

**RESERVED**  
**Court No. 1**

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

**ORIGINAL APPLICATION 251 of 2018**

Tuesday, this, the 9<sup>th</sup> day of October, 2018

**Hon'ble Mr. Justice SVS Rathore, Member (J)**  
**Hon'ble Air Marshal BBP Sinha, Member (A)**

Ex Hav (Honorary Naib Subedar) Harak Singh Dhauni (No.4170289Y)  
son of Late Shri Johar Singh, resident of Vijay Nagar, Sect-II, (Near Sain  
Public School) Nilmatha Bazar PS Nilmatha Bazar, Lucknow Cantt  
22602 (UP).

...Applicant

Counsel for the applicant: **Shri R.Chandra, Advocate**

Versus

1. Union of India through the Secretary, Ministry of Defence, Government of India, New Delhi.
2. The Officer-in-Charge, Records, The Kumaon Regiment, Pin 900473, C/O 56 APO
3. Principal Controller of Defence Accounts (Pension) Draupadi Ghat, Allahabad (UP)

.... Respondents

Counsel for the Respondents : **Mrs Anju Singh,**  
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) *Issue a suitable order or direction to the respondent authorities to forthwith revise the pension for the rank of*

*Honorary Naib Subedar of the applicant as per the direction of Ministry of Defence (Department of Ex-Servicemen Welfare) letter No. 1(8)/2008-D (Pen/Policy) dated 12.06.2009 and light of Order passed in O.A. No.35/2018 : Nar Bahadur Vs. UOI and others and connected Original Applications.*

- (ii) *Issue a suitable order or direction to the respondents to grant revised pension of the Hony Rank of Nb Sub by quashing the tables and preparing fresh table w.e.f. 01.01.2006.*
- (iii) *Pass any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.*

2. The facts draped in brevity are that the applicant was enrolled in the Indian Army on 02.09.1977 and was discharged from service on 30.09.2001. The Applicant was conferred honorary rank of Naib Subedar on 26.01.2002. Since the applicant was not granted pension of the rank of Hony Naib Subedar, the applicant preferred O.A. No. 223 of 2012 with prayer for conferment of pension as admissible to Regular Naib Subedar. The O.A. was allowed and in compliance of the directions of this Tribunal, the applicant was granted revised service pension for the rank of Hony Naib Subedar which was fixed at Rs. 7750/-.

3. The precise submissions made on behalf of the applicant are that the applicant has not been granted revised pension of the rank of Hony Naib Subedar in terms of recommendation made by the Sixth Central Pay Commission which provides that Honorary rank of Naib Subedar will be notionally considered as promotion to the next higher grade pay only with effect from 01.01.2006. Grievance of the applicant is that he is entitled to grant of pension of the rank of Hony Naib Subedar pursuant to directions contained in letter of Ministry of Defence (Department of Ex-Servicemen Welfare) No. 1(8)/2008-D (Pen-Policy) dated 12.06.2009.

4. 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.

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 **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 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.

6. We further take note of the fact that the matter has been finally settled by the Apex court in **Union of India & Ors vs. Subbash 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) ...

(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 entitled 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<sup>ble</sup> 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. 251 of 2018 in terms of the above judgments. The respondents are directed to prepare afresh the table for Hony Naib Subedar, notionally considering it as a promotion to the grade of Naib Subedar and for provision of benefit of fitment in the pay band and higher grade pay only for the purpose of fixation of pension and release the revised service pension to the applicant in the rank of Hony Naib Subedar w.e.f. 01.01.2006 along with arrears 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.

No order as to costs.

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

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

Dated : October, 2018  
anb