

COURT NO 1
RESERVED

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

ORIGINAL APPLICATION No. 473 of 2018

Friday, this the 26th day of April, 2019

"Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)"

Ex Hav (Honorary Naib Subedar) Narayan Datt Suyal
(No 13936618-A) son of late Shiv Datt Suyal, Sector-B,
Vijay Nagar, Nilmatha, Post-Nilmatha Bazar, Lucknow
Cantt-226002 (UP).

.....Applicant

Ld. Counsel for the : **Shri R. Chandra**, Advocate.
Applicant

Versus

1. Union of India, through the Secretary, Ministry of defence, Government of India, New Delhi-110011.
2. The Officer-in-Charge, Army Medical Corps, Lucknow-226002.
3. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (UP).

.....Respondents

Ld. Counsel for the
Respondents.

:**Dr. Shailendra Sharma Atal**,
Central Govt. Standing Counsel

ORDER

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

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

- (i) *The Hon’ble Tribunal may be pleased to direct the respondents to revise the pension for the rank of Honorary Naib Subedar of the applicants as per the direction of Ministry of Defence (Department of Ex-Servicemen Welfare) letter No 1(8)/2008-D(Pen/Policy)dated 12.06.2009/new Revised rate, contained in Annexure No A-6 to this Original Application.*
- (ii) *The Hon’ble Tribunal may be pleased to direct the respondents to forthwith make the payment of arrears alongwith interest accrued to the applicant due to revision of his pension and continue to pay regular pension to the applicant in the revised rate.*
- (iii) *Pass any other suitable order or direction which this Hon’ble Tribunal may deem fit and proper in the circumstances of the case.*

2. The brief facts of the case are that the applicant was enrolled in the Indian Army on 21.10.1972 and was discharged from service w.e.f. 30.10.1996 in the rank of Havildar and granted service pension commensurate to his rank. The applicant was thereafter conferred Honorary Rank of Naib Subedar after retirement on 26.01.1997 and accordingly revised PPO in the Honorary Rank was issued to the applicant on 07.04.1997. Claim of the applicant is that he be granted pension in accordance with Govt Policy letter on the subject dated 12.06.2009 i.e. equivalent to the pensioners of Honorary Naib Subedars retired after

2006. In this regard the applicant had submitted an appeal dated 18.08.2017 which has not been replied till date.

3. Ld. Counsel for the applicant submitted that since the applicant was granted Honorary rank of Naib Subedar after retirement in 1997 he is eligible to be granted pension equivalent to the Honorary Naib Subedars retired after 01.01.2006 in view of the Govt policy letter on the subject dated 12.06.2009.

4. On the other hand, Ld. Counsel for the respondents submitted that the applicant was initially granted service pension @ Rs 689/- per month w.e.f. 01.11.1996 in the rank of Havildar vide PPO dated 22.07.1996. On conferment of Honorary rank of Naib Subedar the applicant was issued with corrigendum PPO dated 07.04.1997 and his pension was revised accordingly. Further submission of Ld. Counsel for the respondents is that since the applicant was discharged from service on 31.10.1996 and the provisions of the letter dated 12.06.2009 are applicable for the retirees who retired from service on or after 01.01.2006, therefore he is not entitled for the benefits. The Ld. Counsel for the respondents further submitted that since the applicant had rendered 24 years and 11 days of qualifying service, he is entitled for

service pension @ Rs 8425/- per month in the rank of Hon'y Nb Sub w.e.f. 01.07.2014 based on Govt of India, Ministry of Defence letter dated 03.02.2016 and PCDA (P), Allahabad Circular No 555 dated 04.02.2016. Relying upon the judgment of Hon'ble High Court Patna in CWJ Case No 16962 of 2013, ***Sudhakar Tiwari vs Union of India & Others***, the Ld. Counsel for the respondents contended that the Court has upheld the Govt policy dated 12.06.2009 for granting benefits to Honorary Naib Subedars who retired after the recommendation of sixth pay commission and has negated the claim of the persons of pre-2006 retirees.

5. We have heard Ld. Counsel for the parties and perused the material placed on record. The short question before us is straight and simple i.e. – is the applicant entitled to the beneficial provisions of Govt of India, Ministry of Defence letter No 1 (8)/2008-D (Pen/Policy) dated 12.06.2009.

6. We are disappointed that the respondents have tried to confuse the Tribunal by bringing in the PCDA (P) Circular No 555 which deals with OROP (One Rank and One Pension) and is not relevant to the case. Additionally they have tried to quote Hon'ble Patna High Court judgment on the subject matter which stands clarified to

the contrary by the Hon'ble Apex Court vide its judgment dated 12.12.2010 in the case of Honorary Naib Subedar **Virender Singh & Others** and in another case i.e. Civil Appeal No 4677/2014 filed by Union of India & Others against the order of Honorary Naib Subedar Subhash Chander Soni dated 20.05.2015. We find that Govt of India, Min of Defence vide its letter No 3 (8)/2013/D (Pen/Legal) dated 30.10.2017 has adequately clarified the position taking into account the law settled by the Hon'ble Apex Court on this matter. For convenience sake relevant portion of the judgment of Hon'ble Apex Court in the case of Honorary Naib Subedar Subhash Chander Soni (supra) is excerpted as under:-

“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 '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.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.”

7. Thus keeping in view the aforesaid Hon'ble Apex Court judgment and the Govt letter dated 30.10.2017 which clarifies the legal position, we find that there is a merit in the pleadings of the Ld. Counsel for the applicant.

8. In view of the above the O.A. deserves to be allowed, hence **allowed**. Impugned orders are set aside. The

respondents are directed to re-fix the pension of the applicant as Honorary Naib Subedar w.e.f. 01.01.2006 in light of Govt of India, Min of Defence letter dated 12.06.2009 and thereafter revise the pension in accordance with relevant OROP circular within a period of four months from the date the certified copy of the judgment and order is produced before the authority concerned. There shall be no interest payable for the past arrears in this regard. However, due to law of limitations the applicant shall be entitled to arrears of Honorary Naib Subedar pension from three years prior to filing of the present application. This O.A. was filed on 15.05.2018. 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 this order.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

Dated: April, 2019
gsr

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