

**RESERVED****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No 108 of 2018**Monday, this, the 22<sup>nd</sup> day of October, 2018**Hon'ble Mr. Justice SVS Rathore, Member (J)****Hon'ble Air Marshal BBP Sinha, Member (A)**

No. 15107888X Ex Hony Nb/Sub Suresh Chandra Yadav, son of Sri Dudhnath Ram, resident of village Budhaun, Post Office Budhaun, district Ballia UP, PIN 277121

...Applicant

Counsel for the applicant:

**Shri V.P. Pandey, Advocates**

Versus

1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence, South Block New Delhi-110001.
3. Officer-in-Charge, Records Artillery, Artillery Centre, PIN 908800, C/O 56 APO.
4. Principal Controller of Defence Account (P), Draupadi Ghat, Allahabad.

.... Respondents

Counsel for the Respondents :

**Shri Adesh Kumar Gupta,**  
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:

- (I) *To issue/pass an order or direction to respondents to implement the scheme vide Govt of India letter dated 12.06.2009.*
- (II) *to issue order or direction to respondents to grant service pension to the applicant to the rank of Nb/Sub and pay arrears from the due date with interest.*
- (III) *Issue/pass any order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*
- (IV) *Allow this application with exemplary costs.*

2 The facts of the case are that the applicant was enrolled in the Indian Army on 30.01.1986 as Driver Spl and was discharged after rendering about 24 years’ of service on 01.02.2010 in the rank of Havildar. The applicant was granted service pension of the rank of Havildar vide PPO dated 27.12.2009. Subsequently, the applicant was conferred rank of Honorary Naib Subedar on 15.08.2010. Consequently, the PCDA (P) Allahabad issued fresh PPO dated 12.04.2013. Grievance of the applicant is twofold; i.e. firstly, he should be granted service pension as per Government of India letter dated 12.06.2009; and secondly, he should be granted service pension in the rank of Naib Subedar.

3. Submission of learned counsel for the applicant is that in view of letter dated 12.06.2009 of Government of India, the applicant on conferment of the honorary rank of Naib Subedar, is entitled to get service

pension of the rank of Naib Subedar. Copy of the aforesaid letter has been annexed as Annexure A-1 to the O.A. Learned counsel for the applicant also seeks benefit of a decision of the Armed Forces Tribunal, Regional Bench, Kochi passed in O.A. No. 69 of **2016 *Rajan Pillai V.K. vs. Union of India and others.***

4. Per contra, learned counsel for the respondents submitted that the applicant has been conferred the rank of Honorary Naib Subedar on 15.08.2010 and that his pension of Honorary Naib Subedar has been made correctly catering for the guidelines as given in Government of India letter dated 12.06.2009. He is already drawing pension of the Honorary rank of Naib Subedar and is in receipt of benefits extended by Government of India, Ministry of Defence Letter dated 12.06.2009. It was additionally submitted that the Honorary rank of Naib Subedar granted to Havildars is notionally considered as promotion to the grade of Naib Subedar and benefits of fitment in the pay band and the higher grade of pay will be allowed notionally for the purpose of fixation of pension only, therefore, the contention of the applicant that he is entitled to the pension of Naib Subedar is incorrect.

5. We have heard both the parties and perused the record.

6. The short question before us is twofold; firstly, is the applicant as Honorary Naib Subedar in receipt of benefits of the Government Letter dated 12.06.2009; and secondly, is the applicant as Honorary Naib Subedar at par with a regular Naib Subedar and can claim the same pension.

7. So far as the first question is concerned, after perusing the letter and his PPO, we agree with the respondents that the applicant is in receipt of benefits as extended by Government letter dated 12.06.2009. As far as the second question is concerned, the law on this issue has been well settled by the Chandigarh Bench of Armed Forces Tribunal in O.A. No. 2755 of 2013 *Hoshiar Singh vs. Union of India and ors*, decided on 27.10.2017. While deciding the moot question, the Bench in the case of *Hoshiar Singh* (supra) framed the following question of adjudication:

*“Whether by the interpretation of Government of India letter dated 12.06.2009 and the order of the Hon’ble Supreme Court, a Havildar granted the Honorary Rank of Naib Subedar after his retirement, can be considered equal to a regular Naib Subedar of corresponding service period?”*

8. The findings recorded by the Bench (supra) is summed in para 35, which for convenience sake is reproduced as under:

*“35. Having regard to the detailed arguments put forth by the learned counsel for the parties on the aspects of “honorary rank”, qualifications and attributes for promotion to the rank of Naib Subedar, doctrine of different classes and groups and finally a “notional” up-gradation given to the selected Havildars after their retirement it is abundantly clear to us that the two categories are not equal and, therefore, grant of equivalence to Honorary Naib Subedar with a regular Naib Subedar of correspondingly similar years of service, cannot be legally justified. That is neither the correct interpretation of the Government policy letters on the subject, nor the thought behind the orders of the Armed Forces Tribunal in Virender Singh’s case (supra) as upheld by the Hon’ble Supreme Court in Subhash Chander Soni’s case (supra). The equivalence, if any, was only in determining up-gradation for the purpose of fixation of pension.”*

9. In view of the settled proposition of law, there appears no reason to take a contrary view than what has been held by the coordinate Bench in the case of *Hosiyar Singh* (supra). Thus, we are of the considered opinion that reliefs as prayed for by the applicant cannot be granted.

10. So far as reliance by learned counsel for the applicant on the decision of Armed Forces Tribunal, Regional Bench, Kochi in O.A. No. 69 of 2016 (supra) is concerned, a careful perusal of said decisions shows that the question before the coordinate Bench was 'whether the 2006 pre-retires are also entitled benefit of upgradation for the purpose of notional fixation of pension of the rank of Hony Naib Subedar. The applicant was discharged on 01.02.2010, thus the case cited by learned counsel for the applicant has no bearing on the issue involved in the present case.

11. In view of discussion made hereinabove, we find no merit in the O.A.

12. It is accordingly **dismissed**.

No order as to costs.

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

**(Justice SVS Rathore)**  
**Member (J)**

Dated : October 2018  
anb