

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI

O.A.No. 69 of 2016

MONDAY, THE 4TH DAY OF JULY, 2016/13TH ASHADHA, 1938

CORAM:

HON'BLE MR. JUSTICE S.S. SATHEESACHANDRAN, MEMBER (J)

HON'BLE VICE ADMIRAL M.P.MURALIDHARAN, AVSM & BAR, NM, MEMBER (A)

APPLICANT:

NO.13937814 M EX- HAV (HONY NB/SUB) RAJAN PILLAI.V.K.,
AGED 62 YEARS, AMC, S/O LATE SHRI KUTTAPPAN PILLAI,
ABHILASH BHAVAN, MALAYALAPUZHA, THAZAM PO.,
PATHANAMTHITTA -DISTT, KERALA STATE – 689 666.

BY ADV. SRI. C.R. RAMESH.

Versus

RESPONDENTS:

1. THE UNION OF INDIA, REPRESENTED BY THE SECRETARY, MINISTRY OF DEFENCE (ARMY), SOUTH BLOCK, NEW DELHI -110 001.
2. THE CHIEF OF ARMY STAFF, INTEGRATED HQRS, MINISTRY OF DEFENCE, SOUTH BLOCK, NEW DELHI -110 001.
3. THE PRINCIPAL CONTROLLER OF DEFENCE ACCOUNTS (PENSION), DRAUPADI GHAT, ALLAHABAD, UTTARPRADESH – 211 014.
4. THE OIC RECORDS, ARMY MEDICAL CORPS, LUCKNOW CANTT., UTTARPRADESH – 226 002.

, BY ADV.SRI. TOJAN J.VATHIKULAM, CENTRAL GOVERNMENT COUNSEL.

ORDER

Satheesachandran, Member (J):

The applicant, V.K. Rajan Pillai, is an Ex-serviceman, who retired from the Army Medical Corps, Indian Army in the rank of Havildar and was subsequently granted Honorary rank of Naib Subedar. He has filed the above application under Section 14 of the Armed Forces Tribunal Act, 2007 (for short 'the Act') for a declaration that he is entitled to the benefit of Annexure A3 letter and revision of basic pension at par with Naib Subedar. He has further sought for issue of a direction to the respondents to pay him pension in the rank of Naib Subedar revising it from 1.1.2006 and corresponding revision w.e.f. 12.6.2009 along with the entire arrears.

2. The applicant has claimed benefits under Annexure A3 letter No.1(8)/2008-D(Pen/Policy) dated 12th June, 2009 issued by the Government of India, Ministry of Defence (Department of Ex-serviceman Welfare), New Delhi. Under the aforesaid letter, Havildars who have been conferred Honorary rank of Naib

Subedar have been granted regular pension w.e.f. 1.1.2006 providing them notional promotion of higher grade of Naib Subedar. That letter reads thus:

"I am directed to say that in pursuance of Government decision on the recommendations of the Sixth Central Pay Commission contained in Para 5.1.62 of Chapter V of the Report, the President is pleased to decide 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. Accordingly, additional element of pension of Rs.100/- pm payable to Havildars granted Hony rank of Naib Subedar as per Regn.137 of Pension Regulations for the Army Part-I (1961), amended vide this Ministry's letter No.1(1)/88/D(Pen/Sers) dated 6.11.1991 will cease to be payable. The notional fixation of pay in the rank of Naib Subedar will not be taken into account for payment of retirement gratuity, encashment of leave, composite transfer grant etc.

2. This letter takes effect from 1st January 2006.

3. This issues with the concurrence of Finance Division of this Ministry vide their UO No.2351/Finance/Pension dated 3.6.2009”.

3. Though the applicant had retired from the rank of Havildar since he was conferred the Honorary rank of Naib Subedar subsequently he was entitled to have his pension refixed in the Honorary rank of Naib Subedar w.e.f. 1.1.2006, is his case for the declaration sought for and the consequent monetary benefits thereto.

4. The respondents have resisted the claims of the applicant contending that the benefits under Annexure A3 letter are available only to those who retired on or after 1.1.2006. The applicant and similarly situated persons, who retired prior to or before 31.12.2005, are not entitled to the benefits conferred under Annexure A3 letter, according to them. The applicant who was discharged from service w.e.f. 1.6.1998 i.e. much prior to 1.1.2006, is not entitled to have revision of pension in the rank of Honorary Naib Subedar which was conferred to him subsequent to his retirement, is the contention of the respondents stating

that Annexure A3 letter is inapplicable to him.

5. We heard learned counsel for the applicant, Shri.C.R.Ramesh and the Central Government Counsel Shri.Tojan J Vathikulam, who appeared for the respondents.

6. The issue involved in the case is no longer res integra as it has already been resolved under the Common Order passed in O.A.No.100 of 2012 and connected cases by this Tribunal on 21st August 2012, which had been moved by similarly placed personnel like the applicant in the present O.A., Havildars conferred with rank of Naib Subedar after retirement and all of whom pre-2006 retirees, claiming the benefit under Annexure A3 letter issued by the Government of India. Repelling the objections canvassed by the respondents that Annexure A3 letter is applicable only to post-2006 retirees this Tribunal has concluded that pre-2006 retirees who had been granted Honorary rank of Naib Subedar after retirement are also entitled to the benefits under the letter w.e.f. 1.1.2006 subject to the condition that the sum of Rs.100/- per month paid to them after

1.1.2006 in terms of Government Order No.1(1)/88/D(Pen/Sers) dated 6.11.1991 has to be adjusted against the amount due on re-fixation of their pension. Analysing the recommendation of the VI Pay Commission, acceptance of which form the basis of Annexure A3 letter, this Tribunal has expressed the view that neither the Commission nor the Government made any distinction between Havildars of pre and post-2006 retirees, who, after retirement, had been granted Honorary rank of Naib Subedar, in re-fixation of their pension in the Honorary rank w.e.f. 1.1.2006. Decision rendered by the Armed Forces Tribunal, Chandigarh Bench and also Lucknow Bench, wherein similar view was taken in identical cases, were also taken note of in passing the common order in O.A. No.100 of 2012 and connected cases to hold that the applicants in those cases, pre-2006 retiree Havildars, who had been conferred Naib Subedar rank after their retirement, are entitled to the benefit of Annexure A3 letter of the Government.

7. The Original Application is allowed declaring that the applicant is entitled to the benefits of Annexure A3 letter

No.1(8)/2008-D-P(Pen/Policy) dated 12.6.2009 issued by the Government of India, Ministry of Defence (Department of Ex-serviceman Welfare), New Delhi w.e.f. 1.1.2006. The respondents are directed to make payment of the due amount to the applicant within three months, including the entire arrears to be computed w.e.f. 1st January 2006. Amount of Rs.100/- per month, which has already been paid to the applicant after 1.1.2006 in terms of Government letter No.1(1)/88/D(Pen/Sers) dated 6.11.1991, shall be adjusted against the due amount as per this Order and payment of that amount of Rs.100/- shall be discontinued.

8. There will be no order as to costs.

9. Issue free copy of this order to both sides.

Sd/-
VICE ADMIRAL M.P. MURALIDHARAN, JUSTICE S.S.SATHEESACHANDRAN,
MEMBER (A) MEMBER (J)

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/True Copy/

Prl. Private Secretary

O.A.No. 69 of 2016

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