

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

ORIGINAL APPLICATION No. 152 of 2021

Tuesday this the 12th day of October 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

No. 669397-T HFO / MWO Bal Krishna Mishra S/o Beni Prasad Mishra R/o Village –Mawaiya, Post – Mawaiya (Sheol), District-Kanpur Dehat Pin No.209204 (U.P.)

..... Applicant

Ld. Counsel for the : **Shri R.Chandra, Advocate.**
Applicant

Versus

1. Union of India through, the Secretary, Ministry of Defence, Government of India New Delhi -110011.
2. Chief of the Air Staff, Air Headquarters New Delhi -110011.
3. Directorate of Air Veterans Air Headquarters SMC Building, 1st Floor, Subroto Park, New Delhi-110010.
4. Joint CDA (Air Force), Subroto Park New Delhi-110010.

.....Respondents

Ld. Counsel for the: **Shri Bipin Kumar Singh,**
Respondents. **Central Govt. Counsel**

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

(I) *The Hon’ble Tribunal may be pleased to set aside the rejection order dated 07/12/2020 (Annexure No.A-1).*

(II) *The Hon’ble Tribunal may be pleased to direct the respondents to grant service pension of the rank of Flying Officer with effect from 01/08/2020 (date of discharge) along with its arrears and interest thereon at the rate of 18% per annum.*

(III) *Any other appropriate order or direction which the Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case.*

2. Brief facts of the case giving rise to this application are that the applicant was enrolled in the Air Force on 16.04.1981 and after having completed more than 39 years of service he was discharged from service on 31.07.2020. Applicant was granted Hony rank of Flying Officer (Post retirement) w.e.f. 15.08.2020 in recognition of the distinguished and dedicated service. Applicant submitted appeal for service pension of Flying Officer which was denied by the respondents. Being aggrieved, applicant has filed instant Original Application for grant of service pension of Flying Officer.

3. Learned counsel for the applicant submitted that applicant was enrolled in Indian Air Force on 16.04.1981 and discharged from service on 31.07.2020. Applicant was granted Honorary rank of Flying Officer (Post retirement) on 15.08.2020. Applicant submitted for service pension of Flying Officer because those personnel are granted Honorary Flying Officer in service they get service pension of Flying Officer but who get this opportunity after retirement, they cannot get service pension of Flying Officer rank which is violation of equality. Govt of India, vide letter dated 07.12.2009 has decided to grant the benefit of pension of Naib Subedar to all those Havildar, who were granted the Honorary rank subsequent to their retirement from the active service. The said benefit has been conferred to bring parity amongst the Havildars who were granted the Honorary rank while on active service and the Honorary Nb sub granted Honorary rank after the retirement. The homogenous class of the Havildar granted Honorary rank has not been treated as a single class and following the mandate of Article 14, the equality in terms of the pension has been brought about.

4. Learned counsel for the applicant submitted that applicant retired from service on 31.07.2020 in the rank of MWO. Armed Forces Personnel are granted Honorary rank after retirement from service for the exemplary service rendered by them.

Applicant was granted Honorary rank of Flying Officer, however, the financial benefit including pension of Flying Officer was not granted to him. All the MWO who were granted the rank of Flying Officer while on active service have been paid the pension admissible to the rank of Flying Officer. The grievance raised by the applicant is that on the one hand ex-Armed Forces Personnel, granted Hony Rank of Naib Subedar from the rank of Havildar after retirement from service, pursuant to the recommendations of the VIth Pay Commission, duly accepted by the Government of India, have been granted pension of the rank of Nb Subedar, but, on the other hand this benefit has not been extended by the respondents to the category of the applicants which is discriminatory and violative of Articles 14 & 16 of the Constitution of India. It causes discrimination as compared with the Honorary Nb Sub of the Indian Army. Thus the homogenous class of MWO conferred with honorary rank of Flying Officer has been divided into two separate classes and a class within class has been created, such a classification is impermissible in law. It has no nexus with the object of the enabling provision and such a classification cannot be made on the ground of the date of retirement. Learned counsel for the applicant prayed that respondents be directed to grant service pension of the rank of

Flying Officer to the applicant from 01.08.2020 along with arrears inter alia, grant of any other relief, deemed fit in the facts and circumstances of the case.

5. On the other hand, learned counsel for the respondents submitted that MWO Bal Krishna Mishra retired from Air Force Service on 01.08.2020 after completion of more than 39 years of qualifying regular service. Applicant is getting service pension vide PPO No 349202012033 dated 14 Sep 2020. Applicant was granted Honorary rank of Flying Officer on 15.08.2020. As per AFO 18/2020, Honorary rank shall be awarded to retired MWOs/WOs granted Honorary Rank of Flying Officer post retirement are only entitled for President's Parchment and their names are published in the Gazette of India. Grant of Honorary rank post retirement does not carry any pecuniary (monetary) and associated benefits (including ROIC, URC, ECHS etc), status and privileges as extended to regular Honorary Commissioned Officers. Applicant filed appeal for grant of service pension of Flying Officer which was rejected vide letter dated 07.12.2020 as there is no provision to grant financial benefits to Honorary rank of Flying Officer post retirement as per Para 345 of Regulations for the Air Force, 1964. Learned counsel for the respondents prayed that instant

O.A. is bereft of merit and lacking substance and is liable to be dismissed.

6. We have heard learned counsel for the parties and perusal the documents available on record.

7. On the face of it, it appears as if discrimination is being meted out to the applicant as the Havildar, granted the Hony rank of Nb Subedar after retirement are being granted the pension and pensionary benefits of Nb Subedar by the respondents under orders of the Armed Forces authorities, covered by the ratio of the judgment of this Tribunal in O.A. No.42 of 2010, titled Virender Singh and others vs. Union of India & others, decided on 08.02.2010, affirmed/ upheld by the Hon"ble Supreme Court in SLP(C) No.18582 of 2010, Union of India vs. Virender Singh & others, decided on 13.12.2010 and UOI vs. Subash Chander Soni, being Civil Appeal No.4677 of 2014, decided on 20.05.2015 , whereas, such and similar benefit is being denied to the applicant herein. However, the case needs judicial scrutiny in order to reach a just and fair conclusion. Therefore, in order to satisfy our judicious conscience, we proceed to carefully consider the pleas taken by the applicant for such a claim and also the stand vindicated by the respondents through the two replies filed/ adopted in these cases.

8. The main plea of the respondents for denial of such and similar benefit to the applicant, as is being extended in the case of Havildars, granted the rank of Hony Nb Subedars, is that there exists no policy regarding pay & allowances/ pensionary benefits for the Honorary rank(s) granted to the JCOs after retirement, therefore, the relief prayed for by the applicant is misconceived. In terms of Para 178 of the Defence Service Regulations (called "DSR" hereinafter) (Rev-86), Honorary Commission as Lieutenant/ Captain, is granted on active service to the JCOs and such personnel remaining on the active list are authorised/ entitled for pay & allowances of the higher rank during service and similar consequential pensionary benefits after retirement, as per circular dated 10.02.1988. The relevant Note, incorporated under Para 13, pertaining to "Revision Sanction" of the said circular, is reproduced below for ready reference:-

"13. Following types of revision of service pension and gratuity are carried out:-

(a) General Revision: xxx xxx xxx

(b) Honorary Revision: It is carried out in grant of Honorary Commission/ Rank to the individuals on 26 Jan and 15 Aug every year.

Note:-

"Hony Commission is granted to the JCOs on active list in the rank of Lt/ Capt. They are entitled for pay & allces

and pensionary benefits admissible to the Hony Offrs, whereas no monetary benefit is admissible to the Hony Rank granted to JCOs after retirement. In case, a Hav is granted Hony Rank of Nb Sub, he will be benefitted with additional pension of Rs.45/- pm plus relief as admissible .”

(The amount of Rs.45/- per month is stated to have been revised to Rs.100/- w.e.f. 01.10.1991.)

9. In terms of Para 179 of the DSR, Honorary Rank of Lieutenant/ Capt to the JCOs on retirement is granted as a matter of Honour on recommendations for exemplary service and no monetary benefits are attached/ applicable in such cases. Still further, in terms of Para 133 of the Pension Regulations for the Army, 1961, Part-I, service pension is assessed on the basis of the rank actually held by an individual regardless of whether it is held in substantive or paid acting capacity and the lowest groups for which he is paid during the last 10 months of qualifying service for pension. This provision has, however, been removed by the Government of India in the VIth Pay Commission and revised with the stipulation that pension will be assessed/ calculated on the basis of the last rank held. The plea of the respondents, thus, is that since the applicant did not serve for a single day in the Honorary rank, he is not entitled to the pay & allowances and the

consequential pensionary benefits as well, of the Honorary Rank conferred upon them after retirement.

10. Lastly, there is no illegality, arbitrariness or discrimination in non-grant of the benefit prayed for by the applicant inasmuch as the categories of Hony Nb Subedars and Hony Subedars/ Subedar Major/ Lieutenant/ Captain, are two different classes of officers, distinct and separate from each other i.e. „the NCOs“ and „the JCOs“, respectively, therefore, not a homogeneous class for being treated alike. It is further reiterated by the respondents that the Honorary Rank as Sub Major/ Lieutenant/ Captain is granted after retirement to the JCOs only as a matter of Honour in recognition of the exemplary service, without any change in their status, pay & allowances or pensionary benefits on grant of this rank, whereas, for the Honorary rank of Nb Sub (granted to Havs (Non-Commissioned Officers) entitles them additional pension as per a policy of the Gol. Such a policy being non-existent in the case of the applicant and the two categories being distinct and separate, the applicant is not entitled for the same/ similar relief.

11. The applicant in these cases having alleged violation of Articles 14 and 16 of the Constitution of India thereby discriminating them vis-a-vis Havildars in grant of pension/

pensionary benefits of the Honorary ranks, conferred upon them after retirement, the whole controversy hinges around in determining whether or not the applicant belong to the same category/ class for being treated equally as, as per the constitutional principle and the well-settled legal principle in a large number of judgments of the Hon^{ble} Supreme Court and various High Courts that “equals cannot be treated unequally” and “unequals cannot be treated equally”.

(Reference may be made to the following few decisions of the Hon^{ble} Supreme Court:-

- (i) Indira Sawhney vs. Union of India & others AIR 1993 SC 477;*
- (ii) Management of Coimbatore vs. Secretary, Coimbatore District, Appeal (civil) 2106 of 2007, , decided on 23.04.2007; -7-*
- (iii) Union of India & Ors vs. Muralidhara Menon & Anr., an Appeal arising out of SLP(c) No.14044 of 2006, decided on 04.08.2009; and ,*
- (iv) Steel Authority of India Ltd & Ors. Vs. Dibyendu Bhattacharya, Appeal No.94809 of 2010 (arising out of SLP© No.26495/2008, decided on 29.10.2010.)*

We proceed to consider the claim of the applicant on the above broad principle of law, set out by the Hon^{ble} Supreme Court in the above cases.

12. With regard to the case of Havildars, granted the Honorary rank of Nb Subedars, we take note of the fact that with regard to this category of the Armed Forces Personnel, as per the existing long-standing policy under the provisions of Rule 137 of the Pension Regulations for the Army, 1961, Part-1, on retirement, they are entitled to an additional pension equal to 20% of the basic pension earned by them as Havildars. The additional pension is rounded-off to the next higher rupee and is taken into account for the purpose of commutation and grant of dearness relief. Subsequently, the additional pension sanctioned to these personnel was revised to Rs.100/- vide Gol, MoD letter dated 06.11.1991. Thereafter, the following recommendations were given by the Sixth Central Pay Commission in Para 5.1.62 on the subject of Pension for Honorary Ranks:-

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 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.”

13. In pursuance of the above recommendations of the Sixth Central Pay Commission, the GoI, Ministry of Defence issued letter No.1(8)/2008- D(Pen/Policy), dated 12th June, 2009 and ordered that the Honorary Rank of Nb Subedar, granted to Havildars be notionally considered as promotion to the Rank of Nb Sub and the benefits to fitment of pay band and the higher grade be allowed notionally for the purpose of fixation of pension only. The rates of pension have been revised from time to time and the anomalies intra category of Hony Nb Sub stand removed. It is in this background that the matter with regard to grant of pension of the rank of Hony Nb Subedars attained finality at the level of the Hon^{ble} Supreme Court and, thus, the benefit is being extended to all similarly situated ex-Armed Forces personnel of this category.

14. In contrast to the above, we find that there is no such evidence of any similar sanction by the Government of India for

personnel as the claimant, who is MWO and has been conferred the Honorary rank of Flying Officer on retirement. The applicant herein has also not rendered active service in the same rank. The Honorary Rank conferred to him did not improve either any pay or service pension and he is entitled to pay and allowances/ pensionary benefits in terms of Para 13 Note of CDA (SC) Circular No.EDF/ Pensions/ Pune/ Orders EDP (Pension), dated 10.02.1988.

15. In the above conspectus, we find a clear-cut difference between the two categories of ex-Armed Forces personnel, therefore, for grant of the relief claimed, these are to be considered as "Classes- Apart" - classified with reasonableness and rationale behind, having intelligible differentia and rational nexus with the object sought to be achieved. We also find no vagueness or arbitrariness therein and, thereby, in not treating the applicant alike Flying Officer (Active Service) . Since, applicant was granted Honorary Rank of Flying Officer after retirement, hence in terms of Para 345 of Regulations for the Air Force, 1964, he is not entitled service pension of Flying Officer. The alleged violation of Articles 14 & 16 is not attracted and made out in this case and the parity, on the analogy of Hony Nb Subedars, claimed by the applicant, cannot be

accepted for grant of the relief prayed for in this O.A. This view of ours stands strengthened by an earlier decision of Armed Forces Tribunal, Regional Bench, Chandimandir vide which a bunch of ten similar cases, the lead case being OA No.107 of 2011, titled Jai Narain & another vs. Union of India & others, was dismissed by order dated 27.11.2012 .

16. For the detailed reasons, recorded above, we do not find any merit in the application to interfere with the impugned order passed by the respondent in rejecting service pension of Flying Officer to the applicant. Consequently, the application being devoid of merit is liable to be **dismissed**. Resultantly, O.A. is **dismissed**.

17. No order as to costs.

18. Pending applications, if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)

Member (A)

Member (J)

Dated: 12 October, 2021
UKT/-