

**IN THE ARMED FORCES TRIBUNAL
REGIONAL BENCH, GUWAHATI**

OA - 11 of 2019

PRESENT

**HON`BLE DR. (MRS) JUSTICE INDIRA SHAH, MEMBER (J)
HON`BLE LT GEN GAUTAM MOORTHY, MEMBER (A)**

No. 4348162A Ex-Hav & Honorary Naib Subedar Ginchinpao
Village-New Lamka Dorcas Veng
PO- Churachandpur
Dist-Churachandpur,
Manipur

..... Applicant

By legal practitioner for
Applicant.
Mr. A.R.Tahbildar

-VERSUS-

- 1. The Union of India through**
the Secretary, Ministry of Defence,
Sena Bhawan, New Delhi-11
- 2. The Records The Assam Regiment**
PIN-900332
C/o 99 APO
- 3. Additional Directorate General**
Personnel Services, PS -4(d)
Adjutant General's Branch
IHQ of MOD (Army), DHQ
PO-New Delhi
- 4. The Principal Controller of Defence Accounts,**
(Pension), Allahabad
PIN-211014, Uttar Pradesh.

..... Respondents

By Legal Practitioner for the
Respondents
Mr. P.K. Garodia, CGSC.

Date of Hearing : 06.05.2019
Date of Judgment & order: 06.05.2019

JUDGMENT & ORDER

(Per Lt Gen Gautam Moorthy, Member (A))

1. This application has been filed under Section 14 & 15 of the AFT Act, 2007 claiming pension as applicable to Honorary rank of Naib Subedar w.e.f. 01.01.2006.

2. The fact of the case is that the applicant was enrolled on 21.12.1975 in the Assam Regiment and on completion of his tenure , he retired from service in the rank of Havildar on 01.01.2000 after rendering 24 years of service. The applicant was conferred Honorary rank of Naib Subedar on 26.01.2000. However, the applicant is receiving pension in the rank of Havildar.

3. Heard Mr. AR Tahbildar, learned counsel appearing for the applicant and Mr. P.K. Garodia, learned CGSC assisted by Capt Nisha Thomas, OIC, Legal Cell, AFT, Guwahati appearing for the respondents.

4. The applicant has claimed pension for Honorary rank of Naib Subedar on the strength of the policy letter dated 12.06.2009 issued by the Government of India (Ministry of Defence) as there is no dispute with regard to the fact that the persons like the applicant are entitled to pension as applicable to Honorary rank of Naib Subedar w.e.f. 01.01.2006, a position which has been held by the different Benches of AFT.

5. The Kochi Bench of AFT in OA-23 of 2007 has answered the question in favour of the applicant who was similarly placed like the applicant in the case in hand. Subsequently in another order in OA-13 of 2018 delivered on 15.01.2018, the same Bench of the AFT had granted relief to another applicant.

6. The learned counsel appearing for the applicant has produced the policy letter issued by the Government of India (Dept. of Ex-servicemen Welfare) No. 1(8)/2008-D (Pen/Policy) dtd. 12 Jun 2009 which authorises pension payable to all Honorary Naib Subedar w.e.f 01.01.2006 (Annexure-'D' of OA).

7. Pursuant to the letter dated 12.06.2009, the applicant had approached the authority for granting pension in the Honorary rank of Naib Subedar, but the same was not admitted on the plea that the pension is being applicable only to those who have retired as Honorary Naib Subedar on and after 01.01.2006 as provided for in the letter dated 12.06.2009.

8. Being aggrieved, some Honorary Naib Subedars filed OA-42 of 2010 (***Virender Singh & Ors vs. UOI & Ors***) before the Chandigarh Bench of AFT which vide order dated 08.02.2010 observed that the date 01.01.2006 would not be the cut off date and therefore, pre 01.01.2006 retirees are also duly entitled to receive the pension of Naib Subedar w.e.f. 01.01.2006 with arrears.

9. The order of the Chandigarh Bench of AFT was then challenged by the Union of India before the Hon'ble Supreme Court by SLP (C) CC No. 18582 of 2010 which was dismissed by the Hon'ble Supreme Court vide order dated 13.12.2010 thereby upholding the order of Chandigarh Bench of AFT dated 08.02.2010. The matter was finally settled in ***Union of India & Ors Vs. Subhash Ch Soni in Civil Appeal No. 4677 of 2014*** decided on 20.05.2015 with the observation that no interest would be payable in such cases.

10. Pursuant to this order, the Government of India conveyed approval of the Ministry of Defence, (Dept. of Ex-Servicemen welfare) vide letter dated 30.10.2017 (Annexure-G of OA) for implementation of

the Hon'ble Supreme Court/ AFT's orders granting benefit of pension to the retired Havildars who were conferred Honorary rank of Naib Subedar before 2006. Based on the above facts, there is no reason as to why the authorities themselves could not have started paying the applicant revised pension in the rank of Naib Subedar.

11. This is not opposed by the learned counsel appearing for the respondents.

12. In view of the above discussions, we are of the opinion that the applicant is entitled to receive pension as applicable to Honorary Naib Subedar w.e.f. 01.01.2006. Therefore, the pension has to be revised on that basis which should be done by the respondents and arrears of pension be paid to him within a period of three months from the date of receipt of copy of this order failing which, the applicant would be entitled to simple interest @8% per annum in the arrears payable till realization.

13. This OA is accordingly allowed.

14. No costs.

MEMBER (A)

MEMBER (J)

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