

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

OA 1095/2019

7065659X Hony Nb Sub Ram Siya Divedi(since deceased)

Rep. through his wife Smt. Krishna Devi ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Mr. SS Pandey, Advocate

For Respondents : Mr Shyam Narayan, Advocate

CORAM :

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

HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

The applicant Smt. Krishna Devi Wd/o of 7065659X Hony Nb Sub Ram Siya Divedi vide the present OA makes the following prayers: -

*(a) Call for the records based on which the respondents have issued the policy instruction dated 30.10.2017 vide which the benefit of enhancement of pension as payable to Naib Sub has been extended to the Hony Nb Sub who have been conferred such Rank after their retirement and have retired prior to 01.01.2006 like the husband of the applicant only if they get a direction from this Hon'ble Tribunal which is otherwise paid to similarly situated persons retired on or after 01.01.2006 from that date as a matter of routine without any such precondition and thereafter quash the same to the extent of making pre-requisite of coming to this Hon'ble Tribunal and obtaining a judicial order.*

*(b) Issue directions to respondents to fix the pension of the applicant to Rs.9382/- as applicable to Naib Subedar of his*

*group as per the revision carried out on 01.07.2009 applicable wef 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 from enhancement of such pension time to time and with further direction to pay the arrears of pension to the applicant on fixation of such pension wef 01.01.2006 as revised from time to time on that basis till date also grant interest on the arrears @12 percent from the date due till actual payments of such arrears.*

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

2. 7065659X Hony Nb Sub Ram Siya Divedi, the late husband of the applicant Smt. Krishna Devi was enrolled in the Indian Army on 23.05.1963 and was discharged from service w.e.f 31.05.1987 after completing the term of his enrolment. He was conferred with the rank of Hony Nb. Sub. after retirement from service on 07.09.1987. He, however, expired on 21.12.2011. The copy of the death certificate issued by the Govt of Uttar Pradesh dated 06.01.2012 qua the demise of the applicant's husband on 21.12.2011 is placed on record as Annexure A-6 to the OA and its veracity is not denied by the respondents. The applicant submits that the GoI, the MoD decided to pay the pension of Nb Sub. to the pensioners who are drawing the pension of Hony Rank of Nb Sub. vide letter No. 1(8)/2008-D(Pen-Policy) dated 12.06.2009 in case of all Hony Nb Sub. irrespective of the date of retirement and as upheld by the Hon'ble Supreme Court in Special Leave to Appeal(Civil) CC No.18582 of 2010 titled *Union of India & Ors Vs Virender Singh & Ors* decided on 13.12.2010 and Civil Appeal No.4677 of 2014 titled *Union of India & Ors Vs Subhash Chander Soni* decided on 20.05.2015. The applicant submits that the action of the respondents of not extending the benefits of the enhanced

pension to the applicant's husband as provided in terms of order dated 12.06.2019 on the sole ground that the applicant retired prior to 01.01.2006 is illegal, arbitrary and outright negation of the principle of One Rank One Pension as accepted by the Government and the issue was already decided by this Hon'ble Tribunal in several matters involving similar question of law and the appeal filed by the respondents in Civil Appeal No.4677 of 2014 case of **Ex Hav(Nb Sub) Subhash Chander Soni** vide judgment dated 20.05.2015. However, the respondents instead of passing an order granting same benefits to all affected persons w.e.f. 01.01.2006 as mentioned in Policy dated 12.06.2009 confined the relief only to those persons who approached this Hon'ble Tribunal.

3. 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 her late husband pensions be revised and re-fixed as applicable to a regular Nb Sub with 24 years of service.

4. The applicant submits that as per the recommendations of the Sixth Central Pay Commission contained in Para 5.1.62 of Chapter V, the Govt. of India decided that Hony rank of Nb Sub granted to Havildar will be notionally considered as a promotion to the higher grade of Nb Sub and benefit of fitment in the pay band and the higher grade pay will be allowed notionally for the purpose of fixation of pension only vide letter No. 1(8)/2008-D(Pen/Policy) dated 12.06.2009. *Inter alia*, the applicant submits that her husband was a pre-2006 retiree and was fully entitled for the revision of Service Pension and she to

the Family Pension on his demise in the rank of Nb Sub. as Rs.9382/-wef 01.07.2009 and further wef 01.01.2016 as per the 7th CPC and on the basis of GoI letter dated 12.06.2009.

5. The respondents through their counter affidavit dated 14.01.2020 submit that all legitimate dues were paid to the husband of the applicant and as per the recommendations of the 6<sup>th</sup> CPC, issued vide Ministry of Defence letter No.1(8)-D/2008(Pen/Policy) dated 12.06.2009, the revision of family pension is admissible to those Hony Nb Sub who were discharged from service on or after 01.01.2006 and the instant case, the husband of the applicant was discharged from service wef 31.05.1987 i.e. prior to 01.01.2006 hence, the revision of pension in the rank of Hony Nb Sub is not applicable. 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 MoD letter dated 21.02.2020.

#### *ANALYSIS*

6. Due to conflicting views regarding the fixation of pension of pre-2006 Hav granted rank of Hony Nb Sub, the matter 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, 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 (HonyNb 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. (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."*

7. 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.

8. 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 6<sup>th</sup> 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 Subhash Chander Soni (supra).

(e) Anomalies in the 6<sup>th</sup> 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 5<sup>th</sup> 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 6<sup>th</sup> 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 5<sup>th</sup> CPC across the

three Services, and the second by utilising the minimum of the transition fitment table of Nb Sub in the 6<sup>th</sup> 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 6<sup>th</sup> 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**

9. Therefore, in view of the above, we dispose of the OA 1095/2019 with the following directions that:

(a) The pension of 7065659X Hony Nb Sub Ram Siya Divedi, late husband 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 till the date of his demise i.e. 21.12.2011.

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

(c) Furthermore, the family pension of the applicant be computed accordingly and re-fixed in accordance with (a)&(b) hereinabove, and the corrigendum PPO be issued and the arrears be paid to the applicant

within a period of three months from the date of receipt of copy of this order failing which interest @6%p.a. to be paid to the applicant on all arrears till the date of actual payment.

10. No order as to costs.

Pronounced in the open Court on this 6 day of March, 2025.

(REAR ADMIRAL/DHIREN VIG)  
MEMBER(A)

(JUSTICE ANU MALHOTRA)  
MEMBER(J)

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