

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW
DELHI**

TA No.361/2009

[WP (Civil) No.4430/1997 of Delhi High Court]

Ex. Honorary Subedar Jaipal Singh

.....Petitioner

Versus

Union of India & Others

.....Respondents

For petitioner:

Sh. Somvir Singh Deswal, Advocate.

For respondents:

Sh. Anil Gautam, Advocate.

CORAM:

**HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.
HON'BLE LT. GEN. M.L. NAIDU, MEMBER.**

**ORDER
19.01.2010**

1. The present petition was transferred from Hon'ble Delhi High Court to this Tribunal on its constitution.
2. Petitioner by this writ petition has prayed that the respondents may be directed to consider his case against the shelter appointment for another six months so that the petitioner is entitled for

the pension of the rank of Naib Subedar from the date of discharge from service along with the arrears of pension and the order dated 06.08.1988 may be quashed.

2. The brief facts which are necessary for the disposal of the present petition are that the petitioner was enrolled in the Indian Army on 29.05.1963 and after completion of initial army training he was posted in the operational units of the army. The petitioner was given promotions and lastly the petitioner was promoted to the rank of Naib Subedar and subsequently on 26.01.1988, he was granted Honorary rank of Subedar which he deserved. The petitioner got the Chronic Bronchitis and was placed before the Medical Board. The petitioner was discharged from service under Army Rule 13 (3) item 2 (i) (a) on fulfilling the condition of enrolment and placed in the low medical category. At the time of retirement, the petitioner made an oral request to his record office that the petitioner had served four months as a Naib Subedar and if the case of the petitioner is considered for another six months against a shelter appointment, then the petitioner will fulfil a minimum criteria of 10 months service in the rank as he has not completed 10 months required under the Government order which was prevailing at the relevant time. But the request of the petitioner was denied by the Record Office. The petitioner made a petition on 23rd

26

July, 1988 to the respondents for the grant of pension for the rank of Naib Subedar but the same was rejected by the respondents on 06.08.1988. Thereafter petitioner approached Hon'ble Delhi High Court for filing the present petition which was transferred to this Tribunal on its formation.

3. The petition was contested by the respondents by filing the counter that as per the Government Order incumbent should have continued on the post of Naib Subedar for 10 months as he did not complete 10 months, therefore, he could not be given the pension of Naib Subedar.

4. Learned counsel for the petitioner has now produced before us a Government Order dated 09th February, 2001 as modified by the order dated 22nd February, 2001 that according to the revised order passed by the Government of India, Ministry of Defence, it clarifies that as per the recommendation of the 5th Pay Commission the incumbents who were retired before 01.01.1996, will also not get less than 50% of the minimum revised pay scale as introduced w.e.f. 01.01.1996. It has also been mentioned that the earlier requirement of minimum period of 10 months for the last rank held by the incumbent is

to be dispensed with. The order dated 09th February, 2001 and 22nd February, 2001 are reproduced as under:-

No. B/39013/AG/PS-4 (a&c)/131/A/D (Pension/Services)
Government of India
Ministry of Defence

New Delhi, dated the 9th February, 2001

To,

The Chief of the Army Staff,
New Delhi.

Subject : Implementation of Government's decision on the recommendations of the 5th Central Pay Commission relating to pensionary benefits in respect of Commissioned Officers and Personal Below Officer Rank.

Sir,

I am directed to refer to this Ministry's letter No. 1 (1)/99/D (Pen/Sers) dated 7.6.1999 as amended wherein Government had decided that w.e.f. 1.1.96 pension of all Armed Force Pensioners, irrespective of their date of retirement shall not be less than 50% of the minimum of the revised scale of pay introduced w.e.f. 1.1.96 PCDA (P), Allahabad has not been giving the benefit of provision of pension under modified parity to those officers who have not held their rank for last 10 months before retirement as per prevailing rules. However, there is no such stipulation in the Government Order under reference.

The matter has been reconsidered in consultation with O/o CGDA. It is clarified that pension of all pre-96 retiree Armed Forces Personnel will be revised on the basis of the rank/group last held by the individual and the revised pay scale connected thereto, even if the rank/group was held for less than 10 year before retirement. Such pension will be reduced proportionately if the qualifying service is less than 33 years. Other conditions to earn pension will continue to apply.

This issues with the concurrence of Ministry of Defence (Finance/Pension) vide their U.O. 143/Pen/01 dated 12.01.2001.

Yours faithfully

Sd/-
(AMRIT LAL)

Deputy Secretary to the Government of India

- | | |
|-------------------------|----------------------------|
| 1. Army Hqrs/Addl. DGPS | 2. DCDA (AF), Subroto Park |
| 3. Army Hqrs/DPP&R | 4. CDA (Navy), Mumbai |
| 5. Naval Hqrs./DPA | 6. DFA (Pensions) |
| 7. PCDA (P), Allahabad | 8. AFA (Pensions) |
| 9. PCDA (P), Allahabad | |

No. B/39013/AG/PS-4 (a&c)/168/A/D (Pen/Ser)
Government of India
Ministry of Defence

New Delhi, the 22nd February, 2001

CORRIGENDUM

Subject : Implementation of Government's decision on the Recommendations of the 5th Central Pay Commission Relating to pensionary benefits in respect of Commissioned Officers and Personnel Below Officer Rank.

The following amendment is made to this Ministry's letter No. No. B/39013/AG/PS-4 (a&c)/131/A/D (Pension/Services), dated 9th February, 2001 on the above subject :-

Para 2, line 5

For 10 years
Read 10 months

Yours faithfully

Sd/-
(AMRIT LAL)

Deputy Secretary to the Government of India

To

The Chief of the Army Staff
New Delhi-110011.

Copy to :-

- | | |
|-------------------------|----------------------------|
| 1. Army Hqrs/Addl. DGPS | 2. DCDA (AF), Subroto Park |
| 3. Army Hqrs/DPP&R | 4. CDA (Navy), Mumbai |
| 5. Naval Hqrs./DPA | 6. DFA (Pensions) |
| 7. PCDA (P), Allahabad | 8. AFA (Pensions) |
| 9. PCDA (P), Allahabad | |

In view of the revised order of the Government, now the insistence of 10 months period of the last rank held cannot be insisted as the Government has also relaxed the same and therefore, the petitioner who had held the post of Naib Subedar for more than four months will be entitled to pension for the rank of Naib Subedar. The respondents are directed to work out the pension of the petitioner in the light of the order dated 09th February, 2001 and 22nd February, 2001.

Arrears should be worked out and same may be released to the petitioner within a period of three months with 12% interest. He will be entitled to arrears of pension from 9th February, 2001. Petition is accordingly allowed. No order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
January 19, 2010