

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

M.A. No. 390 of 2020 Inre O.A. (Nil) of 2020

Ex Hav (Hony Nb Sub) Daya Kishan
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>09.03.2021</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 Ms Pushpa Bhatt, Advocate on behalf of the respondents is taken on record.</p> <p>Heard Shri Anil Anthwal, Advocate holding brief for Shri CS Rawat, learned counsel for the applicant and Ms Pushpa Bhatt, learned counsel for the respondents assisted by Capt Nitesh Chauhan, Departmental Representative.</p> <p>Counter affidavit filed by the respondents is taken on record.</p> <p><u>M.A. No. 390 of 2020</u></p> <p>The Original Application has been filed with delay of 10 years, 08 months.</p> <p>Submission of learned counsel for the applicant is that it is a pensionary matter in which bar of limitation is not applicable. His further submission is that delay in filing Original Application is not deliberate, but on account of reasons stated in affidavit filed in support of application.</p> <p>Per contra, learned counsel for the respondents submits that cause shown by the applicant is not sufficient.</p> <p>Considering that in pensionary matters bar of limitation is not applicable and grounds stated in affidavit filed in support of delay condonation application are genuine and sufficient, delay is liable to be condoned.</p> <p>Accordingly, delay in filing of application is condoned. Application stands decided accordingly.</p> <p>Let Original Application be registered.</p>

O.A. No. 169 of 2021

Shri CS Rawat, learned counsel for the applicant submits that Original Application may be disposed off with direction to the respondents to revise the pension of applicant in terms of letter No. 1(13)/2016/D (Pen/Policy) dated 21.02.2020 issued by Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare, New Delhi, to which Ms Pushpa Bhatt, learned counsel for the respondents has no objection.

With the consent of learned counsel for the parties, we hereby dispose of the Original Application finally with the direction to the respondents to revise the pension of applicant in terms of letter No. 1(13)/2016/D (Pen/Policy) dated 21.02.2020 issued by Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare, New Delhi, within a period of three months from the date of receipt of copy of this order and communicate to the applicant accordingly after verifying the documents.

Let a 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)

rathore

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

M.A. No. 391 of 2020 Inre O.A. (Nil) of 2020

Ex Hav (Hony Nb Sub) Madhaba Nand
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>09.03.2021</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 Ms Pushpa Bhatt, Advocate on behalf of the respondents is taken on record.</p> <p>Heard Shri Anil Anthwal, Advocate holding brief for Shri CS Rawat, learned counsel for the applicant and Ms Pushpa Bhatt, learned counsel for the respondents assisted by Capt Nitesh Chauhan, Departmental Representative.</p> <p>Counter affidavit filed by the respondents is taken on record.</p> <p><u>M.A. No. 391 of 2020</u></p> <p>The Original Application has been filed with delay of 10 years, 08 months.</p> <p>Submission of learned counsel for the applicant is that it is a pensionary matter in which bar of limitation is not applicable. His further submission is that delay in filing Original Application is not deliberate, but on account of reasons stated in affidavit filed in support of application.</p> <p>Per contra, learned counsel for the respondents submits that cause shown by the applicant is not sufficient.</p> <p>Considering that in pensionary matters bar of limitation is not applicable and grounds stated in affidavit filed in support of delay condonation application are genuine and sufficient, delay is liable to be condoned.</p> <p>Accordingly, delay in filing of application is condoned. Application stands decided accordingly.</p> <p>Let Original Application be registered.</p>

O.A. No. 170 of 2021

Shri CS Rawat, learned counsel for the applicant submits that Original Application may be disposed off with direction to the respondents to revise the pension of applicant in terms of letter No.1(13)/2016/D (Pen/Policy) dated 21.02.2020 issued by Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare, New Delhi, to which Ms Pushpa Bhatt, learned counsel for the respondents has no objection.

With the consent of learned counsel for the parties, we hereby dispose of the Original Application finally with the direction to the respondents to revise the pension of applicant in terms of letter No. 1(13)/2016/D (Pen/Policy) dated 21.02.2020 issued by Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare, New Delhi, within a period of three months from the date of receipt of copy of this order and communicate to the applicant accordingly after verifying the documents.

Let a 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)

rathore

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

Dy No. 1521 of 2020 Inre O.A. No. 53 of 2017

Ishwar Singh Chiral
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>09.03.2021</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 Pushpa Bhatt, Advocate on behalf of the respondents is taken on record.</p> <p style="text-align: center;">Heard Shri N.K. Papnoi, learned counsel for the applicant and Ms Pushpa Bhatt, learned counsel for the respondents assisted by Capt Nitesh Chauhan, Departmental Representative.</p> <p style="text-align: center;">Learned counsel for the applicant is directed to remove the defects during course of the day.</p> <p style="text-align: center;">List on 10.03.2021.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)</p> <p>rathore</p>

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

EX.A. No. 77 of 2019 Inre O.A. No. 298 of 2018

Smt Jeewanti 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>09.03.2021</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 Kishore Rai, learned counsel for the applicant and Shri Rajesh Sharma, learned counsel for the respondents assisted by Capt Nitesh Chauhan, Departmental Representative.</p> <p>Affidavit of compliance has been filed today in Court by learned counsel for the respondents and the same is taken on record.</p> <p>We have gone through the affidavit and we find that order under execution has been implemented.</p> <p>Accordingly execution application has rendered infructuous and therefore, dismissed, as such.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)</p> <p>rathore</p>

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

O.A. No. 516 of 2020

Smt Hemlata Bhandari
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>09.03.2021</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>1. Heard Shri Kishore Rai, learned counsel for the applicant and Shri Neeraj Upreti, learned counsel for the respondents assisted by Capt Nitesh Chauhan, Departmental Representative.</p> <p>2. Counter affidavit filed by the respondents is taken on record.</p> <p>3. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-</p> <p style="padding-left: 40px;">(i) A direction to set-aside/quash the order dated 16.04.2015 passed by the respondent No 3 (contained as Annexure No 1 to this original application) or to</p> <p style="padding-left: 40px;">(ii) A direction to grant the family pension to the applicant.</p> <p style="padding-left: 40px;">(iii) To summon the entire records of the applicant pertaining to computation of his family pension.</p> <p style="padding-left: 40px;">(iv) Any other relief to which the applicant is found entitled may also very kindly be granted to the applicant.</p> <p>4. Brief facts of the case are that the husband of the applicant was enrolled in the Army on 22.10.2001 became absent w.e.f. 22.06.2011. He was declared deserter w.e.f. 22.06.2011 and after waiting for a period of three years, he was dismissed from service w.e.f. 20.10.2014 under Section 20 (3) of Army Act, 1950. The applicant's husband died on 18.02.2015.</p>

The deceased soldier had stranded relation with applicant and on account of that she had filed civil suit for maintenance allowance which was allowed vide order dated 27.04.2014 with a direction to pay maintenance allowance @ Rs 4,000/- p.m. w.e.f. 13.02.2013. There is nothing on record to show whether she was granted maintenance allowance or not. Three years after her husband's death, on 25.04.2018 applicant submitted an application for pension and getting a job in Unit Run Canteen but she was denied by respondents vide letter dated 16.05.2018 intimating her that there is no such provision to widow of dismissed soldier. Applicant has filed this O.A. for grant of family pension.

5. We have gone through the pleadings on record and heard arguments of both the sides.

6. Husband of the applicant was enrolled in the Army on 22.10.2001 and was dismissed from service being a deserter on 20.10.2014 having put in 09 years and 08 months service which does not entitle him for grant of service pension in terms of Rule 47 of Pension Regulations for the Army, 2008 (Part-I).

7. We find that since the deceased soldier was not in receipt of any type of pension, therefore, prima facie applicant does not seem to be entitled to family pension.

8. In view of the above, applicant is not entitled to family pension.

9. O.A. is devoid of merit and is hereby **dismissed**.

10. No order as to costs.

11. Pending applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

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

O.A. No. 517 of 2020

Ex Rect Vivek Singh Koshyari
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>09.03.2021</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>1. Heard Shri Kishore Rai, learned counsel for the applicant and Shri Rajesh Sharma, learned counsel for the respondents assisted by Capt Nitesh Chauhan, Departmental Representative.</p> <p>2. Counter affidavit filed by the respondents is taken on record.</p> <p>3. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-</p> <p>(i) A direction to quash the order dated 27.08.2019 passed by respondent No 3 (contained as Annexure No 1 to this original application) or to</p> <p>(ii) A direction to respondent No 3 jointly and severally to provide the copies of the policy letters to the applicant on the basis of which the warning order and show cause notice had been issued to the applicant for his contemplated discharge from service.</p> <p>(iii) A direction to respondent No 3 to convene a fresh testing board for testing jump proficiency of the applicant as per the policy being applied to other recruits.</p> <p>(iv) A direction to reinstatement the service of the applicant with all consequential benefits in case the applicant passes the jump test as per policy.</p>

(v) Any other relief to which the applicant is found entitled may also very kindly be granted to the applicant.

4. Brief facts giving rise to the present application are that the applicant was enrolled in the Army on 07.09.2017. His basic military training started w.e.f 11.09.2017 and after completion of aforesaid training he proceeded on 20 days casual leave. Prior to attestation, some proficiency tests are conducted and in one of the tests i.e. swimming test he got failed thrice and was issued warning letter. On 30.11.2018, he was issued show cause notice. In reply to show cause notice, he requested for special attempt which was allowed on 12.01.2019 with a condition that in case he fails in special attempt, he would be discharged from service. However, applicant failed in special attempt. Thereafter, on the request made by applicant's parents two more special attempts were allowed on 24.04.2019 and 19.07.2019 but he could not succeed. Later on 27.08.2019 he was discharged from service under Rule 13 (3) IV of Army Rules, 1954. This O.A. has been filed to re-instate applicant in service.

5. Learned counsel for the applicant submitted that applicant was not issued show cause notice, thus he has been deprived of opportunity to improve his efficiency prior to discharge from service. He further submitted that respondents have discharged applicant arbitrarily in complete violation of rules and regulations on the subject which is against principles of natural justice. He pleaded that applicant's discharge order dated 27.09.2019 be set aside and applicant be reinstated in service.

6. On the other hand, learned counsel for the respondents submitted that applicant was provided sufficient opportunity to pass swimming test prior to attestation but he could not succeed even after respondents being liberal in providing two additional opportunities on the request of his parents. Further submission of learned counsel for the respondents is that applicant's discharge procedure was carried out meticulously and applicant was given almost one year beyond his training duration to clear the mandatory test. He was issued show cause notice and was discharged

from service in accordance with procedure laid down.

7. We have heard learned counsel for the parties and perused pleadings on record.

8. The moot question involved in this case is that whether an incumbent being a recruit could be discharged from service during basic military training when he could not pass mandatory test required for attestation of a recruit? Admittedly the applicant was provided with enough opportunity to clear the test but he could not succeed even after providing additional opportunities. The record also reveals that two mercy chances were also provided to applicant on the request made by his parents but still he could not pass the test. As per rules on the subject he was issued show cause notice dated 30.11.2018 and was discharged from service in terms of Rule 13 (3) IV of Army Rules, 1954. Therefore, there appears to be strong weightage in the stand of the respondents while discharging a recruit who could not pass requisite qualification for becoming a soldier.

9. We are clear that a recruit is akin to a probationer and hence prima facie the respondents as an employer have a right to discharge a recruit who is not meeting the physical standards required for military service.

10. In view of the above, O.A. lacks merit and is liable to be dismissed. It is accordingly, **dismissed**.

11. No order as to costs.

12. Pending applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

rathore

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

O.A. No. 518 of 2020

Ex Hav Parvindra 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>09.03.2021</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>1. Heard Shri Kishore Rai, learned counsel for the applicant and Ms. Pushpa Bhatt, learned counsel for the respondents assisted by Capt Nitesh Chauhan, Departmental Representative.</p> <p>2. Counter affidavit filed by the respondents is taken on record.</p> <p>3. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-</p> <p style="padding-left: 40px;">(i) A direction to grant the disability pension to the applicant from the date of his retirement i.e. 01.09.2017 along with rounding off to the tune of 50%.</p> <p style="padding-left: 40px;">(ii) To summon the entire records of the applicant pertaining to computation of his disability pension.</p> <p style="padding-left: 40px;">(iii) Any other relief to which the applicant is found entitled may also very kindly be granted to the applicant.</p> <p>4. Brief facts of the case giving rise to this application are that applicant was enrolled in the Indian Army on 04.04.1992 and after having served for more than 25 years, he was discharged from service in low medical category on 31.08.2017. Applicant is in receipt of service pension vide PPO No D/13203/2017. Prior to discharge from service, applicant was brought before Release Medical Board (RMB) on 14.06.2017 which</p>

assessed applicant to be suffering from '(i) **PRIMARY HYPERTENTION (1-10)** (ii) **OBESITY (E-66.0)** and (iii) **DYSLIPIDEMIA (E-78.2)**' with disability @ 40% (composite) for life neither attributable to nor aggravated by military service (NANA). Disability pension claim was rejected vide order dated 13.02.2018. Thereafter, applicant did not prefer first appeal within six months as advised by the letter dated 13.02.2018 and has filed present O.A. for grant of disability element of pension.

5. Learned counsel for the applicant submitted that the applicant was enrolled in the Army in medically and physically fit condition and there is no note in his service documents with regard to suffering from any disease prior to enrolment, therefore, any disability suffered by applicant after joining the service should be considered as attributable to or aggravated by military service and applicant should be entitled to disability pension. Learned counsel for the applicant further submitted that disability pension claim of the applicant has been rejected in a cavalier manner without assigning any meaningful reason. Further submission of learned counsel for the applicant is that since the aforesaid disease is due to stress and strain related rigors of military service, this should be considered either attributable to or aggravated by military service. Learned counsel for the applicant submitted that the instant O.A. is fully covered under various pronouncements of Armed Forces Tribunals and Hon'ble Apex Court. Therefore, the applicant be held entitled to grant of disability pension.

6. On the other hand, learned counsel for the respondents argued that since RMB has declared the applicant's disability as NANA, he is not entitled to disability pension. His further submission is that the competent authority has rightly rejected applicant's disability pension claim on the ground of disability being originated in peace area, therefore, O.A. deserves to be dismissed.

7. The law on attributability of a disability has already been well settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Vs. Union of India and Ors***, (2013) 7 SCC 213. In this case the Hon'ble Apex Court

took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same in the following words:-

"29.1. Disability pension to be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over.

29.2. A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service [Rule 5 read with Rule 14(b)].

29.3. The onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally (Rule 9).

29.4. If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service [Rule 14(c)]. [pic]

29.5. If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service [Rule 14(b)].

29.6. If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons [Rule 14(b)]; and 29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 - "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."

8. In view of the settled position of law on attributability/aggravation, we find that the RMB has denied attributability/aggravation to the applicant only by endorsing a cryptic sentence in the proceedings i.e. the disability is constitutional in nature and took place in peace area. We feel that such a discrimination between peace posting and a posting to Field/High Altitude Area/Counter Insurgency operations amounts to saying that there is no stress and strain of military service in peace area, which is not the absolute truth. It is trite law that any disability not recorded at the time of recruitment must be presumed to have been caused subsequently, and, unless proved to the contrary is to be considered as a consequence of military service. The benefit of doubt, therefore, shall be rightly extended in

favour of the applicant. In the instant case, since the applicant was found to be suffering from disability when he had put in more than 15 years of service, it should be deemed to be aggravated by military service since it has occurred subsequently after prolonged service. We are, therefore, of the considered opinion that the benefit of doubt should be given to the applicant as per the Hon'ble Supreme Court judgment of **Dharamvir Singh** (supra) and the disability of the applicant should be considered as aggravated by military service. It is also well settled law in terms of **Union of India & Ors vs Wing Commander SP Rathore**, Civil Appeal No. 10870 of 2018 decided on 11.12.2019 that if the disability is assessed @ 20% and more when the person is discharged on completion of terms of engagement, he will be eligible for disability pension. In the case in hand, applicant's disability element is 20% which fully meets aforesaid requirement.

9. In view of the above, applicant is held entitled to 40% disability element for life which shall stand rounded off to 50% disability element for life from the date of his discharge.

10. As a result of foregoing discussion, the O.A. is **allowed**. The impugned order is set aside. The disability of applicant is held aggravated by military service and the benefit of rounding off to 50% is extended in terms of Hon'ble Apex Court judgment titled **Union of India and Ors vs. Ram Avtar & Ors**, Civil Appeal No 418 of 2012 dated 10th December 2014. But, due to law of limitation as per Hon'ble Apex Court judgment in the case of **Shiv Dass vs Union of India & Ors** reported in 2007 (3) SLR 445, applicant is entitled to arrears of disability element from three years prior to the date of filing Original Application. The O.A. was filed on 09.11.2020. The respondents are directed to complete the entire exercise within four months from today and pay disability element to applicant alongwith arrears.

11. Default will invite interest @ 8% p.a.

12. No order as to costs.

13. Pending applications, if any, are disposed off.

(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
(Circuit Bench at Nainital)

O.A. No. 522 of 2020

Ex Nk Indra Singh Mahar
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>09.03.2021</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>1. Heard Shri Kishore Rai, learned counsel for the applicant and Ms. Pushpa Bhatt, learned counsel for the respondents assisted by Capt Nitesh Chauhan, Departmental Representative.</p> <p>2. Counter affidavit filed by the respondents is taken on record.</p> <p>3. The Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-</p> <p style="padding-left: 40px;">(i) A direction to quash the order dated 22.06.2010 passed by respondent No 3 (contained as Annexure No 3 to this original application) or to-</p> <p style="padding-left: 40px;">(ii) A direction to grant disability pension to the applicant from the date of discharge i.e. 28.02.2010.</p> <p style="padding-left: 40px;">(iii) To summon the entire records of the applicant pertaining to computation of his disability pension.</p> <p style="padding-left: 40px;">(iv) Any other relief to which the applicant is found entitled may also very kindly be granted to the applicant.</p> <p>4. Brief facts of the case are that applicant was enrolled in the Army on 25.02.1994 and was discharged from service on 28.02.2010 in terms of Rule 13 (3) III (iv) at his own request in low medical category on account of</p>

disability "**POST TRAUMATIC STIFFNESS (LT) ELBOW**". Applicant has rendered more than 16 years of service and is in receipt of service pension vide PPO No S/038814/2009 (Army). Since the applicant was in low medical category, Release Medical Board (RMB) was held which assessed his disability @ 30% for life neither attributable to nor aggravated by military service. This O.A. has been filed for grant of disability pension.

5. Per contra, learned counsel for the respondents submitted that it is not disputed that applicant sustained injury which resulted in disability, as held in report dated 28.11.2009 of the Release Medical Board Proceedings. He further submitted that since the applicant was on casual leave doing his personal work, therefore injury sustained could not be treated on duty as he was not on military duty. However, for grant of disability pension it is not only required that armed forces personnel should be on duty, but there must be some causal connection also between the injury and military service. He further submitted that unless injury sustained has causal connection with military service, armed forces personnel cannot be allowed disability pension merely on the reason of being on casual leave/annual leave. He further submitted that in the given facts, applicant being on leave met with an accident in the year 2006 while at home, there was no causal connection between the injury sustained and military service and, therefore, applicant is not entitled to disability pension, as he is claiming. In support, learned counsel for the respondents has verbally placed reliance on the following case laws of the Hon'ble Apex Court :-

(a) **Union of India vs Ex Nk Vijay Kumar** (civil appeal No 6583 decided on 26.08.2015-It was held by the Hon'ble Apex Court that injury suffered by the respondent has no causal connection with the military service.

(b) **Union of India & ors vs. Jujhar Singh**, reported in (2011) 7 SCC 735-It was held that applicant was not on military at the time of accident in terms of para 12 (d) of Entitlement Rules, 1982 as clarified vide Govt of India, Ministry of Defence letter No 1(1)/81 (Pen)C/ Vol II dated 27 Oct 1998.

6. We have perused the material placed and RMB proceedings.

7. After having heard the submissions of learned counsel of both sides, we find that there are certain facts admitted to both the parties, i.e., applicant was enrolled in the army on 25.02.1994 and discharged from service on 28.02.2010 prior to completion of terms of engagements. He met with an accident while on casual leave and downgraded to medical category for disability '**POST TRAUMATIC STIFFNESS (LT) ELBOW**' vide AFMSF-16 dated 28.11.2009 and his disability was assessed @ 30% for life neither attributable to nor aggravated by military service. The disability claim of the applicant was rejected vide order dated 22.06.2010 with an advice to prefer first appeal with six months but applicant has failed to do so and preferred first appeal belatedly on 26.06.2019 which seems to be pending.

8. The respondents have denied disability pension to applicant on the reason that for getting disability pension, in respect of injury sustained during the course of employment/leave, there must be some causal connection between the disability and military service, and this being lacking in applicant's case, as there was no causal connection between the disability and military service, he is not entitled for the same.

9. This question has been considered time and again not only by the various Benches of AFT, but by the Hon'ble High Courts and the Hon'ble Apex Court also. In a more or less similar matter, **Secretary Govt of India & Others vs Dharamveer Singh**, decided on 20th September 2019 in Civil Appeal No 4981 of 2012, the facts of the case were that respondent in that case met with an accident during the leave period, while riding a scooter and suffered head injury with 'Faciomaxillary and compound fracture 1/3 Femur (Lt)'. A court of inquiry was conducted in that matter to investigate into the circumstances under which the respondent sustained injuries. The Brigade Commander gave report dated August 18, 1999 to the effect that injuries, occurred in peace area, were attributable to military service. One of the findings of the report recorded under column 3(c) was that 'No one was to be blamed for the accident. In fact respondent lost control of his

own scooter'. In this case the respondent was discharged from service after rendering pensionable service of 17 years and 225 days. In pursuance to report of the Medical Board dated November 29, 1999, which held his disability to be 30%, the claim for disability pension was rejected by the Medical Board on the ground that the disability was neither attributable to nor aggravated by military service. An appeal filed by the respondent against the rejection of his claim for the disability pension was rejected by the Additional Directorate General, Personal Services. Respondent then filed an O.A. in Armed Forces Tribunal against the order of denial of disability pension which after relying upon the judgment of Hon'ble Apex Court in the case of **Madan Singh Shekhawat vs Union of India & Ors**, decided on 17.08.1999 was allowed holding that respondent was entitled to disability pension. Aggrieved by the same, a Civil Appeal was filed in which the Hon'ble Apex Court framed following 3 points for consideration:-

(a) Whether, when armed forces personnel proceeds on casual leave or annual leave or leave of any kind, he is to be treated on duty?

(b) Whether the injury or death caused if any, the armed forces personnel is on duty, has to have some causal connection with military service so as to hold that such injury or death is either attributable to or aggravated by military service?

(c) What is the effect and purpose of court of inquiry into an injury suffered by armed forces personnel?

10. The Hon'ble Apex Court decided the question number 1 in affirmative holding that when armed forces personnel is availing casual leave or annual leave, is to be treated on duty.

11. While deciding the second question the Hon'ble Apex Court held that while deciding the question of admissibility of disability pension, it has to be seen that there must be some causal connection between the injury or death and military service. The injury or death must be connected with military service. The injury or death must be intervention of armed forces service and not an accident which could be attributable to risk common to human being. When a person is going on a scooter to purchase house hold

articles, such activity, even remotely, has no causal connection with the military service. In the present case there seems to be no causal connection of accident with military duty.

12. Regarding question number 3, the Hon'ble Apex Court held that if any causal connection has not been found between the disabilities and military service, applicant would not be entitled to the disability pension. While deciding this issue, the Hon'ble Apex Court has discussed several cases decided by itself as well as the various Benches of the Armed Forces Tribunal and Hon'ble High Courts and has held that when armed forces personnel suffers injury while returning from or going to leave, it shall be treated to have causal connection with military service and for such injury, resulting in disability, the injury would be considered as attributable to or aggravated by military service.

13. The Hon'ble Apex Court while summing up has also taken note of the guiding factors of the Armed Forces Tribunal, in the case of **Jagtar Singh vs Union of India & Ors**, decided on November 02, 2010 in T.A. No. 60 of 2010, approved in the case of **Sukhwant Singh and Vijay Kumar** case, and held that they do not warrant any modification and the claim of disability is to be required to be dealt accordingly. Those guiding factors are reproduced below for the ready reference:-

“(a) The mere fact of a person being on ‘duty’ or otherwise, at the place of posting or on leave, is not the sole criteria for deciding attributability of disability/death. There has to be a relevant and reasonable causal connection, howsoever remote, between the incident resulting in such disability/death and military service for it to be attributable. This conditionality applies even when a person is posted and present in his unit. It should similarly apply when he is on leave; notwithstanding both being considered as ‘duty’.

(b) If the injury suffered by the member of the armed force is the result of an act alien to the sphere of military service or is in no way connected to his being on duty as understood in the sense contemplated by Rule 12 of the Entitlement Rules, 1982, it would neither be the legislative intention nor to our mind would it be the permissible approach to generalise the statement that every injury suffered during such period of leave would necessarily be attributable.

(c) The act, omission or commission of which results in injury to the member of the force and consequent disability or fatality must relate to military service in some manner or the other, in other words, the act must flow as a matter of necessity from military service.

(d) A person doing some act at home, which even remotely does not fall within the scope of his duties and functions as a member of the force, nor is remotely connected with the functions of military service, cannot be termed as injury or disability attributable to military service. An accident or injury suffered by a member of the armed force must have some causal connection with military service and at least should arise from such activity of the member of the force as he is expected to maintain or do in his day-to-day life as a member of the force.

(e) The hazards of army service cannot be stretched to the extent of unlawful and entirely unconnected acts or omissions on the part of the member of the force even when he is on leave. A fine line of distinction has to be drawn between the matters connected, aggravated or attributable to military service, and the matter entirely alien to such service. What falls ex facie in the domain of an entirely private act cannot be treated as a legitimate basis for claiming the relief under these provisions. At best, the member of the force can claim disability pension if he suffers disability from an injury while on casual leave even if it arises from some negligence or misconduct on the part of the member of the force, so far it has some connection and nexus to the nature of the force. At least remote attributability to service would be the condition precedent to claim under Rule 173. The act of omission and commission on the part of the member of the force must satisfy the test of prudence, reasonableness and expected standards of behaviour.

(f) The disability should not be the result of an accident which could be attributed to risk common to human existence in modern conditions in India, unless such risk is enhanced in kind or degree by nature, conditions, obligations or incidents of military service.”

14. We have considered the applicant's case in view of the above guiding factors and we find that though applicant was on casual leave when he met with accident and sustained injury resulting disability of permanent nature to the extent of 30% on account of '**POST TRAUMATIC STIFFNESS (LT) ELBOW**', the activity in which injury was sustained being not connected with his military service in any manner, applicant is not entitled to the disability pension for the same, as

opined by RMB.

15. We also take note of rejection of disability pension claim letter dated 22.06.2010 and certificate endorsed by President Medical Board dated 24.10.2009 holding the disability as neither attributable to nor aggravated by military service. Since the disability has no causal connection with military duty, applicant is not entitled to disability element.

16. In the result, we hold that the claim of applicant's disability element has rightly been rejected by the respondents which needs no interference. In the result, applicant has not been able to make out a case and accordingly O.A. is **dismissed**.

17. No order as to costs.

18. Pending applications, if any, are disposed of.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

GSR

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

O.A. No. 525 of 2020

Ex Hav Son 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>09.03.2021</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>1. Heard Anil Anthwal, Advocate holding brief for Shri C.S. Rawat, learned counsel for the applicant and Ms. Pushpa Bhatt, learned counsel for the respondents assisted by Capt Nitesh Chauhan, Departmental Representative.</p> <p>2. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-</p> <p style="text-align: center;">“Humble petitioner/applicant seeks prayer to summon the entire records including on the file of PCDA (P), Allahabad and to grant/sanction of disability pension to the applicant with arrear w.e.f. 31.03.1998, otherwise petitioner shall suffer irreparable loss and injury. Such other suitable order is deemed fit and proper in the facts and circumstances of the case also kindly be pleased to meet in the interest of justice”.</p> <p>3. Brief facts of the case are that the applicant was enrolled in the Indian army on 31.03.1976 and was discharged from service w.e.f. 01.04.1998 (FN) in low medical category 'P2 (permt)' due to 'Primary Hypertension 401 V-67'. Applicant is in receipt of service element of pension vide PPO S/054773/97. The Release Medical Board (RMB) has assessed his disability @ 20% for two years aggravated by military service. Accordingly he was granted disability element for two years i.e. 01.04.1998</p>

to 15.10.1999. Re-survey Medical Board (RSMB) was held on 02.11.1999 which has assessed his disability @ 20% for five years but PCDA (P), Allahabad has assessed his disability element @ below 20% and discontinued disability element. Applicant stood silent over aforesaid rejection of disability element. RSMB was again held on 09.10.2004 which has assessed applicant's disability element @ 11-14% for life. Disability element claim of applicant was again rejected on the ground of disability being below 20%. Records reveal that no appeal has been filed against rejection of disability pension claim and applicant has filed this O.A. for grant of disability element of pension.

4. Learned counsel for the applicant pleaded that applicant was enrolled in the army in medically and physically fit condition. It was further pleaded that a member is to be presumed in sound physical and mental condition upon entering service if there is no note or record to the contrary at the time of entry. In the event of his subsequently being invalided out from service on medical grounds, any deterioration in his health is to be presumed due to service conditions. He pleaded that applicant was under stress of service conditions which may have led to occurrence of the disability. He pleaded for disability element of pension to be granted to applicant.

5. On the other hand, Ld. Counsel for the respondents submitted that since applicant's disability element has been assessed @ 11-14% for life (i.e. below 20%) his claim has rightly been denied by the respondents. He pleaded for the O.A. to be dismissed.

6. We have heard learned counsel for both sides and perused the material placed on record.

7. On careful perusal of the medical documents, it has emerged that applicant's disability element has been assessed @ 11-14% for life by RSMB dated 09.10.2004 and therefore his disability element of pension claim was discontinued. The applicant has failed to represent his case by preferring first and second appeals to appellate authorities.

8. In regard to disability element being below 20%, the Hon'ble Supreme Court in Civil Appeal No 10870 of 2018 **Union of India & Ors vs Wing Commander SP Rathore**, has made it clear vide order dated 11.12.2019 that disability element is inadmissible when disability percentage is below 20%. Para 9 of the aforesaid judgment being relevant is quoted as under:-

"9. As pointed out above, both Regulation 37 (a) and Para 8.2 clearly provide that the disability element is not admissible if the disability is less than 20%. In that view of the matter, the question of rounding off would not apply if the disability is less than 20%. If a person is not entitled to the disability pension, there would be no question of rounding off."

9. Apropos above, applicant is not entitled to disability element of pension.

10. In view of the above, the O.A. is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

11. No order as to cost.

12. Pending applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

rathore

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

O.A. No. 527 of 2020

Ex Spr Dinesh Prasad Dimri
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>09.03.2021</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>1. Heard Shri Anil Anthwal, Advocate holding brief for Shri C.S. Rawat, learned counsel for the applicant and Ms. Pushpa Bhatt, learned counsel for the respondents assisted by Capt Nitesh Chauhan, Departmental Representative.</p> <p>2. This Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-</p> <p style="padding-left: 40px;">(i) Humbly petitioner/applicant seeks prayer to summon the entire records and after calling to quash the impugned orders pertaining to rejection of disability pension of the petitioner/applicant passed by the P.C.D.A.P.</p> <p style="padding-left: 40px;">(ii) To grant/sanction the disability pension from 26.02.1995 with arrears on the date the petitioner/applicant discharged from Army/Kumaon Regiment on disability ground.</p> <p style="padding-left: 40px;">(iii) Such other suitable order be deemed fit and proper in the facts and circumstances of the case also kindly be pleased to meet in the interest of justice.</p> <p>3. Brief facts of the case are that the applicant was enrolled in the Army on 20.08.1985 and was discharged from service on 26.02.1995 in terms of Rule 13 (3) III (v) of Army Rules, 1954. Applicant has rendered more than 09 years of service and he was in medical category S1H1A1P1E1 at the</p>

time of discharge. This O.A. has been filed for grant of disability pension which is inadmissible according to rules as he was not discharged on account of low medical category.

4. We have gone through the pleadings on record and submission made by both the parties.

5. It is not disputed that applicant was enrolled on 20.08.1985 and discharged from service w.e.f. 26.02.1995 as undesirable soldier prior to completion of terms of engagement. The applicant has been a habitual offender and committed offences repeatedly. Despite opportunity granted to him, he did not show any improvement. During his service period he was awarded 05 red ink entries mainly on account of overstaying leave.

6. On this issue, Additional Directorate General, Discipline and Vigilance, Adjutant General's Branch, Army Headquarters New Delhi vide letter dated 07.04.2004 has issued guidelines to discharge army personnel on account of having more than four red ink entries. For convenience sake, extract of aforesaid letter is as under:-

"In order to curb this tendency, Cdrs at all levels be advised to terminate the services of such personnel who are habitual offenders and are undesirable for retention in service especially after four red ink entries".

7. On the issue of discharge, we find that a show cause notice was issued to applicant prior to discharge from service and after receipt of reply he was discharged from service after taking approval of competent authority in chain. It is to be noticed that even after last red ink entry and the show cause notice, the applicant did not improve, and has shown utter dis-regard to military discipline, and has set an exemplary bad example to other disciplined soldiers in the Unit, and since he failed to improve despite several warnings he demonstrated bad example, and did not show any improvement, action was taken against him.

8. In view of the above, since applicant was discharged from service in medical category 'S1H1A1P1E1', he is not entitled to

disability pension. On the point of illegal discharge as contended by learned counsel for the applicant, it may be noticed from aforesaid paras that applicant was discharged from service by following due procedure, therefore respondents have not erred in discharging him from service.

9. The O.A. has no merit and is accordingly **dismissed**.

10. No order as to costs.

11. Pending applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

rathore

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

O.A. No. 540 of 2020

Ex Sep Kamal Singh Rautela
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>09.03.2021</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 Tarun PS Takuli, learned counsel for the applicant and Ms. Pushpa Bhatt, learned counsel for the respondents assisted by Capt Nitesh Chauhan, Departmental Representative.</p> <p style="text-align: center;">Counter affidavit filed by the respondents is taken on record.</p> <p style="text-align: center;">As prayed by learned counsel for the applicant, list on 10.03.2021.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)</p> <p>rathore</p>

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

O.A. No. 531 of 2020

Ex Rect Mukesh Singh Mehta
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>09.03.2021</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>1. Heard Shri GD Joshi, learned counsel for the applicant and Shri Rajesh Sharma, learned counsel for the respondents assisted by Capt Nitesh Chauhan, Departmental Representative.</p> <p>2. Issue of notice to respondent No 2 and 3 is hereby dispensed with due to the following reasons:-</p> <p style="padding-left: 40px;">(i) Applicant's disability i.e. mental disorder being of permanent nature cannot sustain rigors of basic military training as opined by Neurological Specialist in his report dated 15.11.2016.</p> <p style="padding-left: 40px;">(ii) Since applicant's disability is neither attributable to nor aggravated by military service and the fact that the disability of applicant is existing from his childhood for which he was provided treatment for 06 months, he is not entitled to disability pension.</p> <p>3. This Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought the following reliefs:-</p> <p style="padding-left: 40px;">(i) Set aside the Medical Board Proceedings and allow the applicant to join the Army service as Sepoy (GD) retrospectively w.e.f. 01 Jun 2015.</p> <p style="padding-left: 40px;">(ii) Reinstate the petitioner immediately into Army service w.e.f. 27 Feb 2017 by reinstating him for Army Training w.e.f. 29 Sep 2016.</p> <p style="padding-left: 40px;">(iii) Grant of disability element @ 20% along with rounding off benefits @ 50%.</p>

(iv) Refund a sum of Rs 15,243/- which was recovered from the petitioner through Military Receivable Order No 03 dated 20 Jul 2017 on recruitment and training expenditure.

(v) Pay a sum of Rs 5,000/- on account of misc expenditure incurred by the petitioner in carrying out the instructions of Army Authorities after his discharge and retaining him at the Kumaon Regiment Centre, Ranikhet upto 03 Mar 2017.

4. Brief facts of the case are that the applicant was enrolled in Army on 19.08.2016 and was invalided out of service w.e.f. 24.02.2017 under Rule 13 (3) III (iv) of Army Rules, 1954 on account of disability '**GENERALISED SEIZURE**'. The applicant was brought before Invaliding Medical Board (IMB) conducted at Military Hospital, Ranikhet on 06.01.2017 which has assessed his disability @ 20% for life neither attributable to nor aggravated by military service and also not connected with military service. Disability pension claim was rejected vide order dated 24.07.2017. Thereafter, applicant has not preferred any appeal against rejection of his disability pension claim and has filed this O.A. for grant of reliefs mentioned in para 2 above.

5. Learned counsel for the applicant submitted that the applicant was enrolled in the Army in medically and physically fit condition and there is no note in his service documents with regard to suffering from any disease prior to enrolment, therefore, any disability suffered by applicant after joining the service should be considered as attributable to or aggravated by military service and applicant should be entitled to disability pension. Learned counsel for the applicant further submitted that disability pension claim of the applicant has been rejected in a cavalier manner without assigning any meaningful reason. Further submission of learned counsel for the applicant is that since the aforesaid disease is due to stress and strain related rigors of military service, this should be considered either attributable to or aggravated by military service. Learned counsel for the applicant submitted that the instant O.A. is fully covered under various pronouncements of Armed Forces Tribunals and Hon'ble Apex Court. Therefore, the applicant be held entitled to grant of disability pension.

Further submission of learned counsel for the applicant is that after invalidation of the applicant, he was forced to deposit a sum of Rs 15,243/- on account of expenses in connection with recruitment training expenditure, which he deposited through Military Receivable Order No. 03 dated 20.07.2017. His submission is that the aforesaid amount should be refunded to applicant being illegal, as applicant has been deprived of military service and penalised for no fault of on his part.

6. On the other hand, learned counsel for the respondents submitted that since the IMB has opined the disability as NANA, the applicant is not entitled to disability pension. He further submitted that the applicant is not entitled to disability pension in terms of Rule 173 of Pensions Regulations for the Army 1961 (Part-I) which stipulates that, "unless otherwise specifically provided, a disability pension may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service and is assessed at 20% or over but in the instant case the disability of the applicant has been assessed at 20% for life and NANA, therefore the applicant is not entitled to disability pension. On the point of re-instatement into service, learned counsel for the respondents submitted that since applicant is suffering from Seizures and an episode had occurred at the beginning of training, he is unfit to undergo further military training as advised by Classified Specialist, Medicine and Neurology. He pleaded the O.A. to be dismissed.

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

8. On careful perusal of the medical documents, it has been observed that the applicant was enrolled on 19.08.2016 and the disease had first started during first phase of training on 29.09.2016 i.e. within one month of joining the service. He was administered treatment at Military Hospital, Ranikhet and thereafter referred to Command Hospital, Lucknow for specialist opinion. On admission in the Command Hospital, Classified Specialist Medicine and Neurology gave his opinion as under:-

"This 21 year old recruit who had one episode of

Generalised Seizures recorded during training at KRC, Ranikhet on 29 Sep and one episode at 11 yrs age for which he took medication for 6 months. His EEG and MRI brain is normal. However in view of high probability of recurrence of seizure in future during periods of stress, he is unfit to resume training as a recruit and will not make a fit soldier.

To be invalided out of service in P5”.

9. Since the applicant, being a recruit, was recommended to be in Category P5, an IMB was carried out and he was discharged from service in medical category S1H1A1P5E1 with 20% disablement for life neither attributable to nor aggravated by military service.

10. Therefore, there appears to be strong weightage in the stand of the respondents that the disability i.e. '**GENERALIZED SEIZURE**' could not be detected during Enrolment Medical Board. We are in agreement with the opinion of IMB proceedings. Additionally, a recruit is akin to a probationer and hence prima facie the respondents as an employer have a right to discharge a recruit who is not meeting the medical requirement of military service. In view of the foregoing and the fact that the disease manifested within one month of enrolment, an inference may be drawn that applicant was suffering from aforesaid disability prior to enrolment and thus, the disability cannot be accepted as attributable to or aggravated by military service.

11. Apart from, in similar factual background Co-ordinate Bench of this Tribunal dismissed T.A. No. 1462/2010 vide order dated 23.05.2011 wherein the applicant was enrolled on 21.01.2000 and was discharged on 27.04.2010 as he was suffering from Schizophrenia which is alike "Generalized Tonic Clonic Seizure". Said disability was assessed @ 80% for two years and it was opined by the Medical Board to be neither attributable to nor aggravated by military service. Said order of this Tribunal has been upheld by Hon'ble Apex Court as Civil Appeal Dy. No. 30684/2017 was dismissed on delay as well as on merits.

12. On the point of training expenses which applicant has deposited with the respondents, we direct that an amount of Rs 15,243/- deposited by applicant on 20.07.2017 be refunded to him with simple interest within a

period of one month from today.

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

14. Default will invite interest @ 8% p.a.

15. No order as to costs.

16. Pending applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

rathore

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

O.A. No. 439 of 2018

Mukund 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>09.03.2021</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>1. Heard Shri Suresh Chandra Bhatt, learned counsel for the applicant and Ms. Pushpa Bhatt, learned counsel for the respondents assisted by Capt Nitesh Chauhan, Departmental Representative.</p> <p>2. This Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought the following reliefs:-</p> <p style="padding-left: 40px;">(i) Set aside the impugned order dated 11.11.2016 passed by respondent No 8 and order dated 18.11.2016 passed by respondent No 7.</p> <p style="padding-left: 40px;">(ii) Issue a direction to the respondents to calculate the pensionary benefits payable to the petitioner on the basis of his service length of 27 years 1 month and 24 days, instead of 21 years of service.</p> <p style="padding-left: 40px;">(iii) Issue a direction to the respondents to pay the pension and other benefits to the petitioner on the basis of his service length of 27 years 1 month and 24 days.</p> <p style="padding-left: 40px;">(iv) Issue any other or further direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.</p> <p style="padding-left: 40px;">(v) To award the cost of the petition in favour of the petitioner.</p> <p>3. Brief facts of the case are that the applicant was enrolled in the Army on 19.04.1944 and was discharged from service on 13.06.1971 having rendered 27 years, 01 month and 24 days of service.</p>

Applicant is in receipt of service pension vide PPO No S/100559/71. The grievance of the applicant is that despite having rendered more than 27 years of service, he has been granted weightage of pensionary benefits for only 21 years. In this regard, applicant has submitted several representations but each time it was submitted by the respondents that applicant has been granted pensionary benefits as per prevalent rules on the subject. Hence this O.A. has been filed.

4. Learned counsel for the applicant submitted that applicant has rendered more than 27 years of service and at the time of discharge from service he was conferred with Hony rank of Nb Sub. He further submitted that according to rules since applicant has received pay, perks and gratuity for more than 27 years therefore, applicant should be paid pensionary benefits also for the services which he has rendered and not for 21 years of service which he is presently in receipt of.

5. On the other, hand learned counsel for the respondents submitted that service pension of the applicant has been revised regularly and corrigendum PPOs have been issued in this regard. He further submitted that as per para 164 (b) of Regulations for the Army, 1987 (Revised Edition), personnel enrolled prior to 25 Jan 1965 still serving on old terms should be retired compulsorily on completion of 20 years of service for Nk and 21 years of service for Dafadar/Havildar. Further submission of learned counsel for the respondents is that as per para 144 (a) of Regulations for the Army 1987 (Revised Edition) when an OR completes his colour engagement and has not applied for his discharge, he may be allowed to continue to serve with the colours so long as it is desirable and he is within the prescribed age limit. Such continuance in the service does not require formal sanction. Citing Govt of India, Min of

Def policy letter dated 17.01.2013, learned counsel for the respondents further submitted that personnel discharged from service should be granted pension subject to maximum term of engagement for each rank as applicable from time to time, rank and group for which pensioned from the initial issue of PPO.

6. We have perused the record and heard arguments of learned counsel for the parties at length.

7. In the instant case, the applicant was enrolled on 19.04.1944 prior to independence and was discharged from service w.e.f. 13.06.1971 rendering 27 years, 01 month and 24 days of service but he has been granted pension equivalent to pension of 21 years of service.

8. Admittedly, the applicant has served for more than 27 years and he has not applied for discharge and he was allowed to continue in service with colours so long as it was desirable i.e. more than 27 years being within the prescribed age limit and has drawn pay and perks for the services rendered in the Army.

9. On conjoint reading of para 144 (a) and 164 (b) of Regulations for the Army, 1987 (Revised Edition) an inference may be drawn that the applicant should have been discharged from service by the respondents in terms of para 164 (b) (supra) after completion of 21 years of service in the rank of Havildar. But fact remains that applicant has served more than 27 years and has been provided service gratuity for 27 years, therefore, he should have also been granted pensionary benefits equivalent to 27 years of length of service.

10. We also find that PCDA (P), Allahabad Circular No. 555 has put an embargo on pensionary benefits of maximum terms of engagement to 21 years to individuals who were discharged from

service between 01.06.1953 to 30.11.1976 which seems to be not justified in the eyes of law. The applicant has served for more than 27 years in the Army and has received gratuity for the services rendered, therefore, he is entitled to grant of service pension for the services rendered in the Army. Thus, applicant has a legal right with regard to pensionary benefits for the period for which he has been granted gratuity.

11. In view of the above, O.A. deserves to be allowed and hence **allowed.**

12. The respondents are directed to pay pensionary benefits to applicant for the services rendered in the Army i.e. more than 27 years and pay revised pension alongwith arrears thereon within a period of four months from today.

13. It is made clear that this order is restricted to present O.A. and cannot be used as precedence to other judgment and orders.

14. No order as to costs.

15. Pending applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

rathore

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

O.A. No. 185 of 2014

Ex Rfn Lal Bahadur Gurung
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>09.03.2021</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>1. Heard Shri Kishore Rai, learned counsel for the applicant and Ms. Pushpa Bhatt, learned counsel for the respondents assisted by Capt Nitesh Chauhan, Departmental Representative.</p> <p>2. This Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought the following reliefs:-</p> <p style="padding-left: 40px;">(i) A direction to the respondent No 2 and 3 to correctly compute the pension amount of the applicant and to pay him the correct due pension regularly and also to pay the arrears thereof with 12% interest w.e.f. 01.01.2013.</p> <p style="padding-left: 40px;">(ii) To summon the entire record of the applicant pertaining to the commutation of his pension.</p> <p style="padding-left: 40px;">(iii) Any other relief to which the applicant is found entitled may also very kindly be granted to the applicant.</p> <p>3. Brief facts of the case are that the applicant was enrolled in the Army on 26.02.1957 and after having taken part in 1962 war, on 19.08.1966 he was transferred to reservist. On 06.09.1966 he was re-enrolled in 1607 Pioneer Company (GREF) and finally transferred to pension establishment w.e.f. 26.03.1972 under Rule 13 (3) III (i) of Army Rules, 1954. Thus, total service rendered by applicant comes to more than 15 years. The applicant is in receipt of reservist pension in terms of 6th CPC and a prayer has been made to grant reservist pension as per recommendations of 7th CPC, he filed Writ Petition No. 1021 of 2014 in the Hon'ble High Court of</p>

Uttarakhand and vide its order dated 18.07.2014, liberty was granted to applicant to seek redressal of his grievances by approaching Hon'ble Armed Forces Tribunal and, therefore present O.A. has been filed.

4. Learned counsel for the applicant pleaded that since the applicant is not in receipt of revised reservist pension in terms of 7th CPC, he should be granted correct reservist pension applicable to him as per rules.

5. On the other hand, learned counsel for the respondents submitted that applicant is being paid reservist pension by PDA based on PPO issued by the PCDA (P), Allahabad after combining his colour and reservist service as per para 155 of Pension Regulations for the Army, 1961 which reads that "An OR reservist who is not in receipt of a service pension may be granted, on completion of the prescribed combined colour and reserve qualifying service, of not less than 15 years a reservist pension at the rate of Rs 15,000/- p.m. on his transfer to pension establishment either on completion of his terms of engagement or prematurely irrespective of the period of colour service". Further submission of learned counsel for the respondents is that applicant is in receipt of revised reservist pension w.e.f. 01.01.2013 as per instructions issued vide Circular No 501 dated 17.01.2013. He pleaded that since applicant is in receipt of revised reservist pension, this O.A. deserves to be dismissed.

6. We have perused the records and found that as per rules prevalent at that time applicant was engaged in the Army for terms of service of 12 years colour service and 8 years in reserve. Since applicant was transferred to reservist w.e.f. 19.08.1966, re-enrolled in GREF on 06.09.1966 and transferred to pension establishment w.e.f. 26.03.1972, therefore he has completed more than 15 years service for earning pension. The records reveal that applicant is in receipt of service pension. The only question involves in this case is that as per applicant he is not being granted revised reservist pension.

7. While filing counter affidavit, respondents have conceded that applicant is in receipt of reservist pension as per recommendations of 6th CPC, which according to applicant is to be paid in terms of 7th CPC.

8. We have given our anxious consideration and are of the view that applicant is entitled to reservist pension in terms of 7th CPC.

9. In view of the above we **allow** the O.A. and direct the respondents to pay reservist pension to applicant in terms of 7th CPC alongwith arrears within three months from today.

10. Default will invite interest @ 8% per annum.

11. No order as to costs.

12. Pending applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

rathore

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

T.A. No. 1 of 2014

Sarbeswar Pattanaik Petitioner
By Legal Practitioner for the Petitioner

Versus

Union of India & Others Respondents
By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>09.03.2021</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 Anil Kumar, learned counsel for the petitioner and Shri Rajesh Sharma, learned counsel for the respondents are present.</p> <p>Learned counsel for the respondents is directed to provide copy of counter affidavit to the Bench by today which is not available in the T.A.</p> <p>List this case tomorrow (10.03.2021).</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)</p>

SB

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

O.A. No. 185 of 2014

Lal Bahadur Gurung
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>09.03.2021</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 Kishore Rai, learned counsel for the applicant and Ms. Pushpa Bhatt, learned counsel for the respondents.</p> <p style="text-align: center;">Extract of Long Roll filed by the respondents today in the Court is taken on record.</p> <p style="text-align: center;">Original Application is allowed.</p> <p style="text-align: center;">For order, see our judgment passed on separate sheets.</p> <p style="text-align: center;">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>SB</p>

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

O.A. No. 401 of 2019

Ex Sub Ramesh Dwivedi
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>09.03.2021</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 Kishore Rai, learned counsel for the applicant and Ms. Pushpa Bhatt, learned counsel for the respondents.</p> <p style="text-align:center">Counter affidavit filed by the respondents is taken on record.</p> <p style="text-align:center">Original application is allowed.</p> <p style="text-align:center">For order, see our judgment passed on separate sheets.</p> <p style="text-align:center">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>SB</p>

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

O.A. No. 402 of 2019

Maj Alok Vashishtha (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>09.03.2021</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 Jagdish Singh Bisht, learned counsel for the applicant and Shri Rajesh Sharma, learned counsel for the respondents. Rejoinder affidavit filed by the applicant is taken on record. Arguments concluded. Order is reserved.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)</p> <p>SB</p>

