

**Reserved  
Court No. 1**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW**

**ORIGINAL APPLICATION No 584 of 2017**

Tuesday, this the 15<sup>th</sup> day of May, 2018

**Hon'ble Mr. Justice SVS Rathore, Member (J)**  
**Hon'ble Air Marshal BBP Sinha, Member (A)**

No.14517024Y, Hony Nb Sub Radhey Shayam Pandey, son of Ram Manorath Pandey, resident of Village Fatehpur Pakari, Pahitpur Road, Shahzadpur, P.O. Akbarpur, District Ambedkar Na gar - 224122 .

....Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Integrated Headquarter, Ministry of Defence, South Block, New Delhi.
3. Officer In-charge, EME Records, PIN – 900453, C/o 56 APO
4. The Principal Controller of Defence Accounts (Pension) Draupadi Ghat, Allahabad (U.P.)

.....Respondents

Counsel for applicant: **Shri Parijaat Belaura, Advocate**

Counsel for respondents: **Dr. Chet Narain Singh,  
Additional Central Govt Counsel**

**ORDER**

**Per Hon'ble Air Marshal BBP Sinha, Member (A)**

1. The applicant has approached this Tribunal by preferring the present O.A. under Section 14 of the Armed Forces Tribunal Act, 2007 with the following prayers:

- (I) *To set aside of order dated 30.05.2017 passed by Opp. Party no. 3, i.e. EME Records'.*
- (II) *To issue order direction to OP No-3 & 4 to notionally promote the applicant in the higher rank of Naib/Sub and issue PPO in the rank of Naib/Sub of 24 years of service in Y Group.*
- (III) *To issue order direction to OP No. – 3 & 4 to pay pension in Rank of Naib/Sub at par with pension of Naib/Sub of 24 years of service in Y Group*
- (IV) *To pay difference of arrears of pension along with 12% interest w.e.f. 01.01.2006.*
- (V) *Any other suitable relief this Hon'ble Court deems fit and proper may also be granted.*

2. The facts draped in brevity are that the applicant was enrolled in the Indian Army on 30.04.1974 and was discharged from service on 30.04.1998 after rendering more than 24 years of service. It is pleaded that in recognition of his excellent service record, the applicant was conferred the honorary rank of Naib Subedar after retirement. Pleadings on record are that in contravention with the recommendation of the Sixth Pay Commission, the applicant was denied the benefit of notional fitment in the pay band and higher grade for the purpose of fixation of pension, as such, he preferred representation dated 16.05.2017 which was rejected vide order dated 30.05.2017 on the ground that Policy Letter dated 12.06.2009 is

applicable to such honorary Naib Subedars who retired on or after 01.01.2006.

3. Submission of learned counsel for the applicant is that the applicant is entitled for notional promotion in the higher rank of Naib Subedar and for grant of pension as applicable to the rank of Naib Subedars who retired on or after 01.01.2006 as per recommendations of Sixth Pay Commission. It is submitted that in bunch of Original Applications, the leading one being O.A. No. 167 of 2013 Hony Nb Sub Raghu Nath Prasad vs. Union of India and others, the Bench of this Tribunal vide order dated 18.11.2013 has allowed the Original Applicants and granted relief as sought by the applicant in this Original Application.

4. Learned counsel for the respondents contested the submissions advanced by learned counsel for the applicant and submitted that the applicant was bestowed honorary rank of Naib Subedar 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 12<sup>th</sup>

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. Submission is that the fixation of the pension on the basis of notional promotion is correctly carried out.

5. We have given our anxious consideration to the pleadings on record and the arguments advanced by learned counsel for the parties.

6. It may be observed that the learned counsel for the applicant, directly or indirectly, has prayed for a direction to notionally promote the applicant to the higher rank of Naib Subedar and for payment of pension to the applicant at par with pension of Naib Subedar having rendered 24 years' of service vide reliefs No. (II) and (III), by attempting to establish parity between a honorary Naib Subedar and a regular Naib Subedar with same years of service. The law on this issue has been well settled by the Chandigarh Bench of Armed Forces Tribunal in O.A. No. 2755 of 2013 ***Hoshiar Singh vs. Union of India and*** ors, decided on 27.10.2017. While deciding the moot question, the Bench in the case of ***Hoshiar Singh*** (supra) framed the following question of adjudication:

*“Whether by the interpretation of Government of India letter dated 12.06.2009 and the order of the Hon’ble Supreme Court, a Havildar granted the Honorary Rank of Naib Subedar after*

*his retirement, can be considered equal to a regular Naib Subedar of corresponding service period?"*

7. The findings recorded by the Bench (supra) is summed in para 35, which for convenience sake is reproduced as under:

*“35. Having regard to the detailed arguments put forth by the learned counsel for the parties on the aspects of “honorary rank”, qualifications and attributes for promotion to the rank of Naib Subedar, doctrine of different classes and groups and finally a “notional” up-gradation given to the selected Havildars after their retirement it is abundantly clear to us that the two categories are not equal and, therefore, grant of equivalence to Honorary Naib Subedar with a regular Naib Subedar of correspondingly similar years of service, cannot be legally justified. That is neither the correct interpretation of the Government policy letters on the subject, nor the thought behind the orders of the Armed Forces Tribunal in Virender Singh’s case (supra) as upheld by the Hon’ble Supreme Court in Subhash Chander Soni’s case (supra). The equivalence, if any, was only in determining up-gradation for the purpose of fixation of pension.”*

8. In view of the settled proposition of law, there appears no reason to take a contrary view than what has been held by the coordinate Bench in the case of **Hosiyar Singh** (supra). Thus, we are of the considered opinion that reliefs as prayed for by the applicant relate only for payment of pension of honorary Naib Subedar.

9. Submission made by learned counsel for the applicant seeking benefit of order dated 18.11.2015 passed by this Tribunal in O.A. No. 167 of 2013 (surpa) is unsustainable. In said case, the order states, “to the extent that the Applicants shall be entitled to pension with reference to the salary drawn/drawable in the rank of Naib Subedar with effect from 01.01.2006”. Thus, the direction so issued was with respect to pension of honorary Naib Subedar with reference

to salary drawn in the rank of Naib Subedar and tantamount that the 'benefit of fitment in the pay band and the higher grade pay of Naib Subedar will be allowed notionally for the purpose of fixation of pension of honorary Naib Subedar'.

10. On the issue of grant of pension of the honorary rank of Naib Subedar, we find that the controversy involved in the present O.A. is covered by the decision of Armed Forces Tribunal, Regional Bench, Chandigarh 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 the case of *Virender Singh & Ors* (supra) it has been held that pre-01.01.2006 retirees will also be entitled to get pension of the rank of honorary Naib Subedars at the enhanced rate w.e.f. 01.01.2006, as is being paid to post-01.01.2006 retirees.

11. In the case of *Hoshiar Singh* (supra) the Armed Forces Tribunal, Regional Bench Chandigarh while deciding similar issue has held as under:-

*“41. In summation, having given the historical background of the case, the pleadings and arguments addressed in the open Court, elaborately and exhaustively and on a careful consideration thereof, broadly the following conclusions are drawn:-*

*(a) No res judicata, as provided in Order 2, Rule 2 of the Code of Civil Procedure would be applicable in the facts and circumstances of the present case.*

(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 GOI 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.*

(c) *The pension of the applicant and all other similarly situated persons, fixed w.e.f. 01.01.2006 at 7750/- in pursuance of the above judgment, is not disputed and need not be gone into.*

(d) *On the basis of the conclusions at (b) & (c) above, the pension of the Honorary Naib Subedars needs to be recalculated based on the principles 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. In essence, we hold the applicant and similarly situated Honorary Naib Subedars entitled to minimum level of the pension available to regular Naib Subedars. It is needless to state that further improvement/enhancement, if any, as and when available to regular Naib Subedar in the grant of pension shall also be available to the applicant and other similarly situated Honorary Naib Subedars, subject to what is stated above.*

*“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).

12. 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, relevant portion of said judgment is reproduced 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 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.**"*

13. In the premise, we consider the existing tables illegal inasmuch as they do not reflect the true 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. The tables need to be prepared afresh keeping in mind 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 equivalent to the rank and group in which pensioned.

14. In view the aforesaid factual matrix on record, while molding the reliefs:-

(i) we **allow in part** present Original Application No. 584 of 2017 in terms of the above judgments;

(ii) set aside impugned order dated 30.05.2017 passed by EME records;

(iii) direct the respondents to amend the existing tables pursuant to Government of India Policy Letter dated 12.06.2009 and prepare the table for honorary Naib Subedar afresh, notionally considering it as a promotion to the grade of Naib Subedar and for provision of benefit of fitment in the pay band and higher grade pay only for the purpose of fixation of pension; and

(iv) firstly; release the revised service pension to the applicant in the rank of honorary Naib Subedar w.e.f. 01.01.2006 as per Government of India Letter dated 12.06.2009 within a period of three months from the date of receipt of a certified copy of this

order in terms of existing tables and, secondly; make payment along with arrears in accordance with the new tables so prepared within a maximum of six months. 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, respondents will have to pay simple interest @ 9% per annum on the amount of arrear accrued from the due date, till actual payment.

15. No order as to costs

**(Air Marshal BBP Sinha)**  
**Member (A)**

**(Justice SVS Rathore)**  
**Member (J)**

Dated : May, 2018  
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