

FORM NO.4
(SEE RULE 11 (1))
IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA
ORDER SHEET

APPLICATION No. R.A No. 10/2013
(With M.A.No. 137/2013 – arising out of OA No. 100/2012)

APPLICANT (S)	Secretary, AGI Fund, AGI Bhavan, New Delhi
RESPONDENT (S)	Ex NK Nabaghana Behera & 7 Others
Legal Practitioner for Applicant (s)	Legal practitioner for Respondents
Mr.Mintu Kumar Goswami	Mr. Bisikesan Pradhan Mr. Anup Kumar Biswas (Resp. Nos. 2 – 8)

	<u>ORDERS OF THE TRIBUNAL</u>
	<p><u>Order Serial Number:</u> <i>/</i> Dated : 29.04.2014</p>
	<p>Mr. Mintu Kumar Goswami, learned counsel appears for the applicant/respondent Army Group Insurance Fund (AGIF). Mr. Bisikesan Pradhan, learned counsel appears for the respondent/applicant. Mr. Anup Kumar Biswas, learned counsel appears for the Government respondent Nos. 2 to 8.</p> <p>2. RA No. 10/2013 along with the MA No. 137/2013 is taken up for hearing. The MA has been filed by the applicant/respondent praying for condonation of delay in filing RA (No. 10/2013) seeking review of the order dated 25.09.2013 passed in OA No. 100/2012.</p> <p>3. Appearing in support of his application for condonation of delay under Section 5 of the Limitation Act read with Section 151 of Code of Civil Procedure, it is submitted by Mr. Goswami that the delay for just 18 days in filing the instant review application has properly been explained in paragraphs 3 and 4 of this MA (No. 137/2013).</p>

4. Such submission of the learned counsel for the applicant/respondent is, however, rebutted by Mr. Pradhan, learned counsel for the respondent/applicant through the affidavit-in-opposition filed in this regard. It is submitted by him that this application (MA No. 137/2013) filed under Section 5 of the Limitation Act read with Section 151 Code of Civil Procedure is not at all maintainable since Rule 18(1) of the AFT (Procedure) Rules, 2008 clearly lays down that a Review Application shall be entertained only if it is filed within 30 days from the date of receipt of copy of the order. He has sought to emphasize the statutory bar imposed upon the filing of such Review Application beyond the prescribed period of thirty days. It is further pointed out by him that the procedural rules have not provided even one month to file such review application. It is also submitted by him that at this stage the Court is not required to look into the merit of the Review Application. It is further argued by him that it is not within the competence of this Court to entertain such Review Application since it was filed beyond the stipulated period of thirty days as prescribed in Rule 18(1) of the AFT (Procedure) Rules, 2008. Moreover, the delay has not been adequately explained in the delay condonation application making out sufficient cause to condone such delay in filing the Review Application. He, therefore, prays for dismissal of MA No. 137/2013.

5. We have very carefully taken into consideration the rival contentions advanced by both sides. Turning to the factum of filing of Review Application after the stipulated time-frame of thirty days from the date of passing the order impugned under review, we are to examine the scope and context of Rule 18(1) of the AFT (Procedure) Rules, 2008 in its proper perspective; for a proper appreciation of the relevant Rule 18(1) of the AFT (Procedure) Rules, 2008, it would be appropriate to reproduce the same as under:-

“18. Application for review – (1) No application for review shall be entertained unless it is filed within thirty days from the date of receipt of copy of the order sought to be reviewed.”

A plain reading of the relevant provisions of the AFT (Procedure) Rules, 2008 clearly establishes that an application for review shall not be entertained beyond the stipulated period of 30 days from the date of receipt of copy of the order sought to be reviewed. There is no specific provision in the AFT Act, 2007, being a special statute, empowering the Tribunal to condone delay in belated filing of a review application. In such a situation, filing of a petition under Section 5 of the Limitation Act is of no help to the applicant/respondent. We are, therefore, of the considered view that it is not within the competence of this Tribunal to condone any delay in filing the review application in question.

6. Such view stands fortified by a recent un-reported decision of the Hon'ble Gauhati High Court in WP(C) 5606/2012 (Air Cmde Mrigendra Singh, VSM vs Union of India & Others). The Hon'ble Gauhati High Court had an occasion to consider the question as to whether the AFT has the power to entertain review application beyond the period of thirty days as stipulated in Rule 18 of the AFT (Procedure) Rules, 2008. In para 39 of the said un-reported judgement, it is held by the Hon'ble Division Bench of the Gauhati High Court inter alia as under:-

“39. In short, an Armed Forces Tribunal does not have, under the scheme of the Armed Forces Tribunal Act, 2007 read with the Armed Forces Tribunal (Procedure) Rules, 2008, the power to entertain a review petition or any proceeding in the nature of review on expiry of 30 days from the date of receipt of the order, which is sought to be reviewed.....”

7. That apart, we have also carefully gone through the averments made in the delay condonation petition. We find that it has not specifically been averred within the four corners of the application as to how such delay was caused. In such circumstance, we are to opine that such delay has not been properly explained to the satisfaction of the court. There is nothing on record to indicate that the applicant/respondent was prevented from filing the Review Application within the stipulated period of 30 days by sufficient cause. No plausible explanation is forthcoming in this regard.

8. Taking all these legal and factual aspects coupled with other relevant materials and averments on record together into account, we are unable to condone the delay as sought for in MA No. 137/2013. In such view of the matter, the MA (No. 137/2013) filed under Section 5 of the Limitation Act read with Section 151 Code of Civil Procedure is liable to be dismissed. Accordingly the MA (No. 137/2013) stands dismissed on contest without cost.

10. Consequently, RA (No. 10/2013) is also dismissed being barred by limitation.

A plain copy of the order duly countersigned by the Tribunal Officer be given to the parties upon observance of all usual formalities.

(Lt Gen K.P.D. Samanta)
Member (Administrative)

(Justice Raghunath Ray)
Member (Judicial)