

**Reserved
Court No.1**

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 124 of 2018

Thursday, this the 30th day of May, 2019

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

Ram Dhiraj Singh Kushwaha, No. 6306218-M CHM/Ex Hav Honorary/Nb Sub, son of Sri Jagdish Singh, resident of village Dillachawar, Post office, Police Station and Tehsil -Zamania, district Ghazipur(UP).

.... Applicant

Ld. Counsel for the applicant : **Shri VK. Pandey, Advocate**

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi.
2. OIC, Signals Records, Jabalpur (M.P.).
3. PCDA (P), Draupadi Ghat, Allahabad (UP).

...Respondents

Ld. Counsel for the Respondents. : **Ms Appoli Srivastava,
Central Govt Standing Counsel.**

ORDER

Per Hon’ble Air Marshal BBP Sinha (Member-A)

1. Present O.A has been preferred under section 14 of the Armed Forces Tribunal Act 2007 for the following reliefs:

“(i) That this Hon’ble Tribunal may kindly be pleased to quash the impugned Note:- 01 of the Corr.PPO No. S/CORR/0791/13 dated 8 May 2013 issued by opposite party no.03, as contained in annexure No. 1 to this original application and also quash the Circular No. 430, dated 10.03.2010, accordingly, after summoning the same from the respondents, issued by opposite party no. 03 by which the opposite parties is not paying the revised pension and pensionary benefits to the applicant from the date of 01.07,2009 onwards.

(ii) *That this Hon'ble Tribunal may kindly be pleased to direct the opposite parties to release the entire arrear from 01.07.2009 to till today, in favour of applicant with a simple interest @ 12 p.a. from the date of the order till the date of actual and final payment of the amount due to them is paid, be also granted to the applicant and against the respondents.*

(iii) *That this Hon'ble Tribunal; may kindly be pleased to award the cost Rs. 20,20,000/- (RUPEES TWENTY LAC AND TWENTY THOUSAND ONLY) to the applicant against the opposite parties and allow the same.*

(iv) *That this Hon'ble Tribunal may be pleased to pass any other order or direction which this Hon'ble Court may deem just and proper be passed in favour of the applicant."*

2. As per office report, the petition has been preferred with delay of 0-3 years, 01 month and 11 days. Since the matter related to payment of pension which involves recurring cause of action, as such, vide order dated 20.02.2018 delay has been condoned. Pleadings have been exchanged between the parties.

3. The facts draped in brevity are that the Applicant was enrolled in the Indian Army (Corps of Signal) on 22.09.1964 and was discharged from service on 30.09.1988 under Rule 13 (3) III (i) of the Army Rules, 1954 after rendering more than 24 years of service. He was granted service pension vide PPO dated 25.05.1988 and corrigendum PPO dated 18.08.1989. The Applicant was conferred rank of Hony Naib Subedar with effect from 01.10.1988 for which he was granted Rs. 100/- per month in addition to his service pension.

4. Before preferring the instant O.A. the applicant had already been granted relief by this Tribunal in O.A. No. 44 of 2012 decided on 01.03.2012 by which the applicant had pleaded for grant of pension of the rank of Honorary Naib Subedar with effect from 01.01.2006. The Tribunal vide its order dated 01.03.2012 had given relief in line with the preceding decision rendered by the Chandigarh Bench of the Armed Forces Tribunal in O.A. No. 42 of 2010 ***Virendra Singh and others vs. Union of India and others*** decided on 08.02.2010 as per Government policy dated 12.06.2009. As a follow up of this Tribunal's judgment rendered in O.A. No. 44 of 2012, the respondents have already issued PPO dated 08.06.2013 whereby

applicant's pension has been fixed at Rs. 7750/- with effect from 01.01.2006. This pension has been fixed on following calculations as is evident in the PPO annexed along with the petition:

| | | | |
|-------|---|---|------------|
| (i) | Notional Pay in Pay Band as on 01.01.2006 | - | Rs. 9300/- |
| (ii) | Grade Pay as on 01.01.2006 | - | Rs. 4200/- |
| (iii) | Military Pay as on 01.01.2006 | - | Rs. 2000/- |

5. Thus, 50% of this notional pay in the grade of Naib Subedar pay has resulted in pension paid to the applicant (50% of pay) amounting to Rs. 7750/- of Honorary Naib Subedar as per Policy letter dated 12.06.2009.

6. In this O.A. the applicant is primarily praying for a second revision of his pension as Honorary Naib Subedar with effect from 01.07.2009 on following grounds:-

- (a) That his PPO issued in 2013 is having a Note which prohibits consolidation of pension and hence is illegal, arbitrary and unjust.
- (b) He has sent several representations to the respondents against this Note. However, no relief has been provided to him.
- (c) While he has been provided relief fixing his pension with effect from 01.01.2006 as per Policy letter dated 12.06.2009, however, the respondents have arbitrarily and illegally ceased further revision of his Honorary Naib Subedar pension with effect from 01.07.2009 vide Circular No.430 dated 10.03.2010.
- (d) He has appealed to the respondents to pay him revised pension as Honorary Naib Subedar with effect from 01.07.2009, but he has not been provided any relief.
- (e) The Note in his PPO of 2013 endorsing "No consolidation is applicable with effect from 01.07.2009 under this office Circular

No.430, dated 10.03.2010” is discriminatory and imposes artificial restriction on his pension and is violative of Article 14 of the Constitution of India.

- (f) Pensioners in the rank of Honorary Naib Subedars are one class and they cannot be divided arbitrarily by introducing a ‘cut off date’ i.e. 01.07.2009 for the purpose of consolidation of revised pension.
- (g) Creation of two groups of pension, i.e. pre 01.01.2006 and post 01.01.2006 does not appear to be based on any tenable ground or rationale.
- (h) Distinction has been made by the respondents between Honorary Naib Subedars ‘with’ and ‘without consolidation’ which is artificial and unwarranted.
- (i) The applicant has mentioned that in Table-7 of Circular No. 555 dated 04.02.2016, which deals with One Rank One Pension (OROP), there is a difference between the pension of Honorary Naib Subedars and Naib Subedars in “Y” group whereas there is no such difference in “X” group, which is discriminatory.

7. In the end, the applicant has concluded that his pension should be revised with effect from 01.07.2009 and Note-1, which states that “No consolidation is applicable under this office Circular letter No. 430 dated 10.03.2010” should be quashed.

8. **Per contra**, learned counsel for the respondents has submitted that applicant’s pension has been correctly fixed in line with the Armed Forces Tribunal order dated 01.03.2012 and the Government Policy on the matter dated 12.06.2009. Applicant’s pension has been fixed correctly at 7750/- for life with effect from 01.01.2006 and he is not entitled to any further improvement in pension in

accordance with Circular No. 430 dated 10.03.2010. His notional pay in the Pay Band has been correctly fixed @ 9300/-, Grade Pay at 4200/- and Military Pay at 2000/- respectively and accordingly his pension has been fixed correctly with effect from 01.01.2006 @ 7750/-.

9. In this respect, the respondents have also submitted additional affidavit and produced a representative of the PCDA (P) Allahabad who has submitted that the applicant's pension has been fixed correctly at Rs 7750/- with effect from 01.01.2006. It was further submitted that Note 1 in the PPO which reads "No consolidation is applicable with effect from 01.07.2009 under this office Circular No 430 dated 10.03.2010" has been deliberately made to protect the interest of the pensioners because if pension is fixed as per Circular No 430 dated 10.03.2010 then the applicant who is a "Y" group pensioner with 24 years of service to his credit, will receive a reduced pension @ Rs 6790/- per month. He has further submitted that Circular No 430 dated 10.03.2010 has been further revised by issuing Circular No 501 dated 17.01.2013, which is based on the implementation of Government decision on the recommendations of a Committee of Secretaries in the year 2012. He has submitted that even after onward revision as per Circular No 501 which is effective from 24.09.2012, the applicant will be only entitled only to Rs 7601/- and not Rs 7750/-, which he is presently getting, hence the note in his PPO that "No consolidation is applicable under this Office Circular No. 430 dated 10.03.2010 (wef 01.07.2009)" is a protection to him against any possible reduction of pension under Circular No 430 dated 10.03.2010 or revised Circular No 501 dated 17.01.2013. He concluded by stating that the applicant is getting his entitled pension and there is no logic in his demand because if his demand will be accepted, the applicant will suffer a financial loss.

10. On this point, Ld. Counsel for the applicant was asked a specific question as to why he is insisting on issuance of PPO as per Circular No 430 dated 10.03.2010 when it can result in a financial loss to the applicant in terms of monthly pension. On this point Ld. Counsel for the applicant vehemently insisted that he does not agree with the opinion of the respondents and the representative of PCDA (P), Allahabad and he is convinced that in no way applicant's pension can be reduced, and even if pension of the applicant is reduced because of implementation of Circular No 430 dated 10.03.2010, the applicant is consciously willing to accept such a reduction. He again firmly pleaded that applicant's pension be revised as per Circular No 430 dated 10.03.2010 from 01.07.2009.

11. We have heard both the parties and perused the records. We have also tried to understand this complex issue through previous decision in the case of *Virendra Singh and others* (supra), various circulars issued by PCDA (P), Allahabad and the respondents in this matter and we have come to the following conclusion:-

- (a) Any pension is a direct result of the last pay which has been fixed before retirement of an incumbent.
- (b) Any revision of pension for a retired personnel is again linked to his last pay fixed and years of service as upgraded in the new pay commission revision.
- (c) For any Armed forces personnel basic pay depends on two factors;
 - (i) His rank; and
 - (ii) Years of service.

12. It is these variables which decide his pay at the time of revision and his notional pay in the new Pay Commission for deciding his pension. Thus in light of above, it is amply clear that any revision of pension is to be linked to the notional fixation of pay for Army personnel who is transiting to new Pay Commission. The procedure for notional fixation has been given in para 14 (a) and para 9 (a) of SAI 1/S/2008.

13. It is in light of these observations we come down to the specific aspect of this particular case. In this case the following aspects are very clear:-

- (a) That a Havildar who has been granted Honorary Naib Subedar pension till 5th pay Commission were getting only additional pension of Rs 100/- per month.
- (b) For the first time the 6th Pay Commission recommended that a Havildar who has been granted Honorary Naib Subedar Rank should be notionally fitted into pay scales of Naib Subedars and after notional fitment they should be granted pension of Honorary Naib Subedars.
- (c) The Government in its wisdom implemented the recommendations of the 6th Pay Commission and restricted it to post 01.01.2006 retirees.
- (d) Through judicial intervention as in the case of *Virendra Singh* (supra), which was taken in challenge by the Union of India before Hon'ble Apex Court a SLP No 18582 of 2010 and was dismissed by the Hon'ble Apex Court vide order dated 13.12.2010, it became clear that recommendation of the 6th Pay Commission is to be implemented for all Honorary Naib Subedars, either pre-2006 or post-2006 and

therefore the pension of Honorary Naib Subedars was fixed as per Government policy dated 12.06.2009.

- (e) In the present case applicant's notional pay has been fixed at Rs. 9,300/- (Notional Pay), Rs 4,200/- (Grade Pay) and Rs 2,000/- (Military Service Pay) and this notional fixation has resulted in his pension of Honorary Naib Subedar @ Rs 7,750/-.
- (f) Circular No 430 dated 10.03.2010 specifically states that it is to be implemented from 01.07.2009. A perusal of Circular No 430 indicates that "Y" group incumbents having 24 years of service as Honorary Naib Subedars cannot get pension higher than Rs 6,790/-.
- (g) After revision of Circular No 430 dated 10.03.2010 by Circular No 501 dated 17.01.2013, pension for the "Y" group of Honorary Naib Subedars with 24 years of service did not exceed Rs 7,601/-. Hence it is clear that the applicant in this case does not benefit from the improvement of his pension through Circular No 430 dated 10.03.2010 or Circular No 501 of 17.01.2013.

14. Considering all the issues as mentioned herein above we find that the prayer of the applicant is primarily focused on removal of Note-1 i.e. "No consolidation is applicable under this office Circular No 430 dated 10.03.2010" and that existing pension should be revised in view of Circular No 430 with effect from 01.07.2009 onwards. We find that both these prayers are self defeating and to the disadvantage of the applicant. Additionally we find that in the same prayer the applicant has also prayed that Circular No 430 dated 10.03.2010 be quashed. We fail to understand how a revision under the same Circular as well as quashing of the same Circular can be claimed.

15. We have also noted that the co-ordinate Bench of the Chandigarh Armed Forces Tribunal has directed the respondents to revise ab initio certain Honorary Naib Subedar pension circulars and tables issued in the years 2010 and 2013, on certain legal and method of notional fixation grounds in O.A. No. 2733 of 2013 **Hoshiar Singh vs. Union of India and others** decided on 27.10.2017. However, since the applicant's prayer is on entirely different lines and is primarily limited to removal of Note-I in the PPO and finding relief within the existing framework of Circular No.430 dated 10.03.2010, hence we are constrained to note that no relief can be provided to the applicant on these grounds.

16. In view of our observations made herein above, we find that the applicant has failed to prove his case and hence his prayer for consolidation and revision of pension under Circular No 430 dated 10.03.2010 is liable to be rejected.

17. The O.A. being devoid of merit is accordingly **dismissed**.

No order as to cost.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated: May 2019
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