

**RESERVED
Court No. 1**

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 582 of 2017

Friday, this the 9th day of March, 2018

**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
“Hon’ble Air Marshal BBP Sinha, Member (A)”**

No. 4551531-F Ex- Hav (Hony Nb Sub) Badri Datt of 19 MAHAR, C/o 56 APO, S/o Shri Late. Dharmanand, R/o Vill-Ratholi, Post Office-Kandhar, Tehsil- Garur, District- Bageshwar (Uttarakhand), PIN-263635.

..... Applicant

Ld. Counsel for the: **Shri K.K.S. Bisht**, Advocate
Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of Army Staff, Integrated Head Quarters of the Ministry of Defence, (Army), South Block, New Delhi-110011.
3. Officer-in-Charge, Records, Mahar Regiment Abhilekh Karyalaya, Records The Mahar Regiment, Saugor (M.P.) -470001.
4. PCDA (Pension), Draupadi Ghat, Allahabad (UP)-211014.
.....Respondents

Ld. Counsel for the: **Shri V.P.S. Vats**,
Respondents. Central Govt. Standing Counsel assisted by
Maj Salen Xaxa, OIC Legal Cell.

ORDER

(Per Hon’ble Air Marshal BBP Sinha, Member ‘A’)

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant for grant of pension of Hony

Naib Subedar pursuant to direction/Letter No.1(8)/ 2008-D (Pen/Policy) dated 12th June 2009 of Ministry of Defence (Department of Ex-Servicemen Welfare).

The applicant has prayed for the following reliefs:-

“(a) Issue/pass an order or direction of appropriate nature to the respondents to revise the pension of the applicant forthwith as per the direction of the Ministry of Defense (Department of Ex-Servicemen Welfare Letter No. 1(8) 2008-D (Pen/Policy) dated 12th June 2009, contained in **Annexure No. A- 4** to this Original Application.

(b) Issue/pass an order or direction of appropriate nature to the respondents to make the payment of arrears along with interest accrued to the applicant due to revision of his pension and continue to pay regular pension to the applicant in the revised rate.

(c) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

(d) Allow this application with costs.”

2. Heard the learned counsel for the parties and perused the record.

3. Undisputed factual matrix of the case is that the applicant was enrolled in the Army on 13.10.1980 and was discharged on 31.10.2004 (Afternoon) in the rank of Havildar. After discharge, he was granted rank of Honorary Naib Subedar. Grievance of the applicant is that he should be given pension as applicable to the rank of Hony Naib Subedars retired on or after 01.01.2006 as per recommendations of VIth Central Pay Commission. Applicant personally approached the respondent no.3 where he was told that he is not entitled to the benefit of Circular of the Ministry of Defence (Department of Ex- Servicemen Welfare Letter No.1(8)/ 2008-D (Pen/Policy) dated 12th June 2009. Being aggrieved by non grant of enhanced pension the present Original Application has been filed.

4. The delay in filing of Original Application has been condoned vide order dated 23.11.2017.

5. In the counter affidavit the respondents have taken a stand that the applicant is not eligible for enhanced pension of Honorary Naib Subedar as per Letter No.1(8)/ 2008-D (Pen/Policy) dated 12th June 2009 because he had retired before 01.01.2006 whereas the letter (supra) is only for those who have retired from 01.01.2016 and thereafter.

6. We find that the controversy involved in the Present O.A. is squarely covered by the decision of Armed Forces Tribunal, Regional Bench, Chandimandir in **O.A. No. 42 of 2010, Virender Singh & Ors vs. Union of India & Ors** dated 08.02.2010 which attained finality with dismissal of the **SLP(C) CC No. 18582 of 2010**, titled **UOI & Ors vs. Virender Singh & Ors** on 13.12.2010 by the Apex Court. This fact could not be disputed by the learned counsel for the respondents. In that case it has been held that pre 01.01.2006 retirees will also be entitled to get pension at the enhanced rate w.e.f. 01.01.2006, as is being paid to post 01.01.2006 retirees.

7. We further take note of the fact that the matter has been finally settled by the Apex court in **Union of India & Ors vs. Subhash Chander Soni, Civil Appeal No. 4677 of 2014**, decided on 20.05.2015 and a clarification has been given that no interest shall be payable in such cases. For the sake of convenience, the said judgment is reproduced below :-

“In the Supreme Court of India
Civil Appellate jurisdiction

Civil appeal No. 4677 of 2014

Union of India & Ors.

Appellant(s)

Versus

Subhash Chander Soni

Respondent(s)

ORDER

*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 08.02.2010 rendered in O.A. No. 42 of 2010 titled ‘Virender Singh & 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.A.s 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.

sd/-[Hon’ble Mr. Justice A.K. Sikri]

sd/-[Hon’ble Mr. justice Uday Umesh Lalit]

Date: 06.03.2015

May 20, 2015”

8. We dispose of the present petition in terms of the above judgments with a direction to the respondents to release the enhanced service pension to the applicant in the rank of Hony Naib Subedar w.e.f. 01.01.2006 pursuant to Letter No.1(8)/ 2008-D (Pen/Policy) dated 12th June 2009 within a period of four months from the date of receipt of a certified copy of this order, further making it clear that no interest shall be admissible and payable to the applicant in this regard. In case this order is not complied with within the stipulated period, the amount of arrears shall carry interest @ 9% per annum from the due date, till actual payment thereof.

9. No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice S.V.S.Rathore)
Member (J)

Dated: March 09, 2018
JPT/-