

RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

COURT NO. 1

O.A. No. 264 of 2012**Monday, this the 14th day of December, 2015****Corum****"Hon'ble Mr. Justice Virendra Kumar DIXIT, Judicial Member
Hon'ble Lt Gen Gyan Bhushan, Administrative Member"**

1. No 1245261A Ex Hav (Hony Nb Sub) Shiv Gopal, aged about 63 years, son of Late Babu Ram, resident of Village – Sirounj, P.O. – Jahanganj, District – Farukhabad (UP).

2. No 13909227 Ex Hav (Hony Nb Sub) Ramesh Chander, aged about 66 years, son of Shri Babu Ram Dixit, resident of C/O Dr B S Mishra, J.M.V. Road, near S.V. Roji School, Post Office- Fatehgarh, Dist – Fatehgarh.

3. No 1527605K Ex Hav (Hony Nb Sub) Om Prakash aged about 67 years, son of Late Shri Babu Ram Sharma, resident of Kakrahi Bazar, Dibiyapur, District – Auraiya (U.P.)-206244

4. No 13910692K Ex Hav (Hony Nb Sub) Munim Chand Tripathi, aged about 64 years, son of Shri Rup Singh, resident of Basaiyahaar, Post Office, Ekari (Lakhana), District – Itawah (UP)-206127

.... Applicant

Versus

1. Union of India through Secretary, Ministry of Defence (Army), West Block 2, R.K.Puram, New Delhi-110011.

2. The Officer-in-Charge, Records Artillery. Nasik Road Camp, Nasik-422102

3. The Officer-in-Charge AMC Records, Lucknow.

4. The Officer-in-Charge Records, The Bombay Engineer Group, Kirkee, Pune-411003

5. Principal Controller of Defence Account (Pension) Draupadi Ghat, Allahabad (U.P.)

.... Respondents

Ld. Counsel appeared for the Applicant - Shri PK Shukla
Advocate

Ld. Counsel appeared for the Respondent - Shri BPS Chauhan
Sr. C.G.C

ORDER**“Per Hon’ble Mr. Justice Virendra Kumar DIXIT, Judicial Member”**

1. O.A. No. 264 of 2012 has been preferred seeking relief of implementing the Government instructions and releasing the entitled pension with arrears from 01.01.2006 to the applicant who was conferred Honorary rank of Naib Subedar. The fact of the case is that the Applicant was enrolled in the Army on 10.02.1968 and was retired on completion of terms and conditions in the Army from the rank of Havildar with effect from 01.03.1990. He was bestowed honorary rank of Naib Subedar after retirement. The common grouse of the Applicant is that though the Applicant was sanctioned service pension of the rank of Havildar, he was not paid the pension and pensionary benefits concomitant with the post of Naib Subedar as per the recommendations made by the 6th Pay Commission notwithstanding several representations having been made by the Applicant to the Competent Authorities supported by several orders and judgments passed by the Armed Forces Tribunals, which had received reinforcement from Hon’ble The Apex Court.

2. The precise submissions made on behalf of the Applicant is that notwithstanding recommendations of the 6th Pay Commission for grant of pension for all honorary rank of Naib Subedar having been accepted as contained in Policy letter dated 12.06.2009 and circulated by the Adjutant General’s Branch by letter dated 06.07.2009, revised pension in terms of letter dated 06.07.2009 has not yet been issued. All that the Applicant is getting against honorary rank of Naib Subedar is the paltry amount of Rs 100/- per month and that he is entitled to pension of the rank of Naib Subedar w.e.f 06.07.2009. To prop up the

submission on this count, it was submitted that in **O.A No 42 of 2010 Virendra Singh and others v Union of India**, the Regional Bench of Armed Forces Tribunal at Chandigarh vide its order dated 8.2.2010 had allowed the relief similar to the relief as prayed by the Applicant in the instant case which decision was taken in challenge by the Union of India before **Hon'ble The Apex Court in SLP No 18582 of 2010**. The said SLP, it is stated, culminated in being dismissed by Hon'ble The Apex Court vide order dated 13.12.2010.

3. **Per contra**, Learned Counsel for the Respondents submitted that the Applicant was bestowed honorary rank after retirement for which ex-gratia to the extent of Rs 100/- per month was granted w.e.f 01.09.1995 in addition to their service pension and that their service pension was revised from time to time as per policy of the Government of India of the rank of Havildar. He further submitted that since the Applicant had not been granted honorary rank during service, he was not eligible for service pension at par with Honorary Naib Subedar discharged on or after 1st Jan 2006. He also submitted that the Government of India, Ministry of Defence by means of letter No 1(8)/2008-D (Pen/Policy) dated 12th June 2009 has announced the policy decision whereby the benefit has been extended to the personnel who retired on or after 01.01.2006.

4. The recommendations of 6th Pay Commission being relevant are quoted below.

"5.1.62. Presently, Havildars on getting the rank of Honorary Naib Subedar are given an additional pension of Rs. 100. As against this, JCOs after becoming Honorary officers get pension as per the existing formula on the basis of pay attached to the post of Honorary officer. Defence Forces have proposed that the pension of Honorary Naib Subedars may also be fixed, accordingly, on the

basis of pay attached to the post of Honorary officer. Defence Forces have proposed that the pension of Honorary Naib Subedars may also be fixed, accordingly, on the basis of pay attached to the rank. The proposal is inherent in the revised scheme of pay bands being proposed. A Havildar, on promotion as Honorary Naib Subedar will be eligible for pension with reference to the salary drawn/drawable in the rank of Naib Subedar. Further, pension is now payable with reference to either 10 months average emoluments or the last pay drawn, whichever is beneficial. In light of these changes being recommended, pension for all Honorary ranks of Naib Subedar will henceforth be payable by taking this placement as a regular promotion to the higher grade wherein benefit of fitment in the pay band and the higher grade pay will be taken into account for purposes of fixation of pension."

From the recommendations cited above, it would transpire that the essence of recommendation was that the benefits would accrue to all Havildars granted the honorary rank of Naib Subedar without any reservation or exception. It brooks no dispute that the Government letter dated 12.06.2009 was founded upon the recommendations of the VI Pay Commission and from a punctilious reading, it does not imply that those who retired prior to 1.1.2006 were excluded from getting the benefits. The letter only says "the additional element of pension of Rs 100/- per month payable to Havildars granted to the Honorary rank of Naib Subedar as per Regulation 137 of Pension Regulations for the Army Part-1 (1961) and the MoD letter dated 6.11.1991 will cease to be paid with effect from 1.1.2006."

5. In the matter of benefits whether to be extended to Havildar who was conferred honorary rank of Naib Subedar on or after 01.01.2006, the Learned Counsel for the Applicant relied upon the judgment and order dated 8.2.2010 in the case of **O.A No 42 of 2010 Virendra Singh and Ors Vs. Union of India and Ors** passed by a Regional Bench of the Armed Forces Tribunal at Chandigarh. It

may be noticed that in that case, a question had arisen in regard to the implementation of the orders **whether the petitioners and others who were granted honorary rank of Naib Subedars were to be entitled to a sum of Rs 100/- per month as honorary Naib Subedars in addition to their pension as Havildars or were also entitled to the pension of a Naib Subedar**. On a further question raised in that case based upon the Government of India Ministry of Defence by means of letter dated 3.6.2009, it was mentioned in the said order that this letter takes effect from 01.01.2006. On yet another question whether these benefits are to be extended to Havildars granted honorary rank of Naib Subedar on or after 01.01.2006, it was held by the Court that the date "**01.01.2006**" is the date when this letter came into effect and it does not carry connotation that the persons who retired pre-01.01.2006 would not be entitled to these benefits.

6. It thus follows from the above decision that the benefits as extended by that decision apply to all whether they were pre-01.01.2006 retirees or post - 01.01.2006 retirees. It is worthy of notice here that the above order of the Armed Forces Tribunal Chandigarh Bench **in Virendra Singh's case** (supra) was assailed by the Union of India and upon scrutiny of the matter, Hon'ble The Apex Court dismissed S.L.P. by means of order dated 13.12.2010.

7. The decision in the case of **Virendra Singh's case** (supra) was relied upon while deciding **O.A No 3305 of 2013, Subhash Chander Soni vs Union of India** and in the said case, the Regional Bench of the Armed Forces Tribunal at Chandigarh while taking into account the ratio flowing from **Virendra Singh's case** held as under:

"In view of the above discussion, it is held that in all such cases the petitions deserve to be allowed relying upon the judgment of Virendra Singh's case (Supra) and the said judgment shall be implemented in cases of all the petitioners without any discrimination. However, the question of grant of interest in appropriate cases shall be considered in case the petitioners/similarly placed persons are not issued the revised PPOs in spite of these directions. The respondents shall take steps to make payment to all these such petitioners. In case of other similarly placed persons we are not fixing any time limit to make payment within three months since the number of such persons may be sufficiently large and it may take time to issue revised pension orders for them but steps shall be taken to issue the revised pension orders as early as possible."

8. It may also be noted here that after the dismissal of the SLP, the Tribunal delivered verdict deciding a bunch of as many as 35 cases on similar lines and in one of the case, the Union of India assailed the verdict of the Tribunal in Hon'ble The Apex Court by way of SLP. Hon'ble The Apex Court dismissed the said Civil Appeal No 4677 of 2014 by means of order dated May 20, 2015, upholding and reiterating the view taken in Virendra Singh's case (supra). The order of Hon'ble The Apex Court is quoted below.

"From the reading of the impugned judgment of the Armed Forces Tribunal, it gets revealed that the Tribunal has relied upon its earlier judgment dated 8.2.2010 rendered in O.A. No 42 of 2010 titled as "Virendra Singh and Ors v. U.O.I" where identical relief was granted to the petitioners therein who were similarly situated. Further, we note that against the said judgment of the Tribunal, SLP (c) CC No 18582 of 2010 was preferred which was dismissed by this Court on 13.12.2010. We further find that by the impugned judgment, the Tribunal had decided 35 O.As and the Union of India has preferred the instant appeal only in one of those 35 cases. For all these reasons, we are not inclined to entertain this appeal which is dismissed accordingly. We, however, clarify that no interest shall be payable."

Two months' time is granted to the appellants to comply with the impugned judgment passed by the High Court."

9. In view of settled position as enunciated in **Virendra Singh's** case (supra) followed by the orders of Hon'ble The Apex Court dated 13.12.2010 dismissing the SLP of the Union of India preferred against the decision rendered in **Virendra Singh's** case, and the order of Hon'ble The Apex Court in Civil Appeal No. 4677 of 2014 upholding the view of the Tribunal in **Virendra Singh's case (supra)**, we are of the view that the Applicant shall be entitled for the pension with reference to the salary drawn/drawable in the rank of Naib Subedar with effect from 1.1.2006.

Order

10. In the result, the Original Application is allowed to the extent that the Applicant shall be entitled for the pension with reference to the salary drawn/drawable in the rank of Naib Subedar with effect from 01.01.2006. The Applicant shall also be entitled to arrears w.e.f 01.01.2006. The Respondents are directed to comply with the order within 4 months from the date the certified copy of the judgment and order is produced before the authority concerned. In case, the Respondents fail to comply with the order within the stipulated period, the amount payable shall start earning interest @ 9% per annum from the date of order.

11. There shall be no order as to costs.

(Lt Gen Gyan Bhushan)
Administrative Member

(Justice Virendra Kumar DIXIT)
Judicial Member

Dated : December, ,2015