

COURT NO. 2, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(F)

RA 6/2024 WITH MA 362/2024 IN TA 134/2010

Nb Sub Rabendra Singh(Retd)

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Arvind Kumar &
Ms. Riti Sarkar, Advocates

For Respondents : Mr. Anil Gautam, Sr. CGSC

CORAM :

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER(J)

HON'BLE LT. GEN C.P. MOHANTY, MEMBER (A)

ORDER

MA 362/2024

The applicant vide the present application has sought condonation of 4116 days delay in filing the review application seeking review of the order dated 29.05.2012 in TA 134/2010 which bore previous no. Writ Petition(C) 3650/2004 as had been filed before the Hon'ble High Court of Delhi. Before we advert to the aspect of the merits or demerits of the prayers seeking condonation of delay in filing the review application which has been filed under Section-5 of the Limitation Act, 1963, we consider it essential to advert to the merits of RA 6/2024 that the applicant has filed dated 06.10.2023 to

consider whether the interest of justice would demand the grant of condonation of delay in filing the review application.

RA 6/2024

2. RA 6/2024 has been filed by the applicant under Section-14(4)(f) of the AFT Act, 2007 read with Rule-18 of the AFT(Procedure) Rules, 2008. Section-14(4)(f) of the AFT Act, 2007 provides to the effect:-

“14.

(4) For the purpose of adjudicating an application, the Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely—

(a)....

(b)....

(c)....

(d)....

(e)....

(f) reviewing its decisions;

(g)....

(h)...

(i)..... ”

3. Rule-18 of the AFT(Procedure)Rules, 2008 provides to the effect:-

“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.

(2) An application for review shall ordinarily be heard by the same Bench which has passed the order, unless the Chairperson may, for reasons to be recorded in writing, direct it to be heard by any other Bench.

(3) Unless otherwise ordered by the Bench concerned, an application for review shall be disposed of by circulation where the Bench may either dismiss the application or direct notice to be issued to the opposite party.

(4) Where an application for review of any judgment or order has been disposed of, thereafter no application for further review shall lie.

(5) No application for review shall be entertained unless it is supported by a duly sworn affidavit indicating therein the source of knowledge, personal or otherwise. The counter-affidavit in review application will also be a duly sworn affidavit wherever any averment of fact is disputed.”

4. In view of Section-14(4) of the AFT Act, 2007 referred to herein above, it is essential to advert to Order XLVII of the CPC, 1908 as amended, which reads to the effect:-

“1. Application for review of judgment.—(1) Any person considering himself aggrieved— (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred, (b) by a decree or order from which no appeal is allowed, or (c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applied for the review. 1 [Explanation.—The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.] 2. [To whom applications for review may be made.]—Rep. by the Code of Civil Procedure (Amendment) Act, 1956 (66 of 1956) s. 14.

3. Form of applications for review.—The provisions as to the form of preferring appeals shall apply, *mutatis mutandis*, to applications for review.

4. Application where rejected.—(1) Where it appears to the Court that there is not sufficient ground for a review, it shall reject the application.

(2) Application where granted.—Where the Court is of opinion that the application for review should be granted, it shall grant the same:

Provided that—

(a) no such application shall be granted without previous notice to the opposite party, to enable him to appear and be heard in support of the decree or order, a review of which is applied for; and

(b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him when the decree or order was passed or made, without strict proof of such allegation.

5. Application for review in Court consisting of two or more Judges.—Where the Judge or Judges, or any one of the Judges, who passed the decree or made the order a review of which is applied for, continues or continued attached to the Court at the time when the application for a review is presented, and is not or not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, such Judge or Judges

or any of them shall hear the application, and no other Judge or Judges of the Court shall hear the same.

6. Application where rejected.—(1) Where the application for a review is heard by more than one Judge and the Court is equally divided, the application shall be rejected.

(2) Where there is a majority, the decision shall be according to the opinion of the majority.

7. Order of rejection not appealable. Objections to order granting application.—[(1) An order of the Court rejecting the application shall not be appealable; but an order granting an application may be objected to at once by an appeal from the order granting the application or in an appeal from the decree or order finally passed or made in the suit.]

(2) Where the application has been rejected in consequence of the failure of the applicant to appear, he may apply for an order to have the rejected application restored to the file, and, where it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from appearing which such application was called on for hearing, the Court shall order it to be restored to the file upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for hearing the same.

(3) No order shall be made under sub-rule (2) unless notice of the application has been served on the opposite party.

8. Registry of application granted, and order for re-hearings.—When an application for review is granted, a note thereof shall be made in the register and the Court may at once re-hear the case or make such order in regard to the re-hearing as it thinks fit.

9. Bar of certain application.—No application to review an order made on an application for a review or a decree or order passed or made on a review shall be entertained.”

5. Thus in terms of Section-14(4)(F) of the AFT Act, 2007 read with Rule-18 of the AFT(Procedure) Rules, 2008, it is the principles of review legislated by Order XLVII of the CPC, 1908 as amended which govern the consideration of an application for review of the orders of this Tribunal. The requisite parameters for grant of review of an orders of this Tribunal thus are:-

- The discovery of new and important matter or evidence which, after the exercise of due diligence was not within the person's knowledge or could not be produced by him at the time when the decree was passed or order made;
- or a mistake or error apparent on the face of the record;
- or for any other sufficient reason.

6. In the instant case, WP(C) 3650/2024 initially filed by the applicant before the Hon'ble High Court of Delhi since transferred to the Armed Forces Tribunal vide order dated 03.11.2009 of the Hon'ble High Court of Delhi which now bears number TA 134/2010 on receipt by this Tribunal, the applicant had made the following prayers:-

“20. It is therefore respectfully prayed that the respondents may kindly be directed to allow the petitioner to join the services of the respondents in

the rank of Nayab Subedar with all benefits and to retain the quarter allotted to him.”

7. Vide Para-7 of the order dated 29.05.2012 in TA 134/2010 it was directed to the effect:-

“7. In view of the above, we direct the respondents to consider the case of the petitioner for promotion to the rank of Nb Sub from the date person junior to him was promoted i.e. on 01.07.2001 and in case, he meets all requisite criteria then all consequential benefits following thereof be given to the petitioner. Since, the petitioner has retired on 31.07.2003 as Hav, he will be entitled for all notional benefits to the rank of Nb Sub. This exercise be completed by the respondents within three months from date of receipt of copy of this order.”

8. The applicant now after more than 11 years of the pronouncement of the order dated 29.05.2012 in TA 134/2010 has sought the review of the said order seeking to the effect:-

“It is, therefore, prayed that this Hon’ble Tribunal may graciously be pleased to consider to above and admit this Application, issue notice to the respondents/defendants as to why the prayer of the Applicant/plantiff should not be allowed and upon showing the cause or causes and after hearing both the parties, be pleased to review the judgment and order dated 29.05.2012 passed in a case TA 134/2010 after considering the foregoing submissions and modify the same in favour of the applicant in terms of the prayer made for the ends of justice.”

9. Arguments were addressed on behalf of either side by the learned counsel. It is essential to observe that the order dated

29.05.2012 in TA 134/2010 of which review is sought categorically spells out that:

- (a) That the applicant was a Sepoy in the Indian Army on 19.07.1979;
- (b) He rose to the rank of L/Nk on 01.06.1987, to Naik on 01.12.1989 and Hav on 01.02.1994;
- (c) A Court of Inquiry(COI), Summary of Evidence and District Court Martial proceedings were initiated against him but he was acquitted of all the charges on 24.01.2003;
- (d) The applicant approached the respondents to consider him for promotion to the rank of Nb Sub as persons junior to him were promoted after his acquittal of the charge but as the respondents did not do so, he filed WP(C) 3650/2004 before the Hon'ble High Court of Delhi which was transferred to this Tribunal as TA 134/2010;
- (e) The respondents admitted that the applicant was acquitted of all the charges on 24.01.2003, the unit forwarded the proposal of the applicant for promotion with ante-date seniority on 01.05.2003 but the same was

rejected by the Records, Jat Regiment for the reason that the applicant was overage at the time of consideration.

10. Vide order dated 29.05.2012 in TA 134/2010 it was observed by this Tribunal vide Paras-5 to 8 thereof to the effect:-

“5. We have heard both the parties and gone through the record. Reply of the respondents is not at all satisfactory and as per the law. Petitioner was acquitted of all the charges on 24.01.2003 and he became overage for promotion to the post of Nb Subedar on 01.02.2003, however the persons junior to petitioner were promoted by this time. Once petitioner has been acquitted of all the charges then he is relegated to the same position as he was as if there was nothing against him. When the petitioner has been acquitted of all the charges then his position should have been restored back in his unit with his seniority and he should have been given promotion to the rank of Nb Sub which has been given to the persons junior to him.

6. It is pointed out that person junior to petitioner was promoted somewhere in July, 2001 then the case of the petitioner for promotion should have been considered vis-a-vis that person subject to petitioner has acquired all necessary qualification for promotion to the rank of Nb Sub. Reply of the respondents that petitioner's case could not be considered because he became overage or there was no vacancy, is not an answer. It is for the respondents to see that once the petitioner has been acquitted he should be restored back to his original position and he should be considered for promotion vis-a-vis persons junior to him. Petitioner has already gone through the drill of Court of Inquiry, Summary of Evidence and District Court Martial and has been found not guilty then as a matter of right, he should have been considered for promotion.

7. In view of above, we direct the respondents to consider the case of the petitioner for promotion to the rank of Nb Sub from the date person junior to

him was promoted le. on 01.07.2001 and in case, he meets all requisite criteria then all consequential benefits following thereof be given to the petitioner. Since the petitioner has retired on 31.07.2003 as Hav, he will be entitled for all notional benefits to the rank of Nb Sub. This exercise be completed by the respondents within three months from date of receipt of copy of this order.

8. Consequently, petition is allowed. No order as to costs."

11. The applicant through averments made vide para-6 of the present application has submitted to the effect:-

"VI. Because the applicant further contends here in that the disposal of TA 30 of 2010 is in the sheer violation of the Article 14 and 21 which is affording opportunity to the respondents to exploit the general semantic of the impugned order to their benefits and keeping the applicant at bay from the fruits of the order wherefore the applicant would have received the consequential benefits accrued to him, of the rank of Subedar Major, had he discharged from the service in normal course."

12. As was rightly submitted on behalf of the respondents, the applicant did not choose to seek execution of the order dated 29.05.2004 in TA 134/2010 apparently as the same was complied with and the same is brought forth implicitly through Para-6 of the present application RA 6/2024 filed by the applicant, for what the applicant thus now seeks is his subsequent promotions onwards from the rank of Nb Sub even though he had retired on 31.07.2003 as per the order dated 29.05.2012 of which review is sought. The contention raised on

behalf of the applicant is to the effect that in as much as he had filed WP(C) 3650/2004 in the year 2004 and that the TA 134/2010 was disposed of only on 29.05.2012 with the petitioner having retired on 31.07.2003, if the TA 134/2010 had been disposed of earlier, the applicant would have achieved greater heights in the Indian Army.

13. It is essential at the outset to observe that WP(C) 3650/2004 was instituted by the applicant on **10.03.2004**. As per the records of WP(C) 3650/2004 bearing TA 134/2010 itself, the same was filed after the applicant retired on **31.07.2003** as per averments made in Para-16 of the WP(C) 3650/2004 itself which reads to the effect:-


“16. That the relaxation as per Army Rules upto the period of 1.5.2003 of three months have been considered though the petitioner is coming within the category as there is no fault on the part of the petitioner and it was the respondents itself who were responsible in acting belatedly by not discharging the petitioner from 170, Infantry Brigade, C/O 56 APO after completion of evidence of Court of Inquiry in April, 2001, as the petitioner was quite fit for the upper job. The petitioner has been retired on 31.7.2003 with all benefits of Havildar.”

14. Thus, the contention raised on behalf of the applicant that if the applicant's TA had been disposed earlier he would have had an advancement in career and would have achieved greater heights, cannot be accepted.

15. Furthermore the averments made in the RA 6/2024 do not bring forth any new facts or any important matter or evidence which the applicant could not have produced at the time of consideration of TA 134/2010; nor are there any sufficient submissions which brings forth any mistake or error apparent on the face of the record in the order dated 29.05.2012 in TA 134/2010.

15. Reliance that has been placed on behalf of the applicant on the verdicts of the Hon'ble Supreme Court in *Pradeep S/O Rajkumar vs Manganese Ore Limited & Ors.* in Civil Appeal no. 7607/2021 and in the case of *Hindustan Tin Works Pvt. Ltd vs Employees of Hindustan Tin Works Pvt. Ltd* is misplaced as the facts thereof are not in *pari materia* with the facts of the instant case. There is no ground for review of the order dated 29.05.2012 in TA 134/2010 made out. In the circumstances, RA 6/2024 and the accompanying MA 362/2024 are both dismissed.

Pronounced in the open Court on the day of October, 2024.


[LT. GEN C.P. MOHANTY]
MEMBER (A)


[JUSTICE ANU MALHOTRA]
MEMBER (J)

/TS/