

Court No.1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 219 of 2015

Thursday, this the 13th day of July, 2017

Hon'ble Mr. Justice D.P. Singh, Member (J)

Hon'ble Air Marshal Anil Chopra, Member (A)

Kamta Prasad, son of Sri Sita Ram, resident of - village Charthi Bhatt,
Post Office Roopgarh, Tehsil Haraiya, District Basti, U.P.

....Applicant

Ld. Counsel for the : **Shri O.P. Kushwaha, Advocate**
Applicant

Verses

1. Union of India through Secretary, Ministry of Defence, (Army)
West Block-2, R.K. Puram, New Delhi.
2. Senior Record Officer, Record Signals Abhilekh Karyalaya, Post
Bag No. 5, Jabalpur Madhya Pradesh.
3. Principal Controller of Defence, Accounts (Pensions) Allahabad.

...Respondents

Ld. Counsel for the : **Dr. Shailendra Sharma Atal,**
Respondents Central Govt Standing Counsel.

Assisted by : **Maj Salen Xaxa, OIC Legal Cell.**

ORDER (Oral)

1. This petition has been preferred under Section 14 of the Armed Forces Tribunal Act, 2007 being aggrieved with denial of grant of pension of the rank of Honorary Naib Subedar.
2. We have heard Ld. Counsel for the parties and perused the records.
3. Matters relating to payment of pension inhibit recurring cause of action, as such, we condone the delay in filing the O.A. and with the consent of learned counsel for the parties, proceed to hear and dispose of the petition finally.
4. Briefly stated, the facts of the case are that the applicant was recruited in the Indian Army on 06.12.1980. Thereafter he served at different places and because of his good services, he was promoted to the rank of Naik and then to the rank of Havildar. The applicant retired from the rank of Havildar on 01.01.2005 and after retirement he is being paid pension of the rank of Havildar. It is pleaded that the applicant on the eve of Republic Day, 2005 was bestowed the rank of Naib Subedar, but pension is being not paid to the applicant of the rank of Naib Subedar.
5. Learned counsel for the applicant stated that in view of Circular of Ministry of Defence dated 12.06.2009 the applicant is entitled for payment of pension of the rank of Naib Subedar. It is submitted that the applicant submitted representation dated 28.05.2012 for payment of pension of the rank of Naib Subedar which has been rejected.
6. 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 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. Subbash 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.***

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

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.

(Air Marshal Anil Chopra)
Member (A)

(Justice Devi Prasad Singh)
Member (J)

Dated: 13 July, 2017

Before the order could be signed, it was noticed that the applicant has already been granted pension for the rank of Honorary Naib Subedar. The matter requires rehearing.

List the case on 26.07.2017 for rehearing.

Office to inform learned counsel for the parties accordingly.

(Air Marshal Anil Chopra)
Member (A)

(Justice Devi Prasad Singh)
Member (J)

Dated: 13 July, 2017
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