

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(CIRCUIT BENCH AT NAINITAL)****ORIGINAL APPLICATION No. 288 of 2018**Wednesday, this the 30th day of May, 2018**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal BBP Sinha, Member (A)”**

No. 9212217N Ex Havildar/Hony Naib Subedar Padma Datt son of Sri Khima Nand, resident of village Saongaon, Post Bhimtal, district Nainital.

..... ApplicantLd. Counsel for the Applicant : **Shri CS Rawat, Advocate.**

Versus

1. Union of India through Secretary, Ministry of Defence, Central Civil Secretariat, New Delhi
2. Chief of the Army Staff, Integrated Headquarters, Ministry of Defence, (Army) New Delhi.
3. Director, Pension/Policy, Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare, New Delhi.
4. Record Officer, Mahar Regiment, Saugor-470001.
5. P.C.D.A. P (Pension) Allahabad

.....RespondentsLd. Counsel for the Respondents. : **Dr Gyan Singh,**
Addl. Central Govt. Standing Counsel**ORDER****Per Hon’ble Air Marshal BBP Sinha, Member (A)**

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant for grant of pension in the rank of Honorary Naib Subedar with the following prayers:-

“Humble petitioner/applicant seeks prayer to summon the entire records including letter dated 27.03.2012 in File No. G2/II/Misc/2012 on the file of the PCDA (P) Allahabad and to grant of pension benefits as per the recommendation of 6th Central Pay Commission to the pre 1.1.2006 retirees and consequently direct the respondents to extend the benefits of the letter dated 12.06.2009 to the petitioner/applicant with arrears w.e.f. 1.1.2006 who retired prior to 1.1.2006.

Such other suitable order is deemed fit and proper in the facts and circumstances of the case also kindly be pleased to meet in the interest of justice.”

2. In brevity, the undisputed factual matrix of the case is that the applicant was enrolled in the Army on 14.10.1969 and retired on 31.10.1993 from the post of Havildar. After retirement, the applicant was conferred the rank of Honorary Naib Subedar on 26.01.1994. Grievance of the applicant is that he should be given pension w.e.f. 01.01.2006 as applicable to the rank of Honorary Naib Subedar as per recommendations of VIth Central Pay Commission applicable for post 01.01.2006 Honorary Naib Subedars. The applicant made a representation to the appropriate authority which did not see the light of the day. Being aggrieved by non grant of enhanced pension the present Original Application has been filed.

3 Since the issue of payment of pension involved recurring cause of action, as such, vide order dated 28.05.2018 delay in filing of Original Application has been condoned. The respondents have also filed counter affidavit.

4. We have heard learned counsel for the parties and have given our anxious consideration to the pleadings on record.

5. We find that the controversy involved in the present O.A. is squarely covered by the decision of Armed Forces Tribunal, Regional Bench, Chandimandir in the case of **Virender Singh & Ors vs. Union of India & Ors (O.A. No. 42 of 2010)**, decided on 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 Hon’ble the Apex Court. This fact

could not be disputed by the learned counsel for the respondents. In that case it has been held that pre 01.01.2006 retirees will also be entitled to get pension at the revised enhanced rate w.e.f. 01.01.2006, as is being paid to post 01.01.2006 retirees.

6. We further take note of the fact that the matter has been finally settled by Hon'ble Supreme Court in the case of **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 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”.

7. We feel it worth mentioning that in the O.A. No. 2755 of 2013, **Hoshiar Singh Vs. Union of India and others** decided on 27.10.2017 the Armed Forces Tribunal, Regional Bench Chandigarh while deciding similar issue has held on as follows:-

“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 re-calculated 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).

8. In the premise, we consider the existing tables illegal inasmuch as they do not reflect the true essence and intent of the order of the Hon'ble Supreme in the case of *Virendra 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 Subedars by following the principle of determining the highest of notional pay in the revised pay structure corresponding to maximum of pay scales of V CPC equivalent to the rank and group in which pensioned.
9. In view of the aforesaid factual matrix on record:
- (i) We allow the present Original Application No. 288 of 2018 in terms of the above judgments;
 - (ii) 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 the provision of benefit of

fitment in the pay band and higher grade pay only for the purpose of fixation of pension; and

(iii) firstly, release the revised service pension to the applicant in the rank of honorary Naib Subedar w.e.f. 01.01.2006 as per Govt 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, the respondents will have to pay simple interest @ 9% per annum on the amount of arrears accrued from the due date till actual payment.

No order as to cost.

(Air Marshal BBP Sinha)
Member (A)

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

Dated: May 30, 2018
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