

FORM NO – 4

(SEE RULE 11 (1))

IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

ORDER SHEET

APPLICATION No : R.A. 11 of 2013 with MA 138/13 (Arising out of O A 11/2013)

APPLICANT (S)	Union of India & 3 Ors
RESPONDENT (S)	<u>Sunil Kanti Barua</u>
Legal Practitioner of applicant	Legal Practitioner for Respondent (s)
Mr. Anup Kr. Biswas	Mr. Nilanjan Kar(present at the time of hearing of OA 11/13)

NOTES OF THE REGISTRY	<u>ORDERS OF THE TRIBUNAL</u> <u>(Disposed of by Circulation)</u> Order Sl. No. : _____ Dated : 20.12.2013
	<p style="text-align: center;"><u>ORDER</u> (In Chambers)</p> <p>The case record of RA 11 of 2013 is put up in chambers.</p> <p>This review application being No. RA 11 of 2013 has been filed by the respondents of OA 11/2013 praying for review and recall of the order dt. 03.06.2013 on the grounds stated therein. Since there was delay in filing the RA, a Misc. application bearing No. 138/13 has also been filed for condonation of such delay.</p> <p>In the OA, the applicant, who was discharged from Army on 1.3.1989 in the rank of Havildar, was granted honorary rank of Naib subedar on 15.8.1989. He was getting pension as Havildar. Subsequently, on the basis of recommendation of 6th CPC, Govt. of India issued instructions that all those, who have been awarded honorary rank after 1.1.2006 will draw pension in that rank and their last pay will be notionally fixed in the higher promotional rank, i.e. in the case of Havildar, it is Naib Subedar. The applicant prayed for such benefit since it was not granted to</p>

him since he retired prior to 1.1.06.

This Bench relying on a decision of the Chandigarh in OA 42/2010 (**Virender Singh & Ors- vs- UOI & Ors**) decided on 8.2.10, against which the SLP filed by the UOI respondents before the Hon'ble Apex Court was rejected on 13.12.10 (vide SLP No. 18582 of 2010) directed that similar benefit be extended to the applicant w.e.f. 1.1.2006.

In the instant RA, the respondents/petitioners have stated that when the order of the Tribunal was sent to PCDA(P) for implementation, objection was raised by the said authority vide annexure-B to the MA inter alia stating that "benefit of service pension in Naib Subedar which was extended to those Havildar who were granted Hony rank of Nb sub on retirement prior to 1.1.2006 has been dismissed by the Hon'ble Supreme Court vide order dt. 6.3.2013" Accordingly, on the advice of PCDA, the instant RA has been filed. However, in filing the RA, there was delay of 161 days for which condonation has been sought for in the connected MA.

From the RA it appears that the judgement of Hon'ble Supreme Court on which the respondents have placed reliance is that of UOI & Ors –vs- Sohan Lal Bawa, (Civil Appeal No. 13139 of 2001) decided on 7.7.2011, which was also mentioned in our order under review.

It is further submitted in para 8 of the RA that a review petition was filed before the Hon'ble Supreme Court in connection with UOI & Ors –vs- Sohan Lal Bawa which was dismissed on merit on 6.3.2013 to the following effect :-

"It needs, however, to be clarified that the decision of the AFT shall relate to cases of Havildar, who before their retirement were granted Hony promotion to rank of Nb Sub and shall not be used as precedent in the case of other ranks"

It is stated by the review applicants that this fact could not

be brought to the notice of the Tribunal at the time of hearing of the OA although the Id. av. for the respondents, Mr. Anup Kr. Biswas submitted and recorded in the order that "a curative petition is being filed by the Union of India before the Hon'ble Apex Court in Union of India –vs- Sohanlal Bawa...."

Basing on this order of the Hon'ble Apex Court dt. 6.3.13, the respondents have sought review and recall of our order.

We fail to understand the logic or reasoning of the respondents in seeking review because the decision of Hon'n;e Apex Court in RA filed in connection with Sohanlal Bawa's case dt. 6.3.13, clearly stated that the decision of AFT shall not be used as precedent in the cases of other ranks and shall relate only to Havildars who were granted Hony promotional rank of Nb Sub. In the case before us the applicant was also a Havildar and was granted Hony rank of Nb Sub, therefore, there was no infraction of the direction of the Hon'ble Apex Court as it clearly mentioned that it will be applicable to the

From the above factual position, it appears that this RA has been filed beyond the prescribed time limit of 30 days as per rule 18(2) of AFT (Procedure) Rules, 2008.

4. On a plain reading of rule 18(1) of the AFT(Procedure) Rules, it appears that an application for review is not entertainable unless it is filed within 30 days from the date of receipt of a copy of the order sought to be reviewed. There is no express provision for condonation of delay in respect of review petition. The power of condonation of delay as enjoined in Sec. 22 of the AFT Act, 2007 relates to applications filed under Sec. 14(2) of the Act as is evident from the definition of expression 'application' as provided in Sec. 3(b) of the Act. A review petition is filed under Sec. 14(4)(f) of the Act read with rule 18 of the AFT(Procedure) Rules. In this context reference can be made to a recent unreported decision of the Division Bench of Hon'ble

Gauhati High Court dt. 17.08.2013 in WP(C) 5606 of 2012 (**Air Cmde Mrigendra Singh, VSM –vs- UOI & Ors**) wherein it is held in paragraph 37 of the said judgement as under :-

“ 37. There is no provision in the AFT Act or the Rules made thereunder making the Limitation Act, 1963 applicable. There can, therefore, be no manner of doubt that the learned AFT could not have entertained the application seeking rectification/correction, when the said application had been made beyond the period of 30 days of the receipt of the copy of the order.

5. In that view of the matter, we are of the considered opinion that this review application cannot be entertained on the ground of an inordinate delay, which has not been adequately explained to the satisfaction of the Court. Be that as it may, this Tribunal is not empowered to entertain any application for review beyond the prescribed limit of 30 days as envisaged in Rule 18(2) of the Armed Forces Tribunal (Procedure) Rules, 2008.

In view of the above, the RA stands rejected by circulation in terms of Rule 18(3) of AFT (Procedure) Rules, 2008. No cost.

Let copy of the order be furnished to both sides.

(LT. GEN. K.P.D.SAMANTA)
MEMBER(ADMINISTRATIVE)

(JUSTICE RAGHUNATH RAY)
MEMBER(JUDICIAL)