Court No. 1
Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 12 of 2017

Tuesday, this the 27th day of February 2018

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Lt. Gen. Gyan Bhushan, Member (A)

No. 7093886N Ex Hav (Hony Nb Sub) Vidhata Prasad, S/O Late Shiv Narayan, Village and Post-Khekarua, Tehsil-Mahrarajganj, District-Raibarelly, U.P.

.....Applicant

Ld. Counsel for the Applicant : **Shri SG Singh, Advocate**

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi-11.
2. Principal Controller General of Defence Accounts (Pension), Draupadighat, Allahabad-211014.
3. Officer Incharge, EM Secundrabad.

…Respondents

Ld. Counsel for the Respondents : **Shri RKS Chauhan, Ld. Counsel for Central Govt.**

ORDER

Per Hon'ble Lt Gen Gyan Bhushan, 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 Hony Naib Subedar.

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

3. Undisputed factual matrix of the case is that the applicant was enrolled in the Army on 11.06.1965 and was discharged on 30.06.1989 (Afternoon). After discharge, he was granted rank of Honorary Naib Subedar. 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 VIth Central Pay Commission. Being aggrieved by non grant of enhanced pension the present Original Application has been filed.

4. The delay in filing of Original Application has been condoned vide order dated 05.01.2017.

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 The Apex 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 under:-

> *"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 entitiled 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. Keeping in view the aforesaid factual matrix on record we dispose of the present Original Application No. 12 of 2017 in terms of the above judgments with a

direction to the respondents to prepare the table for Honorary Naib Subedar afresh and release the revised 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. 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, respondents will have to pay simple interest @ 9% per annum on the amount of arrear accrued from the due date, till actual payment.

9. No order as to costs.

(Lt. Gen. Gyan Bhushan)
Member (A)

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

Dated : February, 2018
RS/*