

**RESERVED**  
**COURT NO. 1**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**ORIGINAL APPLICATION No. 163 of 2016**

Wednesday, this the 01<sup>st</sup> day of November, 2017

**“Hon’ble Mr. Justice D.P. Singh, Member (J)**  
**Hon’ble Air Marshal BBP, Sinha, Member (A)”**

**No. 4174614 - L Ex-Hav (Hony Nb Sub) Laxman Singh**, of 9 Kumaon, C/o 56 APO, Son of Shri Gopal Singh, resident of Village - Garh Khet, Post - Gagri Gole, Tehsil - Garur, District- Bageshwar (Uttarakhand), Pin code - 263641. .... **Applicant**

Ld. Counsel for the : **Shri K.K.S. Bisht, Advocate**  
Applicant (Counsel for 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 Headquarter of the Ministry of Defence (Army), South Block, New Delhi - 110011.
3. Officer-in-Charge Records, The Kumaon Regiment, PIN-900473, C/o 56 APO.
4. Principal Controller Defence Accounts (Pension) Draupadi Ghat, Allahabad (U.P.) - 211014. **...Respondents**

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

**Assisted by** : Col Hemant Kakar, OIC Legal Cell.

**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 relief of grant of revised pension as per direction of the Ministry of Defence Letter No 1(8)/2008-D (Pen/Policy) dated 12.06.2009 contained in Annexure A-4 to the O.A.

2. The facts draped in brevity are that the Applicant was enrolled in the Indian Army on 14.04.1980 and was discharged from service on 30.04.2004 after rendering 24 years and 20 days of service. The Applicant was conferred honorary rank of Naib Subedar with effect from 01.05.2004. It is alleged that the Applicant represented the matter to the authorities concerned to extend him the benefits flowing from conferment of honorary rank of Naib Subedar but the same did not elicit any response and aggrieved by the inaction, he has preferred the present O.A.

3. The precise submissions made on behalf of the Applicant are that notwithstanding recommendations of the 6<sup>th</sup> Pay Commission for grant of pension for all honorary ranks of Naib Subedar having been accepted as contained in Policy letter dated 12.06.2009 and circulated by the Adjutant General’s Branch by letter dated 06.07.2009, revised pension in terms of letter dated 06.07.2009 has not

yet been issued. All that the Applicant is getting against honorary rank of Naib Subedar is the paltry amount and that he is entitled to pension of the rank of Naib Subedar w.e.f 06.07.2009. To prop up the submission on this count, it was submitted that in **O.A No 42 of 2010 Virendra Singh and others v Union of India**, the Regional Bench of Armed Forces Tribunal at Chandigarh vide its order dated 08.02.2010 had allowed the relief similar to the relief as prayed by the Applicant in the instant case which decision was taken in challenge by the Union of India before **Hon'ble The Apex Court in SLP No 18582 of 2010**. The said SLP, it is stated, culminated in being dismissed by Hon'ble The Apex Court vide order dated 13.12.2010.

4. **Per contra**, Learned Counsel for the Respondents submitted that the Applicant was bestowed honorary rank after retirement for which ex-gratia payment was granted in addition to the service pension and that his service pension was revised from time to time as per policy of the Government of India of the rank of Havildar. He further submitted that since the Applicant had not been granted honorary rank during service, he was not eligible for service pension at par with Honorary Naib Subedars discharged on or after Ist Jan 2006. He also submitted that the Government of India, Ministry of Defence by means of letter No 1(8)/2008-D (Pen/Policy) dated 12<sup>th</sup> June 2009 has announced the policy

decision whereby the benefits have been extended to the personnel who retired on or after 01.01.2006.

5. The recommendations of 6<sup>th</sup> Pay Commission being relevant are quoted below.

*"5.1.62. Presently, Havildars on getting the rank of Honorary Naib Subedar are given an additional pension of Rs. 100. As against this, JCOs after becoming Honorary officers get pension as per the existing formula on the basis of pay attached to the post of Honorary officer. Defence Forces have proposed that the pension of Honorary Naib Subedars may also be fixed, accordingly, on the basis of pay attached to the post of Honorary officer. Defence Forces have proposed that the pension of Honorary Naib Subedars may also be fixed, accordingly, on the basis of pay attached to the rank. The proposal is inherent in the revised scheme of pay bands being proposed. A Havildar, on promotion as Honorary Naib Subedar will be eligible for pension with reference to the salary drawn/drawable in the rank of Naib Subedar. Further, pension is now payable with reference to either 10 months average emoluments or the last pay drawn, whichever is beneficial. In light of these changes being recommended, pension for all Honorary ranks of Naib Subedar will henceforth be payable by taking this placement as a regular promotion to the higher grade wherein benefit of fitment in the pay band and the higher grade pay will be taken into account for purposes of fixation of pension."*

From the recommendations cited above, it would transpire that the essence of recommendation was that the benefits would accrue to all Havildars granted the honorary rank of Naib Subedars without any reservation or exception. It brooks no dispute that the Government letter dated 12.06.2009 was founded upon the recommendations of the VI Pay Commission and from a punctilious reading, it does not imply that those who retired prior to 1.1.2006 were

excluded from getting the benefits. The letter only says "the additional element of pension of Rs 100/- per month payable to Havildars granted to the Honorary rank of Naib Subedars as per Regulation 137 of Pension Regulations for the Army Part-1 (1961) and the MoD letter dated 6.11.1991 will cease to be paid with effect from 1.1.2006."

6. In the matter of benefits whether to be extended to Havildar who was conferred honorary rank of Naib Subedar on or after 01.01.2006, the Learned Counsel for the Applicant relied upon the judgment and order dated 8.2.2010 in the case of **O.A No 42 of 2010 Virendra Singh and Ors Vs. Union of India and Ors** passed by a Regional Bench of the Armed Forces Tribunal at Chandigarh. It may be noticed that in that case, a question had arisen in regard to the implementation of the orders **whether the petitioners and others who were granted honorary rank of Naib Subedars were to be entitled to a sum of Rs 100/- per month as honorary Naib Subedars in addition to their pension as Havildars or were also entitled to the pension of a Naib Subedar.** On a further question raised in that case based upon the Government of India Ministry of Defence by means of letter dated 03.06.2009, it was mentioned in the said order that this letter takes effect from 01.01.2006. On yet another question whether these benefits are to be extended to Havildars granted honorary rank of Naib Subedar on or after

01.01.2006, it was held by the Court that the date **"01.01.2006"** is the date when this letter came into effect and it does not carry connotation that the persons who retired pre- 01.01.2006 would not be entitled to these benefits.

7. It thus follows from the above decision that the benefits as extended by that decision apply to all whether they were pre-01.01.2006 retirees or post -01.01.2006 retirees. It is worthy of notice here that the above order of the Armed Forces Tribunal Chandigarh Bench **in Virendra Singh's case** (supra) was assailed by the Union of India and upon scrutiny of the matter, Hon'ble The Apex Court dismissed S.L.P. by means of order dated 13.12.2010.

8. The decision in the case of **Virendra Singh's case** (supra) was relied upon while deciding **O.A No 3305 of 2013, Subhash Chander Soni vs Union of India** and in the said case, the Regional Bench of the Armed Forces Tribunal at Chandigarh while taking into account the ratio flowing from **Virendra Singh's case** held as under:

*"In view of the above discussion, it is held that in all such cases the petitions deserve to be allowed relying upon the judgment of Virendra Singh's case (Supra) and the said judgment shall be implemented in cases of all the petitioners without any discrimination. However, the question of grant of interest in appropriate cases shall be considered in case the petitioners/similarly placed persons are not issued the revised PPOs in spite of these*

*directions. The respondents shall take steps to make payment to all these such petitioners. In case of other similarly placed persons we are not fixing any time limit to make payment within three months since the number of such persons may be sufficiently large and it may take time to issue revised pension orders for them but steps shall be taken to issue the revised pension orders as early as possible."*

9. It may also be noted here that after the dismissal of the SLP, the Tribunal delivered verdict deciding a bunch of as many as 35 cases on similar lines and in one of the case, the Union of India assailed the verdict of the Tribunal in Hon'ble The Apex Court by way of SLP. Hon'ble The Apex Court dismissed the said Civil Appeal No 4677 of 2014 by means of order dated May 20, 2015, upholding and reiterating the view taken in Virendra Singh's case (supra). The order of Hon'ble The Apex Court is quoted 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 8.2.2010 rendered in O.A. No 42 of 2010 titled as "Virendra Singh and 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 © 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.As 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."*

10. In view of settled position as enunciated in **Virendra Singh's** case (supra) followed by the orders of Hon'ble The Apex Court dated 13.12.2010 dismissing the SLP of the Union of India preferred against the decision rendered in **Virendra Singh's** case, and the order of Hon'ble The Apex Court in Civil Appeal No. 4677 of 2014 upholding the view of the Tribunal in **Virendra Singh's case (supra)**, we are of the view that the Applicant is entitled to the pension of rank of Naib Subedar with effect from 01.01.2006.

### **Order**

11. In the result, the Original Application as aforesaid is allowed to the extent that the Applicant shall be entitled to the pension of Naib Subedar with effect from 01.01.2006. The Applicant shall also be entitled to arrears w.e.f 01.01.2006. The Respondents are directed to comply with the order within 4 months from the date the certified copy of the judgment and order is produced before the authority concerned. In case, the Respondents fail to comply with the



order within the stipulated period, the amount payable shall start earning interest @ 9% per annum from the date of order.

12. There will be no orders as to costs.

**(Air Marshal BBP Sinha)**  
**Member (A)**

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

**Dated: November, 2017**  
MH/-