(2019) 12 AFT CK 0017

In the Armed Forces Tribunal

Case No : Original Application No. 1964 Of 2019

Udal Prasad APPELLANT

Vs

Union Of India And Others RESPONDENT

Date of Decision : 02-12-2019

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14

Citation : (2019) 12 AFT CK 0017

Hon'ble Judges : Rajendra Menon, J;Philip Campose, Member (A)

Bench : Division Bench

Advocate : S.S. Pandey, J.S. Yadav

Final Decision : Allowed

Judgement

1. The applicant, Ex Hony Nb Sub Udal Prasad, has filed the instant Original Application under Section 14 of the Armed Forces Tribunal Act, 2007

praying for grant of pension of the rank of Naib Subedar.

2. Brief facts of the case are that the applicant retired from Army on completion of normal terms of service as Havildar and is being paid pension of

the rank of Havildar at the time of retirement. Thereafter, he was granted honorary rank of Naib Subedar and was paid a sum of Rs.100/- per month

as honorarium in addition to his pension as Havildar.

3. As part of recommendations of 6th Central Pay Commission accepted by the Government, the Honorary Naib Subedars were granted pension of

Naib Subedars deeming it to be a regular promotion for the purpose of fixation of pay and grade of pension. The Ministry of Defence vide letter

No.1(8)/2008-D(Pen/Policy) dated 12.06.2009 issued instructions accordingly. The said letter reads as under:

1. 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 Havidars 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/- p.m,

payable to Haw-Oars granted Hony rank of Nalb 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 for payment of retirement gratuity, encashment of leave, composite transfer grant etc.

2. This letter takes effect from 1st January, 2006.

3. This issues with the concurrence of Finance Division of this Ministry vide their 00 No.235/ Finance/Pension dated 3.6.2009.

4. The claim of the applicant for grant of pension of the rank of Naib Subedar, in accordance with the above instructions, has not been admitted on the

ground that the provision of the above letter was applicable only to honorary Naib Subedars who retired after 01.01.2006. Aggrieved by the denial of

their legitimate rights, the applicant has filed this application before this Tribunal. 5. Learned counsel for the applicant has cited the judgment of the

Armed Forces Tribunal, Chandigarh in Virendra Singh and others v. Union of India and others (OA No.42/2010 decided on dated 8.2.2010) wherein,

the Tribunal has granted relief to the applicant therein as allowed by the Ministry of Defence vide letter dated 12.06.2009.

6. We have heard the learned counsel appearing for both the parties and have gone through the record and instructions issued by the Government of

India, Ministry of Defence relating to fixing of pension of Naib Subedars.

7. A perusal of the letter dated 12.06.2009 clearly indicates that the provisions of the said letter take effect from 01.01.2006. Nowhere does it mention

that the provisions of this letter are applicable only to those Naib Subedars who retired after 01.01.2006. Thus it is clear that all the honorary Naib

Subedars would be eligible for grant of pension of the rank of Naib Subedar with effect from 01.01.2006.

8. We are of the opinion that notional fixation for pension is done for past cases and not for present and future cases as the fixation is actual. If the

fixation was to be effective for post 01.01.2006 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 01.01.2006 is the date of implementation of these instructions, clearly it is not a cut-off date for

awarding the benefits. In case these benefits were to be extended only to Havildars granted honorary rank 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.

9. The facts of this case are squarely covered by the aforesaid judgment of the Armed Forces Tribunal, Chandigarh in Virender Singh (supra), which

attained finality with the dismissal of S.L.P (C) CC No. 18582 of 2010 on 13.12.2010 by the Honible Supreme Court.

10. Viewed in this light, the instant 0.A is allowed and the applicant is granted pension of the rank of Naib Subedar as entitled with effect from

01.01.2006. We make it clear that the amount of Rs.100/-per month, which has already been paid to the applicants after 01.01.2006 in terms of the

Government letter dated 06.11.1991, shall be adjusted against the due amount as per this order and the payment of that amount of Rs.100/- shall be

discontinued. The arrears of pension with 6% interest per annum be calculated and credited to the applicant within a period of three months from the

date of receipt of this order.

11. No order as to costs.

