

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

O.A. No. 835 of 2021

Ex Sep Raj Nath Tiwari
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>21.01.2022</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p>1. Memo of appearance filed by Mrs. Deepti P Bajpai, Advocate on behalf of the respondents today in the Court is taken on record.</p> <p>2. Heard Shri Shashwat Shukla, Ld. Counsel for the applicant and Mrs. Deepti P Bajpai, Ld. Counsel for the respondents.</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) To set aside the impugned order dated 21st Oct. 2021 passed by the respondent No. 1 & 3 along with the order dated 14th Nov. 2018 passed by the respondent No. 2 whereby the applicant is not entitled for Constant Attendance Allowance (CAA) as per Court's order and Govt. sanction and direct respondent authorities to pay the CAA from date of discharge as recommended by Medical Board along with all arrears with interest till date.</p> <p style="padding-left: 40px;">(ii) To direct the respondent authorities to pay the CAA and its arrears with interest as per rules/amended rules//circulars/notifications as provided by the Govt. of India, Ministry of Defence from time to time.</p> <p style="padding-left: 40px;">(iii) To pass orders which their Lordships may deem fit and proper in the existing facts and circumstances of the case.</p> <p style="padding-left: 40px;">(iv) Allow this application with cost.”</p> <p>4. The facts of the case, in brief, are that the applicant was enrolled in the Indian Army on 02.11.1975 and was invalided out of service on 19.03.1988 due to disability “FRACTURE DV-4, DV-5 WITH PARAPLEGIA (OPTD)” and the disability was assessed @ 100% for life. The disability pension claim of the applicant was rejected by PCDA on the ground that his disability was neither attributable to nor aggravated by military service. The applicant filed a case before the Hon'ble High Court of Allahabad which was transferred to this Tribunal and was registered as TA No. 27 of 2012. The petition of the applicant</p>

was allowed vide order dated 29.10.2015. The operative portion of the order reads as under :-

“22. Thus in the result, the Transferred Application succeeds and is allowed. The impugned orders dated 01.02.1989, and 26.08.1993 passed by the Respondents are set aside. The petitioner is entitled to disability pension @ 100% for life from the date of discharge as recommended by Medical Board. The Respondents are directed to pay arrears of aforesaid disability pension alongwith interest @ 9% per annum from the date of discharge till the date of payment. The Respondents are further directed to comply with the order within three months from the date of production of a certified copy of this order.”

5. Learned Counsel for the applicant submitted that the applicant was not aware about payment of Constant Attendance Allowance (CAA) and later on when it came to his notice, he submitted a representation dated 09.10.2018 to PCDA (P) Allahabad but the same was rejected. Thereafter, applicant approached AMC Records for payment of CAA but nothing has been done by AMC Records. He also submitted that Specialist Surgeon vide his opinion and summary dated 17.12.1988 has also mentioned in his medical report that constant attendance is required to the applicant. This Tribunal has granted 100% disability pension to the applicant vide its order dated 29.10.2015. Therefore, applicant is entitled for CAA and he should be paid as per rules/policy.

6. On the other hand, learned counsel for the respondents opposed grant of Constant Attendance Allowance to the applicant stating that neither there was any such order passed by this Tribunal in TA No. 27 of 2012 nor there was any Govt. sanction in this regard. Therefore, applicant is not entitled for CAA. She submitted that the instant Original Application does not have any merit and the same is to be dismissed.

7. Having heard submissions of both the parties and perusing the records and order passed by this Tribunal in TA No. 27 of 2012, we have decided to dispose off the case at admission stage itself.

8. We observe that applicant was 100% disable and therefore, 100% disability pension has been granted to the applicant. Since the applicant is in receipt of 100% disability pension, therefore, the pensioners who are drawing disability pension for 100% disability and are completely dependent on others for day to day activities, shall also be granted in addition to disability pension, the Constant Attendance Allowance in accordance with the rules/instructions issued by the Govt. from time to time. As per para 35(a) of the Amendment to Chapter VI & VII of Guide to Medical Officers (Military Pension) 2002, Govt. of India, Ministry of Defence letter No. 1(2) 2013-D (Pen/Pol) dated 27.04.2015 and PCDA (P) Allahabad Circular No. 543 dated 27.05.2015, applicant is entitled to Constant Attendance Allowance.

9. Resultantly, the O.A. deserves to be allowed, hence allowed. The impugned orders passed by the respondents are set aside. While the disability pension @100% has already being granted to the applicant from the date of his discharge from service, the Constant Attendance Allowance is also granted from the date of discharge from service. However, due to law of limitations settled by the Hon'ble Supreme Court in the case of ***Shiv Dass v. Union of India and others*** (2007 (3) SLR 445), the arrear of Constant Attendance Allowance will be restricted to three years preceding the date of filing of the instant O.A. The date of filing of this O.A is 10.12.2021. The respondents are directed to give effect to this order within four months from the date of receipt of a copy of this order. Default will invite interest @ 8% per annum till actual payment.

10. No order as to costs.

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

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

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