

Court No.1
Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 03 of 2014

Tuesday this the 22nd day of December, 2015

**“Hon’ble Mr. Justice Virendra Kumar DIXIT, Judicial Member
Hon’ble Lt Gen Gyan Bhushan, Administrative Member”**

No. 13826566-M Hon Nb/Sub Kishan Ketheria, son of Late-
Phool Chand, Resident of H.No.828 Sadar Bazar Cantt Bareilly
Post Office Sadar Bazar Cantt District Bareilly.

.... Applicant

Versus

01. Union of India through the Secretary,
Ministry of Defence, New Delhi.
02. Chief of Army Staff Integrated Head Quarter
Ministry of Defence, South Block New Delhi.
03. The Principal Controller of Defence Accounts (Pension)
Draupadi Ghat, Allahabad (UP)
04. Officer in Charge, ASC Records, (South) Bangalore-07

.... Respondents

Ld. Counsel appeared for the Applicant - Shri Parijaat Belaura,
Advocate

Ld. Counsel appeared for the Respondent - Shri Avadhesh Narain
Tripathi, Central
Government Counsel

ORDER

“Hon’ble Lt Gen Gyan Bhushan, Administrative Member”

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, and he has claimed the reliefs as under:-

- “(I) To issue order or direction to opposite parties to implement government instructions as order dated 12.06.2009 and release the pension of applicant according to fitment band of Naib Subedars and further pay arrears w.e.f. 01.01.2006 within some stipulated period which Hon’ble Court thinks fit.*
- (II) To issue order or direction to opposite parties to pay 12% interest on the arrears due to the applicant.*
- (III) Any other relief as considered by this Hon’ble Tribunal be awarded in favour of the applicant.*
- (IV) Cost of the application be awarded to the applicant.”*

2. The fact of the case is that the applicant was enrolled in the Army on 26.01.1969 and he retired on 31.01.1993 on completion of terms and conditions in the Army in the rank of Havildar. He was bestowed honorary rank of Naib Subedar after retirement. The grouse of the applicant is that though he 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. Learned counsel for the applicant submitted that the applicant made several representations to the Competent Authorities supported by several orders and judgments passed by the Armed Forces Tribunals, which received reinforcement from Hon’ble The Apex Court, but he has not been given the said benefit.

3. Precise submissions made by the learned counsel for the applicant is that notwithstanding recommendations of the 6th Pay Commission for grant of pension for 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 to him. Presently, the applicant is getting against honorary rank of Naib Subedar is only Rs. 100/- per month whereas he is entitled to pension of the rank of Naib Subedar w.e.f. 01.01.2006. To support his submission on this count, learned counsel for the applicant further 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 this case and this decision of the Tribunal 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.

4. **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 in addition to his service pension and that his 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 vide 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.

5. 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.”

6. From the recommendations cited above, it transpires that the essence of recommendation is that the benefits should 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 6th 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.”

7. 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 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 benefit is to be extended to Havildar 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.

8. It thus follows from the above decision that the benefits as extended by that decision apply to all whether he was pre-01.01.2006 retiree or post - 01.01.2006 retiree. It is noticed 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.

9. It is also noted 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 and 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 relevant portion of 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.”

10. Keeping in view the settled position 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 considered view that the applicant deserves the pension with reference to the salary drawn/drawable in the rank of Naib Subedar with effect from 1.1.2006.

Order

11. Thus, 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 of receipt of the certified copy of the order. 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.

12. There shall be no order as to costs.

(Lt Gen Gyan Bhushan)
Administrative Member

(Justice Virendra Kumar DIXIT)
Judicial Member

Dated : Dec, ,2015
sry/-