

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

Court No. 1 (List B)

Original Application No. Nil of 2016

Monday, this the 29th day of May 2017

Hon'ble Mr. Justice D.P. Singh, Member (J)
Hon'ble Air Marshal Anil Chopra, Member (A)

No. 4156308-N Ex-Hav (Hony Nb Sub) Man Singh of 2nd Kumaon,
C/O 99 APO son of Late Ganga Singh resident of Village – Aroli
Post-Bageshwar, Tehsil-Bageshwar, District – Bageshwar
(Uttarakhand), Pincode-263642

.....Applicant

Ld. Counsel for : **Shri KKS Bisht, Advocate**
the Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence,
South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters
of the Ministry of Defence (Army), South Block,
New Delhi-110011
3. Officer-in-Charge Records, The Kumaon Regiment,
Ranikhet-263645.
4. Principal Controller Defence Accounts (Pension), Draupadi
Ghat, Allahabad (U.P.) - 211014.

.....Respondents

Ld. Counsel for the : **Shri DK Pandey, Advocate**
Respondents **Ld. Counsel for Central Govt.**





M.A.No.1268 of 2016

Heard learned counsel for the parties on the application for condonation of delay.

The cause shown in the affidavit filed in support of the application for condonation of delay is sufficient. Accordingly, application for condonation of delay is allowed and the delay in filing the Original Application is condoned.

Having heard the learned counsel for the parties, we find that grant of pension to the rank of Hony Naib Subedar is recurring cause of action.

Admit.

ORDER (Oral)

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 of Hony Naib Subedar.
2. Heard learned counsel for the parties and perused the record and with the consent of the learned counsel for the parties, Original Application is disposed of at the admission stage.
3. Undisputed factual matrix of the case is that the applicant was enrolled in the Army on 03.08.1965 and was discharged on 01.09.1989. After discharge, he was conferred with the Honorary rank of Naib Subedar on 06.02.1990. Grievance of the applicant is that he should be given pension as applicable to the rank of Hony Naib Subedars retired on or after 01.01.2006 as per recommendations of 6th Pay Commission. This claim having been denied by the respondents, the present Original Application has been filed.
4. 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 **O.A. No. 42 of 2010, Virender Singh & Ors vs. Union**

Am

of **India & Ors** 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 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 enhanced rate w.e.f. 01.01.2006, as is being paid to post 01.01.2006 retirees.

5. 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 :-

“In the Supreme Court of India
Civil Appellate jurisdiction

Civil appeal No. 4677 of 2014

Union of India & Ors.

Appellant(s)

Versus

Subhash Chander Soni

Respondent(s)

ORDER

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.

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

sd/-[Hon'ble Mr. Justice A.K. Sikri]

sd/-[Hon'ble Mr. justice Uday Umesh Lalit]

Date: 06.03.2015

May 20, 2015”

6. 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 Hony 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, further making it 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.

7. No order as to costs.

An

(Air Marshal Anil Chopra)
Member (A)

Dated : 29.05. 2017
PKG

DP

(Justice D.P. Singh)
Member (J)