

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 536 of 2018

Thursday, this the 30th day of May, 2019

Hon'ble Mr. Justice S.V.S. RAthore, Member (J)

Hon'ble Air Marshal B.B.P. Sinha, Member (A)

Service No. 1291725-L Ex. Hony. Nb/Sub Ram Niwas S/o Sri Soran Singh, Resident of Village – Chandī, PO – Kachhela, District Etah (Kashganj), PIN-207245.

..... Applicant

Ld. Counsel for the – **Shri Pankaj Kumar Shukla, Advocate**
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, 101 South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters, Ministry of Defence (Army), South Block, New Delhi-110001.
3. Officer In-Charge Records, Topkhana Abhilekh Artillery Records, Nasik Road Camp-422102.
4. The Principal Controller of Defence Accounts (P), Draupadi Ghat, Allahabad.

..... Respondents

Ld. Counsel for the – **Shri Arun Kumar Sahu,**
Respondents **Central Govt. Counsel.**

ORDER (ORAL)

“Per Hon’ble Mr. Justice S.V.S. Rathore, Member (J)”

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 quash/set aside impugned order 09.04.2018 passed by respondent (Annexure No. 1).*
- (II) Issue/pass an order or direct the respondent to implement the Govt. instruction Ministry of Defence letter dated 12.06.2009 and release the entitled pension with arrears from 01.01.2006 to the applicant as a Naib Subedar along with simple interest @18% p.a.*
- (III) Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*
- (IV) Allow this application with exemplary cost.”*

2. Since grant of pension is a recurring cause of action, delay in filing the Original Application has been condoned vide order dated 13.11.2018.

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

4. The fact of the case is that the applicant was enrolled in the Army on 21.03.1968 and he was discharged from service with effect from 31.03.1992 on completion of terms and conditions in the Army in the rank of Havildar. He was

bestowed honorary rank of Naib Subedar after retirement vide Corrigendum PPO No. S/CORR/075369/92 dated 08.01.1993. The grouse of the applicant is that though he was sanctioned service pension of the rank of Havildar, he was not paid the pension and pensionary benefits associated with the post of Honorary Naib Subedar as per the recommendations made by the 6th Pay Commission. The applicant had sent application dated 21.03.2018 to the respondents, which was rejected vide order dated 09.04.2018. Learned Counsel for the applicant submitted that despite several orders and judgments passed by the Armed Forces Tribunals on the subject and reinforcement of the same from Hon'ble Apex Court, he has not been given the said benefit of Honorary Naib Subedar pension.

5. Precise submissions made by the learned counsel for the applicant is that notwithstanding recommendations of the 6th Pay Commission for grant of pension for honorary rank of Naib Subedar having been accepted as contained in Govt. Policy letter dated 12.06.2009 and circulated by the Adjutant General's Branch by letter dated 06.07.2009, the same has not yet been extended to him. The applicant is not getting pension of the rank of Hony Naib Subedar w.e.f. 01.01.2006. To support his submission on this count, learned counsel for the applicant further submitted that in ***O. A. No 42 of 2010 Virendra Singh and others vs 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 this case and this decision of the Tribunal 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.

6. Per contra, Learned Counsel for the respondents submitted that the applicant was bestowed honorary rank after retirement and his service pension was revised from time to time as per policy of the Government of India in 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 Subedar discharged on or after 1st Jan 2006. He also submitted that the Government of India, Ministry of Defence vide letter No 1(8)/2008-D (Pen/Policy) dated 12th June 2009 has announced the policy decision whereby the benefit has been extended to the personnel who retired on or after 01.01.2006. Since, the applicant is pre 01.01.2006 retiree, he is not eligible for grant of service pension in the rank of Hony Naib Subedar under the provision of Government letter dated 12.06.2009.

7. In the matter of benefits whether to be extended to Havildar who was conferred honorary rank of Naib Subedar

before 01.01.2006, the Learned Counsel for the applicant relied upon the judgment and order dated 08.02.2010 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 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 Havildar 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.

8. It follows from the above decision that the benefits as extended by that decision apply to all whether he was pre-01.01.2006 retiree or post - 01.01.2006 retiree. It is important to note that appeal by Union of India against the above order of

the Armed Forces Tribunal Chandigarh Bench was dismissed by the Hon'ble Apex Court.

9. 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 :-

*“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 (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.***

Two months' time is granted to the appellants to comply with the impugned judgment passed by the High Court.”

10. Keeping in view the settled position enunciated in **Virendra Singh's** case (supra), we are of the considered view that the applicant is entitled for the pension of the rank of Hony Naib Subedar.

11. It is also observed that claim for pension of Hony. Naib Subedar is based on continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. In the case of **Shiv Dass vs. Union of India**, reported in 2007 (3) SLR 445, Hon'ble Apex Court has observed as under:-

“In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.”

12. As such, in view of the decision of Hon'ble Supreme Court in the case of **Shiv Dass (supra)**, we are of the considered view that benefit of pension of Hony Naib Subedar may be made applicable to the applicant from three preceding years from the date of filing of the Original Application.

13. Thus, in the result, the **Original Application No. 536 of 2018** is **partly allowed**. The impugned order dated 09.04.2019, enclosed as Annexure No. 1 of the Original Application, is set aside. Based on the Government letter dated 12.06.2009, the applicant was entitled to the pension of Hony Naib Subedar w.e.f. 01.01.2006 but the applicant has approached this Tribunal with long delay so the arrears of

pension of Hony Naib Subedar shall be restricted w.e.f. three years prior to the date of filing of this Original Application. The respondents are directed to release the enhanced/revised service pension to the applicant in the rank of Hony Naib Subedar w.e.f. three years prior to the date of filing of this Original Application. The date of filing of this Original Application is 12.04.2018. The respondents are also directed to comply with the order within four months from the date of receipt of the certified copy of the order, 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 B.B.P. Sinha)
Member (A)

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

Dated : 30 May, 2019

AKD/-