

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

**O.A. No. 239 of 2020 with M.A. No. 110 of 2020**

**Ex L/Nk Hardayal Singh**

Applicant

By Legal Practitioner for the Applicant

Versus

**Union of India & Others**

Respondents

By Legal Practitioner for Respondents

<b>Notes of the Registry</b>	<b>Orders of the Tribunal</b>
	<p><b><u>18.02.2021</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>1. Heard Shri RN Tripathi, learned counsel for the applicant and Dr. Gyan Singh, learned counsel for the respondents.</p> <p style="text-align: center;"><b><u>M.A. No. 110 of 2020</u></b></p> <p>2. The Original Application has been filed with delay of 24 years, 05 months and 23 days.</p> <p>3. 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>4. Per contra, learned counsel for the respondents submits that cause shown by the applicant is not sufficient.</p> <p>5. 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>6. Accordingly, delay in filing of application is condoned. Application stands decided accordingly.</p> <p>7. O.A. has already been admitted and registered vide order dated 09.09.2020.</p>

**O.A. No. 230 of 2020**

8. 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) An order or direction quashing the proceedings of the re-survey medical board, relevant page which is Annexure No. A-1 to the present OA and for directing the respondents to grant the same w.e.f. 08.04.1999 and round off the disability pension of the applicant from 20% to 50% with the date of the discharge (01.01.1990).*

*(ii) To allow the OA with the costs.*

*(iii) Any other or further order or direction which this Hon'ble Court may deem just, fit and proper in the circumstances of the case.*

9. Brief facts of the case giving rise to this application are that the applicant was enrolled in the Indian Army on 24.11.1973 and after having completed more than 16 years of service he was discharged from service in low medical category 'CEE' (Permanent) on 01.01.1990. Applicant is in receipt of service pension. Prior to discharge from service, the applicant was brought before Release Medical Board (RMB) held on 05.08.1989 which assessed applicant to be suffering from '**CERVICAL SPONDYLOSIS 421**' @ 20% for two years and opined it to be aggravated by military service. Thereafter, various Re-Survey Medical Boards were held at different intervals and applicant was granted disability element through PPO placed on record. The last RSMB held on 26.12.1998 assessed applicant's disability @ 20% for five years w.e.f. 08.04.1999. However, disability element was reduced to 11-14% (i.e. below 20%) for five years by PCDA (P), Allahabad and accordingly disability element was stopped vide order dated 16.04.1999 being disability below 20%. Applicant was advised to prefer an appeal against rejection of disability pension claim, but applicant did not do so and has filed this O.A. for grant of disability pension.

10. Ld. Counsel for the applicant submitted that applicant was enrolled in the Army in medically and physically fit condition and there was 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 he should be entitled to disability pension. Ld. Counsel for the applicant further submitted that vide RSMB dated 26.12.1998 applicant's disability percentage was assessed @ 20% for five years but pension sanctioning authority i.e. PCDA (P), Allahabad has reduced the disability percentage to 11-14% (i.e. below 20%) and disallowed the same w.e.f. 08.04.1999. He submitted that pension sanctioning authority has no right to sit over the opinion of RMB/RSMB. He concluded by pleading for grant of disability element to applicant.

11. On the other hand, Ld. Counsel for the respondents submitted that the RMB has declared the applicant's disability as aggravated by military service and he was granted disability element for that period but submitted that disability percentage assessed in the later RSMB dated 26.12.1998 was reduced to below 20% by pension sanctioning authority, therefore, the competent authority has rejected claim of disability pension being disability at less than 20%. He pleaded for dismissal of O.A.

12. Heard Ld. Counsel for the parties and perused the material placed on record. We have also gone through the RMB, subsequent RSMBs and the rejection order of disability pension claim.

13. We take note that the applicant was assessed disability element @ 20% for five years starting from 08.04.1999 but on adjudication Medical Adviser of PCDA (P), Allahabad has reduced applicant's disability percentage to 11-14% (i.e. below 20%), which seems to be unjustified in terms of the Hon'ble Apex Court judgment in Civil Appeal No. 164/1991 decided on 14.01.1993, titled **Ex. Sapper Mohinder Singh vs. Union of India & Others**. The observation made in the decision of **Mohinder Singh** (supra) being relevant, is quoted below:

*"From the above narrated facts and the stand taken by the parties before us, the controversy that falls for determination by us is in a very narrow compass viz. whether the Chief Controller of Defence Accounts (Pension) has any jurisdiction to sit over the opinion of the experts (Medical Board) while dealing with the case*

*of grant of disability pension, in regard to the percentage of the disability pension, or not. In the present case, it is nowhere stated that the Applicant was subjected to any higher medical Board before the Chief Controller of Defence Accounts (Pension) decided to decline the disability pension to the Applicant. We are unable to see as to how the accounts branch dealing with the pension can sit over the judgment of the experts in the medical line without making any reference to a detailed or higher Medical Board which can be constituted under the relevant instructions and rules by the Director General of Army Medical Core.”*

14. Thus, from the aforesaid observations we find that disability percentage assessed by the RSMB cannot be reduced by PCDA (P), Allahabad in terms of the Hon'ble Apex Court judgment cited above. The respondents have no right to alter findings of RSMB. Therefore, we set aside letter dated 16.04.1999 by which disability percentage was reduced to 11-14% for five years, though the RSMB has assessed it @ 20% for five years.

15. In view of the above applicant is held entitled to 20% disability element (rounded off to 50% disability element) for the period 08.04.1999 to 25.12.2003.

16. We further find that the RSMB conducted on 07.10.2004 has assessed applicant's disability percentage @ 11-14% for life which is below 20%. Therefore, keeping in view the Hon'ble Apex Court judgment delivered in Civil Appeal No 10870 of 2018 decided on 11.12.2019, titled ***Union of India & Others vs Wg Cdr SP Rathore***, applicant is not entitled to disability element w.e.f. 26.12.2003 being disability element below 20%.

17. The O.A. is partly **allowed**.

18. Respondents are directed to pay disability element to applicant @ 20% (rounded off to 50%) for the period 08.04.1999 to 25.12.2003 within four months from today.

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

20. No order as to costs.

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

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

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