

Reserved
Court No.1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 333 of 2019

Thursday, this the 30th day of May, 2019

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

No. 14294051-K, Hony Nb Sub Ram Milan Verma,
Son of Ram Kisun Verma, Resident of House No 594 Kha/191,
Adarsh Colony, Nilmatha, Lucknow, PIN – 226002.

.... **Applicant**

Ld. Counsel for the : **Shri Sudhir Kumar Singh, Advocate**
Applicant

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi, PIN- 110011.
2. The Chief of Army Staff, Sena Bhawan, New Delhi, PIN- 110011.
3. Senior Record Office, The Records Signal, PIN – 908770, C/o 56 APO
4. Principal Controller of Defence, Accounts (Pension), Draupadi Ghat, Allahabad- 14.

...**Respondents**

Ld. Counsel for the: **Shri V.P.S. Vats,**
Respondents. **Central Govt Counsel.**

ORDER

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

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, and he has claimed the reliefs as under:-

“(I) To pass an order or direction commanding respondents to grant the service pension to the applicant of the rank of Naib Subedar with effect from 01.01.2006.

“(II) To pass an order or direction commanding the respondent to grant the arrear of service pension from the 01.01.2006 along with interest @ 12% per annum till actual realization of aforesaid amount.

“(III) Pass any order which this Hon’ble Tribunal deem fit and proper under the facts and circumstances of the case in favour of the petitioner, in the interest of justice.

“(IV) Allow the Original Application with cost.”

2. The brief facts of the case are that the applicant was enrolled in the Army on 03.02.1975 and he was discharged from service on 28.02.2001 on completion of terms and conditions of service in the Army in the rank of Havildar (Hav). He was bestowed Honorary rank of Naib Subedar (Hony Nb Sub) after retirement on 15.08.2001. The prayer of the applicant is primarily for grant of Naib Subedar (Nb Sub) Pension w.e.f. 01.01.2006. It is alleged that the applicant represented the matter to the respondent No. 3 to extend him the benefits flowing from conferment of Honorary rank of Nb Sub and grant him pension

of Nb Sub but the representation dated 01.12.2017 has not elicited any response hence the applicant has preferred the instant Original Application.

3. The precise submissions made on behalf of the Applicant are that the Applicant has not been granted pension of Nb Sub in terms of Defence letter No 1 (13)/2012/D (Pen/Policy) dated 17.01.2013. To prop up the submission on this count, it was submitted that in **O.A No 455 of 2017, Awadhesh Bahadur Singh v Union of India**, this Tribunal vide its order dated 08.11.2017 had allowed the relief similar to the relief as prayed by the Applicant in the instant case.

4. On the other hand, Learned Counsel for the Respondents submitted that the applicant had retired as a Hav on 28.02.2001. He was bestowed Honorary rank after retirement on 15.08.2001. His service pension of Hony Nb Sub was revised from time to time as per policy of the Government of India. The Applicant is in receipt of revised consolidated service pension for the rank of Honorary Nb Sub with effect from 01.01.2006 in line with Govt letter dated 12.06.2009 and Hon'ble Apex Court judgment in **O.A. No. 42 of 2010, Virender Singh & Ors vs. Union of India & Ors** decided on 08.02.2010 as revised from time to time. He further submitted that since the applicant had only been granted Honorary rank of Nb Sub after retirement and he was never promoted to Nb Sub during service,

therefore he was not eligible for service pension of Nb Sub. He also submitted that it is nowhere mentioned in Govt of India, Ministry of Defence Letter dated 12.06.2009 that pension of Honorary Nb Sub is equal to that of Nb Sub. He concluded that the O.A. is without any merit and pleaded for the Original application to be dismissed.

5. We have heard learned counsel for the parties and perused the record.

6. After hearing both the parties and going through the record, we noted that the applicant is specifically praying for pension of the rank of Nb Sub whereas he has retired in the rank of Hav and has been conferred the rank of Hony Nb Sub after retirement. In this context when we asked a specific query to learned counsel for the applicant, he insisted that though the applicant is Hony Nb Sub, he is entitled to the pension of Nb Sub in light of this Tribunal's judgment in ***O.A. No 455 of 2017, Hony Nb Sub Awadhesh Bahadur Singh vs Union of India & Others*** decided on 08.11.2017. The learned counsel finally submitted that he is persisting with his demand for pension of the applicant as Nb Sub.

7. In this background we have given our anxious thought to the entire range of issues emerging from this O.A. and concluded that we need to answer only one issue in this O.A. i.e. is a soldier who has retired as Hav and has been conferred the rank of Hony Nb Sub

eligible for the same pension as entitled to the regular rank of a Nb Sub?

8. In this context we have noted that any kind of pension originates from pay i.e. normal pension is 50% of last drawn pay. We have also noted that rank and the number of years of service put up by a soldier in armed forces decides his pay fixation and the consequent pension. Thus if any of these two parameters of a soldier are varied i.e. either his years of service rendered or his last held rank is changed, his pay fixation will automatically stand changed and consequently his pension will also accordingly change. It is in this context that every retired soldier is authorised pension revision only as per the last rank held by him and years of service rendered.

9. In this context when we examine the judgment of this Tribunal ***Awadhesh Bahadur Singh*** (supra), we find that this is an oral order and deals with the subject of pension for Hony Nb Sub. This judgment is primarily based on ***Virender Singh & Others Vs Union of India and others***. The relevant portion of the judgment for this purpose reads as follows:-

“7. Admittedly the applicant has been granted honorary rank of Naib Subedar after retirement, hence he is entitled for pension of the rank of Naib Subedar.

8. Accordingly, 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 Naib Subedar w.e.f. 01.01.2006 within a period of four months from the date of receipt of a certified copy of this order. However, this shall be subject to further verification by the respondents of the factual pleadings on record with respect to conferment of status of Honorary Naib Subedar on the applicant. It is further made 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.”

10. On analysis, since one of us was a Member in the Bench which has given this judgment, we are of the considered opinion that the two places where Nb Sub is written is a typographical error in which ‘Honorary’ word has got omitted.

11. Notwithstanding the above, the recommendations of 6th Pay Commission on the subject 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.”

12. The law on this issue has already 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?”

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.”

13. There is another aspect of this issue which cannot be ignored. Army is a pyramidal organisation and performance matters while selecting for promotions. Thus in this pyramidal hierarchy it is mandatory to have top ACRs, pass promotion examinations and be medically fit to get promotion from Hav to Nb Sub. Thus as per customs and traditions of Army those Havs who had failed to make it to Nb Sub promotion but are otherwise good, sincere, hard working and dedicated are given the Hony rank of Nb Sub as a parting gift for their services and in their honour. However grant of Hony Nb Sub rank cannot be and should not be equated with a regular promotion of Nb Subs because such a parity can result in demoralisation and demotivation for a large number of combatant soldiers who are striving hard to improve their performance and get promoted to Nb Sub.

14. The law is settled on the point that when there are two contrary judgments on a particular point by two coequal Benches, then it is for the Court to decide which of two is better and to follow the decision which is more accurate and better in point of law, whether it be earlier or later. In ***R. Rama Subbarayalu vs Rengammal***, AIR 1962 Mad 350 (FB), it was held to quote:-

“Where the conflict is between two decisions pronounced by a Bench consisting of same number of judges, and the subordinate Court

after a careful examination of the decisions came to the conclusion that both of them directly apply to the case before it, it will then be at liberty to follow the decision which seems to be more correct, whether such decision be the later or the earlier one.”

15. Hon'ble Madhya Pradesh High Court in ***Smt Kalabai Choubey and others vs. Rajabhadur Yadav and another***, AIE 2002 MP 8 and Hon'ble Rajasthan High Court in ***Rajasthan High Court in Jaipur vs M/s Himalaya Paper (Machinery) Pvt. Ltd. New Delhi***, AIR 1990 Raj 120 have also taken similar view, conferring option to choose from the conflicting rations, the one which the Court considers to be better in point of law. In this case we are of the considered opinion that the opinion expressed by AFT, Regional Bench Chandigarh in ***O.A. No 2755 of 2013, Hoshiar Singh vs Union of India*** (supra) is more appropriate & meets the ends of justice.

16. A conceptuous of our observations is that the pension of the applicant who has retired as Hav and has been conferred the Hony rank of Nb Sub can only be fixed as Hony Nb Sub. He has not retired as a Nb Sub and therefore he cannot claim the pension fixation as applicable to a Nb Sub.

17. Thus, we are of the view that the petitioner has failed to prove his case and hence we have no valid reason to grant pension of Nb Sub to the applicant when his last rank held is Hony Nb Sub.

18. Accordingly, the **Original Application No 333 of 2019**, being devoid of merit, is hereby **dismissed**.

19. However, the applicant shall be at liberty to file a fresh application for claims if any for the revision of pension as a Hony Nb Sub.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

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

Dated: May , 2019
Ukt/-