

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No 31 of 2018**Monday, this, the 22nd day of October, 2018**Hon'ble Mr. Justice SVS Rathore, Member (J)****Hon'ble Air Marshal BBP Sinha, Member (A)**Smt Gita Devi, widow of late Jagdish Lal resident of Village Pariwaji,
Post Chunar, Tehsil Chunar, P.S. Chunar, district Mirzapur.

...Applicant

Counsel for the applicant: **Shri BB Tripathi, Advocates**

Versus

1. Union of India through Secretary, Ministry of Defence, Government of India, New Delhi.
2. The Officer Commanding Headquarter Wing, ASC Centre (South) Bangalore.
3. The Principal; Controller of Defence Accounts (Pension) Draupadi Ghat, Allahabad 211014.

.... Respondents

Counsel for the Respondents : **Ms Amrita Chakraborty,**
Addl Central Government Counsel**ORDER****“Per Hon'ble Air Marshal BBP Sinha, Member (A)”**

1. By means of the present O.A., the applicant has approached this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 praying for the following reliefs:

- (a) *issue an order, direction and command to the respondents to implement the Government Instructions (Ministry of Defence) dated 12.06.2009 and release the entitled pension/family pension with arrears thereof w.e.f.*

01.01.2006 to the applicant, who is widow of late Jagdish Lal, on the rank of Honorary Naib Subedar within a time so fixed by this Hon'ble Tribunal along with interest @ 12% per annum from the date of due till the date of actual payment.

- (b) issue such other order/direction which may be deemed just and proper in the circumstances of the case.*
- (c) allow the Original Application with cost against the respondents in view of the facts and circumstances, legal provisions and grounds raised in the application.*

2. Since grant of pension involves recurring cause of action, delay in filing the Original Application has been condoned vide order dated 05.01.2018.

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

4. The facts draped in brevity are that the husband of the applicant (No.13835389Y Late Ex Havildar Honorary Naib Subedar Jagdisgh Lal) was enrolled in the Indian Army 25.03.1969 and was discharged from service on 31.12.1992 on completion of terms and conditions in the rank of Havildar. He was bestowed honorary rank of Naib Subedar after retirement with effect from 31.12.1992. The deceased Army personnel after retirement died on 07.08.2014. The grouse of the applicant is that though her deceased husband was sanctioned service pension of the rank of Havildar, he was not paid the pension and pensionary benefits associated with the post of Honorary Naib Subedar as per the recommendations made by the 6th Pay Commission. Learned Counsel for the applicant submitted that despite several orders and judgments passed

by the Armed Forces Tribunals on the subject and reinforcement of the same from Hon'ble Apex Court, her deceased husband was not given said benefit by the respondents.

5. At this stage, we feel it pertinent to mention that the deceased husband of the applicant during his life time had not approached any forum for the reliefs as prayed for in the present OA. Now the applicant after death of her husband on 07.08.2014 has approached this Tribunal with the prayer that so far as service pension of her late husband is concerned, the respondents be directed to implement the Government letter dated 12.06.2009 and release the entitled pension and consequently grant her family pension with arrears from 01.01.2006.

6. It is submitted by learned counsel for the applicant that notwithstanding recommendations of the 6th Pay Commission for grant of pension for honorary rank of Naib Subedar having been accepted as contained in Government Policy letter dated 12.06.2009 and circulated by the Adjutant General's Branch by letter dated 06.07.2009, the same has not yet been extended to the deceased soldier. Learned counsel for the applicant 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 8.2.2010 had allowed the relief similar to the relief as prayed by the applicant in this case and this decision of the Tribunal 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.

7. **Per contra**, Learned Counsel for the respondents submitted that the deceased soldier was bestowed honorary rank after retirement with effect from 31.12.1992 and his service pension was revised from time to time as per policy of the Government of India in the rank of Havildar. He further submitted that since the deceased soldier had not been granted honorary rank during service, he was not eligible for service pension at par with Honorary Naib Subedar discharged on or after 1st Jan 2006. He also submitted that the Government of India, Ministry of Defence vide letter No 1(8)/2008-D (Pen/Policy) dated 12th June 2009 has announced the policy decision whereby the benefit has been extended to the personnel who retired on or after 01.01.2006. Since, the applicant is pre 01.01.2006 retiree, he is not eligible for grant of service pension in the rank of Hony Naib Subedar under the provision of Government letter dated 12.06.2009.

8. In the matter of benefits whether to be extended to a Havildar who was conferred honorary rank of Naib Subedar before 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 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 3.6.2009, it was mentioned in the said order that this letter takes effect from 01.01.2006. On yet another question whether these benefit is to be extended to Havildar 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.

9. It follows from the above decision that the benefits as extended by that decision apply to all whether he was pre-01.01.2006 retiree or post - 01.01.2006 retiree. It is important to note that appeal by Union of India against the above order of the Armed Forces Tribunal Chandigarh Bench was dismissed by the Hon’ble Apex Court.

10. 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 :-

“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 (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.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."

11. Keeping in view the settled position enunciated in **Virendra Singh's** case (supra), we are of the considered view that the husband of the applicant was entitled for the pension of the rank of Honorary Naib Subedar with effect from 01.01.2006.

12. The question which remains to be answered is that from which date the deceased soldier is entitled for the grant of pension of the rank of Honorary Naib Subedar keeping in view the fact that the deceased soldier died on 07.08.2014 without raising his grievance for grant of pension of the rank of Honorary Naib Subedar in consonance with the Government letter dated 12.09.2009 and decision in the case of **Virendra Singh and Ors** (supra) from 01.01.2006, either before the departmental authorities or before any Court or Tribunal, and the applicant (widow of the deceased soldier) has for the first time approached the concerned authorities by preferring representation dated 20.07.2017 and thereafter has approached this Court by filing M.A. No. 1553 of 2017. We have given our anxious consideration on this issue and feel that in the peculiar circumstances of the present case, the interest of justice would stand satisfied if the applicant is granted arrears of pension of her deceased

husband of the rank of Honorary Naib Subedar from one year prior to his death, i.e. from 01.09.2013 and thereafter, subsequent to his death on 07.08.2014, revised family pension as per rules.

13. Thus, in the result, the Original Application No. 31 of 2018 is **allowed**. Based on the Government letter dated 12.06.2009, the respondents are directed to release the enhanced/revised service pension of the deceased husband of the applicant in the rank of Honorary Naib Subedar w.e.f. 01.09.2013 and thereafter family pension as per rules to the applicant after death of her husband on 07.08.2014. The respondents are also directed to comply with the order within four months from the date of receipt of the certified copy of the order, further making it clear that no interest shall be admissible and payable to the applicant in this regard. 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.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated : October , 2018
anb