

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

OA 48/2019

13912074X Ex Hony Nb Sub Mohbat Singh Rathore ...

Applicant

Versus

Union of India &Ors.

... Respondents

For Applicant : Mr. Virender Singh Kadian, Advocate

For Respondents : Ms. Jyotsana Kaushik, Advocate

CORAM :

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

ORDER

The applicant 13912074X Ex Hony Nb. Sub. Mohbat Singh Rathore vide the present OA makes the following prayers: -

*(a) Quash and set aside the impugned order
No.13912074X/SPR(H)LN-76/2018 dated 25.09.2018.
And/or*

*(b) Direct to the respondents to revision of Service Pension to
the applicant for Rs.9382/- w.e.f. 01.07.2009 and Rs.9429/-*

wef 01.07.2014(OROP) and Rs.24,233/- wef 01.01.2006 in the rank of Naib Subedar in qualifying service 24 years in 'Y' Group and also change the Pay Band from PB-1 Rs.5200-20200-/- to PB-2 Rs.9300-34800/- by issuing Corr. PPO as per GoI, MoD letter dated 12.06.2009, dated 08.03.2010 and PCDA(P) Allahabad Circular No..430 dated 10.03.2010 and in the light of Hon'ble Tribunal Chandigarh order dated 27.10.2017 in OA No.2755 of 2013 titled as Hoshiar Singh & Ors Vs UOI & Ors alongwith interest @12% p.m. to till payment be made which has not been released willfully.

(b) Issue such further appropriate order/direction as this Hon'ble Tribunal may deem fit and proper in facts and circumstances of the case."

2. The applicant was enrolled in the Indian Army on 12.01.1968 and was discharged from service w.e.f 31.01.1992 after completing 24 years and 20 days of pensionable service. The applicant was conferred with the Hony Rank of Nb Sub. on 15.08.1992 and subsequently, his service pension has been revised from time to time as per policies issued by the GoI, MoD. in accordance with Para 5.1.62, Chapter V of the 6th CPC Report. This was promulgated vide MoD letter dated 12.06.2009, granting a notional promotion to the rank of Nb. Sub. for pension fixation purposes and the GoI, MoD has decided to pay the pension of Nb. Sub. vide letter No.1(13)/2016/D(Pen/Policy) dated 21.02.2020.

3. The applicant had filed OA 1900/2011 before the Hon'ble AFT(RB), Chandigarh seeking the grant of pension of Nb. Sub. having been granted the

rank of Hony. Nb Sub. after retirement and prior to 01.01.2006 and it was observed vide the order dated 30.11.2011 to the effect:

“The petitioner’s claim for grant of pension of Naib Sub. having been granted the rank of Honorary Naib Subedar after retirement and prior to 01.01.2006. Since both the learned counsel agree that in cases of such persons entitlement to grant of pension to Naib Subedar is upheld by judgment of this Tribunal dated 8.2.2010 passed in OA No.42 of 2010 Virender Singh Vs Union of India and Ors., which has subsequently been followed by this Tribunal consistently apart from the fact that it has been affirmed by Hon’ble Supreme Court.

Subsequently, the Hon’ble Supreme Court did make observation in CA No.5478, 5479 and 5480 of 2011 ‘Union of India vs Sohan Lal Baba’ vide order dated 7.7.2011. That judgment has also been read with relevant Rule position by this Tribunal in judgment dated 21.10.2011 passed in bunch of cases led by OA No.1327 of 2011 “Raghubir Singh and Ors Vs Union of India and Ors. upholding the entitlement.

A look at the judgment in Virender Singh’s case does show that directions in general nature were issued and required to be complied within the timeframe, and despite that the needful having not been done, the petition is allowed, for the same reasons and granting the same relief.

Necessary verifications be made by respondents and on actual aspect being verified, necessary calculations and actual payment be now made to the petitioners with a period of three months from the date of receipt of copy of this order, failing which the respondent No.1 shall be liable to pay costs of Rs.10,000/- to be deposited in the Tribunal. ”

4. The applicant submits that he was entitled to get his basic service pension re-fixed in the rank of Nb Sub. as Rs.9382/- wef 01.07.2009 as qualifying service of 24 years and as per the recommendations of the 7th CPC he is entitled to get his basic service pension as Rs.24,233/- w.e.f. 01.01.2016. The respondents, however, through their counter affidavit dated 25.03.2019 submit that the applicant has already been granted the relief prayed.

5. 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 his pension be revised and re-fixed as applicable to a regular Nb. Sub. with 24 years of service.

6. 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 the MoD letter dated 21.02.2020.

ANALYSIS

7. It is essential to advert to the order dated 29.06.2020 in OA 697/2020 of the AFT(PB), New Delhi in *Ex Hav(Hony Nb Sub) Ram Lal Singh Jat Vs UOI & Ors* wherein a similar relief as in the instant case was prayed. In that case too, the applicant had filed OA 1275/2018 before this Tribunal claiming service pension in the rank of Nb. Sub. and the said OA was allowed vide order dated 18.01.2019 in view of the order in OA 42/2010 *Virender Singh and Ors Vs UOI & Ors*, having been affirmed vide verdict of the Hon'ble Supreme Court in CA 4677/2014 dated 20.05.2015 in *UOI and Ors Vs Subhash Chander Soni*. Vide order dated 29.06.2020 in OA 697/2020 of this Tribunal the OA was allowed and the respondents were directed to revise the pension of the applicant in the rank of Nb. Sub. after verification of the conferment of the rank in Hony Nb Sub. w.e.f. 01.07.2009.

8. It is however further essential to observe that due to conflicting views regarding the fixation of pension of pre-2006 Hav granted the rank of Hony Nb Sub. the matter had already been 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 (Hony. Nb Sub) Shiv Pal Vs. Union of India and others) decided on 11.12.2019, relying upon the ju 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."

9. 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.

10. 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 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 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

11. Therefore, in view of the above, we dispose of the OA 48/2019 with the directions that:

(a) The pension 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.

(b) Corrigendum PPO be accordingly issued and arrears be paid within three months from the date of receipt of this order failing which interest @ 6% p.a. will be paid to the applicant on all arrears till the date of actual payment.

12. No order as to costs.

Pronounced in the Open Court on the 29 day of August, 2024.

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

(JUSTICE ANU MALHOTRA)
MEMBER (J)

/Chanana/