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

OA 2126/2021 with MA 2241/2021

Smt. Mithlesh Devi Wd/o 1467746M Late Ex Hav (Hony Nb Sub)

Madan Lal

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant

: Mr. Virender Singh Kadian, Advocate

For Respondents

: Mr. Shyam Narayan, Advocate

CORAM :

HON'BLE MS JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE LT. GEN C.P.MOHANTY, MEMBER (A)

ORDER

MA 2241/2021

This is an application filed by the applicant under Section 22 of the AFT Act, 2007, seeking condonation of delay of 910 days in filing the OA. In view of the judgments of the Hon'ble Supreme Court in the matter of *UoI & Ors Vs Tarsem Singh* 2009(1)AISLJ 371 and in *Ex Sep Chain Singh Vs Union of India & Ors* (Civil Appeal No. 30073/2017 and the reasons mentioned, MA 2241/2021 is allowed and the delay of 910 days in filing the OA 2126/2021 is thus condoned. The MA is disposed of accordingly.

OA 2126/2021

The applicant, Smt. Mithlesh Devi Wd/o 1467746M Ex Hav (Hony Nb Sub) Madan Lal vide the present OA makes the following prayers: -

(a) Direct to the respondents to grant the Service Pension in the rank of Naib Subedar to the applicant wef 01.01.2006 as per GoI, MoD letter No.1(8)/2008-D(Pen/Policy) dated 12.06.2009 and order dated 08.02.2010 passed by the Hon'ble AFT Chandigarh Bench in OA No.42 of 2010 titled as Virender Singh & Ors Vs UOI & Ors and Civil Appeal No.4677 of 2014 titled UOI & Ors Vs Subhash Chander Soni, decided by Hon'ble Supreme Court on 20.05.2015 alongwith interest @10% p.a. till the payment be made, for which the applicants deserves till death of her husband and further to her.

(b) Any other relief which this Hon'ble Tribunal may deem fit and proper in facts and circumstances of the case."

2. 1467746M Ex Hav (Hony Nb Sub) Madan Lal, late husband of the applicant was enrolled in the Indian Army on 12.03.1981 and was discharged from service w.e.f 31.03.2005 after completing 24 years and 20 days of pensionable service. He was conferred with the rank of Hony Nb. Sub. after retirement from service. He, however, expired on 06.05.2021. The copy of the death certificate issued by the Govt of Uttar Pradesh dated 17.05.2021 qua the demise of the applicant's husband on 06.05.2021 is placed on record as Annexure A-3 to the OA and its veracity is to be presumed. The applicant submits that the GoI, the MoD decided to pay the pension of Nb Sub. to the pensioners who are drawing the pension of Hony Rank of Nb Sub. vide letter No. 1(8)/2008-D(Pen-Policy) dated 12.06.2009 extended vide Govt. of India,

Ministry of Defence letter No.1(13)/2016/D(Pen/Policy) dated 21.02.2020 and the MoD vide letter No.1(13)/2016/D(Pen/Policy) dated 30.01.2019 conveyed in principle the approval of the Raksha Mantri for implementation of the AFT, RB, Chandigarh order dated 27.10.2017 in OA 2755/2013 in the case **Nb Sub Hoshiar Singh Vs UOI & Ors.** The applicant submits that her late husband was not granted the service pension of Nb. Sub. though he was entitled for re-fixation of basis pension in the rank of Nb Subedar at Rs.7750/- wef 01.01.2006 in the rank of Nb Sub. Rs.9382/- wef 01.07.2009 with 24 year of qualifying service and further as per the recommendations of the 7th CPC and seeks further re-fixation of family pension to the applicant.

3. Based on the recommendations of the 6th CPC, the MoD vide letter dated 12.06.2009 promulgated that the 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 her late husband pensions be revised and re-fixed as applicable to a regular Nb Sub with 24 years of service.

4. The applicant submits that as per the recommendations of the Sixth Central Pay Commission contained in Para 5.1.62 of Chapter V, the Govt. of India decided that Hony rank of Nb Sub granted to Havildar 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/Policy) dated 12.06.2009. *Inter alia*, the applicant submits that her husband was a pre-2006 retiree and was fully entitled for the revision of Service Pension and Family Pension in the rank of Nb Sub. as Rs.9382/-wef 01.07.2009 and further wef 01.01.2016 as per the 7th CPC and on the basis of GoI letter dated 12.06.2009.

5. 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

6. 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 case of *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 (HonyNb 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."

7. 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.

8. 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 therein and concluded as given in Para 83 of the order, and answered the reference as given in Paras 83 and 84 thereof are 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 Subhash 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 utilising 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.

REFERENCE IS ANSWERED

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. “

CONCLUSION

9. Therefore, in view of the above, we dispose of the OA 2126/2021 with the following directions that:

(a) The pension of 1467746M Ex Hav (Hony Nb Sub) Madan Lal, late husband 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 till the date of his demise i.e. 06.05.2021.

(b) Corrigendum PPO be accordingly issued and arrears be paid to the applicant within three months from the date of receipt of this order failing

which, interest @ 6% p.a. be paid to the applicant on all arrears till the date of actual payment.

(c) Furthermore, the family pension of the applicant be computed accordingly and re-fixed in accordance with (a)&(b) hereinabove, and the corrigendum PPO be issued and the arrears be paid to the applicant within a period of three months from the date of receipt of copy of this order failing which interest @6%p.a. to be paid to the applicant on all arrears till the date of actual payment.

10. No order as to costs.

Pronounced in the open Court on the 7th day of October, 2024.

(LT.GEN C.P.MOHANTY)
MEMBER (A)

(JUSTICE ANU MALHOTRA)
MEMBER (J)

/Chanana/