

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

O.A. No. 342 of 2017

Monday, the 28th day of August, 2017

Hon'ble Mr. Justice D.P. Singh, Member (J)
Hon'ble Air Marshal Anil Chopra, Member (A)

No. 1259951P Ex Hav/Hony Nb Sub Kali Sahai, son of late Dev Narain, resident of Sainik Niwas, Shiv Nagar, Lane No.2, Naini Allahabad, Pin-211 008

.... Applicant

Learned Counsel for the Applicant: **Shri Pankaj Kumar Shukla,**
Advocate

Verses

1. Union of India through Secretary Ministry of Defence (Army) South Block, New Delhi-110010.
2. Chief of the Army Staff, IHQ MOD (Army) South Block, New Delhi.
3. The Officer-in-Charge, ARTY Nasik Road Camp (Maharashtra), Pin Code-422102
4. PCDA (Pension), Draupadi Ghat, Allahabad.

...Respondents

Learned counsel for the Respondents: **Ms Amrita Chakraborty,**
Advocate
Assisted by Maj Salen Xaxa, OIC Legal Cell.

ORDER (Oral)

1. The instant Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for grant of pension of Hony Naib Subedar.
2. There is a delay of 07 years in filing the present OA. The delay has been satisfactorily explained. Accordingly, the delay in filing the OA is condoned. The OA is admitted for hearing.
3. We have heard learned counsel for the parties and perused the record.
4. Since the controversy raised is very short, with the consent of parties' counsel, we proceed to hear the matter at this stage itself.
5. The applicant was enrolled as a Sepoy in Indian Army on 31.01.1973 and was discharged from service on 01.02.1997 in the rank of Havildar. After discharge, he was granted honorary rank of Naib Subedar and received additional element of Rs 100/- per month. 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 Pay Commission. The applicant submitted representation to the respondents for revision of pension in the light of MoD letter dated 12.06.2009 as per VIth C.P.C. but the same was denied vide letter dated 19.04.2016. This claim having been denied by the respondents, the present Original Application has been filed.

6. The law on the question raised has been well settled and is no more a *res integra*. 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 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 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. & Ors’, 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.”

8. We dispose of the present petition in terms of the above judgments with a direction to the respondents to release the enhanced pension in the rank of Hony Naib Subedar based on MoD Letter dated 12.06.2009 w.e.f. 01.01.2006 within a period of four months from the date of receipt of a certified copy of this order, further making it 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 @ 10% per annum from the due date, till actual payment thereof.

No order as to costs.

**(Air Marshal Anil Chopra)
Member (A)**

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

Dated : August 28, 2017
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