

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

A.

OA 599/2017 with MA 1302/2019 , 1303/2019 , 1304/2019 ,  
1447/2019 & 1571/2019

Hony Sub Maj Prithi Singh (Retd) & Ors. .... Applicant  
VERSUS  
Union of India and Ors. .... Respondents

For Applicant : Mr. Anil Srivastava, Advocate  
For Respondents : Ms. Jyotsana Kaushik, Advocate

CORAM

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

ORDER  
18.11.2024

Vide our detailed order of even date we have dismissed the OA 599/2017. Learned counsel for the applicant makes an oral prayer for grant of leave to appeal in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007 to assail the order before the Hon'ble Supreme Court. After hearing learned counsel for the applicant and on perusal of our order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order to grant leave to appeal. Therefore, the prayer for grant of leave to appeal stands declined.

  
(JUSTICE ANU MALHOTRA)  
MEMBER (J)

  
(LT GEN CP MOHANTY)  
MEMBER (A)

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HON'BLE LT. GEN. C. P. MOHANTY, MEMBER (A)

ORDER

MA 1302/2019, MA 1303/2019, MA 1304/2019,  
MA 1447/2019 AND MA 1571/2019

These are the applications filed on behalf of the respondents for condonation of delay of 01 day each in filing the counter affidavits. In view of the reasons explained in the MAs and in the interest of justice, MA 1302/2019, MA 1303/2019, MA 1304/2019, MA 1447/2019 AND MA 1571/2019 are allowed and the delay in filing the counter affidavits are condoned. The MAs are disposed of accordingly.

OA 599/2017  
Ex Hony Sub Maj Prithi Singh & Ors

OA 599/2017

2. The instant OA is filed by Ex Hony Sub Maj Prithi Singh along with 55 other applicants praying for the following reliefs:-

*“(a) The Applicants be granted the pension of the rank of Hony Subedar Major w.e.f. 01.01.2006 in accordance with Government of India MoD (Army) letter No. 1(8)/2008- 12.06.2009 within a (Pen/Policy) dated period of 3 months from the date of issue of the order.*

*(b) The Respondents be directed to pay interest @ 12% per annum on the arrears, thereof.*

*(c) That the Applicants be awarded cost the litigation @ Rs 10000/- per Applicant.*

*(d) To Issue such other orders/ directions as deemed fit in the facts and circumstances of the present case.*

3. The applicant Nos 1- 53, and the late husbands of applicant Nos 54, 55 and 56 respectively were enrolled in the Indian Army and were granted rank of Hony Sub Maj consequent to their superannuation in the rank of Sub. The applicants thereafter submitted legal notice dated 10.12.2016, for grant of pension in the rank of Sub Maj which was subsequently rejected by the AG branch, IHQ of MoD (Army) New Delhi vide letter dated 23.02.2017 on the ground that the other honorary ranks, except Havildar who were granted Hony Nb Sub rank, were not entitled for the pension of their respective Hony Rank bestowed upon them, since the ranks were honorary in nature on retirement.

4. The counsel for the applicants contends that the applicants have superannuated in the rank of Sub and were awarded the rank of Hony Sub Maj after their superannuation, but were in receipt of the pension of the rank of Sub only. It is contended that vide para 5.1.62 of Chapter V of 6th Central Pay Commission (CPC), the JCO's in the rank of Havaldar's who have been granted the Hony Nb Sub rank on superannuation post 01.01.2006, shall be entitled to get the pension of the rank of Nb Sub w.e.f. 01.01.2006 or their date of discharge whichever is later. The said recommendation of the 6th CPC had been accepted by the Govt. and the affected persons have been granted the pension of the rank of Hony Nb sub. It is the case of the applicant that on the same analogy and applying the principle of equity and fair play all the applicants who have superannuated in the rank of Sub and have been awarded the rank of Hony Sub Maj should also be granted benefits of the honorary rank and the benefit be bestowed to them despite there being no specific provision made by the Govt in relation thereto for the rank of Hony Sub Maj.

5. The counsel for the applicants placed reliance on the verdict in *DS Nakara v. Union of India*, [(1983) 1 SCC 305] to contend that Hon'ble Supreme Court has held therein that the liberalized

pension formula to the pensioners, who have retired even prior to the specified date will also be applicable to them because the specified date cannot create two classes amongst the homogeneous class of pensioners by classifying one group who retired after the specified date and the other group, who retired prior to the specified date. The applicants further contend that it has been held by the Apex Court that pre-retirees' to the specified date will also be entitled to the benefits of the liberalized pensionary benefits but restricted to the benefits applicable w.e.f. the specified date as in the instant case i.e. 01.01.2006.

6. Further reliance was placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in *Indian Bank and Anr v. N Venkatramani*, [(2007) 10 SCC 609], to contend that a person otherwise entitled to the benefit of the beneficial provision of a statute should not ordinarily be deprived there from.

7. The learned counsel for the respondents on the other hand contends that as per provisions contained in the Government of India, Ministry of Defence letter No. 1(8)/2008-D (Pen/Policy) dated 12.06.2009, pay fixation in the rank of Hony Naib Subedar granted to Havildars is to be notionally considered as a promotion to the higher grade of Naib Subedar and benefit of fitment in the

pay band and the higher pay which were applicable to personnel who were discharged from Army service on or after 01.06.2006 only. The respondents further submit that the said provisions also were not applicable to the applicants in the instant case as they were not discharged in the rank of Havildars with the Honorary rank of Naib Subedar on retirement and therefore, the claim of the applicants is without justification. It was further submitted on behalf of the Respondents that no monetary benefits were admissible to the personnel who were granted honorary rank of Risaldar Major/ Subedar Major or Risaldar/ Subedar on retirement and since the applicants were granted Hony rank of Subedar Major on retirement they were not entitled for any monetary benefits.

8. Reliance was placed by the respondents on the order of the Hon'ble, AFT (RB) Chandigarh in the case of *Mehar Singh v. UOI and ors [OA 1078 of 2012; AFT (RB) Chandigarh]* and six other OA's bearing no.s OA 1386/2012, OA 1769/2011, OA 2110/2011, OA 2185/2012, OA 393/2019, OA 4655/2012 wherein cases with similar prayers were dismissed vide order dated 22.03.2017.

9. We have considered the contentions raised on behalf of either side and the only issue that remains for our consideration is, 'Whether the benefits arising out of the MoD no. 1(8)/2018-D(Pen/Policy) letter dated 12.06.2009 should be extended to Sub Maj in absence of any specific provisions governing the same?'

10. Before proceeding further, it is essential to advert to the order of the (RB) AFT Chandigarh in the case of *Mehar Singh v. UOI* (supra) whereby vide para 11,12 and 13 thereof it was observed to the effect;

*11. In pursuance of the above recommendations of the Sixth Central Pay Commission, the Gol, Ministry of Defence issued letter No. 1(8)/2008-D(Pen/Policy), dated 12" June, 2009 and ordered that the Honorary Rank of Nb Subedar, granted to Havildars be notionally considered as promotion to the Rank of Nb Sub and the benefits to fitment of pay band and the higher grade be allowed notionally for the purpose of fixation of pension only. The rates of pension have been revised from time to time and the anomalies intra category of Hony Nb Sub stand removed. It is in this background that the matter with regard to grant of pension of the rank of Hony Nb Subedars attained finality at the level of the Hon'ble Supreme Court and, thus, the benefit is being extended to all similarly situated ex-Armed Forces personnel of this category.*

*12. In contrast to the above, we find that there is no such evidence of any similar sanction by the Government of India for personnel as the claimants, who are JCOs and have been conferred the Honorary rank of Sub Major / Lieutenant / Captain on retirement. The applicants herein have also not rendered active service in the same rank in terms of Part 133 of Pension Regulations for the Army, 1961, Part-I. The Honorary Ranks conferred upon them did not improve either any pay or service pension and they are entitled to pay and allowance/Pensionary benefits in terms of para 13 note of CDA SC circular no EDF/ Pension/Pune/Orders EDP (Pension), dated 10.02.1998.*

13. In the above conspectus, we find a clear-cut difference between the two categories of ex-Armed Forces personnel, therefore, for grant of the relief claimed, these are to be considered as "Classes-Apart" - classified with reasonableness and rationale behind, having intelligible differentia and rational nexus with the object sought to be achieved. We also find no vagueness or arbitrariness therein and, thereby, in not treating the applicants (JCOs) alike the Honorary Nb Subedars (NCOs). The alleged violation of Articles 14 & 16 is not attracted and made out in these cases and the parity, on the analogy of Hony Nb Subedars, claimed by the applicants, cannot be accepted for grant of the relief prayed for in these OAs.

This view of ours stands strengthened by an earlier decision of this Tribunal vide which a bunch of ten similar cases, the lead case being OA No.107 of 2011, titled Jai Narain & another vs. Union of India & others was dismissed by order dated 27.11.2012.

Thus, it is apparent therefrom that there exists a clear demarcation of two different categories of ex-armed forces personnel. Further, this order also held that this demarcation is valid and in consonance with Article 14 and 16 of the Constitution of India. Thus the relief claimed by the applicants on the analogy of Hony Nb Subs cannot be accepted because of the existence of two separate and distinct classes i.e., JCO's and NCO's, i.e. the Hony Nb Subs cannot be treated alike.

11. Thus the issue under consideration is no longer *res integra*, in view of the order in *Mehar Singh (supra)* and we find no reason to differ from the same. Thus, in the light of the aforesaid and applying the principle that "*equals cannot be treated unequally and unequals cannot be treated equally*" we are of the considered

view that the relief prayed by the applicants in the instant matter cannot be granted. The OA is thus dismissed.

12. No order as to costs.

Pronounced in open Court on this 18<sup>th</sup> day of November, 2024.

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

[JUSTICE ANU MALHOTRA]  
MEMBER (J)

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