluntarily absent without authority from the place where he knows, or ought to know, that his duty requires him to be. If, when he so absented himself, he intended either to quit the service altogether or to avoid some particular duty for which he would be required, he is guilty of desertion. Therefore, the



*distinction between desertion and absence without leave consists in the intention. (AO 159/72). When a soldier absents himself without due authority or deserts the service, it is imperative that prompt and correct action is taken to avoid complications at a later stage.*

*We also find the following notes appended to the Section 38 of the Army Act in the Manual of the Armed Forces:*

*2. Sub Section (1)-Desertion is distinguished from absence without leave under AA. Section 39, in that desertion or attempt to desert the service implies an intention on the part of the accused either (a) never to return to the service or (b) to avoid some important military duty (commonly known as constructive desertion) e.g., service in a forward area, embarkation for foreign service or service in aid of the civil power and not merely some routine duty or duty only applicable to the accused like a fire piquet duty. A charge under this section cannot lie unless it appears from the evidence that one or other such intention existed; further, it is sufficient if the intention in (a) above was formed at the time during the period of absence and not necessarily at the time when the accused first absented himself from unit/duty station.*

*3. A person may be a deserter although here-enrolls himself, or although in the first instance his absence was legal (e.g. authorised by leave), the criterion being the same, viz., whether the intention required for desertion can properly be inferred from the evidence available (the surrounding facts and the circumstances of the case).*

*4. Intention to desert may be inferred from a long absence, wearing of disguise, distance from the duty station and the manner of termination of absence e.g., apprehension but such facts though relevant are only prima facie, and not conclusive, evidence of such intention. Similarly the fact that an accused has been*



declared an absentee under AA. Section 106 is not by itself a deciding factor if other evidence suggests the contrary.

In Black's Law Dictionary the meaning of the expression 'desertion' in Military Law is stated as follows:

Any member of the armed forces who-(1) without authority goes or remains absent from his unit, organization, or place of duty with intent to remain away therefrom permanently; (2) quits his unit, organization, or place of duty with intent to avoid hazardous duty or to shirk important service; or (3) without being regularly separated from one of the armed forces enlists or accepts an appointment in the same or another one of the armed forces without fully disclosing the fact that he has not been regularly separated, or enters any foreign armed service except when authorized by the United States; is guilty of desertion. Code of Military Justice, 10 U.S.C.A. 885".

11. In another case of **Shish Ram vs. Union of India & Ors**, (2012) 1 SCC, page 290, the appellant in that case was declared deserter with effect from 19.06.1978 and was dismissed from service with effect from 20.10.1981 that is after expiry of three years. The appellant challenged his dismissal order, however, no infirmity in the said order was found by the Hon'ble Apex Court and dismissal order was confirmed.

12. While perusing the records, we also find that the applicant has been a habitual offender who was punished several times on account of his lapses as under:

S. No.	AA Sec	Date of punishment	Punishment awarded	Awarding officer	Type of offence
1.	39(b)	27.10.2003	28 days RI	Col RP Joshi, CO 20 Raj Rif	OSL (Fd/Nowshera)
2.	39(b)	18.10.2006	07 days RI	Col Gurjap Singh, CO 20 Raj Rif	OSL (Peace/Faizabad)
3.	63	29.06.2011	28 days RI	Col Rajeev Kumar, CO, 20 Raj Rif	Prejudicial to Good Order and Mil Discp (Peace/Delhi)
4.	39(a)	04.10.2012	14 days RI	Col Anirudh Chauhan, CO, 20 Raj Rif	AWL (Peace/Delhi)
5.	39(a)	07.03.2013	07 days RI	Col Anirudh Chauhan, CO, 20 Raj Rif	AWL (Peace/Delhi)
6.	48	19.05.2014	14 days RI	Col Anirudh Chauhan, CO, 20 Raj Rif	Intoxication (Fd/Glacier)
7.	39(a)	07.10.2015	28 days RI	Col Rajneesh Tyagi, CO, 20 Raj Rif	AWL (Peace/Shahjahanpur)

The aforesaid punishments awarded by different Commanding Officers clearly show that the applicant had no respect towards the disciplined organization like Army.

13. The applicant was about to complete his pensionable service and keeping that view in mind a lenient view would have been taken to grant service pension, but in our considered opinion desertion is the abandonment of a military duty without permission and therefore, a deserted soldier has no sympathy.

14. Keeping in view the aforesaid legal position when we examine the facts and circumstances of the instant case, it is clear that the defence of the applicant, that he tried to join

from leave but was denied, is absolutely without substance. The applicant was a deserter and did not report to any authority after 25.04.2016 i.e. the date till he was on leave. This itself shows that the applicant had no intention to return to his unit. Admittedly, after unauthorised absence of the applicant, a Court of Inquiry was held and he was declared a deserter from the date of his absence i.e. 26.04.2016. Three years from the date of his desertion, he was dismissed from service by following due process. Hence, we do not find any illegality or irregularity in the impugned order. In the Army discipline cannot be overlooked in such matters. Therefore, we do not find any substance in the present O.A. which deserves to be dismissed. It is accordingly, **dismissed**.

15. So far as the claim for service pension is concerned, dismissed Armed Forces personnel is not considered as an ex-serviceman and also not entitled to any pensionary benefits as per the policy in vogue.

16. No order as to costs.

17. Pending misc applications, if any, shall stand disposed off.



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

O.A. No. 231 of 2021

**Ex Ris/Clk Manoj Kumar 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><b><u>18.01.2022</u></b>  <b><u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u></b>  <b><u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></b></p> <p>Heard Shri V.P. Pandey, Ld. Counsel for the applicant and Shri Rajiv Pandey, Ld. Counsel for the respondents are present.</p> <p>Learned counsel for the applicant submits that when discharged from service applicant was suffering from diabetes @ 20% for life which was attributable to service. He further submits that despite applicant's disability being attributable to military service, the same has been wrongly denied by the respondents stating the same was not attributable to military service, therefore, claim for grant of disability element be allowed.</p> <p>Per contra, submission of learned counsel for the respondents is that the instant O.A. has been filed without availing the opportunities of departmental appeal as provided in Rules. He, therefore, submits that since instant O.A. has been filed without availing the remedies, as provided in rules and wherefore is barred under Section 21 of the AFT Act, 2007, it should be dismissed as such.</p> <p>During the course of hearing, learned counsel for the applicant conceded that applicant has filed application without exhausting remedies of appeal provided under the rules. He, however, submitted that applicant should be permitted to withdraw the application with liberty to avail the remedy provided under rules.</p> <p>Considering that this O.A. has been filed without exhausting remedy available under rules and for which it may be dismissed, we think it proper to allow applicant to withdraw the O.A. with liberty to exhaust the remedy available under rules.</p> <p>Accordingly, Original Application is dismissed being withdrawn with liberty to approach the appropriate forum as per rules.</p>



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

Reserved

E- Court No.1

O.A. No 287 of 2021

Hav Ram Naresh Singh (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>27.01.2022</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>Order pronounced today in the open Court.</p> <p>O.A. No. 287 of 2021, Hav Ram Naresh Singh (Retd), vs. Union of India and others is <b>dismissed</b>.</p> <p>For order, see our judgment passed on separate sheets.</p> <p>Misc. Application, if any, pending for disposal, shall be treated to have been disposed of.</p>

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

O.A. No. 364 of 2021

Ex. MWO Hari Narayan Shukla  
Legal Practitioner for the Applicant

Applicant

**Versus**

Union of India & Others  
Legal Practitioner for Respondents

Respondents

Notes of the registry	<b>Orders of the Tribunal</b>
	<p><b><u>17.01.2022</u></b> <b><u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u></b> <b><u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></b></p> <p>Counter Affidavit filed by the respondents and Rejoinder Affidavit filed by the applicant are taken on record.</p> <p>Heard Shri Sudhir Kumar Singh, Ld. Counsel for the applicant and Shri Arvind Kumar Pandey, Ld. Counsel for the respondents.</p> <p>Original Application is <b>allowed</b>.</p> <p>For order, see our Judgment passed on separate sheets.</p> <p>Misc. Application, if any, pending for disposal, shall be treated to have been disposed of.</p>

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

O.A. No. 456 of 2021

**Rect Satyendra Kumar Dwivedi**  
By Legal Practitioner for the Applicant

Applicant

**Versus**

**Union of India & Others**  
By Legal Practitioner for Respondents

Respondents

<b>Notes of the Registry</b>	<b>Orders of the Tribunal</b>
	<p><b><u>02.02.2022</u></b> <b><u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u></b> <b><u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></b></p> <p>On the case being taken up for hearing Shri Vinay Pandey, Ld. Counsel for the applicant and Shri Arun Kumar Sahu, Ld. Counsel for the respondent Nos. 1 to 3 and Shri Hari Prasad Srivastava, Ld. Counsel for the respondent Nos. 4 &amp; 5 are present.</p> <p>Counter affidavit has been filed today by respondent Nos. 4 &amp; 5 is taken on record.</p> <p>Learned counsel for the applicant seeks and is allowed two weeks time to file rejoinder affidavit.</p> <p>List on <b>04.03.2022</b>.</p>

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

O.A (A) No.391 of 2018

**Ravindra Singh**  
**(Through Smt. Surekha, Legally Wedded Wife)**  
By Legal Practitioner for the Appellant

Appellant

**Versus**

**Chief of Army Staff & Others**  
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><b><u>17.01.2022</u></b> <b><u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u></b> <b><u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></b></p> <p>On the case being taken up for hearing Co. Ashok Kumar (Retd) and Shri Rohit Kumar, Ld. Counsel for the applicant and Shri Kaushik Chatterjee, Ld. Counsel for the respondents are present.</p> <p>Pleadings have been exchanged between the parties and the case is ripe for hearing.</p> <p>The matter needs physical hearing.</p> <p>List on <b>23.03.2022</b> for physical hearing.</p> <p>On the date fixed, learned counsel for the respondents shall produce original documents pertaining to case for perusal of the Bench.</p>



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

O.A (A) No. 373 of 2019

**Ex. Hav/SKT Kanhaiya Singh**  
By Legal Practitioner for the Appellant

Appellant

**Union of India & Others**  
By Legal Practitioner for Respondents

Versus

Respondents

**Notes of  
the  
Registry**

**Orders of the Tribunal**

17.01.2022

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, Ld. Counsel for the appellant and Shri Asheesh Agnihotri, Ld. Counsel for the respondents are present.

The matter needs physical hearing.

List on **28.03.2022** for physical hearing.

On the date fixed, learned counsel for the respondents shall produce original documents pertaining to case for perusal of the Bench.

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

T.A. No. 1053 of 2010

**Pitambar Datt Nainwal**  
**(Deceased) Through His Wife Smt. Kalawati Devi**  
By Legal Practitioner for the Petitioner

**Petitioner**

**Versus**

**Chief of Army Staff & Others**  
By Legal Practitioner for Respondents

**Respondents**

**Notes of  
the  
Registry**

**Orders of the Tribunal**

**17.01.2022**

**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 SK Singh, Ld. Counsel for the petitioner and Shri Ashish Kumar Singh, Ld. Counsel for the respondents are present.

The matter needs physical hearing.

List on **28.03.2022** for physical hearing.

On the date fixed, learned counsel for the respondents shall produce original documents pertaining to case for perusal of the Bench.

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

T.A. No. 52 of 2017

**Lt. Dharendra Tiwari (Retd)**  
By Legal Practitioner for the Petitioner

**Petitioner**

**Versus**

**Union of India & Others**  
By Legal Practitioner for Respondents

**Respondents**

Notes of the Registry	Orders of the Tribunal
	<p><u>17.01.2022</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 Virat Anand Singh, Ld. Counsel for the petitioner and Shri Kaushik Chatterjee, Ld. Counsel for the respondents are present.</p> <p>The matter needs physical hearing.</p> <p>List on <b>29.03.2022</b> for physical hearing.</p> <p>On the date fixed, learned counsel for the respondents shall produce original documents pertaining to case for perusal of the Bench.</p>