

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**  
**Court No 1 (E court)**

**Original Application No 216 of 2019**

Friday, this the 09<sup>th</sup> day of October, 2020

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

**No 4163627-Y Ex Hav & Hony Nb Sub Anil Kumar Singh,**  
 S/O Late Lalu Singh, Resident of Village – Mustafabad,  
 Post Office – Mustabad.  
 District-Mau (U.P.), Pincode – 221706.

..... Applicant

Ld. Counsel for the Applicant: **Shri V.P. Pandey**, Advocate

Versus

1. Union of India through the Secretary, Ministry of Defence,  
South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry  
of Defence (Army), South Block, New Delhi- 110011.
3. Officer-in-Charge, Records BEG Roorkee,  
PIN-908779, C/O 56 APO.
4. Principal Controller of Defence Accounts (Pension), Draupadi  
Ghat, Allahabad (U.P.) -211014.

..... Respondents

Ld. Counsel for the : **Shri Asheesh Agnihotri**,  
 Respondents Central Govt Counsel.

**ORDER**

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

1. This is an application filed under Section 14 of the Armed Forces Tribunal Act, 2007 with the following reliefs:-

*“(a). Issue/pass an order or direction of appropriate nature to the respondents to give effect to Government of India, Ministry of Defence letter dated 12.06.2009 and pay service pension to the rank of Nb/ Sub to the applicant.*

*“(b). Issue/pass an order or directions to the respondents to pay service pension to the applicant to the rank of Nb Subedar w.e.f. 30.09.2003 i.e., date of discharge.*

*“(c). Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the present case.*

*“(d). Allow this Application with exemplary costs.”*

2. The factual matrix of the case in brief is that applicant was enrolled in the Army on 14.09.1979 and after successfully rendering 24 years service he was discharged from service on 30.09.2003 in the rank of Havildar. Applicant was conferred the rank of Honorary Naib Subedar on 26.01.2004.

3. The Government of India, Ministry of Defence, based on recommendations of 6<sup>th</sup> Pay Commission Report, issued letter No 1(8)/2008-D (Pen/Policy) dated 12.06.2009 (in short “GoI, MoD letter dated 12.06.2009”) to the effect that Honorary rank of Naib Subedar granted to Havildars will be notionally considered as a promotion to the higher grade of Naib Subedar and benefit of fitment in the pay

band and the higher grade pay will be allowed notionally for the purpose of fixation of pension only with effect from 1<sup>st</sup> January, 2006. Applicant moved a representation to Officer-in-Charge Records for the grant of pension to the rank of Naib Subedar with effect from 1<sup>st</sup> January, 2006 but no action was taken on the said representation, hence the O.A. was filed.

4. Respondents have while admitting the applicant's case regarding his enrolment in the Army, discharge from the service in the rank of Havildar, conferment of the rank of Hony Nb Subedar to him on 26.01.2004, and issuing of GoI, MoD letter dated 12<sup>th</sup> June, 2009, stated that aforesaid letter being applicable to post - 2006 retiree, applicant is not entitled to the benefit of this letter.

5. We have heard Shri VP Pandey, learned counsel for the applicant and Shri Asheesh Agnihotri, learned counsel for the respondents.

6. At the outset we would like to say that after issuing of the aforesaid letter dated 12.06.2009 a Section of Pre- 2006 retiree Havildars granted Hony Rank of Nb Subedar approached various courts for implementing the provision of this letter in their cases. AFT, Chandigarh vide their order dated 27.10.2017 in O.A. No 275 of 2013 filed by **Ex Havildar (Hony Nb Subedar) Hoshiar Singh** allowed the benefit of letter dated 12.06.2009 to all Pre- 2006 Havildars granted the rank of Hony Nb Subedar with effect from 01.01.2006.

7. This issue was examined by the Ministry of Defence also and based on their recommendations, Government of India decided to extend the benefit of the Gol, MoD letter dated 12.06.2009 to Pre-2006 retiree Havildars also who were granted the rank of Nb Subedars. Government of India has issued letter No 1(13)/2016/D(Pen/Policy, Gol, MoD, New Delhi, dated 21.02.2020 allowing Pre – 2006 retiree Havildars, who were granted the rank of Hony Nb Subedars, the benefit of Gol, MoD, letter dated 12.06.2009 for the purpose of fixation of pension only. In **response** to this letter, Circular No 631 dated 05.03.2020 has also been issued authorising PDAs to make the payment of pension/ arrears in the affected cases of Pre- 2006 retiree Havildars granted Hony rank of Nb Subedars without any further authorisation.

8. Submission of learned counsel for the applicant is that applicant's case is fully covered with Gol, MoD letter dated 21.02.2020. His further submission is that applicant is entitled to the benefit of Gol, MoD letter dated 12.06.2009, and respondents having wrongly denying this benefit, they should be directed fixing his pension in the higher pay band and higher grade of Nb Subedar in terms of Gol, MoD letter dated 12.06.2009.

9. Per contra, Shri Asheesh Agnihotri, learned counsel for the respondents submits that Gol, MoD letter dated 21.02.2020 being applicable to only Havildars who were granted the rank of Hony Nb subedar before their retirement, applicant is not entitled to benefit of

this letter. He further submits that applicant could be given the benefits of this letter only if he would have granted the rank of Hony Nb Subedar before this discharge but this being not happened due to applicant being retired before Hony rank of Nb Subedar being retired, he can not be allowed the pension in the pay band and higher grade pay of Nb Subedar with effect from 01.01.2006.

10. Upon hearing submissions of learned counsel of the parties, we find that respondents plea regarding denying the benefit of Gol, MoD, letter dated 16.06.2009 and 21.02.2020 to the applicant in fixing his pension in the pay band and higher grade pay of Nb Subedar w.e.f. 01.01.2006 being based on wrong and baseless interpretation of letters is quite absurd and not acceptable. It is no where stated in the letters referred to above that benefit of fixation of pension in the pay band and higher grade pay of Nb subedar will be given to only those Havildars who were granted the rank of Nb Subedars before retirement. It is clearly provided in Gol, MoD, letter dated 12.06.2009 that Havildars who were granted the rank of Hony Nb Subedars will be given the benefit in fixation of their pension in the pay band and higher grade pay of Nb Subedar and the letter would be effective from 01.01.2006.

11. The Gol, MoD, letter dated 12.06.2009 was, however, wrongly read as if it was applicable in case of those Havildars only who retired on or after 01.01.2006. This was the reason that a pre- 2006 retiree Havildar, Hoshiar Singh granted the rank of Nb Subedar approached

AFT Chandigarh and their Hon'ble Members ruled that letter dated 12.06.2009 was applicable in cases of pre- 2006 retiree Havildars also who were granted the rank of Hony Nb Subedars. After this ruling, Government of India examined the matter and decided to extend the benefit of its letter dated 12.06.2009 to pre-2006 retiree Havildars also. There being no such mention in either of the letters that is would be applicable to Havildars who were granted the rank of Hony Nb Subedar before retirement, the benefit can not be denied on this reason. The respondents plea of denying the benefits of Gol, MoD, letter dated 12.06.2009 for making fixation of pension of the applicant in the pay band and the higher grade pay of Nb Subedar with effect from 01.01.2006 being devoid of force is rejected.

12. Accordingly, we allow the O.A. with cost and direct respondents to fix the pension of applicant in the pay band and higher grade pay of Nb Subedar in terms of Gol, MoD, letter dated 12.06.2009 and pay the arrear within four months from the date of order. In the event of respondents failing to comply with order, the amount shall carry interest at the rate of 9% per annum from the due date.

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

**Member (A)**

**Member (J)**

Dated: October, 2020  
Ukt/-