

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

7. O.A. No. 168 of 2020 With M.A. No. 38 of 2020

EX L/NK (MP) PrasannaKumaranPillai
S/o VasudevanPillai
By Legal Practitioner for the Applicant

Versus

Union of India & Others
By Legal Practitioner for Respondents

Applicant

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>22.08.2022</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>Heard Mr. A.P. Singh, Ld. Counsel for the applicant and Mr. Rishi Ashok, Advocate instructed by Mr. B.K. Ashok, Ld. Counsel for the respondents.</p> <p>Being pensionary matter, delay in filing of Original Application is condoned. Delay condonation application stands decided accordingly.</p> <p><u>O.A. No. 168 of 2020</u></p> <p>Heard Mr. A.P. Singh, Ld. Counsel for the applicant and Mr. Rishi Ashok, Advocate instructed by Mr. B.K. Ashok, Ld. Counsel for the respondents.</p> <p>Original Application is dismissed.</p> <p>For orders, see our order passed on separate sheets.</p> <p>Misc. Application(s), pending if any, shall be treated to have been disposed of.</p> <div><div>(Vice Admiral Abhay Raghunath Karve) Member (A) AKD/AMK/-</div><div>(Justice Umesh Chandra Srivastava) Member (J)</div></div>

ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI

ORIGINAL APPLICATION No. 168 of 2020

Monday, this the 22nd day of August, 2022

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

Ex. L/Nk (MP), Army No. 7769768K, Prasanna Kumaran Pillai,
S/o Vasudevan Pillai, Room No. 314, Building No. 1, Ganesh
Wadi, MIDC, Andheri (E), Mumbai-400093.

..... **Applicant**

Ld. Counsel for the : **Mr. A.P. Singh**, Advocate.
Applicant

Versus

1. The Union of India, (Rep. by Defence Secretary),
Department of Ministry of Defence, South Block, DHQ Post,
New Delhi-110011.
2. The Chief of Army Staff (COAS) (for Adj. Gen. Br.
Personnel Services), IHQ of MoD (Army), D-II Sena
Bhawan, DHQ Post, New Delhi-110105.
3. The General Officer Commanding in Chief, HQs, Southern
Command, Pune-411001.
4. The Officer-in-Charge Records, Corps of Military Police
Records, PIN-900493, C/o 56 APO.
5. The Pr. Controller of Defence Accounts, Draupadi Ghat,
Allahabad-211014.

.....**Respondents**

Ld. Counsel for the : **Mr. Rishi Ashok**, Advocate
Respondents. Instructed by **Mr. B.K. Ashok**
Central Govt. Counsel

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs :-

- (a) *to set aside and quash the impugned order(s) if any and grant disability pension at least @20% for life with rounding of benefit from 20% to 50% for life from the date of retirement i.e. 24.11.1980 with restriction of arrears of pension to 03 years only preceding to the date of filing this OA. With direction to the respondent to issue PPO accordingly. The apex court ruling in the case of ‘Tarsem Singh (Supra) referred.*
- (b) *to direct the respondents to calculate and pay arrears of disability pension within two months from the date of order, and failing which the respondents to pay interest @12% on arrears of till the effect date payment.*
- (c) *Any other relief/direction may be ordered as it may be deemed fit by the Hon’ble Tribunal in the facts and circumstances of the present case.*
- (d) *Costs of this petition may be allowed to the applicant.*

2. Briefly stated, applicant was enrolled in the Indian Army on 20.12.1974 and was invalided out from service on 23.11.1980 in Low Medical Category ‘EEE’ under Rule 13(3) Item III (iii) of the Army Rules, 1954 after rendering 05 years and 11 months and 04 days of service. As per Original Application, at the time of

invalidation from service, the Invaliding Medical Board held at Military Hospital, Barrackpore assessed his disability '**NEUROSIS (HYSTERICAL REACTION) ICD – 300 (b)**' @ 30% for life and opined the disability to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability pension was rejected which was never communicated to the applicant. The applicant preferred representation after elapse of more than 39 years of his invalidation which was replied vide letter dated 28.01.2020. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned counsel for the applicant submitted that applicant was found fit in all respects at the time of enrolment in the army and there was no note in his primary service documents with regard to any disease/disability. Therefore, whatever disease with which applicant suffered during service is attributable to military service. He pleaded that Hon'ble Apex Court and various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension as well as arrears thereof, as applicant is also entitled to disability pension and its rounding off to 50%.

4. On the other hand, learned counsel for the respondents submitted that disability pension of the applicant was rejected by the respondents stating that disability of the applicant is neither

attributable to nor aggravated by military service and does not fulfil the conditions. He further submitted that applicant was non pensioner, therefore, his medical documents including constituents thereof have been destroyed after expiry of retention period as per para 592 to 596 of Regulations for the Army 1987. Long Roll in respect of pensioners and non- pensioners are retained for a period of 50 years and 25 years respectively from the date of becoming non-effective. Further submission of learned counsel for the respondents is that since documents relating to applicant have been destroyed on expiry of mandatory retention period of 25 years being a non-pensioner, therefore, degree of disablement cannot be ascertained at this stage. He pleaded the Original Application to be dismissed being devoid of merit.

5. Heard Ld. Counsel of both sides and perused the records and we find that documents relating to ex army person have been destroyed after mandatory retention period in terms of para 592 to 596 of Regulations for the Army, 1987. We could have decided the case, had there been related medical documents pertaining to the applicant and applicant could have been benefitted, but we are unable to impart justice in the absence of requisite medical documents.

6. In view of the above, we are unable to decide the case in vacuum after a prolonged gap of more than 39 years from the date

of invaliding out from service. Original Application is devoid of merit and is liable to be dismissed. It is accordingly **dismissed**.

7. Pending misc. applications, if any, are disposed off.

8. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 22 August, 2022

AKD/AMK/-