

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

**M.A. No 966 of 2019 with M.A. No 967 of 2019 Inre O.A. No 404 of 2018**

**Ex Nk Mahendra Singh**  
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>13.10.2020</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 style="text-align: center;"><b><u>M.A. No 966 of 2019 with M.A. No 967 of 2019</u></b></p> <p>Heard Shri VP Pandey, learned counsel for the applicant and Dr. Shailendra Sharma Atal, learned counsel for the respondents.</p> <p>This is an application to recall the order dated 02.04.2019, passed in O.A. No 404 of 2018, by which the O.A. has been partly allowed and while setting aside the letter dated 07.02.2007, the respondents have been directed to grant disability element of pension to the applicant @ 30% for life wef 21.10.2012 to be rounded of to 50% for life wef 19.12.2014.</p> <p>Submission of learned counsel for the applicant is that applicant had filed the O.A No 404 of 2018 for the grant of disability element to him from the date of discharge from service alongwith arrears and interest. The Tribunal took up this case on 02.04.2019 to decide in view of settled position of law regarding disability element and, therefore, no counter affidavit was invited and Original Application was partly allowed with following order:-</p> <p style="text-align: center;"><i>"In view of the above, the Original Application No 404 of 2018 deserves to be partly allowed, hence partly allowed. The order dated 07.02.2007, enclosed at Annexure A-1 of the Original Application, is set aside. The respondents are directed to grant disability element of pension to the applicant @ 30% for life w.e.f. 21.10.2012 i.e. the date on which the applicant took up his case for disability element with Record Office. His disability element of 30% for life would stand rounded off to 50% for life w.e.f three years preceding the date of filing this O.A. The date of filing this Original Application is 19.12.2017. The respondents are directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @ 9% per annum till actual payment."</i></p>

Learned counsel for the applicant submits that since during pendency of the aforesaid O.A., respondents had accepted the applicant's case treating him entitled to get disability element @ 30% for life from the date of discharge i.e. 01.10.2006 and had issued a Corrigendum PPO No- 18720060002-0105 dated 02 July 2018, copy whereof has been filed as annexure R-2 to the recall application, O.A. was liable to be dismissed being infructuous.

Learned counsel for the applicant further submits that the aforesaid PPO was communicated to PDA vide letter dated 11 Dec 2018 of Senior Record Officer, OIC Records, with copy to applicant. He further submits that applicant had saved the Mobile No. of his counsel, who was prosecuting the aforesaid O.A., in his mobile phone which had lost as a result of which he could not communicate him about his claim being accepted by the respondents, and on account of which when the Tribunal took up the O.A. for hearing on 02.04.2019, this fact could not be brought to the notice of the Tribunal and O.A. was partly allowed instead being dismissed being infructuous. He further submits that applicant came to know about the order dated 02.04.2019 of the Tribunal after receiving the copy of the letter dated 20.09.2019 of Additional Director General, Personnel Services, AGs Branch, Integrated HQs of MoD (Army), DHQ PO New Delhi. Thereafter, applicant rushed to Lucknow and contacted a new Counsel and got the instant recall application filed.

Learned counsel for the applicant submits that Tribunal has not passed the impugned order on merit, but in view of settled position of law. He further submits that in case of O.A being taken to be decided on merit, counter affidavit would be invited and in that case facts relating to issuance of Corrigendum PPO would come into notice of Tribunal and the impugned order would not be passed rather O.A. being infructuous would be dismissed. He further submits that in the circumstances stated above, impugned order be recalled and while directing respondents to pay disability element to applicant @ 30% for life with stipulation to same to be rounded off to 50% wef 01.10.2006, in terms of Corrigendum PPO dated 02.07.2018, O.A. be dismissed being infructuous.

Dr. Shailendra Sharma Atal, learned counsel for the respondents has opposed the prayer saying impugned order being passed after hearing learned counsel of both sides, it is not recallable. He further submits that if applicant felt aggrieved with the impugned order, he should have filed a Review based on the submissions made above.

However, Dr Shailendra Sharma Atal does not dispute that Corrigendum PPO No- 18720060002-0105 dated 02 July 2018 was issued in the matter enabling applicant to receive disability pension @ 30% for life wef 01.10.2006 during pendency of application and after impugned order being passed in O.A. the said PPO has been recalled and direction has been issued to all concerned regarding payment of disability element to applicant in terms of the impugned order. He also admits that once applicant's claim being accepted and Corrigendum PPO issued, O.A. was liable to be dismissed being infructuous.

Upon hearing the submissions of learned counsel of both sides what we notice is that applicant had filed the O.A. for grant of disability element together with arrear with interest from the date of discharge i.e. 01.10.2006. We also notice that during pendency of O.A., respondents considered the matter at their own and on finding applicant's case genuine they issued corrigendum PPO No. 18720060002-0105 dated 02.07.2018 enabling applicant to receive disability pension @ 30% for life with facility of rounding of to 50% wef 01.10.2006. We also notice that after applicant's case being accepted by the respondents and corrigendum PPO issued, there could be no justification for Tribunal proceeding with O.A. and passing order, rather O.A. was liable to be dismissed being infructuous. However, on account of facts relating to applicant's case being accepted by the respondents being not brought to the notice of this Tribunal while hearing the case on 02.04.2019, impugned order was passed, for which both applicant and respondents are equally liable. The respondents being well in knowledge of the corrigendum PPO, and O.A. being infructuous on account of that, when the case was taken up for hearing, it was their's duty also to inform the Tribunal through their

counsel which they utterly failed. The impugned order being a result of suppression of material facts is not be liable to sustain for simple reason that it has been passed in an infructuous application. With this view of matter we find that recall application deserves to be allowed.

Accordingly, delay is condoned and recall application is allowed. Respondents are directed to pay disability element to applicant @ 30% for life to be rounded of to 50% wef 01.10.2006 in terms of corrigendum PPO dated 02.07.2018. Application stands decided accordingly.

**O.A. No 404 of 2018**

In view of order passed above in recall application, O.A. is dismissed being infructuous.

**(Vice Admiral Abhay Raghunath Karve)**  
Member (A)

**(Justice Umesh Chandra Srivastava)**  
Member (J)

UKT/-

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

**O.A. No 309 of 2020**

**Alok Kumar Yadav**  
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>13.10.2020</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 style="text-align: justify;">Heard Shri Parijaat Belaura, learned counsel for the applicant and Shri Shailendra Sharma Atal, learned counsel for the respondents on interim relief.</p> <p style="text-align: justify;">Learned counsel for the applicant submits that applicant is the son of an ex- serviceman Shri Yash Pal Singh who became member of Ex Servicemen Contributory Health Scheme (ECHS) run by Ministry of Defence, Department of Ex- Servicemen Welfare on the pattern of CGHS to provide quality health care to Ex Servicemen and their dependents. He further submits that as per rules applicable to ECHS member, son is entitled to the benefit of scheme upto 24 years of his age and daughter is entitled until she gets earning or get married, whichever is earlier, but in case of permanent disability of any kind (physical or mental), if disability is more than 40% then in that case he or she is entitled to treatment irrespective of his or her age. He further submits that in 2011 applicant underwent Renal Transplantation and since then he was regularly given check up and treatment by the Nephrology Department of CH (CC). He further submits that in the same year when applicant was only 22 years of age, he was detected to have been suffering from Renal Disorder and his disability was assessed at 90%. A disability certificate to this effect has also been issued to applicant by the Command Hospital, Lucknow.</p>

Learned counsel for the applicant further submits that applicant's condition deteriorated in 2020 and he was advised for dialysis after consultation with Nephrologist CH (CC) Lucknow on 31.08.2020 and he was referred to Charak Hospital & Research Centre, Dubagga, Hardoi Road, Lucknow, which is an empanelled hospital, where his dialysis was done twice a week. Medicines prescribed to applicant by Charak Hospital were given by CH (CC), Lucknow after being counter signed by the HoD Nephrology Department. On 30.09.2020, HoD, Nephrology Department all of sudden refused to counter sign the prescriptions of medicines on the premise that kidney failure and Transplant of kidney are not covered in ECHS disability list. He further submits that MoD, Department of Ex Servicemen Welfare has issued a letter dated 05.12.2017 regarding ECHS membership to married disabled son. Para 7 of the letter says that as per existing rules, son of ECHS member suffering from any permanent disability (physical or mental) subject to disability 40% or higher in terms of the relevant Act mentioned above is eligible for benefits irrespective of age limit and irrespective of the fact that he is married or not.

Learned counsel for the applicant thus submits that HoD at Nephrology Department has wrongly refused to counter sign the prescriptions of medicines and thereby stopped giving treatment to applicant as a result of which his life is in imminent danger and needs immediate attention of the Tribunal.

In reply, Dr. Shailendra Sharma Atal Advocate, learned counsel for the respondents does not deny applicant being son of an ECHS member. He also does not deny that applicant was given treatment at Charak Hospital and Research Centre which is an empanelled hospital under ECHS. What he submits is that applicant's treatment was never stopped by the HoD, Nephrology Department, Command Hospital, Lucknow rather he was simply advised to seek clarification, if case of Kidney failure and transplant of kidney is covered under ECHS disability list. Thus, he submits that applicant's request being not based on true facts, he is not entitled to interim relief.

It is not disputed that applicant is the son of an ECHS member. It is also not in dispute that as per existing rules, son of an ECHS member is entitled to treatment upto age of 25 years and daughter is entitled until she gets earning or gets married, whichever is earlier. It is also not in dispute that MoD which runs ECHS, has issued a letter dated 05.12.2017 regarding ECHS membership to married disabled son, copy whereof is filed alongwith O.A. Para 7 of the letter speaks that as per existing rules a son of ECHS member suffering from any permanent disability of any kind (physical/ mental) subject to disability being 40% or higher in terms of the relevant Acts mentioned above is eligible for ECHS benefit irrespective of age limit and irrespective of the fact that he is married or not. From this, it is clear that applicant is covered under the scheme as he has permanent disability at 90%.

During the course of hearing, learned counsel for the respondents failed to show that case of kidney failure and kidney transplant is not covered in ECHS disability list. Contrarily, applicant has been treated at Charak Hospital and Research Centre, Lucknow, which is an empanelled hospital under ECHS, for the same disease he is suffering with. Considering the applicant's disability and stage and nature of his disease, we direct the respondents to restart and continue applicant's treatment from today itself, without fail, until further orders of Tribunal.

Registry is directed to furnish copy of this order to learned counsel for the applicant and Respondent No 3 also to ensure compliance of the order.

**(Vice Admiral Abhay Raghunath Karve)**  
Member (A)

**(Justice Umesh Chandra Srivastava)**  
Member (J)

UKT/-

