

COURT NO. 2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA 1797/2020 with MA 2121/2021

9505224-A Ex Hav(Hony Nb Sub) Hajari Lal ... Applicant

Versus

Union of India &Ors. ... Respondents

For Applicant : Mr. J P Sharma, Advocate
For Respondents : Mr. KK Tyagi, Advocate

CORAM :

HON'BLE MS JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

MA 2121/2021

This is an application filed by the respondents under Section 12(5) of the AFT Rules, 2008 seeking condonation of delay of 231 days in filing the counter affidavit. In view of the reasons mentioned in the MA and in the interest of justice, MA 2121/2021 is allowed and the delay of 231 days in filing the counter affidavit is thus condoned and the counter affidavit is taken on record. The MA is disposed of accordingly.

OA 1797/2020

Vide order dated 20.03.2024 of the Larger Bench in OA 589/2019 and connected OAs 1690/2020, OA 1691/2020, OA 1692/2020 with MA 287/2021, OA 1693/2020 with MA 2853/2021, OA 1694/2020, OA 1797/2020 with MA 2121/2021, OA 1912/2020 with MA 2217/2020, OA 1709/2021 with MA 1669/2021, OA 2589/2021 with MA 2727/2021, OA 2590/2021 with MA 2728/2021, OA 2544/2021 with MA 2674/2021, OA 2264/2019 with MA 3170/2019, OA 1593/2017, OA 1253/2017, OA 1750/2017 with MA 1030/2020, OA 1760/2017, OA 1878/2017, OA 2012/2017, OA 2438/2021 with MA 2546/2021 and OA 894/2019, the reference to the Larger Bench, as to

"whether an individual who has been conferred the rank of 'Hony Nb Sub' is entitled to the pension of 'Nb Sub' or 'Hony Nb Sub' in terms of the Govt. of India, Min of Def Circular No.1(8)/2008-D(Pen/Pol) dated 12.06.2009":

has been answered to the effect:

"84. Thus, the reference is answered to the effect that: -

(a) A pre-2006 retiree Hony Nb Sub is entitled to the pension of a Hony Nb Sub as promulgated vide MoD notification dated 21.02.2020 and implementation instructions issued vide PCDA(P) Circular No.631 dated 05.03.2020.

(b) The individual is not entitled to the pension of a regular Nb Sub as he is only entitled to the pension of a Hony Nb Sub which is calculated based on a notional promotion to the rank of a regular Nb Sub at the

minimum of the pay band, including the grade pay, MSP and group pay as applicable.

(c) This pension will be reckoned with reference to a notional maximum in the post 01.01.2006 revised pay structure corresponding to the maximum of the previous pay scales as per the fitment table for each rank, determined on the basis of notional maximum for the rank and group across the three Services, as applicable in fixing the pension of all pre-2006 retirees. "

2. As the similar issues were involved in the lead case of OA 589/2019 *Ex Hony Nb Sub Ram Kishan Vs Union of India & Ors.* and in the other connected matters detailed hereinabove, all the said matters were taken up together for hearing. Vide order dated 23.11.2020, the present case was tagged with OA 589/2019. However, it is considered appropriate for effective implementation of the directions of the Larger Bench that a separate order in each of the OAs is passed.

3. The applicant 9505224-A *Ex Hav (Hony Nb Sub) Hajari Lal* vide the present OA makes the following prayers: -

(a) To quash and set aside the Impugned orders dated 21.09.2020, 21.02.2020 and 05.03.2020 as Annexure A-1(Colly) Impugned order.

(b) Direct to the respondents to revise Service Pension in the rank of Naib Subedar @ Rs.9382/-wef 01.07.2009 and Rs.9429/- wef 01.07.2014(OROP) and Rs.24,233/-wef 01.01.2016 in qualifying service 24 years in 'Y' Group by issuing Corr PPO to the applicant as per GoI, MoD letter dated 12.06.2009, dated 08.03.2010 and PCDA(P) Allahabad Circular No.430 dated 10.03.2010 and in the light of this Hon'ble

Tribunal order dated 27.10.2017 in OA No.2755 of 2013 titled as Hoshiar Singh & Ors Vs UOI & Ors alongwith interest @10%p.m/ to till payment.

(b) Issue such further appropriate order/direction as this Hon'ble Tribunal may deem fit and proper in facts and circumstances of the case.

4. The applicant 9505224-A Ex Hav (Hony Nb Sub) Hajari Lal was enrolled in the Indian Army on 23.08.1969 and was discharged from service w.e.f 31.08.1993 after completion of more than 24 years of pensionable service. The applicant submits that he was granted the rank of Hony Nb Sub on the occasion of Republic Day-1994 (26.01.1994) and the PCDA(P) Allahabad revised his pension in the rank of Hony Nb Sub vide PPO No.S/Corr/066614/1994. The applicant submits he had filed an OA 1877/2018 on the basis of Hon'ble AFT(RB) Chandigarh order dated 08.02.2010 in OA 42 of 2010 titled Ex Havildar (Hony Nb Sub) Virender Singh & Ors Vs Union of India & Ors. for revision of his service pension. The applicant further submits that the Govt of India has accepted the recommendations of the 6th CPC contained in Para 5.1.62 of Chapter V of the Report, the President is pleased to decide that Hony rank of Nb Sub granted to Havildars will be notionally considered as a promotion to the higher grade of Nb Sub 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 vide letter No.1(8)/2008-D(Pen/Pol) dated 12.06.2009. Further, the GoI, MoD has

issued a policy letter dated 08.03.2010 regarding implementation of the Govt decision on the recommendations of the Cabinet Secretary's Committee - Revision of Pension in respect of Personnel Below Officer Rank(PBOR) discharged prior to 01.01.2006 wef 01.07.2009 and on the basis of said letter the PCDA(P) Allahabad issued the Circular No.430 dated 10.03.2010 and as per Table 32 the pension has been fixed in the rank of Nb Sub 'Y' Group in 24 years of qualifying service at Rs.9382/- wef 01.07.2009 and thus the applicant is fully entitled for the revision of his service pension in the rank of Nb Sub for Rs.9382/- wef. 01.07.2009 and Rs.9429/-wef 01.07.2014 (OROP) and Rs.24233/- wef 01.01.2016 and further revision as per the 7th CPC. The applicant further submits that his representation dated 15.07.2020 for revision of his basic pension has been rejected by the PCDA(P) Allahabad vide letter No.G-2/LN/AEC/GP-X/Vol.1 dated 21.09.2020.

5. Based on the recommendations of the 6th CPC, MoD vide letter dated 12.06.2009 promulgated that rank of Hony Nb Sub granted to Hav will be notionally considered as a promotion to the higher grade of Nb Sub and that benefit of fitment in the pay band and higher grade pay will be allowed notionally for the purpose of fixation of pension only. It is thus the case of the applicant that his pension be revised and re-fixed as applicable to a regular Nb Sub with 24 years of service.

6. The respondents through their counter affidavit dated 17.07.2021 submit that the applicant was granted the Hony Rank of Nb Sub after retirement on 01.09 1993 and the Hony rank of Nb Sub granted to Havildars will be notionally considered as a promotion to the higher grade and higher pay will be allowed notionally for the purpose of fixation of pension only. The counsel for the respondents briefly took us through the details pertaining to fixing the pension of pre-2006 retirees in general and that of Hav granted Hony rank of Nb Sub on retirement. The counsel further elaborated that the provisions of the MoD letter dated 12.06.2009 were applicable only to those retiring on or after 01.01.2006 and that the pension of pre-2006 Hav granted rank of Hony Nb Sub is to be now regulated as per the provisions of MoD letter dated 21.02.2020.

ANALYSIS

7. Due to conflicting views regarding the fixation of pension of pre-2006 Hav granted rank of Hony Nb Sub, the matter was placed before a Larger Bench by the order dated 28.01.2020 in the instant case itself in Ex Hony Nb Sub Ram Kishan Vs. Union of India and Ors in OA 589/2019, which reads as under:

"By way of the present OA, the applicant claims pension in the rank of 'Nb Sub" with effect from 01.01.2006 on the basis of Govt. of India (MoD) Circular dated 12.06.2009. Number of OAs are being filed by the

individuals who were conferred Hony Rank of Nb Sub on the occasion of Republic Day/Independence Day and they have been claiming revision in their pension on the basis of Govt. of India letter dated 12.06.2009 in the rank of 'Nb Sub'. There are conflicting views as to whether the individual is entitled to revision in pension of 'Hony Nb Sub' or 'Nb Sub'.

In OA No. 2127 of 2019 Ex Hav (Hony Nb Sub) Yogandar Singh Vs. Union of India & Ors.) decided on 10.12.2019 and OA No. 1981 of 2019 (Ex Hav (Hony Nb Sub) Shiv Pal Vs. Union of India and others) decided on 11.12.2019, relying upon the judgment in Virender Singh & Ors. Vs. Union of India & Ors. (O4 No. 42 of 2010) decided on 08.02.2010 the Tribunal granted pension to the applicant of the rank of 'Nb Sub', whereas in OA. No. 06 of 2019 (Ex Hav (Honorary Naib Subedar) Ram Murti Vs. Union of India and others) decided on 22.07.2019 by AFT, Regional Bench, Lucknow, the applicant has claimed service pension in the rank of 'Nb Sub' relying upon the said Govt. of India Circular dated 12.06.2009, however, the OA was dismissed on the ground that the applicant was not entitled to pension to 'Nb Sub'. When his last rank held was of 'Hony Nb Sub'.

In view of the conflicting opinions, it will be desirable that the matter be referred to a Larger Bench for its decision as to whether as individual who has been conferred rank of 'Hony Nb Sub' is entitled to the pension of 'Nb Sub' or 'Hony Nb Sub' in terms of the aforesaid Govt. of India Circular dated 12.06.2009, and for the said purpose, let the matter be placed before the Hon'ble Chairperson for appropriate orders as may be deemed fit."

8. The Larger Bench of AFT (PB) New Delhi vide its order dated 20.03.2024 held that a pre-2006 retiree Hony Nb Sub is entitled to the pension of a Hony Nb Sub as promulgated vide MoD notification dated 21.02.2020 and implementation

instructions issued vide PCDA (P) Circular No.631 dated 05.03.2020 and that the individual is not entitled to the pension of a regular Nb Sub as he is only entitled to the pension of a Hony Nb Sub which is calculated based on a notional promotion to the rank of a regular Nb Sub at the minimum of the pay band, including the grade pay, MSP and group pay as applicable.

9. The Larger Bench examined the concept of Hony Nb Sub, relationship between pay and pension, revision of pension in respect of pre-2006 retirees, pension of Hony Nb Sub, relevance of various judgments in this matter, the notification dated 21.02.2020, the issues raised by the applicant, and concluded as given in Para 83 of the order, and answered the reference as given in Para 84 (already reproduced in para hereinabove). Para 83 is reproduced below:-

Conclusion

83. *Based on the above consideration we conclude the following: -*

(a) As per Regulation 180 of the Defence Services Regulations (DSR), Hav/Dfr and Hav Clks (including those employed in recruiting offices) with 24 years of service and who could not get promotion to the next higher rank of Nb Sub during active service, are selectively conferred the rank of Hony Nb Sub after retirement. Initially a financial benefit of Rs.12/- was attached to it which was later enhanced to Rs.100/- per month.

(b) Based on the recommendations of the 6th CPC, MoD issued letter dated 12.06.2009 which directed that the Hony rank of Nb Sub granted to Hav

would be notionally considered as a promotion to the higher grade of Nb Sub and that the benefit of fitment in the pay band and higher-grade pay will be allowed notionally for the purpose of fixation of pension only. And that additional element of pension of Rs.100/- will cease to be paid.

(c) Hav who retired prior to 01.01.2006 and who were granted the rank of Hony Nb Sub sought the benefit of the MoD notification dated 12.06.2009. Aggrieved on not being granted the benefit of this notification, pre-2006 retirees filed cases in the AFT.

(d) AFT (RB) Chandigarh in its order dated 08.02.2010 in the case of Virender Singh (supra) held that the provisions of the MoD notification dated 12.06.2009 were admissible to the pre-2006 retiree Hony Nb Subs too and directed that the notification be implemented and arrears be paid from 01.01.2006. This attained finality with the SLP filed against this order being dismissed by the Apex Court. The ratio of judgment in the case of Virender Singh(supra) was further upheld by the Hon'ble Supreme Court by its order dated 20.05.2015 in the case of Subbash Chander Soni (supra).

(e) Anomalies in the 6th CPC and grant of pension to pre-2006 retirees were examined by various committees. The CCS made two sets of recommendations. The implementation instructions of CCS-I were issued on 18.03.2010 and was made effective from 01.07.2009. That of CCS-II was issued on 17.01.2013 and was effective from 24.09.2012. The letter dated 17.01.2013 included revised pension tables for Hony Nb Sub and Nb Sub as on 01.07.2009 and 24.09.2012.

(f) Though revision of pension of pre-2006 retirees as per provisions CCS-II was initially effective from 24.09.2012, based on a judgement of Delhi

High Court it was made effective from 01.01.2006 for civilians initially, and subsequently for officers and PBOR vide MoD letter dated 03.09.2015 (PCDA Circulars No.547 & 548). Thus, with this, the recommendation of CSC-II was extended to PBOR also from 01.01.2006.

(g) Till 5th CPC, the maximum pension was worked out for a total qualifying service of 33 years and progressively reduced as per the actual qualifying service along with the added weightage. However, in the 6th CPC, the pension has been since delinked from the total qualifying service of 33 years and is now granted at 50% of the last pay drawn. Thus, in the case of pre-2006 retirees, irrespective of their qualifying service, the pension was protected at 50% of the minimum pay in the pay band.

(h) Based on various instructions issued from time to time since 01.01.2006 regarding revision and enhancement of pension of pre-2006 retirees, the guiding principle is that the pension of pre-01.01.2006 pensioners will be reckoned with reference to a notional maximum in the post 01.01.2006 revised pay structure corresponding to the maximum of the previous pay scales as per fitment table for each rank, determined on the basis of notional maximum for the ranks and group across the three Services. Though the revisions of pension were made applicable from later dates, based on certain Tribunal/Court cases, it was subsequently made applicable from 01.01.2006 for all ranks of the armed forces.

(i) Based on the orders in the case of *Hoshiar Singh (supra)* Gol issued notification dated 21.02.2020 with fresh pension tables for Hony Nb Sub as applicable on 01.07.2009 and 24.09.2012.

(j) In working out this table, the pension was worked out by two methods; one based on the max

pay of Hav in 5th CPC across the three Services, and the second by utilizing the minimum of the transition fitment table of Nb Sub in the 6th CPC. With this, the maximum and minimum for Hony Nb Sub in X-Group was Rs.10,090/- and Rs.9,170/-. And for Hony Nb Sub in the Y-Group, it was Rs.8,505/- and Rs.8,330/-.

(k) An Hony Nb Sub is distinctly different from a regular Nb Sub and both appointments cannot be equated. Thus, an Hony Nb Sub is not entitled to the pension of a regular Nb Sub except as part of the relief granted under the 6th CPC, wherein a Hav granted the rank of Hony Nb Sub is notionally considered as a promotion to the higher grade of Nb Sub and benefit of the fitment in the pay band and the higher-grade pay is to be allowed notionally for fixing of pension only. And since it's a notional fixation for pensionary benefits only, it has to be at the minimum in the pay band as the Hav has never served as a regular Nb Sub. Thus, the notional fitment in the revised pay scale in the table for the Nb Sub can only be done at the minimum of the table and cannot be undertaken based on the years of service in the rank of Hav, since the individual never held the rank of a regular Nb Sub even for a single day.

CONCLUSION

10. Therefore, in view of the answer to the reference as detailed hereinabove, we dispose of the OA 1797/2020 with the directions that:

(a) The pension of the applicant be revised in accordance with MoD notification dated 21.02.2020 and implementation instructions issued vide PCDA (P) Circular No.631 dated 05.03.2020.

(b) The corrigendum PPO be accordingly issued and arrears be paid within three months from the date of receipt of this order failing which, interest @ 6%p.a. shall be payable to the applicant on all the arrears till the date of actual payment.

11. No order as to costs.

Pronounced in the open Court on the 19 day of December, 2024.

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

(JUSTICE ANU MALHOTRA)
MEMBER (J)

/Chanana/