

COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

4.

OA 2449/2024 with MA 2831/2024

Ex Hony Nb Sub Ghan Shyam Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Mohan Kumar, Advocate
For Respondents : Mr. Sudhir Kumar, Advocate

CORAM

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

ORDER
25.07.2024

The applicant vide the present OA makes the following prayers:-

“(a) To direct the respondents to implement the policy no. 1(8)/2008-D(Pen-Pol) dated 12 June 2009 issued by the Government of India, Ministry of Defence and to grant pension of Naib Subedar w.e.f. 01.01.2006 to the applicant alongwith arrears with interest @ 18% p.a.

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

Along with the same is MA 2831/2024 filed by the applicant seeking condonation of 26 days delay in institution of the OA which for reasons mentioned therein is allowed in the interest of justice.

2. The prayers made by the applicant relate to a settled issue as disposed of already by the Larger Bench of the AFT (PB)

New Delhi vide order dated 20.03.2024 in the case of *Ex Hony Nb Sub Ram Kishan vs Union of India and Ors* in OA 589/2019, whereby it has been observed to the effect:-

"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.

2. 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'.

3. In O.A. No. 2127 of 2019 [Ex Hav (Hony Nb Sub) Yogandar Singh Vs. Union of India & Ors.]decided on 10.12.2019 and O.A. 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. [O.A., No, 42 of 2010] decided on 08.02.2010 the Tribunal granted pension to the applicant of the rank of 'Nb Sub, whereas in O.A. 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'.

4. 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 an 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."

3. The Larger Bench of AFT (PB) New Delhi vide paras 83 & 84 of the said order dated 20.03.2024 held as under:-

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 CCS-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 Hostidar Singh (supra) Govt 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. “

4. Therefore, in view of the adjudication of the issue before the Larger Bench in OA 589/2019 by the AFT (PB) New Delhi,

we dispose of the OA with the following directions issued to the respondents:

(i) To fix the pension of the applicant as per MoD Notification dated 21.02.2020 and implementation instructions issued vide PCDA (P) Circular No 631 dated 05.03.2020.

(ii) Issue fresh corrigendum PPO to the applicant accordingly on verification of his averments in relation to the date of enrolment, date of discharge and date of grant of rank of 'Hony Nb Sub'.

(iii) Calculate the pension accordingly and ensure that all actions in this regard including payment of arrears are completed in three months from the date of receipt of this order failing which interest @ 6% will be paid to the applicant on all arrears till the date of actual payment.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(LT GEN R M. HARIZ)
MEMBER (A)