

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

1.

OA 1250/2019 with MA 1983/219 2019

Ex Hav (Hony Nb Sub) Suresh
Chand Sharma. Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr.V S 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
27.05.2024

Order partially allowing the OA in terms of order dated
27.05.2024 pronounced, signed and dated.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

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

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Ex Hav (Hony Nb Sub) Suresh Chand Sharma ... Applicant
Versus
Union of India & Ors. ... Respondents

For Applicant : Mr. Manoj Kumar Gupta, proxy for
Mr. VS 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 1983/2019

This is an application filed under Section 22(2) of The Armed Forces Tribunal Act, 2007 seeking condonation of delay of 7661 days in filing the present 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, the MA 1983/2019 is allowed despite opposition on behalf of the respondents and the delay of 7661 days in filing the OA 1250/2019 is thus condoned. The MA is disposed of accordingly.

OA 1250/2019

2. The applicant has filed this application under Section 14 of the Armed Forces Tribunal Act, 2007, aggrieved over the non-granting of service pension equivalent to that of a regularly promoted Nb Sub with 24 years 26 days of service, in terms of MoD Circular dated 12.06.2009. He has made the following prayers:-

(a) Direct the respondents to grant the service pension in the rank of Naib Subedar to the applicant with effect from 01.01.2006 as per the GoI, MOD letter No 1(8)/2008-D(Pen/Policy) dated 08.02.2010 and passed the AFT Chandigarh Bench in OA No 42 of 2010 titles as Virender Singh & others v. UOI & Ors and Civil Appeal No. 4677 of 2014 titled UOI & Ors v. Subhash Chand Soni, decided by Hon'ble Supreme Court on 20.05.2015 along with interest @10% p.a till the payment be made, for which applicant deserves.

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

Brief Facts of the Case

3. That the applicant was enrolled in the Indian Army on 06.08.1974 and discharged from service w.e.f. 31.08.1998 under Army rule 13 (3) Item III (i) after rendering 24 years and 26 days of service. After his retirement, the applicant was awarded the rank of Hony Nb Sub vide Signals Records letter

No.3476/CA-4/14/GEN/80 dated 24.05.1999 on the occasion of Republic Day 1999. Following the recommendations outlined in Para 5.1.62, Chapter V of the VI Central Pay Commission (CPC) Report, the pension scheme for Havs granted the honorary rank of Nb Sub underwent revision. The recommendation proposed fixing the pension of such individuals by granting them notional promotion to the rank of Nb Sub. The Government duly accepted this proposition, issuing a MoD letter dated 12.06.2009 to this effect. The MoD directive stipulated that the honorary rank of Nb Sub granted to Havs would be notionally regarded as a promotion to the higher grade of Nb Sub and accordingly, the benefit of fitment in the pay band and higher-grade pay would be allowed notionally for the sole purpose of pension fixation. However, the applicability of this order was restricted to individuals who retired after 01.01.2006 with the honorary rank of Nb Sub. Consequently, pre-2006 retirees who had been granted the rank of Honorary Nb Sub were denied the benefit accorded by the MoD letter dated 12.06.2009. Since, the applicant being a pre-2006 retiree himself had not been granted service pension in the rank of Nb Sub, he submitted a representation dated 01.02.2019. The respondents have not replied to the aforesaid representation

within the period of 6 months and therefore the applicant has filed this OA.

Arguments by the Counsel for the Applicant

4. The counsel vehemently asserted that the pension of the applicant is wrongly fixed as Rs. 4,896/- from 01.01.2006; Rs. 6,304/- from 01.07.2009 and Rs 7,111/- from 24.09.2012, which is much lower than the pension of a regularly promoted Nb Sub of 24 years of service and therefore, in terms of MoD circular dated 12.06.2009 the applicant is entitled to receive pension of the rank of regularly promoted Nb Sub of 24 years of service which is @ Rs. 7,750/- PM w.e.f. 01.01.2006.

5. The Counsel further placed reliance on the case of Union of India and others Vs. Subhash Chander Soni (C.A. No. 4677 of 2014 decided on 20.05.2015).

Arguments by the Counsel for the Respondents

6. The counsel emphasized that under the provisions of Rule 137 of Pension Regulation, Part-I 1961 as amended vide GoI, MoD letter No. 1 (8)2008-D(Pen/Policy) dated 12.06.2009, the benefits of a Nb Sub has been extended to those Havs who have been granted the rank of Honorary Nb Sub on their retirement from service. As per ibid revised policy, they will be notionally considered as promoted to higher grade of Nb Sub and benefit in the pay band and the higher grade pay will be

allowed notionally for the purpose of fixation of pension only. The provisions of ibid letter will be applicable to the personnel, who retired on or after 01.01.2006. Therefore, the counsel contended that since the applicant is pre 01 Jan 2006 retiree, he is not eligible for grant of service pension in the rank of Hony Nb Sub under the provisions of above government letter.

7. The counsel additionally contended that the Government of India, Ministry of Defence possesses the authority to determine a cut-off date for the implementation of benefits to pensioners, as it may not always be feasible to extend such benefits to everyone. Thus, the Government of India, Ministry of Defence has appropriately executed its policy, which is fair, lawful, and in accordance with the constitution.

Consideration of the Case

8. We have perused the arguments for both sides and the issue for consideration is - Whether the benefits arising out of the MoD letter dated 12.06.2009 should be extended to pre-2006 retirees or not? This issue 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 as there were conflicting views between different benches of this Tribunal on the same, 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.

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."

9. The Larger Bench of the tribunal vide order dated 20.03.2024 finally settled the issue and 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 ca 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 senhes 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) GoI 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

10. Therefore, in view of the above answered reference the OA is disposed of with directions that the applicant 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 to be 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.

Therefore, in view of the above answered reference we partially allow the OA and pass the following directions:

(i) The applicant 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.

(ii) The applicant 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 to be 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.

(iii) The pension of the applicant 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 scale as per the fitment table for his 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.

(iv) The respondents shall ensure all actions in this regard are completed in four 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.

11. No order as to costs.

Pronounced in open Court on this 27th day of May, 2024.


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


(JUSTICE ANU MALHOTRA)
MEMBER (J)

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