

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

**Court No. 2(Sl. No. 22)**

**R.A. 7 of 2024 with M.A. No. 242 of 2024 Inre O.A. 1076 of 2022**

## Union of India & Others

## Applicants-Respondents

By Legal Practitioner for the Applicants : Shri Ram Saran Awasthi, Advocate

## Versus

**Ex HFO Kamlesh Kumar Mishra**

Respondent-Applicant

By Legal Practitioner for Respondent: Shri V.P. Panday and Shri R.K. Singh, Advocates

Notes of the Registry	Orders of the Tribunal
	<p><b><u>18.10.2024</u></b> <b><u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u></b> <b><u>Hon'ble Maj Gen Sanjay Singh, Member (A)</u></b></p> <p>1. On the case being taken up for hearing, Shri Ram Saran Awasthi, Ld. Counsel for the applicants - Union of India and Others is present through virtual mode. None is present for the respondent-applicant. MWO SK Mishra, Departmental Representative for the applicants-Union of India &amp; Others is present before the court.</p> <p><b><u>M.A. No. 242 of 2024</u></b></p> <p>2. The applicants have filed this Review Application under Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008. By means of this Review Application, the applicants have prayed for the following reliefs :-</p> <p>“(i) To allow the review application by reviewing the judgment and order dated 19.01.2023 passed by his Lordship “Hon'ble Mr. Justice Anil Kumar, Member (J) and Hon'ble Maj Gen Sanjay Singh, Member (A)” in a proper prospective after considering all the facts and circumstances and pass a fresh and final judgment and order as this Hon'ble Tribunal may deem fit, proper and just in the eyes of law in the interest of justice otherwise and applicants will suffer irreparable loss and injury. .</p> <p>(ii) To issue an order or direction that this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case.”</p> <p>3. As per registry, the application is delayed by 365 days. Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008 postulates that no application shall be entertained beyond the period of thirty days from the date of receipt of copy of the order sought to be reviewed. Review Application No. 7 of 2024 seeks review of the judgment and order dated 19.01.2023 passed in O.A. No. 1076 of 2022. Admittedly, the Review Application has been filed beyond the period of 30 days, as such, it is not entertainable.</p>

	<p>4. We have gone through the grounds and reasons indicated in the affidavit filed in support of the application for condonation of delay. In our considered opinion, the grounds mentioned in support of the application are not sufficient as delay has not been explained properly. The application for condonation of delay (M.A. No. 242 of 2024), therefore, has no force and it is accordingly dismissed.</p> <p><b><u>R.A. No. 7 of 2024</u></b></p> <p>5. The applicants have filed this Review Application under Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008 with prayer to review/set aside this Tribunal order dated 19.01.2023 passed in O.A. No. 1076 of 2022 by which this court has allowed notional increment to the respondent-applicant w.e.f. 01.07.2018 having completed one full year of service for the period from 01.07.2017 to 30.06.2018 on the basis of pleadings on record. .</p> <p>6. We have gone through the grounds and reasons indicated in the review application and have also gone through the judgment and order sought to be reviewed. The judgment and order sought to be reviewed was passed in proper prospective after considering all the facts and circumstances and based on pleadings of the parties and also in view of the several pronouncement of the Hon'ble Apex Court. Neither the applicants-Union of India &amp; Others nor respondent-applicant have brought on record during their pleadings, the issue of grant of Honorary Flying Officer (HFO) rank in Jan 2018 and its impact on the increment. Therefore, no error apparent on the face of record has been shown to us so as to review the aforesaid judgment of this Court.</p> <p>7. That apart, it is a settled proposition of law that the scope of the review is limited and until it is shown that there is error apparent on the face of record in the order sought to be reviewed, the same cannot be reviewed vide Order 47, Rule 1 sub-rule (1) of the Code of Civil Procedure.</p> <p>8. In view of the principles of law laid down by the Hon'ble Supreme Court in various decisions, it is settled that the scope of review jurisdiction is very limited and re-hearing is not permissible as held by the Hon'ble Supreme Court in Para 9 of its judgment in the case of <b><i>Parsion Devi and others vs. Sumitri Devi and others</i></b>, reported in (1997) 8 Supreme Court Cases 715 and in the case of <b><i>S. Madhusudhan Reddy Versus V. Narayana Reddy and Others</i></b>, Civil Appeal Nos. 5503-04 of 2022, decided on 18.08.2022.</p> <p>9. It will also be proper here to discuss the alternative option of Date Next Increment (DNI) available to the respondents to implement the order. The fact that the applicant has been granted HFO rank on 26<sup>th</sup> Jan and retired on 30.06.2018 has not been brought on record by either of the parties. There is a provision of DNI wherein it is provided that an individual can exercise his option on promotion to have his pay fixed either from the date of promotion or from the date of next increment in the lower rank as per Air Force Pay Rules, 2017.</p>
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	<p>The matter for grant of notional increment has been settled by the Hon'ble Apex Court vide order dated 10.07.2023 passed in Civil Appeal No. 4339 of 2023, arising out of Diary No. 16764 of 2023, <b>Union of India &amp; Others vs. Anand Kumar Singh</b>. The respondents could have very well considered the rule of DNI for implementing the order of this Tribunal but this fact has not been considered by the respondents.</p> <p>10. In the instant case, grounds/details mentioned in the present Review Application cannot be taken into consideration at this stage being fresh facts which were not part of the pleadings. Moreover, the provision of exercise of DNI option exists for implementing the order. The order for grant of notional increment was passed as per records/rule position on the subject. Therefore, in the light of the facts and legal position crystalized above, we are of the considered view that there is no illegality or irregularity or error apparent on the face of record being found in the impugned order dated 19.01.2023, passed in O.A No. 1076 of 2022, which may be corrected in exercise of review jurisdiction.</p> <p>11. Accordingly, Review Application No. 7 of 2024 is hereby <b>rejected</b>.</p> <div><div>(Maj Gen Sanjay Singh) Member (A)</div><div>(Justice Anil Kumar) Member (J)</div></div> <p>SB</p>
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