

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****O.A. No. 509 of 2017**Wednesday, this the 8th day of November, 2017**Hon'ble Mr. Justice D.P. Singh, Member (J)**
Hon'ble Air Marshal B.B.P. Sinha, Member (A)

13947045F-EX Hav (Hony Nb Sub) Arun Kumar Rai, son of late Ram Avatar Rai, resident of House No. 592/153/5, Rajiv Nagar, Ghosiyana, Kaharkiya, Telibah, Lucknow.

.... Applicant

Learned Counsel for the Applicant: **Shri Arvind Kumar Pandey**

Vs

1. Union of India through Secretary, Ministry of Defence, Government of India, New Delhi.
2. The Officer In-charge Records AMC, Lucknow.
3. The Chief Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (U.P.).

... Respondents

Learned counsel for the Respondents: **Dr. Shailendra Sharma Atal**,
assisted by Maj Piyush Thakran
OIC Legal Cell.**ORDER (Oral)**

1. Heard learned counsel for the parties and perused the record.
2. By means of this petition, the applicant has prayed for grant of additional pension of Naib Subedar, which inhibits in itself a recurring cause of action. Accordingly, the delay in filing the OA is condoned. The OA is **admitted** for hearing.

3. 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 Naib Subedar.

4. Since the controversy involved is short, we, with the consent of learned counsel for the parties, proceed to decide the present application at this stage itself.

5. Undisputed factual matrix of the case is that the applicant was enrolled in the Army on 04.12.1978 and after completing his 26 years 28 days' service, was discharged on 01.01.2005 after attaining the age of superannuation. After discharge, he was granted honorary rank of 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 6th Central Pay Commission. This claim having been denied by the respondents, the present Original Application has been filed.

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 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 enhanced rate w.e.f. 01.01.2006, as is being paid to post 01.01.2006 retirees.

7. We further take note of the fact that the matter has been finally settled by Hon'ble 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”

8. Admittedly the applicant has been granted honorary rank of Naib Subedar after retirement, hence he is entitled for pension of the rank of Naib Subedar.

9. Accordingly, 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 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. However, this shall be subject to further verification by the respondents of the factual pleadings on record with respect to conferment of status of Hon Nb Subedar on the applicant. It is further made 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.

9. No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

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

Dated: 08th November, 2017
LN/-