

Court No.1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 219 of 2015**Thursday, this the 9th day of November, 2017**“Hon’ble Mr. Justice D.P. Singh, Member (J)**
“Hon’ble Air Marshal BBP, Sinha, Member (A)”Kamta Prasad, S/o Shri Sita Ram, R/o Vill-Charthi Bhatt, Post Office
Roopgarh, Tehsil Haraiya, Distt Bast (U.P.).**.... Applicant**Ld. Counsel for the : **Shri A.K. Maurya, Advocate** Applicant**Versus**

1. Union of India through Secretary, Ministry of Defence, (Army) West Block-2 R.K. Puram, New Delhi.
2. Senior Record Officer, Record Signals Abhilekh Karyalaya Post Bag No.5, Jabalpur Madhya Pradesh.
3. Principal Controller of Defence, Accounts (Pension) Allahabad.

...RespondentsLd. Counsel for the:
Respondents. **Dr Shailendra Sharma Atal, Advocate,**
Central Govt Standing Counsel.**Assisted by** : **Maj Piyush Thakran, OIC Legal Cell.**

ORDER (Oral)

1. Present O.A has been preferred under section 14 of the Armed Forces Tribunal Act 2007 for the relief of setting aside the order/letter dated 15.01.2014 passed by respondent no 2 Senior Record officer, Record Signals Abhilekh Karyalaya, Post Bag No 5 Jabalpur Madhya Pradesh contained in Annexure no 1 to the O.A and to pay the basic pension of Rs 9382 to the Applicant of the post of Naib Subedar w.e.f 01.07.2009 alongwith arrears as per Circular No 50 dated 17.01.2013 issued by PCDA (P) Allahabad.

2. The facts draped in brevity are that the Applicant was enrolled in the Indian Army on 06.12.1980 and was discharged from service on 01.01.2005 after rendering more than 24 years of service. The Applicant was conferred honorary rank of Naib Subedar with effect from 31.01.2005. It is alleged that the Applicant represented the matter to the respondent no 2 to extend him the benefits flowing from conferment of honorary rank of Naib Subedar on 18.05.2012 but the same did not elicit any response and aggrieved by the inaction, he has preferred the present O.A. which was disposed of with the direction to implement the Govt instructions and release the entitled pension with arrears w.e.f 01.01.2006 but despite serving certified copy thereof, he did not yield any response or action. Feeling aggrieved, the Applicant filed Execution Application No 93 of 2012 and it was in consequence of the Ex Application that the Applicant was granted revised consolidated service pension for the rank of Honorary Naib Subedar which was fixed at Rs 7750/- with effect from 01.01.2006.

3. The precise submissions made on behalf of the Applicant are that the Applicant has not been granted revised pension in terms of Defence letter No 1 (13)/2012/D (Pen/Policy) dated 17.01.2013 and the same has been granted in terms of Defence letter dated 08.03.2010 and PCDA (P) Circular no 430 dated 10.03.2010. 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 08.02.2010 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.

4. **Per contra**, Learned Counsel for the Respondents submitted that the Applicant was bestowed honorary rank after retirement for which ex-gratia payment was granted in addition to the 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 Subedars discharged on or after 01.01.2006. 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 benefits have been extended to the personnel who retired on or after 01.01.2006. He also submitted that it is nowhere mentioned in Govt of India, Ministry of Defence Letter dated 12.06.2009 that pension of Honorary Naib Subedar is equal to that of Naib Subedar. He also submitted that the fixation of the pension on the basis of notional promotion is correctly carried out and the same has

been clarified by letter of the P.C.D.A (P) dated 17.12.2013. He further submitted that as per Table 4 of Circular 501 dated 17.01.2013 pension of Honorary Naib Subedar group 'Y' whose qualifying service is 24 years may be revised from Rs 6790/- to Rs 7601/- only.

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.”

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 Subedars 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 Subedars 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.”

6. 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 03.06.2009, 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.

7. 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.

8. 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.”

9. 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 © 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. 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 is entitled to the pension of rank of Naib Subedar.

11. A question cropped up whether service pension of Applicant who was granted Honorary rank of Naib Subedars after retirement, has been fixed lower than that to which he was otherwise legally entitled as per recommendation of the 6th Central Pay Commission (6th CPC) in contravention to Government of India, Ministry of Defence letter dated 17.01.2013. By said letter, with reference to a Committee of Secretaries constituted on issues of pension of Armed Forces Personnel and Ex-Servicemen as also to bridge the gap in pension between the pre and post – 01.01.2006 JCO/OR, it was recommended in Para-2, as under:

“2.1. The pension of pre-1.1.2006 JCO/OR pensioners may be determined on the basis of notional maximum for the ranks and grouped across the three Services; and

2.2. Current weightage in qualifying service of Sepoy, Naik and Havildar may be increased by two years.

*3. The above recommendations of the Committee has been accepted by the Government and the President is pleased to decide that with effect from 24th September, 2012, the service pension, invalid pension, special pension, service element of disability pension and service element of war injury/liberalized disability pension (in release cases only) of all pre-1.1.2006 JCO/OR pensioners of Army, Navy and Air Force (including DSC & TA) shall be recomputed in terms of Para 2 of Defence Ministry's above said letter dated 8.3.2010 after **determining the highest of notional pay in the revised pay structure, corresponding to maximum of pay scales of Fifth CPC across the three Services equivalent to the rank and group in which pensioned.** Before determining highest of notional pay of equivalent ranks across three Services, 50% of highest classification allowance (rates effective from 1.9.2008) shall also be added in the notional pay of the ranks in Army, wherever applicable.”*

12. The above recommendation of the Committee were accepted by the Government who *inter alia* decided that with effect from 24th September, 2012, the service pension, invalid pension, special pension, service element of disability pension and service element of war injury/ liberalized disability pension (in release cases only) of all pre-1.1.2006 JCO/OR pensioners of Army, Navy and Air Force (including DSC & TA) shall be recomputed in terms of Para 2 of Defence Ministry letter dated 17.01.2013 after **determining the highest of notional pay in the revised pay structure corresponding to maximum of pay scales of Fifth CPC across the three Services equivalent to the rank and group in which pensioned.** Before determining highest of notional pay of equivalent ranks across three Services, 50% of highest classification allowance (rates effective from 1.9.2008) was also to be added in the notional pay of the ranks in Army, wherever applicable.

13. Thus, in compliance to the letter and the directions therein, an enhancement to the pension to all honorary ranks of Naib Subedar was also to be made for pre-01.01.2006 retirees by determining the highest of notional pay in the revised pay structure corresponding to maximum of pay scales of Fifth CPC across the three Services equivalent to the rank and group in which pensioned. We find force in the argument of Learned Counsel for the Applicant, and agree, that this enhancement has not been done in the case of the Applicant. There appears no room of doubt that the enhancement and revision of pensionary benefits as provided by the Committee of Secretaries and issued by the Government in their order of 08.03.2010 and 17.01.2013 should also be made available to the Applicant (Honorary Naib Subedar) who retired prior to 01.01.2006. We agree with the Learned Counsel for the Applicant that pension for Honorary Naib Subedar so decided and fixed at Rs.7750/- as per 01.01.2006 should also be revised upwards taking into account the new policy and it be reckoned with reference to a notional maximum in post-01.01.2006 revised pay structure corresponding to the maximum of pre-6th CPC pay scales. If Rs 7750/- is correctly worked out pension as on 01.01.2006, then subsequent enhancement by the letters dated 08.03.2010 and 17.01.2013 must also flow to the Applicant by the same formula of determining this notional increase from Rs.7750/- to a corresponding maximum of Vth CPC and then re-ascertaining the new pension scale of Honorary Naib Subedar who retired prior to 01.01.2006. The Applicant, who retired prior to 01.01.2006, should be entitled to minimum level of the pension available to regular Naib Subedars. Subsequent enhancement in pension, as and when improved upon by the competent authority, should also be provided to him subject to and based on the principles laid down for other ranks of the Armed Forces.

14. Before parting with, we may notice that as per PCDA(P), Circular No.501 (Table N 4), dated 17.01.2013, any rank who was granted Modified Assured Career Progression (MACP), introduced with effect from 01.09.2008, will be eligible for pension of next higher rank. While dealing with identical issue, the Armed Forces Tribunal, Regional Bench Chandigarh in O.A. No. 2755 of 2013, **Hoshiar Singh vs. Union of India and others**, vide order dated 27.10.2017, has held as under:

*“42. In order to clinch the controversy in this case, we have carefully examined the aforesaid circulars, pension tables annexed thereto and the modalities adopted in fixation of pension of Honorary Naib Subedar and Naib Subedar in order to see if there is any violation of the rules, regulations or the law as alleged by the persons falling in the category of the applicant. The issue and anomaly, thus, lies in the correct interpretation thereof. **We, thus, direct that the tables so prepared in respect of Honorary Naib Subedar in pursuance of the Government policy letters dated 08.03.2010 and 17.01.2013 are illegal and do not reflect the essence and intent of the orders of the Hon^{ble} Supreme Court in the cases of Virender Singh and Subhash Chander Soni (supra) as also the upward revision so agreed to and recommended by the Committee of Secretaries for all pre-01.01.2006 pensioners and, thus, need to be and are hereby quashed.** These be prepared afresh taking specifically into account the aspect that the respondents were required to grant upliftment to the pre-01.01.2006 Honorary Naib Subedar by following the principle of **determining the highest of notional pay in the revised pay structure corresponding to maximum of pay scales of Fifth CPC across the three Services equivalent to the rank and group in which pensioned.**”*

(Emphasis supplied)

15. A conceptuous of our observations is that the pension of the Applicant needs to be recalculated based on the principle of determining the highest of notional pay in the revised pay structure corresponding to maximum of pay scales of Fifth CPC, i.e. minimum level of pension available to regular Naib Subedars with further improvement as and when available to regular Naib Subedars in the matter of grant of pension as emerging after incorporation of

Government Policy Letters dated 08.03,2010 and 17.01.2013 keeping the spirit of Hon'ble Supreme Court judgments on this matter in mind.

Order

16. In the result, the Original Application as aforesaid is allowed. The order dated 15.01.2014 is set aside. The Applicant shall be entitled to the notional pension of Naib Subedar. The notional fixation of pension of pre 2006 Honorary Naib Subedar be worked out afresh in the light of the Government Policy Letters dated 08.03.2010 and 17.01.2013. 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 further making it clear that no interest shall be admissible and payable to the Applicant in this regard. 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.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice D.P. Singh)
Member (J)

Dated: November 09 , 2017
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