

Reserved**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Court No 1 (E court)****Original Application No 343 of 2020**Friday, this the 21st day of January, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**No- 4447995M Ex Hony Nb Sub Dhani Ram, S/o Late
Chhote Lal, R/o Vill and Post – Karikhar, Distt- Raibarelli.**

..... Applicant

Ld. Counsel for the : **Shri Parijaat Belaura, Advocate**
Applicant

Versus

1. Union of India through the Secretary, Ministry of Defence,
New Delhi.
2. Addl Dte Gen of Personnel Service, Adjutant General's
Branch, Integrated Head Quarters, Ministry of Defence
(Army), L-1 Block, Church Road, New Delhi – 01.
3. Officer-in-Charge, Sikh Light Infantry Abhilekh Karyalaya,
Fatehpur (U.P.).
4. Principal Controller of Defence Accounts (Pension),
Draupadi Ghat, Allahabad (U.P.) -211014.

..... Respondents

Ld. Counsel for the : **Shri Shyam Singh,**
Respondents **Central Govt Counsel.**

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

1. This is an application filed under Section 14 of the Armed Forces Tribunal Act, 2007 with the following reliefs:-

“(I). To grant pension of the rank of Naib Subedar w.e.f. 01.01.2006 as per Govt of Indi Mnistry of Defence letter dated 12.06.2009, as directed by AFT Delhi in the case of O.A. No 1247/2018 Hony Nb Sub Khushi Ram Yadav Vs Union of India and Others vide its order dated 14.01.2020.

(II). To pay arrear of difference of pension along with 12% interest 01.01.2006 till it is actually paid.

(III). Any other suitable relief this Hon’ble Court deems fit and proper may also be granted”.

2. The factual matrix of the case in brief is that applicant was enrolled in the Army on 09.12.1967 and after successfully rendering 24 years service he was discharged from service on 31.12.1991 in the rank of Havildar (Hav). Applicant was conferred the rank of Honorary Naib Subedar (Hony Nb Sub) on 26.01.1992. Applicant represented his case for grant of pension of Nb Sub in the light of Govt of India, Min of Def letter dated 12.06.2009 but he was not paid the same. Being aggrieved, applicant has filed instant O.A. for grant of pension of Nb Sub.

3. Learned counsel for the applicant submitted that applicant after retirement from army was granted rank of Hony Nb Sub and he is getting pension of Hony Nb Sub. He pleaded that Govt of India, MoD letter dated 12.06.2009 is based on the recommendation of Para 5.1.62 of 6th CPC Recommendation which read as under:-

“The president is pleased to decide that Hony rank of Nb Sub granted to Havs will be Notionally considered as a Promotion to the higher grade of Nb Sub and benefit of fitment in the pay band and the higher grade pay will be allowed notionally for the purpose of fixation of pension only. Accordingly, additional element of pension of Rs. 100/- pm payable to Havs granted Hony rank of Nb Sub as per Reg 137 of Pension Regulation for the Army Part- I (1961), amended vide this Ministry’s letter No 1(1)/88/D (Pen/Sers) dated 06.11.1991 will cease to be payable. The notional fixation of pay in the rank of Nb Sub will not be taken into account for payment of retirement gratuity, encashment of leave, composite transfer grant etc”.

4. Learned counsel for the applicant further submitted that recommendation of 6th Pay Commission contained in para 5.1.62 of Chapter V of the report reads as under:-

*“Presently Havs on getting the rank of Hony Nb Sub are given an additional pension of Rs. 100/-. As against this, **JCOs after becoming Hony Officers get pension as per the existing formula on the basis of pay attached to the post of Hony Officer.** Defence forces have proposed that pension of Hony Nb Sub 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.

5. Learned counsel for the applicant submitted that a Havildar, on promotion as Hony Nb Sub **will be eligible for pension with reference to the salary drawn in the rank of Nb Sub.** Pension is now payable with reference to either 10 months average emoluments or the last pay drawn, whichever is beneficial. In the light of these changes being recommended, pension for **all Hony rank of Nb Sub will hence forth be payable by taking the placement as a regular promotion to the higher grade wherein benefit in the pay band and the higher grade pay will be taken in to account for purpose of fixation of pension.** Applicant represented his case for grant of pension of the rank of Nb Sub in the light of Govt of India, MoD letter dated 12.06.2009 but respondents have denied the same.

6. He further submitted that X- Group Hony Nb Sub are being paid exactly equal to pension of Nb Sub after OROP wef, whereas pension of Y Group Hony Nb Sub has been paid much less pension than Y Group Hony Nb Sub. In support of his contention he relied upon judgments passed by various Armed Forces Tribunals. Learned counsel for the applicant prayed that

respondents be directed to grant pension of Regular Nb Sub to the applicant.

7. Per contra, learned counsel for the respondents admitted that there is no dispute regarding date of enrolment in the Army, discharge from the service in the rank of Hav, conferment of the rank of Hony Nb Sub to applicant on 26.01.1992. On retirement, the applicant was granted service pension vide PPO No S/035452/91. On grant of Hony rank of Nb Sub after retirement, service pension of the applicant was revised vide PPO No S/CORR/067265/92. Service Pension of the applicant was further revised in terms of Govt of India policy letter dated 12.06.2009.

8. Learned counsel for the respondents submitted that Govt of India, Min of Def has revised the pension for Hony Nb Sub vide policy dated 12.06.2009. This policy letter confirms that the benefits of said policy will also be applicable wef 01.01.2006 to the pre January 2006 retirees, who were granted Hony rank of Nb Sub after retirement. Pre-2006 retiree Havs who were granted Hony rank of Nb Subs, a fresh table has been issued duly revised the pension wef 01.01.2006, 01.07.2009 and 24.09.2012 as per entitlement. PCDA (P) has issued Circular No 631 dated 05.03.2020 duly authorising Pension Disbursing

Agencies to review all affected cases of Pre-01.01.2006 Havs granted Hony rank of Nb Subs and make payment without any further authorisation.

9. We have heard Shri Parijaat Belaura, learned counsel for the applicant and Shri Shyam Singh, learned counsel for the respondents.

10. The questions before us to decide is whether the applicant granted Hony rank of Nb Sub Group -Y after retirement is entitled pension equal to regular Nb Sub Group-Y?

11. The Government of India, Ministry of Defence, based on recommendations of 6th Pay Commission Report, issued letter No 1(8)/2008-D (Pen/Policy) dated 12.06.2009 (in short "Gol, MoD letter dated 12.06.2009") to the effect that Honorary rank of Nb Sub granted to Havs will be notionally considered as a promotion to the higher grade of Nb Sub and benefit of fitment in the pay band and the higher grade pay will be allowed notionally for the purpose of fixation of pension only with effect from 1st January, 2006. Applicant moved a representation to Officer-in-Charge Records for grant of pension to the rank of Nb Sub with effect from 1st January, 2006 in terms of aforesaid

letter, but applicant was not granted pension of Nb Sub. After issuing Gol, MoD, letter dated 12.06.2009, a Section of Pre-2006 retiree Havs granted Hony rank of Nb Sub approached various courts for implementing the provision of this letter in their cases. AFT, Chandigarh vide their order dated 27.10.2017 in O.A. No 275 of 2013, filed by **Ex Havildar (Hony Nb Subedar) Hoshiar Singh** allowed the benefit of letter dated 12.06.2009 to all Pre- 2006 Havs granted the rank of Hony Nb Sub with effect from 01.01.2006.

12. This issue was examined by the Ministry of Defence also and based on their recommendations, Government of India decided to extend the benefit of the Gol, MoD letter dated 12.06.2009 to Pre-2006 retiree Havs also who were granted the rank of Hony Nb Subs. Consequently, Government of India has issued letter No 1(13)/2016/D(Pen/Policy, Gol, MoD, New Delhi, dated 21.02.2020 allowing Pre – 2006 retiree Havs, who were granted the rank of Hony Nb Subs for the purpose of fixation of their pension. This is latest policy on fixation of pension of Hony Nb Sub. Further as per the directions of Hon'ble Court the tables meant for Hony Nb Sub for implementation of Gol, MoD letter No 10(1)/2009-D(Pen/Pol) dated 08.03.2010 and Gol, MoD letter No 1(13)/2012/D(Pen/Policy) dated 17.01.2013

respectively are quashed. If rate of pension mentioned in various orders issued earlier by the Ministry in respect of Hony Nb Sub happens to be more beneficial than the rates as per attached tables, then the same will not be revised to the disadvantage of the pensioners. To extend the benefits of these Govt orders afresh tables have been prepared and Annexure 'A' to table applicable to Hony Nb Sub Group- X and Group- Y pre-2006 retiree is issued for rates wef 01.01.2006, 01.07.2009 and 24.09.2012 replacing existing columns of tables of Gol, MoD letter dated 08.03.2010 and 17.01.2013 applicable wef 01.07.2009 and 24.09.2012 respectively which reads as under:-

Annexure-A

Havildar granted Hony Naib Subedar Pre-2006 GP "X" and Equivalent Gp "A"			
Length of Service (In Years)	Revised Pension W.E.F.W 1.1.2006	Revised Pension .E.F.W 1.7.2009	Revised Pension .E.F. 24.09.2012
15	9170	9170	9170
15.5	9170	9170	9170
16	9170	9170	9170
16.5	9170	9170	9170
17	9170	9170	9170
17,5	9170	9170	9170
18	9170	9170	9170
18,5	9170	9170	9170
19	9170	9170	9170
19.5	9170	9170	9170
20	9170	9170	9170
20.5	9170	9170	9170
21	9170	9170	9170
21,5	9170	9170	9170

22	9170	9170	9170
22.5	9170	<u>9170</u>	9170
23	9170	9170	9170
23.5	<u>9170</u>	9170	9170
<u>24</u>	9170	<u>9170</u>	9170
24.5	9170	9170	9170
25	9170	9170	9173
25.5	9170	9170	9326
26	9170	9170	9479
26,5	9170	9170	9632
27	9170	9170	9785
27.5	<u>9170</u>	9170	9938
28 & above	9170	9280	10090

Havildar granted Hoy Naib Subedar			
Pre-20 06 GP "Y" and Equivalent Gp "B", "C", "D"			
Length of Service (In Years§)	Revised Pension W.E.F.W 1.1.2006	Revised Pension .E.F.W 1.7.2009	Revised Pension .E.F. 24.09.2012
15	8330	8330	8330
15.5	8330	8330	8330
16	8330	8330	8330
16.5	8330	8330	8330
17	8330	8330	8330
17.5	8330	8330	8330
18	8330	8330	8330
18.5	8330	8330	8330
19	8330	<u>8330</u>	8330
19.5	8330	8330	8330
20	8330	8330	8330
20.5	8330	8330	8330
21	8330	8330	8330
21.5	8330	8330	8330
22	8330	8330	8330
22.5	8330	8330	8330
23	8330	8330	8330
23.5	8330	8330	8330
<u>24</u>	8330	8330	8330
24.5	8330	8330	8330
25	8330	8330	8330
25.5	8330	8330	8330
26	8330	8330	8330
26,5	8330	8330	8330
27	8330	8330	8330
27.5	8330	8330	8377

13. As per Annexure 'A' to above policy letter a pre 2006 Group Y Hav granted rank of Hony Nb Sub having 24 years of service shall be granted revised pension Rs. 8,330/- wef 01.01.2006.

14. It is pertinent to mention that Armed Forces Tribunal, Chandigarh in its judgment passed in O.A. No. 2755 of 2013, Ex Hav (Hony Nb Sub) Hoshiar Singh decided on 27.10.2017 has held that parity between Hony Nb Sub and Nb Sub could neither be established, nor accepted. Para 41 (b) of the judgment being relevant is produced as under :-

*(b) An inter se parity between the Honorary Naib Subedar and Naib Subedar could neither be established, nor is acceptable to this Tribunal. The fundamental difference between the said two categories has always remained and shall remain so. However, the limited parity, conferred on acceptance of the recommendations of the Sixth Pay Commission vide Gol Circular dated 12.06.2009 to the following extent **“that Honorary rank of Naib Subedar granted to Havildar will be notionally considered as a promotion to the higher grade of Naib Subedar and benefit of fitment in the pay band and the higher grade pay will be allowed notionally for the purpose of fixation of pension only”** is required to be accepted and implemented in letter and spirit of the judgment of this Tribunal in Virender Singh’s case (supra), as upheld by the Hon^{ble} Supreme Court.*

15. In the instant case, we find that pension of the applicant was revised from time to time in terms of Govt of India, Min of

Def letter dated 16.06.2009 and 21.02.2020 in the pay band and higher grade pay of Nb Sub. From 01.01.2016, the applicant is drawing basic pension of Group -Y Hony Nb Sub Rs. 21,653/- for 24 years of service as per recommendations of 7th Pay Commission. Judgments referred by the applicant are based on different facts and have no direct correlation with the case of applicant. Contention of learned counsel for the applicant that Hony Nb Sub of X Group is getting pension equal to Nb Sub of X Group is not agreed. An Hony Nb Sub Group – X, having 24 years of service gets pension Rs. 11136/- and a Nb Sub Group- X also gets pension Rs 11,136/- whereas a Hony Nb Sub Group X having 28 years of service gets pension Rs. 11,205/- whereas an Nb Sub Group X gets pension Rs. 11,958/-. A person granted Hony rank of Nb Sub cannot get pension less than Hav of the same category and same length of service. There are certain parameters for fixation of pension i.e. length of service, seniority and Group in which one is enrolled in the army. A Hav of X Group, granted Hony rank of Nb Sub who is in receipt of MACP-I, can only get pension equal to regular Nb Sub. On perusal of Table No 7 of Rate of service pension under OROP Scheme for JCO and Other Ranks including Hony Commissioned Officers of Army, pension of Group- Y, Hony Nb

Sub with 24 years of service is shown as Rs. 8425/-. Rates of service pension under OROP for Subedar and Subedar Major granted Hony rank of Lt and Capt in service only are granted same pension as regular Lt and Capt and not those who are granted Hony rank of Lt and Capt after retirement. In the instant case, the applicant is pre- 2006 retiree and the individual from whom applicant is comparing himself is post 2006 retiree, hence applicant is getting less pension than post 2006 retiree. While granting pension various provisions are kept in mind. Para 12 of Govt of India, Min of Def letter dated 21.02.2020 stipulates that revised pension of an Hony Nb Sub who had retired before 01.01.2006 shall not exceed that of an Hony rank Nb Sub who retired on or after 01.01.2006. It further clarifies that the revised pension of an Hony rank of Nb Sub who had retired before 01.01.2006 shall not exceed that of a regular Nb Sub who retired either before or after 01.01.2006. Accordingly, plea of the applicant that he is entitled pension equal to regular Nb Sub of Y Group has no substance. The applicant is not entitled pension equal to pension of regular Nb Sub Group -Y.

16. In view of the above, we do not find any irregularity or illegality in not granting pension equal to regular Nb Sub of Y

Group and hence, there is no violation of Army Rules 13 & 22 and Article 20 of the Constitution of India as alleged by the applicant. The O.A. is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

17. No order as to costs.

18. Miscellaneous applications pending, if any, shall stand disposed off.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)

Member (A)

Member (J)

Dated: 21 January, 2022

Ukt/-