

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

OA 153 of 2018

Ex Nb Sub Raj Pal Singh **Applicant**
Versus
Union of India and Ors. **Respondents**

For Applicant : Mr. V.S. Kadian, Advocate
For Respondents : Ms. Jyotsna Kaushik, Advocate

CORAM

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

ORDER

This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, by the applicant who is a retired Nb Sub and is aggrieved by the incorrect fixing of his basic pay at the time of retirement in the rank of Hav, and consequently in the incorrect fixing of his pension. He has made the following prayers:

- (a) Direct respondents to fix the pension of the applicant of the rank of Naib Subedar by quashing the decision of re-fixation of his pension of Havildar as intimated vide letter No Pension/1/179/RTI/DPDO/ Meerut dated 27.09.2017. AND/OR
- (b) Direct respondents to pay the due arrears by fixing the service pension of Naib Subedar with effect from 01.07.2009 with interest @ 12% p.a.

(c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost of the application in favour of the applicant and against the respondents.

Brief Facts of the Case

2. The applicant was enrolled on 26.06.1963 in Army Service Corps (ASC). He was promoted to the rank of Nb Sub on 07.12.1988 and later discharged on 30.06.1989 having held the rank of Nb Sub for 06 months and 24 days. However, on retirement his last pay drawn was fixed in the rank of Hav on the grounds that he had not held the rank of Nb Sub for the stipulated minimum period of 10 months. Consequently, his pension was also fixed in the rank of Hav.

3. It is the applicant's case that based on the MoD Notification dated 09.02.2001 which stipulated that the pension of all pre-1996 retirees will be revised on the basis of the rank/group last held, even if the rank/group was held for less than 10 months, the applicant was entitled to have his pension fixed in the rank of Nb Sub. It is also the case of the applicant that based on the recommendations of the 6th CPC, the requirement of holding the last rank for 10 months had been waived off and therefore, if an

individual held a rank even for a day, he was eligible for fixing his final pay and pension in the last rank held. Further, in the 6th CPC regime, as per Para 7 of MoD letter dated 12.11.2008, the pension was to be in no case lower than 50% of the minimum pay in corresponding pay band plus grade pay and military service pay in the revised pay structure, based on the rank and group from which the pensioner had retired.

4. The applicant made numerous representations to correct the incorrect pay fixation and the case was taken by ASC Records with PCDA (P), Allahabad vide their letter dated 20.10.2015 (Annexure A-3). PCDA (P) vide their letter dated 13.01.2016 intimated that the applicant's pay had been fixed in the rank of Hav since he had not held the rank of Nb Sub for 10 months. PCDA (P) also intimated that in case the applicant's pension was fixed as per the minimum of the revised pay rank of 6th CPC, it would not be beneficial to the applicant.

5. The applicant then filed OA No.1168/2016 to fix his pension in the rank of Nb Sub. During the pendency of the case, the applicant was informed by PCDA (P), Meerut vide their letter dated 27.04.2017 (Annexure A-5) that the revised pension of the applicant w.e.f. 01.01.2006 was Rs.8,330/- based on PCDA Circular

No.568 dated 13.10.2016 and that the pension had been fixed in the rank of Nb Sub with 26 years of qualifying service. As a result of this letter, the applicant withdrew OA No.1168/2016 on 12.07.2017. It is the applicant's case that subsequently, his pension was fixed in the rank of Nb Sub from 01.01.2006 to 30.06.2009 and arrears were also paid. However, since 01.07.2009, the applicant was again being paid the pension of Hav. The applicant then sought information under RTI Act 2005 vide his application dated 11.08.2017 and 17.08.2017. This was replied to by PCDA (P) Meerut Cantt vide their letter dated 27.09.2017 stating that the applicant's pension as on 01.07.2009 @ Rs.10,029/- and w.e.f. Jul 2014 @ Rs.10,405/- was paid as per the last rank held for pension. However, w.e.f. 24.09.2012 as per Para 5.1 of Circular No.501, the applicant was paid as per the last rank held for pension, which was that of Hav, though the last rank held was that of Nb Sub. Aggrieved by the fact that though he was initially paid the pension as per the last rank held of Nb Sub, subsequently the pension was paid as per the last rank for pension (Hav), this OAs has been filed.

Arguments by the Counsel for the Applicant

6. The counsel reiterated that the applicant was discharged on 20.06.1989 after having served for 26 years 06 months and 45 days. He further stated that that prior to the applicant's retirement, he had been promoted to the rank of Nb Sub on 07.12.1988 and that the applicant had held the rank for 06 months and 24 days. The counsel then drew our attention to PPO No.S/025093/89 (Army) issued to the applicant as per which the applicant had been granted pension in the rank of Hav instead of Nb Sub, the last rank held by the applicant, and that the total service endorsed on the PPO was 26 years, 06 months and 45 days. The counsel then drew our attention to MoD letter dated 09.02.2001 related to the revision of pension based on recommendations of the 5th CPC which states that the pension of pre-96 retirees will be revised on the basis of the rank/group last held by the individual, even if the rank/group was held for less than 10 months before retirement.

7. The counsel vehemently asserted that based on this letter, the applicant was entitled to have his pension fixed in the rank of Nb Sub. He further added that it was thus the duty of the Pension Disbursing Authority (PDA) to have automatically issued a corrigendum PPO and adjusted the pension. The counsel then drew

our attention to the AFT, RB, Chennai order dated 13.02.2015 in OA No.62/2014, **JWO P. Gopalakrishnan** Vs. **Union of India and Ors.** and elaborated that this order had examined and elaborated on various policies related to the revision of pension including the MoD letter dated 11.11.2008 regarding revision of pension in the 6th CPC and PCDA Circular No.430. The counsel also drew our attention to AFT (PB) order dated 29.01.2010 in TA No.339/2010, **JWO Bharat Singh Khatana** Vs. **Union of India & Others** which had stated that the earlier requirement of PBOR having to hold the rank for a minimum of 10 months prior to retirement had been amended and that in the light of this, the applicant was entitled to pension in the rank of Nb Sub which he had held for 06 months and 24 days. He then further emphasized that the AFT had granted pension in the last rank held less than 10 months in numerous cases.

8. The counsel then drew our attention to MoD letter dated 11.11.2008 (Annexure A-6) regarding revision of pension of pre-06 retirees in the 6th CPC. He then drew our attention to the letters dated 08.03.2010 and 17.01.2013 vide which the pension of pre-06 retirees had been revised based on the report of the Committee of Secretaries. He then took us through the Tables in these revisions and demonstrated how the pension of the applicant

has been incorrectly fixed. The counsel concluded by stating that since the applicant had held the rank of Nb Sub for 06 months and 24 days prior to his retirement, under the provisions of letter dated 09.02.2001 his pension was required to be fixed in the rank of Nb Sub with 26 and half years of qualifying service and all subsequent revisions and fixing of pension in the 5th, 6th and 7th CPC should have been accordingly done. He vehemently asserted that the Respondents could not have issued subsequent policies contrary to the ones issued earlier, resulting in an individual being granted pension in the last rank held, even if less than 10 months, and subsequently the pension of the same individual being revised in the rank held for 10 months (Hav).

Arguments by the Counsel for the Respondents

9. The counsel drew our attention to Para 1 to 7 of the Pension Regulations Part-1 (Edition 1961) and emphasised that pension is to be fixed based on the rank and group held continuously for last 10 months at the time of discharge. He further added that based on this rule position, the applicant's pension on retirement was fixed in the rank of Hav and not Nb Sub, since he had not held the rank of Nb Sub for the mandatory minimum period of 10 months. He then drew our attention to the PPO at Annexure R-1 and emphasised

while the last rank was that of Nb Sub, the rank for pension was indicated as Hav.

10. Referring to the fixing of pension in the 6th CPC, the counsel drew our attention to Para 4.3 of the MoD letter dated 11.11.2008 and stated that the consolidated pension was in no case to be less than 50% of the minimum pay in the Pay Band + Grade Pay including MSP and Group Pay where applicable, corresponding to the pre-revised scale from which the applicant had retired. He further elaborated that the pension was calculated based on the maximum, which then was to be proportionally reduced if the qualifying service was less than 33 years. The counsel further added that the qualifying service of 33 years had been subsequently delinked vide MoD letter dated 30.09.2016 (Annexure R-3) issued vide PCDA (P) Circular No.568 dated 13.10.2016.

11. The counsel then drew our attention to PCDA (P), Meerut letter dated 27.09.2017 (Annexure A-1) and elaborated that consequent to the implementation of the 6th CPC, pension was granted as per the last rank held of Nb Sub from 01.01.2006 to 30.06.2009 under the provisions of PCDA(P) Circular No.568 dated 13.10.2016. Subsequently, pension was paid as per the last rank of pension (Hav) from 01.07.2009 under the provisions of PCDA (P)

Circulars No.430, 501, 555 and emphasised that though his pension since 01.07.2009 was considered in the rank of Hav, his pension has been retained @ Rs.8,330/- which had been earlier fixed in the rank of Nb Sub since pension applicable to the applicant in the rank of Hav was less than what had been granted from 01.01.2006 to 01.07.2009. In conclusion, the counsel reiterated that the pension of the applicant had been fixed and revised as per the regulations and policies issued from time to time, and where applicable, pension already paid in the higher scale was protected in the subsequent revision, and that all arrears due to the applicant by these revisions had been paid.

Consideration

12. Having heard both parties at length, the following issues require re-consideration:

- (a) Whether the applicant is entitled to have his pension fixed in the last rank held of Nb Sub?
- (b) Whether all subsequent revisions of pension from time to time has been done correctly or not?
- (c) Whether there are inconsistencies in the MoD policy letters pertaining to fixing/revision of pension?

Pension in Last Rank Held

13. As per the AFT (RB), Chennai Order dated 16.01.2014 in the matter of **Thiagrajan** Vs. **Union of India and Ors.** (OA No.93 of 2014), which waived off the 10 months as stipulated in Para 123 of Pension Regulations for Air Force 1961 and opined that ***"pension cannot be deprived to an individual to a rank for which he has already rendered his service and that the applicant had earned his pension in the rank of JWO already, and therefore, is entitled to be paid pension in the rank of JWO. Even if, for some reason, such a pension is found to be less, the applicant is entitled to receive the highest pension he earned already. The said statutory right for pension already earned by the applicant cannot be reduced even if an undertaking is executed by him for receipt of any lower pension in the rank of JWO."*** As per the PPO No.S/025093/89 (Army) dated 08.05.1989 at Annexure R-1, the applicant was discharged on 30.06.1989 having served for 26 years 6 months and 45 days and at that relevant time pension has fixed in the rank of Hav, based on the last rank held continuously for a minimum of 10 months prior to discharge. Since the applicant had held the rank of Nb Sub only for 06 months and 24 days, he was therefore

not eligible to have his pension fixed in the rank of Nb Sub as per the policy in vogue at the relevant time.

14. The AFT, RB, Chennai in its order dated 13.02.2015 in OA No.62/2014, **JWO P. Gopalakrishnan** (supra) had examined and elaborated on various policies related to the revision of pension including the MoD letter dated 11.11.2008 regarding revision of pension in the 6th CPC and PCDA Circular No.430 and had explained the exact method of calculation. Para 14 of the AFT (RB) Chennai order dated 13.02.2015 in the case of **JWO P. Gopalakrishnan** (supra) is reproduced below:-

For appreciating the rival contentions, we have gone through the Tables annexed with Circular 430 issued in pursuance of the policy letters dated 11.11.2008 by the Government of India. As per the Circular 430 in Table 116, we find the revision pension of Sergeant rank who has completed 20 years of service and retired after 01.04.2004 was fixed at Rs.3,694/-. The submission of the learned Central Government Standing Counsel as to the pension of Sergeants who retired on 01.05.2005 shall be Rs.3,694/- is found correct to that extent. However, when we go through the service pension payable to a JWO in Table 116 of Circular 430 having 20 years of service and retired after 01.04.2004 would be Rs.4,711/- and not Rs.3,358/- as put forth by the respondents. Therefore, the pension payable to the applicant as on 13.01.2005 in accordance with the policy letters of the Government of India dated 07.06.1999 and 09.02.2001 would be Rs.4,711/- and not Rs.3,694/-. Similarly, the benefits conferred upon the JWO as per the VI Central Pay Commission recommendations as tabulated in Table 116 of Circular 430 for 20 years of service, we see that the pension payable to the applicant with effect from 01.01.2006 would be Rs.7,100/- and the revised pension with effect from 01.07.2009 would be Rs.8,720/-. When the benefits conferred upon the Armed Forces personnel on the changed policies have been clearly laid down in the Circular 430 containing several Tables, it ought to have been issued by the respondents without any request from the applicant. However, we find that the applicant had sought for payment of pension in the last held rank on several occasions and it was not heeded. The claim for pension is a statutory right and the respondents ought to have granted the entitled pension, admittedly, even without issuing any corrigendum in the PPO. This has

been reiterated in various communications of the Government. Therefore, the respondents are under the obligation to revise the pension when it is brought to their notice of any defect in granting the pension. However, in this case, the respondents have not acceded to the plea of the applicant even when it was raised immediately after his retirement."

15. The MoD vide its letter dated 09.02.2001 in relation to implementing the Government's decision on the recommendations of 5th CPC related to pensionary benefits has *clarified that the pension of pre-96 retirees will be revised on the basis of the rank/group last held by the individual, even if this rank/group was held for less than 10 months before retirement.* This letter also stipulated that w.e.f. 01.01.1996 pension of all armed forces personnel irrespective of the date of retirement *shall not be less than 50% of the minimum of the revised pay scale* introduced w.e.f. 01.01.1996. This letter is reproduced below:

*No.B/39013/AG/PS-4(a&c)/131/A/D(Pension/Services)
Government of India
Ministry of Defence
New Delhi, dated the 9th February, 2001*

To,

**The Chief of Army Staff
The Chief of Air Staff
The Chief of Navy Staff**

New Delhi.

Sub: Implementation of Govt.'s Decision on the recommendations of the 5th CPC relating to pensionary benefits in respect of Commissioned Officers and personnel Below Officer Rank.

.....

I am directed to refer to this Ministry's letter No.1(1)/99/D(Pen/Sers) dated 7-6-99 as amended wherein the government has decided that w.e.f. 1-1-96 pension of all armed forces pensioners, irrespective of their date of retirement

shall not be less than 50% of the minimum of the revised scale of pay introduced w.e.f. 1.1.96. PCDA (P) Allahabad has not been giving the benefit of provisions of pension under the modified parity to these officers who have not held their rank for last 10 months before retirement as per prevailing rules. However there is no such stipulation on the government order under reference.

The matter has been reconsidered in consultation with O/O CGDA, it is clarified that the **pension of all pre-96 retiree Armed Forces Personnel will be revised on the basis of the rank/group last held by the individual and the revised pay scale connected thereto, even if the rank/group was held for less than 10 months before retirement.** Such pension will be reduced proportionately if the qualifying service is less than 33 years. Other conditions to earn pension will continue to apply".

This issue with the concurrence of the Ministry of Defence (Finance/Pension) vide their UO No. 148/Pen/01 dated 12-1-2001.

Yours faithfully
S/d
(AMRIT LAL)
Deputy Secretary to the Govt. of India

16. The AFT (PB) in its order dated 29.01.2010 in TA No.339/2010, **JWO Bharat Singh Khatana** (supra) had upheld the grant of pension in the last rank held under the provision of MoD letter dated 09.02.2001. The Union of India appealed against the AFT (PB) order dated 29.01.2010 vide Civil Appeal No.7366-7367/2011, however, this was subsequently dismissed by the Apex Court vide its order dated 08.03.2016 on the grounds that there was no substantial question of law of general/public importance for consideration in this case. Relevant extracts of the AFT (PB) order dated 29.01.2010 in the case of **JWO Bharat Singh Khatana** (supra) is reproduced below :-

"3. Petitioner by this writ petition has prayed for Implementation of the Government Circular dated 09.02.2001 for extending the pensionary benefits to

all Armed Forces personnel, the pension should be calculated on the basis of last pay drawn.

4. *In the present case the petitioner joined Indian Air Force in Technical Group-t as Airman on 01.10.1980 and continued till 30.09.2000 when he retired after completing the regular engagement from the post of Junior Warrant Officer (JVVO). Petitioner was promoted from time to time and finally promoted to JWO w.e.f. 01.04.2000 and he was retired from service on 30.09.2000 having served in the said rank of JWO for a period of six months.*

5. *According to the provisions of the Armed Forces Rules, the incumbent has to serve at least 10 months on the last rank for full pension of that post but he was not given the pension of the last rank held by him i.e. JWO. Hence, petitioner aggrieved by this filed the present petition before the Hon'ble Delhi High Court which has been transferred to this Tribunal after formation of Armed Forces Tribunal and prayed that his pension may be given on the basis of last rank held by him. In this connection, petitioner has referred to a Notification dated 09.02.2001 whereby the Government of India, Ministry of Defence has issued a Circular Implementing the Government decision on the recommendations of Fifth Pay Commission relating to pensionary benefits in respect of commissioned officers and personnel below officers ranks and in that it has been clarified that all Armed Forces pensioners irrespective of their date of retirement shall not get less than 50% of the minimum revised scale on pay Introduced w.e.f. 01.01.1996. Since this was not being given by the PCDA, Allahabad and that matter came before the Government and the Government had clarified as under :-*

"It is clarified that pension of all pre-96 retiree Armed forces Personnel will be revised on the basis of the rank/group last held by the individual and the revised pay scale connected thereto, even if the rank/group was held for less than 10 months before retirement. Such pension will be reduced proportionately if the qualifying service is less than 33 years. Other conditions to earn pension will continue to apply."

In view of this clarification, we do not find any reason as to why petitioner should not be given pension of last rank held by him for a period of six months. Therefore, condition of 10 months has now been waived by the Government. Consequently, we direct that petitioner's pension should be determined in the light of the aforesaid Circular and he may be given the pension @ 50% of the last post held by him as JWO. His pension should be worked out and arrears shall be paid to the petitioner with 12% interest. This whole exercise should be done within three months from today. Petition is accordingly allowed. No order as to costs."

17. Since then, the AFT has issued numerous orders granting similar relief and benefits to the PBOR who had not been earlier granted pension in the last rank held on the grounds that they had

not held it for 10 months, and these have already been implemented. Further it is seen from the details submitted by the respondents that *even while fixing the pension on 01.07.1989 in the rank of Hav, the pension has been calculated based on 24 years of qualifying service with a weightage of 5 years, whereas the applicant had served for 26 years 6 months and 45 days, as indicated in his PPO No S/025093/89 (Army) dated 08.05.1989 and thus the pension should have been computed for a qualifying service for 26 years and 6 months plus weightage.* A soldier cannot be denied pension for the period which he has physically rendered service.

18. In view of the above consideration, we uphold that the applicant is entitled to have his pension on retirement fixed in the rank of Nb Sub with a qualifying service of 26 years and 06 months, and all subsequent revisions in various CPCs/OROP be carried out accordingly, i.e., in the rank of Nb Sub with qualifying service of 26.5 years from 01.01.1996.

Revision and Fixing of Pension

19. The respondents have submitted that the applicant's pension had been initially fixed, and subsequently revised in the manner as discussed in the subsequent paragraphs.

20. At the time of retirement on 01.07.1989, it was fixed @ Rs.689/- based on the maximum of the existing scale of Hav in the 4th CPC, which was 1130-25-1350-30-1530 and that the pension had been calculated as per the Para 3.1 of MoD letter dated 30.10.1987 based on the maximum permissible terms of engagement of a Hav at 24 years with a weightage of five years. Though the applicant had served for a total of 26 years, 06 months and 45 days his pension at the then existing scale had been computed only for 24 years of service. *However, If the pension is calculated based on the maximum of the existing scale of Hav in the 4th CPC for a period of 26.5 years, the pension is revised to Rs.748/-.* A soldier cannot be denied pension for the total period of his actual service, which in this case is 26.5 years, notwithstanding the fact that the maximum service of a Hav was then stipulated as 24 years, as the applicant physically served for 26.5 years.

21. The applicant's pension in the 5th CPC was revised w.e.f. 01.01.1996 in the rank of Hav, based on the last pension in 4th CPC @ Rs.689/- to Rs.2,104/- under the provisions of Para 4.1.1 of the MoD letter dated 24.11.1997 regarding the implementation of the 5th CPC pertaining to rationalising of pension of pre-1996 pensioners. *If the last pension in 4th CPC was taken @*

Rs.748/-, then based on the MoD letter dated 24.11.1997 his pension should have been revised to Rs.2,279/- for 5th CPC.

22. Consequent to the issuance of MoD letter dated 09.02.2001 the applicant's pension was revised to Rs.2,255/- as applicable to the minimum of Nb Sub/Gp B scale in the 4th CPC scale. MoD letter dated 09.02.2001 had dispensed with requirement of holding the last rank for a minimum period of 10 months prior to retirement, and made pension eligible in the last rank held even if it was less than 10 months, and that that *pension shall not be less than 50% of the minimum of the revised pay scale introduced w.e.f. 01.01.1996.* Thus, here again in our view the respondents have erred by fixing the pension of the applicant at the minimum of the Nb Scale in the 4th CPC. The letter stated that once the pension is fixed in the last rank held, and that it shall not be less than 50% of the minimum in the Nb Sub/Gp-B scale in the 5th CPC revised pay scale. It implies that, where such fixation results in the pension being less than 50% of the minimum in the revised scale, it should be stepped up to the minimum which is so calculated. Further, we calculated the 50% of *minimum of the Nb Sub/Gp B scale in the 5th CPC scale for a qualifying service of 26.5 years plus*

weightage 5 years the revised minimum comes out to be 2290.91 [4800(26.5+5)/33x2 = 2291].

23. Consequent to merger of portion of a dearness relief w.e.f. 01.04.2004, the applicant's pension was revised to Rs.3,383/- based on the pension fixed @ Rs.2,255/- (*as applicable to the minimum of Nb Sub/Gp B scale in the 4th CPC scale*); $2255 + 2255/2 = 3383$. *This should have been fixed based on pension of Rs.2,279/- fixed at minimum of Nb Sub/Gp B scale in 5th CPC; thus merger of dearness relief should be $2290.91 + (2290.91/2) = Rs.3436/-$.*

24. Consequent to the issue of Mod letter dated 01.02.2006 the implementation of which was issued vice PCDA(P) Circular No.350 dated 19.05.2006, the pension of the applicant was **revised to Rs.3,375/- based on the maximum of the Hav/Gp B in the 5th CPC with qualifying service of 24 years and increased weightage of 06 years.** In our view the letter has been misinterpreted to the extent that what was intended that in reference to the earlier direction that the revised pension will not be less than 50% of the minimum of the corresponding pay scale in the 5th CPC, the comparison of pension fixed was now required to be done with 50% of the maximum in the corresponding pay scale, and where it was less, the pension ought to be fixed at 50% of the

maximum of the corresponding pay scale in the 5th CPC. Thus, in comparison to the pension fixed in the last rank of Nb Sub/ Gp B with qualifying service of 26.5 years plus weightage, is supposed to be at the maximum of the pay scale i.e. $(7050) \times (26.5+5)/33/2=3365/-$ Further based on the Table-7 mentioned in Circular 350, if the pay is revised for the rank of Nb-sub for a qualifying service of 26.5 years, it is received at the Rs.5,048/-.

25. Consequent to the implementation of the 6th CPC, MoD letter dated 11.11.2008 notified the revision of pension of pre-2006 retirees. The implementation instructions were issued vide PCDA (P) Circular No.397 dated 18.11.2008. Based on this, the applicant's pension of Rs.3,375/- fixed in the rank of Hav based on Circular No.350, was now consolidated as on 01.01.2006 and fixed at Rs.5,085/-. However, based on the minimum guaranteed pension in terms of Annexure-III of MoD letter dated 11.11.2008, which specifies that pension will be in the last rank, the pension was re-fixed at Rs.7,281/- in the rank of Nb Sub/GpB/QS-26 from 01.01.2006. In our opinion, with the pension fixed at the maximum of the scale of Nb Sub/Gp B in the 5th CPC scale based on the letter of 09.02.2001, all subsequent revisions should have been carried out with this as the datum at the rank of Nb Sub. Thus, the

consolidation of the applicant's pension in the 6th CPC should have been based on the revision carried out earlier based on Circular No.350 and fixed at Rs.5,048/-. With is, as per Para 4.1.1 of the letter dated 11.11.2008, the consolidated pension would be Rs.7,606/-. Further, based on the minimum guaranteed pension in terms of Annexure-III of MoD letter dated 11.11.2008, which specifies that pension will be in the last rank, the pension should not be below Rs.7,398/- in the rank of Nb Sub/GpB/QS-26.5 from 01.01.2006. *And since the value calculated according to Para 4.1.1 of the letter dated 11.11.2008 is higher than the minimum mentioned in Annexure-III, the applicant's pension should have been fixed @ Rs.7,606/-.*

26. Subsequently, MoD vide letter dated 13.09.2016 delinked the 33 years pro rata pension with directions that the consolidated pay was not to be less than 50% of the minimum in the revised 6th CPC pay band with grade pay, corresponding to the pre-revised scale of the rank/group in which the individual retired. Implementation instructions were issued vide PCDA (P) Circular No.568 dated 31.10.2016. Based on this the applicant's pension was fixed at Rs.8,330/- from 01.01.2006 as applicable to a Nb Sub/Gp B with qualifying service of 26.5 years.

27. Subsequently, there were two revisions of pension undertaken based on the recommendations of the Committee of Secretaries. The first revision was issued vide MoD letter dated 08.03.2010 and was to be effective from 01.07.2009 while the second issued vide MoD letter dated 17.01.2013 and was effective from 24.09.2012. The implementation instructions for these revisions were issued vide PCDA(P) Circular No.430 dated 10.03.2010 and Circular No.501 dated 17.01.2013 respectively. As per the respondents, since both these revisions were applicable in the rank of Hav, and would consequently be less than the pension of Rs.8,330/- already granted, pension to the applicant on both these revisions were retained at Rs.8,330/-. *In our opinion, having initially fixed the pension in the rank of Nb Sub/Gp B with qualifying service of 26.5 years, both the revisions should have been carried out as applicable to a Nb Sub/Gp B with qualifying service of 26.5 years, as per Table No.32 of Circular 430 and Table 4 of Circular No.501. From both Tables it is seen that the pension vide Circular 430 should have been revised to Rs 10190, which is also the revised pension in Table 4 of Circular 501. Thus, the pension should have been revised to Rs.10,190/-.*

28. As per the letter promulgating the above two revisions, these were originally to be applicable from 01.07.2009 and 24.09.2012 respectively. This issue had been extensively examined in the AFT (PB) Larger Bench Order dated 20.03.2024 in OA No.589/2019 in the case of **Ex Hony Nb Sub Ram Kishan Vs. Union of India and Ors.** and had held that based on the judgement of CAT (PB), New Delhi and the dismissal of the appeal by UoI by the Hon'ble Supreme Court, both these revisions were made applicable from 01.01.2006. Thus, the applicant was entitled to the revised pension in the rank of Nb Sub from 01.01.2006 at the rate of Rs.10,190/-. Relevant extracts of the AFT (PB) order is reproduced below:

Revision of Pension Pre-2006 Retirees

56. GoI issued OM dated 01.09.2008 revising the pension of pre-2006 pensioners/family pensioners wherein in Para 4, the method of consolidation of pension was given. The main instructions for implementing the Govt decision on the recommendations of the 6th CPC regarding the revision of pension of pre-2006 armed forces pensioners/family pensioners were issued vide MoD letter No.17(4)/200891)/D(pen/Policy) dated 11.11.2008.

57. The pension was to be first consolidated as per the provisions of Para 4.1 and was in no case to be lower than 50% of the minimum of pay in the pay band plus the grade pay, military service pay and group pay where applicable, corresponding to the pre-revised scale from which the pensioner had retired/discharged. Instructions for implementing the **CCS-I recommendations** were issued vide MoD letter dated No PC 10(1)/2009-D (Pen/Pol) dated 08.03.2010 to be effective from 01.07.2009. It stated that pre-10.10.1997 PBOR pensioners may be brought on par with post 10.10.1997 PBOR pensioners and that **pension of pre-01.01.2006 pensioners may 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.** The pension was to reckon at 50% of the notional pay in the 6th CPC pay structure corresponding to the maximum of pay

scales applicable in the 5th CPC scale in the rank and group held continuously for the last 10 months preceding invalidment/ discharge. In addition, the enhanced weightage for qualifying service recommended by GOM (2006) was to continue. **In addition to the revised pension so calculated, Hav who were granted the rank of Hony Nb Sub were allowed an additional pension of Rs.226/-.**

58. Instructions for implementing the **CCS-II recommendations** regarding the improvement of pension of JCO/OR who were retired/ discharged/ invalided out prior to 01.01.2006 was issued vide MoD letter No.1(13)/2012/D(Pen/Pol) dated 17.01.2013 to be effective from 24.09.2012. It stated that the pension be **determined on the basis of notional maximum for the ranks and group across the three Services** and the **qualifying service weightage for Sep/Nk/Hav was increased further by two years**. Further MoD vide letter No.1(11)/2012-D(Pen/Policy) dated 17.01.2013 also issued instructions on the minimum guaranteed pension and family pension in respect of pre-2006 commissioned officer pensioners/family pensioners. **The tables issued with this letter revised the pension based on max across three Services in the rank and group pensioned, in the pre revised scale.**

59. CAT (PB) order dated 01.11.2011 held that revision of pension of pre-2006 retirees as per CCS-II will be applicable from 01.01.2006 instead of 24.09.2012. The appeal against this order was dismissed by both the Delhi High Court and Supreme Court. Consequent to this, GoI/ Dept of Pensioners and Pensioners' Welfare vide its letter No.38/37/08-P&PW(A) dated 30.07.2015 directed that the **pension/family pension of all pre-2006 pensioners/family pensioners will be revised with effect from 01.01.2006 instead of 24.09.2012**. Instructions regarding applicability of CCS-II revision from 01.01.2006 instead of 24.09.2012 in respect of armed forces PBOR was then issued vide MoD letter No.1(04)/2015(II)-D(Pen/Pol) dated 03.09.2015 and for the pre-2006 commissioned officer pensioners/family pensioners vide MoD letter dated No.1(04)/2015(I)-D(Pen/Pol) dated 03.09.2015. The implementation of both these letters were further issued vide PCDA (P) Circulars No.547 and 548.

29. Relevant extracts of Circulars No.547/ 548 are reproduced

below:

OFFICE OF THE PR. CONTROLLER OF DEFENCE ACCOUNTS (PENSIONS)
DRAUPADI GHAT, ALLAHABAD-211014

REGISTERED

Circular No. 547

Dated:11.09.2015

xxx

xxx

xxx

Subject:- Revision of pension in r/o pre-2006 JCOs/ORs pensioners/ Family pensioners

xxx

xxx

xxx

2. As per provision contained in Para 5 of Ministry's letter No 17(4)/2008(1)/D(Pen/Pol) dated 11.11.2008 as amended therein, wef 01.01.2006 revised pension and revised ordinary family pension of all pre-2006 Armed Force pensioners/family pensioners determine in terms of fitment formula laid down in Para 4.1 of above said letter dated 11.11.2008, shall in no case be lower than fifty percent and thirty percent respectively, of the minimum of the pay in pay band plus the Grade pay corresponding to the pre-revised scale from which the pensioner had retired / discharged/ invalided out/ died including Military Service Pay and 'X' Group Pay, where applicable.

3. After issue of GOI, Ministry of Personnel, PG & Pensioners, Department of Pension & Pensioners' Welfare letter No. 38/37/08-P & PW (A) dated 30.07.2015, it has been decided that with effect from 01.01.2006 pension/family pension of Pre-2006 JCOs/ORs pensioners/Family pensioners shall be determined as fifty and thirty percent respectively of the minimum of the fitment table for the Rank in the revised Pay Band as indicated under fitment tables annexed with 1/S/2008 as amended and equivalent instructions for Navy and Air Force, plus Grade Pay corresponding to the pre-revised scale from which the pensioner had retired/discharged/invalided out/died including Military Service Pay and X group pay.

4. However, in case, the consolidated pension/family pension calculated as per Para 4.1 of this Ministry's letter No. 17(4)/2008(1)/D(Pen/Pol) dated 11.11.2008 is higher than the pension/family pension calculated in the manner indicated above, the same (higher consolidated pension/family pension) will be continued to be treated as basic pension/family pension. However, where revised pension in terms of GOI, MOD letter No. PC 10(1)/2009-D (Pen/Pol) dated 08.03.2010 and No. 1(13)/2012/D(Pen /Policy) dated 17.01.2013 is higher than the rates indicated in annexure attached with this letter, the same will be continued to be treated as basic pension/family pension from 1.07.2009 and 24.09.2012 respectively.

xxx

xxx

xxx

xxx

xxx

xxx

No. Gts/Tech/0167/XXI
Dated: 11.09.2015

sd/-
(G.K.Baranwal)
Deputy.Controller(Pensiobns)

OFFICE OF THE PR. CONTROLLER OF DEFENCE ACCOUNTS (PENSIONS)
DRAUPADI GHAT, ALLAHABAD-211014

REGISTERED

Circular No. 548

Dated:11.09.2015

xxx

xxx

xxx

Subject:- Revision of pension in r/o pre-2006 JCOs/ORs pensioners/ Family pensioners

xxx

xxx

xxx

2. In this context, please refer to the Govt. of India, Ministry of Defence letter No. 17(4)/2008(1) /D(Pen/Pol) dated 11.11.2008 as amended, issued in implementation of government decision on the recommendations of the sixth CPC for revision of pension/ family pension in respect of Pre-2006 Armed Forces pensioner/Family pensioners. As per provisions contained in Para 5 therein, with effect from 01.01.2006 revised pension and revised ordinary family pension of all Pre-2006 Armed Forces pensioners/Family pensioners determined in terms of fitment formula laid down in Para 4.1 of above said letter dated 11.11.2008, shall in no case be lower than fifty percent and thirty percent respectively, of the minimum of the pay band plus the Grade pay corresponding to the pre-revised scale from which the pensioner had retired/discharged/ invalided out/ died including Military Service Pay and 'X' Group Pay, where applicable:

3. The above minimum guaranteed pension was revised vide Ministry's letter No. 1(II)/2012/D(Pen/Pol)dated 17.01.2013 with effect from 24.09.2012(circulated vide circular No 500 dated 17.01.2013), at the rate of minimum of fitment table for the Rank in the revised pay band as indicated under fitment tables annexed with SAI 2/S/2008 and SAI 4/S/2008 as amended plus Grade Pay corresponding to the pre-revised scale from which the pensioner had retired/discharged/ invalided out/ died including Military Service Pay.

4. After issue of GOI, Ministry of Personnel, PG & Pensioners, Department of Pension & Pension Welfare letter No. 38/37/08-P & PW (A) dated 30.07.2015, it has been decided that the pension/family pension of all pre-2006 pensioners/family pensioners may be revised in accordance with Para 2 of GOI, MOD letter dt-17.01.2013 with affect from 01.01.2006 instead of 24.09.2012.

5. In case, the consolidated pension/ family pension calculated as per Para 4.1 of Ministry's letter No. 17(4)/2008(1)/D(Per/Pol) dated 11.11.2008 is higher than the pension/ family pension calculated in the manner indicated above, the same (higher consolidated pension/family pension) will be continued to be treated as basic pension/ family pension.

xxx

xxx

xxx

xxx

xxx

xxx

sd/-

(G.K.Baranwal)

Deputy Controller(Pensions)

No. Gts/Tech/0167/XXI

Dated: 11.09.2015

30. The orders of OROP-1 was promulgated vide MoD letter dated 03.02.2016 and this was to be effective from 01.07.2014. The

implementation instructions were issued vide PCDA (P) Circular No.555 dated 04.02.2016. Based on the directions contained therein, that the OROP be granted as per the rank for pension as reflected in the PPO, the respondents examined the applicant's case in the rank of Hav. Since as per the OROP table, a Hav with 24 years of service was only entitled to a pension of Rs.7,808/-, which was less than that was already being paid, the respondents retained the pension at Rs.8,330/-, the scale being paid from 01.01.2006. *In our view, having once fixed his initial pension in the rank of Nb Sub in the 5th CPC, all subsequent revisions should have been carried out as applicable to a Nb Sub/Gp-B/QS-26.5, and thus fixed at Rs.10,415/- (Table-7) with effect from 01.07.2014.*

31. Revision of pension of the pre-2016 retirees in the 7th CPC was promulgated vide MoD letter dated 29.10.2016 and the implementation instructions were issued vide PCDA (P) Circular No.570 dated 31.10.2016. Based on these instructions, the Respondents fixed the pension of the applicant at Rs.21,409/- with reference to pension @ Rs.8,330/- as on 31.12.2015 ($8330 \times 2.57 = 21409$). *In our view, since the applicant is entitled to have his pension fixed in OROP-1 in the rank of*

Nb Sub/Gp-B/QS-26.5's @ Rs.10,415/-, his pension in 7th CPC should have been fixed @ Rs.26,767/- (10415x2.57).

32. The orders of OROP-2 was promulgated vide MoD letter dated 20.01.2023 and this was to be effective from 01.07.2019. The implementation instructions were issued vide PCDA (P) Circular No.666 dated 20.01.2023. Accordingly, the *respondents again fixed the pension of the applicant in the rank of Hav with a qualifying service of 24 years at Rs.22,257/-*. In our opinion, having once fixed his initial pension in the rank of Nb Sub in the 5th CPC, all subsequent revisions should have been carried out as applicable to a Nb Sub/Gp-B/QS-26.5, and thus should be fixed at Rs.24,825/- (Table-7) with effect from 01.07.2019. However, since the applicant was already given a higher revised pension in previous revision based on the vide Circular 570 dated 31.10.2016. He should continued to receive pension @ Rs.26,767/-.

33. It has been the contention of the respondents that they have revised the pension as per the Government orders issued from time to time. We are of the opinion that in the light of the MoD letter dated 09.02.2001, the applicant's pension on retirement should have been revised in the rank of Hav for a qualifying period of 26 years and 06 months (not 24 years). His pension on transition to 5th

CPC regime, and under the provisions of the letter dated 09.02.2001 his pension should have been re-fixed in the rank of Nb Sub with 26.5 years of service in comparison to the maximum of 50% in the revised pay scale for Nb Sub. All subsequent revisions should then have been undertaken accordingly in the rank of Nb Sub. Merely because the pension policy letters which are at best difficult to completely comprehend, the pension of the applicant cannot be fixed in the rank of Nb Sub for certain periods and in the rank of Hav for subsequent periods. The details of the preceding paragraphs on how the pension was fixed, is tabulated below:

Ser	Calculation of Pension by Respondents	Rate	Pension now required to be revised	Remarks
(a)	On retirement - 01.07.1989	689	748	Earlier the QS was taken 24 years and now the QS taken is 26.5 years.
(b)	Revision of pension in 5 th CPC - 01.01.1996	2104	2279	Calculation is according to para 4.1 of MoD letter dated 24.11.1997, having revised his basic pension in 4 th CPC @ 748
(c)	Revision of pension as per MoD letter 09.02.2001	2255	2291	Herein 50% of the min of Nb Sub has been considered
(d)	Revision of pension wef 01.04.2004 on merger of Dearness Pension	3383	3436	Based on initial fixing of pension in 5 th CPC @ 2279
(e)	Revision of pension - 01.01.2006 - Circular 350	3375	5048	Calculation as per Para 4.1.1 considering 50% of the max of Nb Sub

Ser	Calculation of Pension by Respondents	Rate	Pension now required to be revised	Remarks
(f)	Consolidation of pension in terms of MoD letter dated 11.11.2008	5085	7606	
(g)	Minimum Guaranteed Pension of pension wef 01.01.2006 - Mod letter 11.11.2008	7281	7398	Since the calculated pension as per Para 4.1.1 is higher than the minimum, the pension will be revised based on the calculation mentioned in (f) @ 7606
(h)	Revision of pension wef 01.01.2006 Circular 547	7826	7952	
(i)	Revision of pension - 6 th CPC wef 01.01.2006 Circular 568	8330	8330	
(j)	Revision of Pension wef 01.07.2009 - Circular 430	8330	10190	Revision is done based on the QS of 26.5 years for the rank of Nb Sub
(k)	Revision of pension wef 24.09.2012 - Circular 501	8330	10190	Revision is done based on the QS of 26.5 years for the rank of Nb Sub
(l)	Revision of pension - OROP-I wef 01.07.2014 , Circular 555	7808	10415	Revision is done based on the QS of 26.5 years for the rank of Nb Sub, Table-7
(m)	Revision of pension - 7 th CPC wef 01.01.2016 Circular 570	21409	26767	Based on pension fixed in OROP-I @ 10415.
(n)	Revision of pension -OROP-II wef 01.07.2019 Circular 666	22257	26767	Since the applicant was entitled for a higher revised pension in previous revision the continue to receive Rs. 26767.

Inconsistency in policy

34. It is our considered view that the above anomaly has arisen due to inconsistent Govt policy on pension fixation and revision, which for revision at certain point of time, has promulgated that the revision will be carried out as per the last rank held, and at times it has promulgated that revision will be carried out in the rank in which pensioned. In our considered view, having once promulgated vide letter dated 09.02.2001, that the pension of pre-1996 retirees will be fixed as per the last rank/group held, even if the rank/group held was less than 10 months, **ALL subsequent policies should have been issued in line with this.** We see no reason why at certain points of time the revision should be made as per the rank in pensioned, which has caused prejudice to the applicant and those similarly placed. Surprisingly, the instruction of OROP-I states the last rank pensioned be obtained as given in the PPO which was initially issued, without taking into consideration, the PPO in many cases have been revised and corrigendum issued subsequently, and the subsequent pension from 01.01.1996 was based on the last rank held.

Conclusion

35. With the above consideration we conclude the following:-

(a) That the applicant is entitled to have his pension on retirement on 01.07.1989 fixed in the rank of Hav /Gp-B with a qualifying service of 26 years with weightage of 05 years.

(b) That the applicant is entitled to have his pension subsequently revised/ fixed in 5th CPC in the rank of Nb Sub with qualifying service of 26.5 years, subject to 50% of the maximum of a Nb Sub in the revised pay scale.

(c) That the applicant is entitled to all subsequent revisions including revision in the 6th CPC, 7th CPC, OROP-1 and OROP-2 in the rank of Nb sub with qualifying service of 26.5 years.

Directions

36. Accordingly the OA is allowed and we direct the following:-

(a) Fix the pension of the applicant on retirement on 01.07.1989 in the rank of Hav /Gp-B with a qualifying service of 26 years with weightage of five years.

(b) Revise all subsequent revisions, and fix the pension in the 5th CPC, 6th CPC, 7th CPC, OROP-1 and OROP-2 in the rank of Nb Sub with qualifying service of 26.5 years.

37. No order as to costs.

38. Pending miscellaneous application(s), if any, stands closed.

Pronounced in open Court on this 26 day of September, 2024.

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

(JUSTICE ANU MALHOTRA)
MEMBER (J)

Neha