

**Form No. 4**  
**{See rule 11(1)}**  
**ORDER SHEET**  
**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**  
**Court No.3 (Sl. No.1)**

**O.A. No. 30 of 2020 with M.A. No. 30 of 2020**

**Ex Nk Pawan Kumar** Applicant  
By Legal Practitioner for the Applicant

**Versus**

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

**Judgment with Lt Gen RK Anand.**

Notes of the Registry	Orders of the Tribunal
	<p><b><u>20.12.2022</u></b> <b><u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u></b> <b><u>Hon'ble Lt Gen Rakesh Kumar Anand, Member (A)</u></b></p> <p><b><u>M.A. No. 30 of 2020</u></b></p> <p>1. This is an application for condonation of delay in filing Original Application. As per office report, there is delay of 04 years, 10 months and 08 days in filing Original Application.</p> <p>2. Heard Shri Amrendra Singh, learned counsel for the applicant and Shri Ashish Kumar Singh, learned counsel for the respondents on delay condonation application.</p> <p>3. Learned counsel for the applicant submits that delay is not deliberate. He further submits that being a pensionary matter, delay may be condoned.</p> <p>4. On the other hand, learned counsel for the respondents opposed the prayer and submitted that delay has not been properly explained.</p> <p>5. Cause shown is sufficient and supported by affidavit. Accordingly, delay is condoned. M.A. No. 30 of 2020 is disposed off.</p> <p><b><u>O.A. No. 30 of 2020</u></b></p> <p>6. This O.A. has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for grant of following reliefs:-</p> <p>(i) The Hon'ble Tribunal may kindly be pleased to direct the respondents for grant of promotional pay scale to the applicant to the Havaldar from Nayak, from the date of his promotion was due, in service with full dignity and with all consequential benefits.</p> <p>(ii) To pay arrears of the promotional pay scale along with 18% interest from the date of his promotion was due.</p> <p>(iii) To award the cost of the petition in favour of the applicant from the respondents.</p> <p>(iv) Any other or further orders which this Hon'ble Tribunal deems fit</p>

and proper under the circumstances be granted to the applicant.

7. Brief facts of the case are that the applicant was enrolled in the Army on 25.02.1997. After completion of his training he was inducted in 6<sup>th</sup> Battalion of the Rajputana Rifles w.e.f. 25.11.1997. Thereafter, he was posted to 22<sup>nd</sup> Battalion of the Rajputana Rifles w.e.f. 02.04.2010. During the course of his service he was awarded 'Severe Reprimand' on 04.01.2014 under Section 42 (e) for the offence 'Neglect to obey general local or other order'. Earlier, in the year 2011 while serving with 41 Task Force, where he was inducted for three years, he was downgraded to low medical category. Due to being placed in low medical category, he submitted an application for premature discharge from service which was accepted vide letter dated 19.03.2014 and he was discharged from service w.e.f. 31.08.2014 (AN). The applicant was detailed for Naik to Havildar promotion cadre as per his seniority roster which is a mandatory quantitative requirement for promotion to the rank of Havildar. However, he gave his unwillingness to attend the cadre course, owing to which he was not promoted to the rank of Havildar alongwith his batchmates. However, the applicant was granted MACP to the rank of Havildar w.e.f. 25.02.2013 and he is in receipt of MACP pension w.e.f. 01.09.2014. Since the applicant was not promoted to the rank of Havildar, it is in this perspective that this O.A. has been filed.

8. Learned counsel for the applicant submitted that the applicant is entitled to get promotion to the post of Havildar but his request was denied even after submitting several requests and representations in this regard. It was further submitted that due to various family problems he submitted an application for voluntary discharge from service in the year 2012 but after waiting for two years it was belatedly accepted and he was discharged from service w.e.f. 31.08.2014 after completion of 16 years service, but his request for grant of promotion to the post of Havildar has not been given due consideration. He pleaded for grant of promotion to the post of Havildar and grant of pension of the rank.

9. Per contra, learned counsel for the respondents submitted that the applicant was enrolled in the Army on 25.02.1997. He further submitted that while serving with 22 Rajputana Rifles he was awarded 'Severe Reprimand' on 04.01.2014 under Section 42 (e) of the Army Act, 1950 for an offence 'neglect to obey general local or other order'. It was further submitted that on

07.04.2012 the applicant submitted an application for premature discharge from service which was waitlisted at the Battalion level for processing the same as per his seniority. He was discharged from service w.e.f. 31.08.2014.

10. Learned counsel for the respondents further submitted that the applicant was detailed for Naik to Havildar promotion cadre as per his seniority roster but since he submitted his unwillingness to undergo promotion cadre, he was not promoted to the rank of Havildar along with his batchmates. He, however submitted that the applicant was granted MACP to the rank of Havildar w.e.f. 25.02.2013 which he has received and accordingly, pension was sanctioned in the rank of MACP Havildar. He pleaded for dismissal of O.A. on the ground that since the applicant refused to undergo promotion cadre course, he was not granted promotion to the rank of Havildar.

11. Heard learned counsel for the parties and perused the record.

12. It is not in dispute that the applicant was enrolled in the Army on 25.02.1997 and he was discharged from service on own request w.e.f. 31.08.2014 (AN). During the course of his service he was sent to 41 Task Force for the period of three years on 07.08.2011 but he was returned back to his parent unit on 08.12.2012 within 17 months due to downgradation of his medical category.

13. On 07.04.2012 applicant submitted an application for premature retirement which was processed as per his seniority at unit level and ultimately he was discharged from service w.e.f. 31.08.2014 (AN).

14. During the course of his service he was awarded 'Severe Reprimand' by the Commanding Officer on 04.01.2014 under Section 42 (e) of the Army Act, 1950 due to negligence to obey general or local order. Earlier, he was detailed for Naik to Havildar promotion cadre as per his seniority roster which is a mandatory requirement for promotion to the rank of Havildar for which he submitted an unwillingness certificate and refused to undergo the promotion cadre course.

15. Respondents contention is that the applicant was granted MACP Havildar and he was receiving pay for that rank while in service. In regard to this we have perused applicant's pay slip for the month of February, 2014 and we find that the applicant was in receipt of MACP Havildar pay prior to his date of discharge and accordingly, he was granted service pension.

16. The applicant has filed this O.A. after an inordinate delay of approx six

years but the matter being related to pension, delay was condoned. In the instant case we find that since the applicant has himself submitted an unwillingness certificate for promotion cadre, he is not eligible to claim promotion to the rank of Havildar.

17. In view of the above, O.A. being devoid of merit, is **dismissed**.

18. No order as to costs.

**(Lt Gen Rakesh Kumar Anand)**  
Member (A)

**(Justice Anil Kumar)**  
Member (J)

rathore

**Form No. 4**  
**{See rule 11(1)}**  
**ORDER SHEET**  
**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**  
**Court No.3 (Sl. No.2)**

**O.A. No. 768 of 2022**

**Smt Laxmi Devi Widow D/o Late Ex. Sep Avadhesh Singh**                      Applicant  
By Legal Practitioner for the Applicant

**Versus**

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

<b>Notes of the Registry</b>	<b>Orders of the Tribunal</b>
	<p><b><u>20.12.2022</u></b> <b><u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u></b> <b><u>Hon'ble Lt Gen Rakesh Kumar Anand, Member (A)</u></b></p> <p style="text-align: center;">Heard Shri Vijay Kumar Pandey, Shri Girish Tiwari, Shri Sandeep Tripathi and Shri Vishnu Kant Awasthi, Ld. Counsel for the applicant and Mrs Anju Singh, Ld. Counsel for the respondents.</p> <p style="text-align: center;">Heard.</p> <p style="text-align: center;">O.A. is <b>allowed</b>.</p> <p style="text-align: center;">For orders, see our judgment passed on separate sheets.</p> <p style="text-align: center;"><b>(Lt Gen Rakesh Kumar Anand)</b> <b>Member (A)</b></p> <p style="text-align: center;"><b>(Justice Anil Kumar)</b> <b>Member (J)</b></p> <p>rathore</p>

**Form No. 4**  
**{See rule 11(1)}**  
**ORDER SHEET**  
**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**  
**Court No.3 (Sl. No.3)**

**O.A. No. 776 of 2022**

**Poonam Choudhary W/o Lt Col Abhinav Choudhary**  
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>20.12.2022</u></b> <b><u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u></b> <b><u>Hon'ble Lt Gen Rakesh Kumar Anand, Member (A)</u></b></p> <p>On the case being taken up for hearing Shri Abhinav Bhattacharya, Ms Divya Singh and Shri Amber Lal Gupta, Ld. Counsel for the applicant and Shri Ashish Kumar Singh, Ld. Counsel for the respondents are present.</p> <p>This case was listed in Registrar Court on 23.09.2022 for exchange of pleadings and it was to be listed before this Bench on 21.12.2022 but inadvertently it has been listed today.</p> <p>Learned counsel for the respondents prays for and is granted four weeks further time to file counter affidavit.</p> <p>List on <b>30.01.2023</b>.</p> <p style="text-align: center;"><b>(Lt Gen Rakesh Kumar Anand)</b> Member (A)</p> <p style="text-align: center;"><b>(Justice Anil Kumar)</b> Member (J)</p> <p>rathore</p>

**Form No. 4**  
**{See rule 11(1)}**  
**ORDER SHEET**  
**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**  
**Court No.3 (Sl. No.4)**

**O.A. No. 798 of 2022**

**Smt Birbala W/o Late Ex Nk (TS) Sadhu 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>20.12.2022</u></b> <b><u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u></b> <b><u>Hon'ble Lt Gen Rakesh Kumar Anand, Member (A)</u></b></p> <p>On the case being taken up for hearing Shri Vijay Kumar Pandey, Shri Sandeep Tripathi and Shri Vishnu Kant Awasthi, Ld. Counsel for the applicant and Shri R.C. Shukla, Ld. Counsel for the respondents are present.</p> <p>Learned counsel for the respondents prays for and is granted four weeks further time to file counter affidavit.</p> <p>List on <b>30.01.2023</b>.</p> <p style="text-align: center;"><b>(Lt Gen Rakesh Kumar Anand)</b> <b>Member (A)</b></p> <p style="text-align: right;"><b>(Justice Anil Kumar)</b> <b>Member (J)</b></p> <p>rathore</p>

**Form No. 4**  
**{See rule 11(1)}**  
**ORDER SHEET**  
**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**  
**Court No.3 (Sl. No.5)**

**O.A. No. 806 of 2022 with M.A. No. 1004 of 2022**

**Ex Hav (Hony Nb Sub) Shiv Nandan Singh Rathore** Applicant  
By Legal Practitioner for the Applicant

**Versus**

**PCDA (P), Allahabad & Ors** Respondents  
By Legal Practitioner for Respondents

<b>Notes of the Registry</b>	<b>Orders of the Tribunal</b>
	<p><b><u>20.12.2022</u></b> <b><u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u></b> <b><u>Hon'ble Lt Gen Rakesh Kumar Anand, Member (A)</u></b></p> <p><b><u>M.A. No. 1004 of 2022</u></b></p> <p>1. This is an application for condonation of delay in filing Original Application. As per office report, there is delay of 14 years, 03 months and 09 days in filing Original Application.</p> <p>2. Heard Shri Virendra Kumar Gupta, Ld. Counsel for the applicant and Dr. Shailendra Sharma Atal, Ld. Counsel for the respondents on delay condonation application.</p> <p>3. Learned counsel for the applicant submits that delay is not deliberate. He further submits that being a pensionary matter, delay may be condoned.</p> <p>4. On the other hand, learned counsel for the respondents opposed the prayer and submitted that delay has not been properly explained.</p> <p>5. Cause shown is sufficient and supported by affidavit. Accordingly, delay is condoned. M.A. No. 1004 of 2022 is disposed off.</p> <p><b><u>O.A. No. 806 of 2022</u></b></p> <p>6. This O.A. has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 through which applicant has prayed for revision of his pension in view of Circular No 631 dated 05.03.2020.</p> <p>7. The applicant was enrolled in the Army on 31.12.1963 and he was discharged from service w.e.f. 31.12.1987 on completion of terms of engagement. After discharge from service he was granted pension vide PPO No S/115231/1987 which was revised from time to time. The applicant was</p>

also granted honorary rank of Naib Subedar after retirement and as per PCDA (Pension), Allahabad Circular No 631 dated 05.03.2020 he is eligible for grant of pension in the rank of Honorary Naib Subedar. The respondents have not disputed that applicant is not entitled to revision of his pension. He submitted that in regard to revision of pension to the affected persons, instructions have already been issued to all the Pension Disbursing Authorities (PDAs) including Treasury Officers. Accordingly, vide order dated 07.10.2022 notice was issued to respondent No 2 (Treasury Officer, Farrukhabad) on 15.11.2022 to represent the matter on 20.12.2022 but no one has turned up.

8. In view of the above, O.A. is **allowed**.

9. Treasury Officer, Farrukhabad (Fatehgarh) is directed to revise pension of the applicant in view of Circular No 631 dated 05.03.2020 within a period of one month after receipt of certified copy of this order. Default will invite interest @ 8% p.a.

10. No order as to costs.

**(Lt Gen Rakesh Kumar Anand)**  
Member (A)

**(Justice Anil Kumar)**  
Member (J)

rathore

**Form No. 4**  
**{See rule 11(1)}**  
**ORDER SHEET**  
**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**  
**Court No.3 (Sl. No.6)**

**O.A. No. 828 of 2022**

**MWO (HFO) Bhawan Nath Giri (Retd)**  
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>20.12.2022</u></b> <b><u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u></b> <b><u>Hon'ble Lt Gen Rakesh Kumar Anand, Member (A)</u></b></p> <p>1. Counter affidavit filed by the respondents is taken on record.</p> <p>2. Heard Shri Ravi Kumar Yadav, learned counsel for the applicant and Shri SN Pandey, learned counsel for the respondents and perused the record.</p> <p>3. Learned Counsel for the applicant submits that after the Six Central Pay Commission, the Central Government fixed 1<sup>st</sup> Jan/1<sup>st</sup> July, as the date of increment for all Government Employees, thereafter, the applicant being retired on 31.12.2021 is entitled for grant of last increment due on 01.01.2021 as per decision of the Hon'ble Madras High Court in the case of <b><i>P. Ayamperumal Versus the Registrar, Central Administrative Tribunal, Madras Bench and Others</i></b> (W.P. No. 15732 of 2017, decided on 15.09.2017).</p> <p>4. On the other hand, Ld. Counsel for the respondents contended that the applicant had served for complete one year from the date of his last annual increment, but he had not been granted annual increment as on the date of his discharge i.e. 31.12.2021 as per policy in vogue since the date of annual increment falls on the following day i.e. 01.01.2022. Therefore, benefit of the Hon'ble Madras High Court order being <i>in personam</i> cannot be extended to the applicant and hence, Original Application is liable to be dismissed.</p> <p>5. The law on notional increment has already been settled by the Hon'ble Madra High Court in the case of <b><i>P. Ayamperumal Versus the Registrar, Central Administrative Tribunal, Madras Bench and Others</i></b> (Supra).</p>

Against the said Judgment the Union of India had preferred Special Leave Petition (Civil) Diary No.22282 of 2018 which was dismissed by the Hon'ble Supreme Court vide order dated 23.07.2018. The relevant portion of the Judgment passed by the Hon'ble Madras Court is excerpted below:-

*"5. The petitioner retired as Additional Director General, Chennai on 30.06.2013 on attaining the age of superannuation. After the Sixth Pay Commission, the Central Government fixed 1st July as the date of increment for all employees by amending Rule 10 of the Central Civil Services (Revised Pay) Rules, 2008. In view of the said amendment, the petitioner was denied*

*the last increment, though he completed a full one year in service, i.e., from 01.07.2012 to 30.06.2013. Hence, the petitioner filed the original application in O.A.No.310/00917/2015 before the Central Administrative Tribunal, Madras Bench, and the same was rejected on the ground that an incumbent is only entitled to increment on 1st July if he continued in service on that day.*

*6. In the case on hand, the petitioner got retired on 30.06.2013. As per the Central Civil Services (Revised Pay) Rules, 2008, the increment has to be given only on 01.07.2013, but he had been superannuated on 30.06.2013 itself. The judgment referred to by the petitioner in State of Tamil Nadu, rep. by its [Secretary to Government, Finance Department and others vs. M. Balasubramaniam](#), reported in CDJ 2012 MHC 6525, was passed under similar circumstances on 20.09.2012, wherein this Court confirmed the order passed in W.P.No.8440 of 2011 allowing the writ petition filed by the employee, by observing that the employee had completed one full year of service from 01.04.2002 to 31.03.2003, which entitled him to the benefit of increment which accrued to him during that period.*

*7. The petitioner herein had completed one full year service as on 30.06.2013, but the increment fell due on 01.07.2013, on which date he was not in service. In view of the above judgment of this Court, naturally he has to be treated as having completed one full year of service, though the date of increment falls on the next day of his retirement. Applying the said judgment to the present case, the writ petition is allowed and the impugned order passed by the first respondent-Tribunal dated 21.03.2017 is quashed. The petitioner shall be given one notional increment for the period from 01.07.2012 to 30.06.2013, as he has completed one full year of service, though his increment fell on 01.07.2013, for the purpose of pensionary benefits and not for any other purpose. No costs."*

6. In view of law laid down by the Hon'ble Madras High Court, upheld by the Hon'ble Apex Court, we are of the view that since the applicant had completed one full year service as on 31.12.2021, but the increment fell due on the next day of his retirement 01.01.2022, on which date he was not in service, he has to be treated as having completed one full year of service.

7. In view of the above, the Original Application is **allowed**. The impugned order, if any, is set aside. The applicant shall be given one notional increment

from 01.01.2022, as he has completed one full year of service, though his increment fell on 01.01.2022, for the purpose of pensionary benefits and not for any other purpose. The respondents are directed to issue fresh Corrigendum P.P.O. accordingly. The respondents are further directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @ 8% per annum till the actual payment

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

**(Lt Gen Rakesh Kumar Anand)**  
Member (A)

**(Justice Anil Kumar)**  
Member (J)

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**Form No. 4**  
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**ORDER SHEET**  
**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**  
**Court No.3 (Sl. No.7)**  
**O.A. No. 871 of 2022**

**Sub Rajvir Singh (Retd)** Applicant  
By Legal Practitioner for the Applicant

**Versus**

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

<b>Notes of the Registry</b>	<b>Orders of the Tribunal</b>
	<p><b><u>20.12.2022</u></b> <b><u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u></b> <b><u>Hon'ble Lt Gen Rakesh Kumar Anand, Member (A)</u></b></p> <p>On the case being taken up for hearing Shri Prahlad Maurya, Ld. Counsel for the applicant and Shri Amit Jaiswal, Ld. Counsel for the respondents are present.</p> <p>Learned counsel for the respondents prays for and is granted further four weeks time to file counter affidavit.</p> <p>List on <b>07.02.2023</b>.</p> <p style="text-align: center;"><b>(Lt Gen Rakesh Kumar Anand)</b> <b>Member (A)</b></p> <p style="text-align: right;"><b>(Justice Anil Kumar)</b> <b>Member (J)</b></p> <p>rathore</p>

**Form No. 4**  
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**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**  
**Court No.3 (Sl. No.8)**

**O.A. No. 872 of 2022**

**Ex Sub (Lab Tech) Rajeev Kumar**  
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>20.12.2022</u></b> <b><u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u></b> <b><u>Hon'ble Lt Gen Rakesh Kumar Anand, Member (A)</u></b></p> <p>On the case being taken up for hearing Ms. Sanjai Srivastava and Shri Anchit Srivastava, Ld. Counsel for the applicant and Shri Manu Kumar Srivastava, Ld. Counsel for the respondents are present.</p> <p>Learned counsel for the respondents prays for and is granted further four weeks time to file counter affidavit.</p> <p>List on <b>07.02.2023</b>.</p> <p style="text-align: center;"><b>(Lt Gen Rakesh Kumar Anand)</b> <b>Member (A)</b></p> <p style="text-align: right;"><b>(Justice Anil Kumar)</b> <b>Member (J)</b></p> <p>rathore</p>

**Form No. 4**  
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**ORDER SHEET**  
**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**  
**Court No.3 (Sl. No.9)**

**O.A. No. 873 of 2022**

**Ex Sub (Lab Tech) Vidhya Sagar**  
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>20.12.2022</u></b> <b><u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u></b> <b><u>Hon'ble Lt Gen Rakesh Kumar Anand, Member (A)</u></b></p> <p>On the case being taken up for hearing Ms. Sanjai Srivastava and Shri Anchit Srivastava, Ld. Counsel for the applicant and Shri D K Pandey, Ld. Counsel for the respondents are present.</p> <p>Learned counsel for the respondents prays for and is granted further four weeks time to file counter affidavit.</p> <p>List on <b>07.02.2023</b>.</p> <p style="text-align: center;"><b>(Lt Gen Rakesh Kumar Anand)</b> <b>Member (A)</b></p> <p style="text-align: center;"><b>(Justice Anil Kumar)</b> <b>Member (J)</b></p> <p>rathore</p>