

**Form No. 4**  
**{See rule 11(1)}**  
**ORDER SHEET**  
**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**  
**Court No.2 (Sl. No. 9)**

**O.A. No. 50 of 2022 with M.A. No. 1340 of 2022 & M.A. No. 1341 of 2022**

**Ex WO Vijai Pratap Narain Mishra** Applicant  
By Legal Practitioner for the Applicant: Shri Shiv Kant Pandey, Advocate  
Shri Amit Pandey, Advocate  
Ms. Nisha Pandey, Advocate

**Versus**

**Union of India & Others** Respondents  
By Legal Practitioner for Respondents: Shri Amit Jaiswal, Advocate

Notes of the Registry	Orders of the Tribunal
	<p><b><u>21.09.2023</u></b> <b><u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u></b> <b><u>Hon'ble Lt Gen Anil Puri, Member (A)</u></b></p> <p>1. Heard Shri Shiv Kant Pandey and Ms. Nisha Pandey, Ld. Counsel for the applicant and Shri Amit Jaiswal, Ld. Counsel for the respondents.</p> <p>2. M.A. No. 1341 of 2022 has been moved by the applicant for recalling the order dated 10.10.2022 passed by this Tribunal in O.A. No. 50 of 2022.</p> <p>3. The Registry has reported that there is delay of 01 month and 09 days in filing the Recall Application.</p> <p>4. The applicant has moved M.A. No. 1340 of 2022 for condoning the delay in filing Recall Application. An affidavit has been filed in support of the delay condonation application.</p> <p>5. Learned counsel for the respondents has vehemently opposed the delay condonation application and application for recalling the order but written objection has not been filed.</p> <p><b><u>M.A. No. 1340 of 2022</u></b></p> <p>6. As reported by the Registry, recall application has been filed with delay of 01 month and 09 days.</p> <p>7. Learned counsel for the applicant has submitted that delay is not deliberate but for the reasons stated in affidavit annexed with delay condonation application.</p> <p>8. Learned counsel for the respondents opposed the prayer for condoning the delay and submitted that day to day explanation of the delay has not been given.</p> <p>9. Considering the submissions of leaned counsel of both the parties and perusing the record, we are of the view that reasons shown in affidavit are sufficient to condone the delay. Accordingly, delay is condoned. Delay condonation application stands disposed of.</p>

**M.A. No. 1341 of 2022**

10. This application has been moved by the applicant under rule 25 of Armed Forces Tribunal (Procedure) Rules 2008 for recalling the order dated 10.10.2022 passed by this Tribunal in O.A. No. 50 of 2022 to the extent directing applicant to delete respondent no. 11 & 12 from array of parties and also to delete reliefs relating to initiating disciplinary action against the respondents No. 11 & 12 and awarding compensation.

11. The Original Application No. 50 of 2022 has been filed by the applicant for following reliefs :-

- i. *This Hon'ble Tribunal may graciously be pleased to set aside Impugned Order/Signal No. 2021/AFRO/RRP/483 dated 28.06.2021 issued by O I/C CP Wing (Wg Cdr S Rawat) Air Force Record Office Subroto Park New Delhi (Annexure A-26 to this OA).*
- ii. *This Hon'ble Tribunal may graciously be pleased to declare Para 21 and Para 39 of the Promotion Policy 2020 issued vide Letter No. AIR HQ/C40651/PA (CPC) dated 25.08.2020 issued by ACAS (PA & C) of Air HQ, being ultra vires of Article 14 of Constitution of India, and null and void and struck down the same being unconstitutional (Annexure A-27 to this OA).*
- iii. *This Hon'ble Tribunal may graciously be pleased to direct Respondents, not to enforce Para 21 and Para 39 of Promotion Policy 2020, issued vide Letter No. AIR HQ/C40651/PA (CPC) dated 25.08.2020 issued by ACAS (PA & C) of Air HQ, being ultra vires of Article 14 of Constitution of India, during pendency of present OA.*
- iv. *This Hon'ble Tribunal may graciously be pleased to direct Respondents to grant promotion to applicant to Rank of MWO wef 01.07.2021, with all consequential benefits, in terms of Order/Signal No. 2021/AFRO/ RDA/157 dated 14.06.2021 (Annexure A-25 to this OA).*
- v. *This Hon'ble Tribunal may graciously be pleased to set aside the punishment Severe Reprimand awarded on 14.06.2021, awarded by AOC Advance HQ CAC Lucknow (Annexure A-26 to this OA).*
- vi. *This Hon'ble Tribunal may graciously be pleased to direct Respondent no. 1 and 2 to conduct inquiry against Respondents No. 11 and 12 for their illegal acts and take necessary action against them, in accordance with procedure established by law.*
- vii. *This Hon'ble Tribunal may graciously be pleased to award compensation 50 Lakhs in favour of applicant and against Respondent No. 11, 12 for their torturous and illegal acts, and direct Respondent No. 11, 12 and Respondent No. 1 and 2 to pay*

*the same to applicant.*

viii. *This Hon'ble Tribunal may grant any other and further relief to applicant as it deem fit, just and proper in the facts and circumstances of the case.*

ix. *This Hon'ble Tribunal may award the cost of petition to applicant.*

12. The respondents has raised preliminary objection on maintainability of the Original Application mainly on two grounds, (1) misjoinder of the parties (respondents No. 11 & 12) and (2) for plural remedies.

13. The detailed reply of the objection has been filed by the applicant mentioning therein law composition and case laws.

14. After hearing learned counsel for the parties and perusing the record, order dated 10.10.2022 (impugned order) has been passed by the Tribunal in court. Last para of the detailed impugned order is as follows :-

*"In view of above, Original Application is held to be bad in law for misjoinder of respondents Nos. 11 and 12 and causes of action relating to reliefs of initiating disciplinary action against respondents Nos. 11 and 12 and awarding compensation to the applicant. Applicant is, therefore, directed to delete respondents Nos. 11 and 12 from the array of the parties and also the reliefs relating to initiating of disciplinary action against respondents Nos. 11 and 12 and awarding compensation for which steps may be taken within two weeks."*

15. Learned counsel for the applicant also submitted that detailed reply of the objection raised by the respondents has been filed. This case was listed for hearing on 10.10.2022. Learned counsel made oral submission but could not submit case law compilation. It is further submitted that impugned order has not been passed in accordance with law. Learned counsel for the applicant has also referred case laws.

16. Learned counsel for the respondents vehemently opposed the prayer to recall the order and submitted that applicant was granted full opportunity to file reply and argue the case. He further submitted that applicant has moved detailed reply with law position and case laws. Arguments of learned counsel for the applicant was heard and impugned order was passed on merit. Applicant cannot be permitted to argue again on merit of the case.

17. We have considered the submissions of learned counsel of both the parties and perused the records.

18. After filing O.A. No. 50 of 2022 by the applicant, detailed objection on maintainability of O.A. was moved by the respondents on 04.03.2022. Applicant has been provided copy of objection and detailed reply has been filed by the applicant on objection of the respondents mentioning therein legal position and referring the case laws.

19. Learned counsel for the Applicant submits that he has not filed review application but recall application has been filed by him. He further submitted

that there is difference between a review and recall application. Learned counsel for the applicant has cited order dated 22.02.2011 passed by the Hon'ble Apex Court in **Vishnu Agarwal vs. State of U.P. & Anr**, in which the Hon'ble Apex Court has expressed view regarding difference between review and recall application and view taken by the Hon'ble Apex Court in **Asit kumar vs. State of West Bengal and Ors**, 2009 (1) SCR 469, is quoted as follows :-

*“There is a distinction between ..... a review petition and a recall petition. While in a review petition, the Court considers on merits whether there is an error apparent on the face of the record, in a recall petition the Court does not go into the merits but simply recalls an order which was passed without giving an opportunity of hearing to an affected party. We are treating this petition under Article 32 as a recall petition because the order passed in the decision in all Bengal Licensees Association vs. Reghabendra Singth & Ors [2007(11) SCC 374] cancelling certain licences was passed without giving opportunity of hearing to the persons who had been granted licences.”*

20. Impugned order dated 10.10.2022 has been passed after hearing the learned counsel of both the parties and perusing the record. In the order, arguments and reasoning advanced by learned counsel for the applicant is well discussed and reason for passing impugned order has also been given.

21. Learned counsel has also admitted that oral submission was made by him. It is submitted that compilation could not be submitted by him but detailed reply to the objection of respondents was submitted by the applicant before the Tribunal in which legal provisions and rules were also cited.

22. After hearing learned counsel for the applicant and perusing the record, detailed order has been passed.

23. If the applicant is aggrieved by the reasoned order passed after hearing both the parties, he may approach to appropriate forum against it but hearing in recall application on merit of the case cannot be re-opened.

24. In view of the above, we are of the view that there is no sufficient ground to invoke inherent power under Section 25 of AFT (Procedure) Rules, 2008 and application to recall order dated 10.10.2022 is liable to be dismissed. Accordingly, recall application is **dismissed**.

25. List the O.A. on **07.11.2023** for further proceeding.

(Lt Gen Anil Puri)  
Member (A)

(Justice Anil Kumar)  
Member (J)