

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

**O.A. No. 112 of 2020 with M.A. No. 975 of 2019**

**Smt Santosh Dwivedi W/O**  
**Ex Nk Rama Shankar Dwivedi**  
By Legal Practitioner for the Petitioner

Applicant

Versus

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

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><b><u>24.03.2021</u></b> <b><u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u></b> <b><u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></b></p> <p>Heard Shri Vinay Pandey, learned counsel for the applicant and Shri DK Pandey, learned counsel for the respondents.</p> <p><b><u>M.A. No. 975 of 2019</u></b></p> <p>The Original Application has been filed with delay of 18 years, 04 months and 17 days.</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>O.A. has already been admitted vide order dated 14.01.2020.</p> <p><b><u>O.A. No. 112 of 2020</u></b></p> <p>Heard.</p> <p>Arguments concluded.</p> <p>Judgment is reserved.</p> <p style="text-align: center;"><b>(Vice Admiral Abhay Raghunath Karve)</b> <b>Member (A)</b></p> <p style="text-align: center;"><b>(Justice Umesh Chandra Srivastava)</b> <b>Member (J)</b></p> <p>rathore</p>

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<b>Notes of the Registry</b>	<b>Orders of the Tribunal</b>
	<p><b><u>26.03.2021</u></b> <b><u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u></b> <b><u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></b></p> <p>Order pronounced today in the open Court. Original Application is <b>dismissed</b>. For order, see our judgment passed on separate sheets. Misc. Applications, pending if any, shall be treated as disposed of accordingly.</p> <p>(Vice Admiral Abhay Raghunath Karve) Member (A)</p> <p>(Justice Umesh Chandra Srivastava) Member (J)</p> <p>rathore</p>

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

**Original Application No. 112 of 2020**

**Friday, this the 26<sup>th</sup> day of March, 2021**

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

Santosh Dwivedi wife of No 14368291Y Ex-Naik Rama Shankar Dwivedi,  
R/O Village-Tiliyani, Post-Biraura, Tehsil-Mirzapur (UP).

..... Applicant

Ld. Counsel for the: **Shri Vinay Pandey, Advocate**  
Applicant

Versus

1. Union of India, through, Secretary Ministry of Defence (Army), DHQ,  
PO-New  
Delhi-11.
2. The Chief of the Army Staff, Army Headquarters, Sena Bhawan, New  
Delhi.
3. Commanding Officer, 165 Field Regiment, C/O 56 APO.
4. The Officer-in-Charge Records, Artillery, Nasik Road Camp, C/O 56  
APO.
5. Principal Controller of Defence Accounts, Draupadi Ghat, Allahabad  
(UP).

..... Respondents

Ld. Counsel for the :**Shri DK Pandey, Advocate**  
Respondents                      Central Govt Counsel.

## ORDER

1. 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:-

- “(i) Issue/pass an order or direction of appropriate nature to the respondents to review and assess the medical category of the applicant’s husband by a duly constituted medical board comprising of classified specialist of Psychiatry and Neurologists.*
- “(ii) To issue/pass an order of appropriate nature to assess the percentage of disablement of applicant’s husband by a duly constituted medical board comprising of classified specialist of Psychiatry and Neurologists.*
- “(iii) Issue/pass an order or direction of appropriate nature grant the invalid/disability pension to the applicant as per the current medical category of the applicant’s husband after holding the Review Medical Board and also grant benefit of broad banding of disability pension as per the Government of India letter dated 31.01.2001, with effect from 31.01.1996.*
- “(iv) Issue/pass an order or direction of appropriate nature to the respondents to make the payment of arrears along with interest accrued to the applicant due to revision of his pension and continue to p[ay regular pension to the applicant in the revised rate.*
- “(v) Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*
- “(vi) Allow this application with costs.*

2. Brief facts of the case are that husband of the applicant was enrolled in the Army on 29.10.1982. On 10.12.1991 applicant’s husband submitted an application for premature discharge from service on extreme compassionate grounds. Accordingly, he was discharged from service before completion of terms of engagement at his own request with effect from 30.06.1992 (AN) in terms of Rule 13 (3) III (iv) of Army Rules, 1954. Earlier in the year 1986, applicant’s husband suffered from ‘Neurotic Depression’ and was downgraded to medical category ‘CEE (temporary)’ for 06 months with effect from 26.04.1986 but in review medical board he was upgraded to medical category ‘AYE’ on 13.11.1986. Since husband of

applicant was discharged from service in medical category 'AYE', therefore, prior to discharge his Release Medical Board (RMB) was not conducted but applicant was medically examined by a medical officer in terms of Army Order 03/89 who declared him fit in medical category 'AYE'. Applicant had preferred a representation dated 09.07.1997 for grant of disability pension. The aforesaid representation being not decided, applicant had filed a Writ Petition No. 12143/2000 in the Hon'ble High Court at Allahabad. The Hon'ble High Court vide its order dated 07.03.2000 disposed of the Writ Petition directing the respondents to decide applicant's representation within three months. The aforesaid representation was rejected vide order dated 07.07.2000. On 07.01.2012 a representation for grant of disability pension was again submitted but it was turned down vide order dated 28.01.2012. The applicant has filed this O.A. for grant of disability pension and conducting Re-survey Medical Board (RSMB) in respect of her husband who is said to be mentally depressed.

3. Learned counsel for the applicant submitted that after discharge from service applicant became totally depressed and on account of that he spent two years time at Vindhyachal Parvat for recuperation. After that he underwent medical treatment with various doctors viz, Dr. Hemant Singh and Dr. Rakesh Raj. His further submission is that husband of the applicant is still under treatment for neurotic depression and that is the reason this application has been filed by his wife. Applicant's learned counsel further submitted that husband of applicant was enrolled in medically and physically fit condition and any disability that has occurred while in service should be either attributable to or aggravated by military service and husband of applicant should be granted disability pension as his disability had occurred while in military service. Relying upon the Hon'ble

Apex Court judgment in the cases of ***Sukhwinder Singh vs Union of India & Ors***, Civil Appeal No 5605 of 2010, decided on 25.06.2014, ***Dharamvir Singh vs Union of India & Ors***, reported in (2013) 7 SCC 316, learned counsel for the applicant submitted that keeping in view of the aforesaid judgments, husband of the applicant is entitled to disability pension as he was enrolled in medically and physically fit condition. He pleaded for disability pension to be granted to husband of applicant.

4. On the other hand, learned counsel for the respondents submitted that applicant's husband is not entitled to disability pension on two grounds, firstly his Release Medical Board (RMB) was not conducted prior to discharge from service and, secondly at the time of release medical examination, he was found to be in medical category 'AYE' which debars grant of disability pension.

5. We have heard learned counsel of both sides and perused the material placed on record.

6. We find that husband of applicant was enrolled in the Army on 29.10.1982 and during service he applied for premature discharge from service through application dated 10.12.1991 on extreme compassionate grounds so that he could look after his old aged father. Application for premature discharge was sanctioned and he was discharged from service with effect from 30.06.1992. It is admitted fact that applicant's husband suffered with Neurotic Depression in the year 1986 and his medical category was downgraded to 'CEE (temporary)' for six months which was subsequently upgraded to medical category 'AYE' with effect from 13.11.1986.

7. During arguments, learned counsel for the applicant produced copy of Govt of India, Min of Def letter dated 22.11.1983 and submitted that as per para 10 of the aforesaid letter, post discharge claims can be considered

within 10 years of discharge from service. We have gone through this letter and found that this ruling is applicable to those who were under treatment prior to discharge and their discharge was not solely on medical grounds and the disability, with which they were suffering, manifested within 10 years after discharge from service. There is no document on record to show that applicant was under treatment at the time of discharge and the disability manifested after discharge from service. Thus, this ruling does not help the applicant.

8. Release Medical Examination Report (RME) (AFMSF-18) dated 22.04.1992 conducted prior to discharge clearly indicates that applicant's husband was released from service in medical category 'AYE' and as such there is no ground for grant of disability pension. Extract of endorsement made on RME by medical officer is as under:-

*"Fit to be released from service in medical category 'AYE'.*

9. In view of the above and the fact that husband of applicant was discharged from service in medical category 'AYE' at his own request, he is not entitled to disability pension. Further, after about 28 years of discharge, we see no reason for conducting RSMB at this belated stage more so when applicant's husband was not suffering from any disability that was overlooked by medical doctors who conducted his Release Medical Examination on 22.04.1992.

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

11. No order as to costs.

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

(Vide Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)  
Member (A) Member (J)

Dated : March, 2021  
rathore

