

COURT No. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. 371 of 2019

Ex Hav (Hony Nb Sub) Sugan Singh ... Applicant
Versus
Union of India and Ors. ... Respondents

For Applicant : Mr. Randhir Singh Kalkal, Advocate
For Respondents : Dr. Vijendra S. Mahndiyan, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG MEMBER (A)

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant filed this OA prays for the following relief:

(a) direct the respondents to pay the pension of the NB Sub to the applicant as per the Govt. of India, Ministry of Defence letter dated 12-06-2009 with effect from 01-01-2006 along with interest @ 18% p.a.

(b) direct the respondents to pay the rounding of disability elements @20% (now 50% wef 01.09.2002) along with interest @18% P.a.

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

BRIEF FACTS

2. The applicant was enrolled in the Indian Army on 22.08.1978 and was discharged from service on 01.09.2002 after completion of 24 years of service in low medical category (LMC) A-2 (P). The applicant after retirement was granted the Hony rank of Nb Sub after his retirement on 26.01.2003 on the occasion of Republic Day and is seeking the pension of Nb Sub. The applicant was also in receipt of disability pension @20% for life vide PPO no. DE/011460/2003 dated 06.06.2003. The disability however was not rounded off to 50% and aggrieved by the same the applicant filed this OA in the interest of justice, we take up the present OA.

CONTENTIONS OF THE PARTIES

3. It is the case of the applicant that the applicant was discharged from service in the low medical category and the disability of the applicant was aggravated by military service as per

the PPO issued by the PCDA(P) and the disability element granted was @20% for life without being rounded off to 50%.

4. It was contended that the applicant on 26.01.2003 was granted Hony Rank of Nb Sub by the respondents after retirement from service. It was further contended that as per the Govt. of India, Ministry of Defence had issued a letter dated 12.06.2009 for the benefits of the Army personnel who are getting the pension of the Hony Rank of Nb Sub and in light of the provisions of the aforementioned letter the rejection of the applicants claim for grant of pension to the rank of Hony Nb Sub is illegal and arbitrary.

5. Per Contra, Learned Counsel for the Respondents submits that the applicant was granted disability pension w.e.f 01.09.2002 for life. Further as per Para 7.2 of Govt of India, Ministry of Defence letter No. 1(2)/97/D (Pen-C) dated 31 Jan 2001, the benefits of rounding of disability pension are applicable to those personnel who have been invalided out from military service on medical grounds before completion of terms and conditions on or after 01 Jan 1996. But in the instant case, the applicant has been transferred to pension establishment upon fulfilling the conditions of

enrolment with effect from 31 Aug 2002 (AN) and not invalidated out of service. Hence, the said policy is not applicable to him.

6. The counsel for the respondents, further submits that GoI, MoD letter No.1(8)/2008-D(Pen/Policy) dated 12.06.2009 under which Hony. Rank of Nb Sub granted to Havildars has been 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 has been allowed notionally for the purpose of fixation of pension only. This provision was applicable for Havildars granted Hony Rank of Nb Sub retired on or after 01 January 2006.

ANALYSIS

7. We have heard the learned counsel for the parties at length and perused the records produced before us. After perusal of the rival contentions two questions arose for consideration; (i) whether the applicant is entitled for the benefit rounding of disability element from @20% to 50% and (ii) whether the applicant is entitled to pension of the NB Sub as per the Govt. of India, Ministry of Defence letter dated 12-06-2009.

8. With respect to the first issue in hand we are of the view that it is not in dispute that the extent of the disability of the applicant is @ 20% for life and the applicant was accordingly granted disability element of pension @ 20% for life being aggravated by service and a PPO was issued in this regard bearing no. DE/011460/2003, dated 06.06.2003. Regarding broad-banding benefits, we find that the Hon'ble Supreme Court in its order dated 10.12.2014 in **Union of India v. Ram Avtar**, Civil Appeal No. 418 of 2012 and connected cases, has observed that individuals similarly placed as the applicant are entitled to rounding off the disability element of pension. We also find that the Government of India vide its Letter No. F.No.3(11)2010-D (Pen/Legal) Pt V, Ministry of Defence dated 18th April 2016 has issued instructions for implementation of the Hon'ble Supreme Court order dated 10.12.2014 (supra).

9. With regard to the second issue in hand i.e. grant of pension of Hony Nb Sub, the Larger Bench of AFT (PB) New Delhi vide its order dated 20.03.2024 in the case of **Ex Hony Nb Sub Ram Kishan Vs. Union of India & Ors. and connected**


matters, 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, and concluded as given in Para 83 of the order, and answered the reference as given in Para 84. Paras 83 and 84 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 judgment 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 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 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 Subs 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. "

11. In view of the above, we dispose of the OA 371/2019 with the following directions that :

- i) With respect to the first prayer of the applicant that is rounding-off of disability element of disability pension, we hold that the applicant is entitled for rounding-off of disability element of pension from 20% to 50% for life in terms of the judicial pronouncement of the Hon'ble Supreme Court in the

case of ***Union of India Vs. Ram Avtar*** (Civil Appeal No. 418/2012), decided on 10.12.2014. Accordingly, the respondents are directed to grant the disability element of pension to the applicant @ 50% for life, w.e.f. date of discharge of the applicant 01.09.2002.

ii) The respondents are thus directed to calculate, sanction and issue the necessary PPO to the applicant within a period of three months from the date of receipt of copy of this order and the amount of arrears shall be paid by the respondents, after adjusting the amount of disability pension already paid to the applicant, failing which, the applicant will be entitled for interest @6% p.a. from the date of receipt of copy of the order by the respondents.

iii) 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. The 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. shall be payable

to the applicant on all the arrears till the date of actual payment.

12. No order as to costs.

Pronounced in the open Court on this 31st day of January, 2025.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

nk/ng