

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

OA 862/2019

Hony Nb Sub Tapsi Ram (Retd) ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Mr. S.S. Pandey, Advocate

For Respondents : Mr. V Pattabhai Ram, Advocate

CORAM :

HON'BLE MS JUSTICE ANU MALHOTRA, MEMBER (J)

HON'BLE LT. GEN P.M. HARIZ, MEMBER (A)

ORDER

The applicant, who is a retired Hony Nb Sub, has filed this application under Section 14 of the Armed Forces Tribunal Act, 2007, aggrieved on not being granted the pension equivalent to that of a regularly promoted Nb Sub, in terms of MoD Circular dated 12.06.2009. He has made the following prayers: -

(a) Call for the records based on which the Respondents have issued order dated 25.02.2019 relying upon the order dated

05.04.2018 rejecting grant of pension to the applicant of Nb Sub w.e.f 01.01.2006 as per the judgments binding on the Respondents and thereafter quash the same along with any other instructions on the basis of which the Respondents have not extended the benefit of revision of pension as Nb Sub to the applicant.

(b) Direct Respondent No.1 to issue necessary clarifications to all concerned to the instruction dated 30.10.2017 vide which the benefit of pension of Nb Sub to those Hony Nb Sub who were granted such Hony Rank after retirement before 01.01.2006 have been made conditional to only those persons who approaches this Hon'ble Tribunal instead of granting the said benefit to all affected persons like the applicant at par with Hony Nb Sub who have been discharged from service on or after 01.01.2006 w.e.f. 01.01.2006 after deleting the portion of instruction dated 30.10.2017 by which obtaining a judicial order has been made a pre-requisite for grant of pension as Nb Sub w.e.f 01.01.2006.

(c) Issue directions to Respondents to fix the pension of the applicant to Rs. 9382/as applicable to Nb Sub of his group as per the revision carried out on 01.07.2009 applicable w.e.f 01.01.2006 otherwise granted to any Hony Nb Sub who retired on or after 01.01.2006 with same service as the applicant with all the revisions carried out for enhancement of such pension from time to time and with further direction to pay the arrears of pension to the applicant on fixation of such pension w.e.f 01.01.2006 as revised from time to

time on that basis till date and also grant interest on the arrears @ 12% from the date due till actual payments of such arrears.

(d) Issue such other order/ direction as may be deemed appropriate in the facts and circumstances of the case.

Brief Facts of the Case

2. The applicant was enrolled in the Indian Army on 21.11.1963 and was discharged from service w.e.f 01.12.1987 after completing 24 years and 10 days of service. On 15.08.1988, the applicant was granted the rank of Hony Nb Sub. In accordance with Para 5.1.62, Chapter V of the VI CPC Report, the pension scheme for Havs granted the rank of Hony Nb Sub was revised. This was promulgated vide MoD letter dated 12.06.2009, granting a notional promotion to the rank of Nb Sub for pension fixation purposes. However, this policy was applicable only to post 01.01.2006 retirees granted the rank of Hony Nb Sub. Consequently, pre-2006 retiree Hony Nb Subs were denied the benefits outlined in the MoD letter. In 2017, OA 353/2017 was jointly filed by 48 Hony Nb Subs who were all pre 2006 retirees. When the matter was heard, vide AFT (PB) order dated 14.11.2017, the applicants were permitted to withdraw the OA and file fresh individual OAs, since the factual details of each applicant was

different. The applicant approached the Hon'ble Tribunal by filing OA 663/2018. This OA was disposed of vide order dated 05.04.2018, wherein the Hon'ble Tribunal directed the respondents to treat OA 663/2018 as a representation and to consider and revise the pension. However, the respondents vide letter dated 25.02.2019 rejected the claim of the applicant stating that there is "no general policy issued by the MoD/D (Pen/Policy) consequent to orders of the Hon'ble AFTs in pre-2006 retirees". Hence, the OA.

3. The counsel for the applicant reiterated the details of the case and fairly stated that in view of the AFT (PB) Larger Bench Order dated 20.03.2024 in **Ex Hony Nb Sub Ram Kishan Vs. Union of India and Ors** in OA 589/2019, appropriate order may be issued in this case too. The counsel for the respondents stated that he had no objection to this.

Consideration of the Case

4. This issue regarding pension of pre-2006 retiree Hony Nb Sub has already been settled vide AFT (PB) Larger Bench Order dated 20.03.2024 in OA 589/2019 in the case of **Ex Hony Nb Sub Ram Kishan (Supra)**.

5. Regulation 180 of the Defence Services Regulations (DSR) provided that Havildar/Dafadar (Hav/Dfr) and Havildar Clerks (Hav Clk) with 24 years of service, who were not promoted to Naib Subedar (Nb Sub) during active service, could be selectively conferred the rank of Hony Nb Sub after retirement. Initially, a financial benefit of Rs.12/- per month was attached, which was later increased to Rs.100/- per month as per Regulation 137 of the Pension Regulations for the Army, Part-1 (1961), amended by MoD letter dated 06.11.1991. The 6th CPC recommended that the pension of Havs granted the rank of Hony Nb Sub be fixed by granting notional promotion to Nb Sub. The government accepted this recommendation, and issued MoD letter dated 12.06.2009, directing that the rank of Hony Nb Sub would be notionally considered as a promotion to Nb Sub for pension fixation. However, this order applied only to those who retired after 01.01.2006, thus excluding pre-2006 retirees. Pre-2006 retirees, including **Ex Hav (Hony Nb Sub) Virender Singh**, challenged this exclusion in AFT (RB), Chandigarh, which ruled in their favor on 08.02.2010. The Supreme Court dismissed the Union of India's appeal on 13.12.2010, and reaffirmed this in the case of **Subbash Chander Soni** on 20.05.2015.

6. Despite revisions in 2009 and 2012, pre-2006 retirees with the rank of Hony Nb Sub received lower pensions. Ex Hav (Hony Nb Sub) Hoshiar Singh filed a case in the AFT (RB), Chandigarh, seeking pension revision to match that of a Nb Sub. The AFT, on 27.10.2017, quashed the pension tables for Hony Nb Sub issued in 2010 and 2013, and directed a recalculation. The Union of India's review application was dismissed on 21.05.2018. Following this, the MoD issued a new pension table for pre-2006 Hony Nb Sub retirees on 21.02.2020, and PCDA(P) Allahabad issued Circular No.631 on 05.03.2020 for implementation. Meanwhile, the AFT ruled in favor of applicants in similar cases, granting them Nb Sub's pension, while dismissing a similar claim in another case on the grounds that the applicant's last rank held was Hony Nb Sub. Therefore, finding conflicting views between different Benches of this Tribunal, the matter was then 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.

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) Yoganda 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. 36 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."

7. The Larger Bench of AFT (PB) vide order dated 20.03.2024 finally settled the issue and in Paras 83 & 84 of the said order 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 (PCCA 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. "

8. Therefore, in view of the above we dispose of the OA with the following directions:

(i) 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.

(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.

9. No order as to costs.

Pronounced in open Court on this ^{Tu} 25 day of July, 2024.

JUSTICE ANU MALHOTRA
MEMBER (J)

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

/ashok/