

ARMED FORCES TRIBUNAL CHANDIGARH BENCH AT  
CHANDIMANDIR

O.A. No 42 of 2010

Virender Singh & ors

Vs

U.O.I & ors

D/O 8-2-10

ORDER

Present : For the applicant : Mr Surinder Sheoran, Advocate

For the respondents : Mr Sandeep Bansal, CGC

This is an application u/s 14 of the Armed Forces Tribunal Act 2007 for grant of pension in the Honorary rank of Naib Subedar.

Heard counsel for both the parties and perused the record.

The petitioners retired from the Army on completion of normal terms of service as havildars and are being paid the pension of havildar. At the time of their retirement they were granted the honorary rank of naib subedar. As per existing entitlement they were being paid a sum of Rs 100/- per month as honorary naib subedars, in addition to their pension as havildar.

Consequent to the acceptance of the recommendations of the 6<sup>th</sup> Pay

Commission by the Government, honorary naib subedars were granted the pension of naib subedars by taking this as regular promotion for purpose of fixation of pay and grade pay for pension. The Ministry of Defence vide letter No 1(8)/2008-D(Pen/Policy) dated 12 June 2009 issued instructions accordingly which was circulated by Integrated Headquarters of MoD (Army) vide letter No B/39027/29(5)/AG/PS-5 dated 06 Jul 09 (Annexure A1). The letter reads :

"I am directed to say that in pursuance of Governments decision on the recommendations of the Sixth Central Pay Commission contained in Para 5.1.62 of Chapter V of the Report, the President is pleased to decide that Honorary rank of Naib Subedar granted to Havildar will be notionally considered as a promotion to the higher grade of Naib Subedar 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. Accordingly, additional element of pension of Rs. 100/- pm payable to Havildars granted honorary rank of Naib Subedar as per Regn. 137 of Pension

regulations for the Army Part-I (1961), amended vide this Ministry's letter No. 1 (1)/88/D(Pen/Sers) dated 6.11.1991 will cease to be payable. The notional fixation of pay in the rank of Naib Subedar will not be taken into account of payment of retirement gratuity, encashment of leave, composite transfer grant etc.

2. This letter takes effect from 1<sup>st</sup> January, 2006.
3. This issues with the concurrence of Finance Division of this Ministry  
Vide their UO No. 2351/Finance/Pension dated 3.6.2009."

The claim of the petitioners for grant of pension of naib subedar in accordance with these instructions has not been admitted. Counsel for the respondents contended that Para 2 of the letter which states that

"This letter takes effect from 1<sup>st</sup> January 2006" implies that these benefits are applicable to those who retired as honorary naib subedars on or after

1<sup>st</sup> January 2006. In other words this was the cutoff date for extending these benefits.

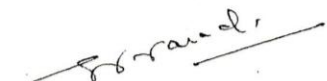
A careful reading of the operative part of the letter above highlights that *honorary rank of naib subedar granted to havildars will be notionally considered as a promotion to the higher grade of naib subedar and benefit of fitment in the pay band and the higher grade pay will be allowed notionally for the purpose of fixation of pension only. Accordingly, additional element of pension of Rs 100/- pm payable to havildars granted honorary rank of naib subedar as per Regulation 137 of Pension Regulations for the Army Part 1(1961) amended vide this Ministry letter No 1(1)/88/D(Pen/Sers) dated 6.11.01 will cease to be payable.*

Notional fixation for pension is done for past cases and not for present and future cases as their fixation is actual. If this fixation was to be effective for post 1.01.2006 honorary naib subedars then the Rs 100/- granted to earlier retirees would not cease to be payable. Para 2 of the letter stating that it will take effect from 1<sup>st</sup> January 2006 is the date of implementation of these instructions. It is not a cut off date for awarding the benefits.

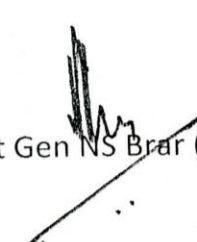
In case these benefits were to be extended to havildars granted honorary rank of naib subedar on or after 01.01.2006, it would introduce serious disparities within the same class and category of individuals i.e. honorary naib subedars of pre and post 01.01.2006. This would be arbitrary and discriminatory.

In view of the facts and circumstances of the case the application is allowed. Respondents No 1 to 6 are directed to implement the government instructions and release the entitled pension with arrears wef 01.01.2006 to honorary naib subedars within three months of the receipt of this order.

Respondent No 2 is also directed to issue suitable directions to all Records offices to implement the government instructions in letter and spirit.

  
(Justice Ghanshyam Prasad)

08  
09-02-2010  
psc

  
(Lt Gen NS Brar (Retd))