

SEE RULE 102 (1)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

APPLICATION : O.A. : 176/2018

DATED : THE SECOND DAY OF MAY, 2019

CORAM

HON'BLE DR. (MRS.) JUSTICE INDIRA SHAH, MEMBER (JUDICIAL)

HON'BLE LT GEN GAUTAM MOORTHY, PVSM, AVSM, VSM, ADC,  
HON'BLE MEMBER (ADMINISTRATIVE)

APPLICANT (S) : No. 6890309F HONY NB SUB  
MANINDRA NATH SARKAR (RETIRED)  
S/O Late Shoba Ram Sarkar  
Village & Post – Kushmandi (Master Para)  
Dist – Dakshin Dinajpur  
West Bengal – 733 132

**Versus**

RESPONDENT (S) : (1) The Union of India, service through  
The Defence Secretary  
Ministry of Defence  
South Block, DHQ, PO,  
New Delhi – 110 011

(2) The Chief of the Army Staff  
Sena Bhawan,  
Integrated HQ of MoD (Army)  
DHQ PO New Delhi – 110 011

(3) The Officer-in-Charge  
Army Ordnance Corps Records  
PIN – 900 453  
c/o 56 APO

Counsel for the applicant (s) : Mr. M. K. Sikdar, Ld. Advocate  
Ms. Manika Roy, Ld. Advocate

Counsel for the Respondent (s) : NONE

**ORDER**

PER LT GEN GAUTAM MOORTHY, PVSM, AVSM, VSM, ADC,  
MEMBER (ADMINISTRATIVE)

1. This case (O.A. No.–176/2018) has been filed by the applicant

under Section 14 of The Armed Forces Tribunal Act, 2007 (in short - The Act) for non grant of pension of the rank of Honorary Naib Subedar w.e.f. 26 January, 1986 (The date the Hony Rank was awarded to the applicant, i.e., on the eve of Republic Day 1986) by the Govt. of India in recognition of his hard work, devotion to duty a meritorious services. The same has been duly conveyed to the applicant by the then Officer-in-Charge, Records, The Army Ordnance Corps, Secunderabad vide letter No. 3004/RD-86/ADM (H&A) dt. 27 January 1986 (Annexure : A/3 of the O.A.).

### **Facts of the Case**

2. The facts of the case are that the applicant was enrolled in the Indian Army in the Army Ordnance Corps on 19 November, 1963 as a Sepoy (SKT) and was attested on 14.06.1965. During the course of his service, he was promoted to the rank of Havildar. On completion of 22 years and 12 days of qualifying service, the applicant retired on completion of his terms of engagement on 30 November, 1985. He was duly issued with his P.P.O. and discharge book on retirement. As per his submission, his pension has not been revised to Honorary Naib Subedar w.e.f. the date of grant of the rank i.e., 26 January, 1986 but it continued to be that corresponding to the rank of Havildar. The only change was that the service element of his pension was increased by Rs. 100.00 per month.

3. The applicant vide an appeal dt. 25<sup>th</sup> June, 2018, through his Ld. Counsel had approached the Chief of the Army Staff, Integrated HQ of MoD (Army), DHQ New Delhi – 110 011 and to the OIC Records, Army Ordnance Corps Records, Post – Trimulghery, Secunderabad – 500 015 (Annexure – A/5 of the O.A.) for grant of pension corresponding to his present rank i.e., Hony Naib Subedar. The Records, Army Ordnance Corps vide their letter No. 6890309/GR/ESM/NER dated 07 July, 2018 (Annexure – A/6 of the O.A.) had refused granting the applicant's pension in the present rank i.e., Honorary Naib Subedar. The above letter is reproduced below :-

Tele : Civ : 040-27730705  
Mil : 2745  
E-Mail : [tuskerretires.doc1@gmail.com](mailto:tuskerretires.doc1@gmail.com)  
6890309/GR/ESM/NER

Ex Hav (Hony Nb Sub)  
Manindra Nath Sarkar  
Vill & PO – Kushmandi (Master Para)  
Dist – Dakshin Dinajpur (WB)  
PIN – 733 132

**BY REGD POST**

Army Ordnance Corps Records  
PIN – 900 453  
c/o 56 APO  
07 July 2018

**APPEAL ON BEHALF OF NO 6890309 EX HAV (H/NB SUB) MANINDRA NATH SARKAR**

1. Refer to your Legal Notice dated 25 Jun 2018 served by Mr. MK Sikdar, Advocate & Chief Editor of AFLJ, Madras High Court & Armed Forces Tribunal on your behalf regarding revision of pension for the rank of Hony Nb Sub.
2. In this connection it is to inform you as per Govt of India, Min of Def letter No 1 (8)/2008-D(Pen/Policy) dated 12 Jun 2009 Honorary Nb Sub will be notionally considered for promotion to the higher rank of Nb Sub and benefits of fitment in the pay band in the higher grade will be allowed notionally for the purpose of fixation of pension only and additional pension elements of Rs. 100/- will cease to be payable. However, the said policy is applicable wef 01 Jan 2006 and the difference of pension in the case of Hony Nb Sub's rank will be substantial if the above provisions are made applicable to Pre 01 Jan 2006 Hony Nb Sub. Hence, Govt of India, MoD letter No 1(8)/2008-D (Pen/Policy) dated 12 Jun 2009 is not applicable to Pre 01 Jan 2006 cases.
3. Further the reference drawn of Department of Ex-Servicemen Welfare, New Delhi letter No. 3(8)/2013/D (Pen/Legal) dated 30 Oct 2017 where the approval of the competent authority in Ministry of Defence accorded for implementation of orders passed by Hon'ble Court / AFT for grant of bnfits of Hony Nb Sub in Pre 2006 cases.
4. Therefore, revision in terms of Department of Ex-servicemen Welfare, New Delhi letter No. 3(8).2013/D(Pension/Legal) dated 30 Oct 2017 is applicable only o receipt of orders from Hon'ble Court / AFT. No general policy on the subject has been issued by IHQ of MoD (Army) so far.
5. You are requested to apprise the facts to your counsel accordingly.

Sd/- x x x x x x x x  
Lt Col  
Senior Record Officer  
for OIC Records

4. On receiving the above reply, the applicant seeing no other alternative approached this Tribunal for grant of pension in the rank of Honorary Naib Subedar as entitled through this Original Application being No. 176 of 2018.

**Analysis and Order**

5. The issue of grant of pension in the rank of Hony Naib Subedar to the personnel who were discharged as Havildar is no longer res-integra. In view of the catena of judgments and Govt. of India, Ministry of Defence, Department of Ex-Servicemen Welfare letter No. 3(8)/2013/D (Pension/Legal) dated 30 October, 2017 this benefit was also extended this benefit with regard to the pension of Hony Nb Sub to those Havildars who were discharged pre-2006.

6. Hence, there is no requirement of calling for the Respondents to file any Affidavit-in-Opposition.

7. The applicant is entitled to the revised pension w.e.f. 01.01.2006 (the date of effectiveness of the order), though the applicant retired on 30<sup>th</sup> November, 1995. Therefore, his pension is to be revised by the Respondents within a period of 3 months from the date of receipt of this order, and be paid along with arrears (from 01.01.2006); failing which, a simple interest @ 8% per annum to be paid to the applicant till the date of realization.

8. It is also made clear that an amount of Rs. 100/- per month which was already paid to the applicant in terms of Govt. of India, Ministry of Defence letter dt. 06.11.1991 shall be adjusted against the amount due to the applicant as per this order and the said amount of Rs. 100/- per month as paid shall be discontinued.

9. Accordingly, this Original Application (O.A. No. – 176/2018) is allowed the directions as above.

10. The O I/C Legal Cell has made an oral prayer for appeal to the Hon'ble Supreme Court under Sec 31 of the AFT Act. As there is no point of law of general public importance, the appeal is denied.

11. No order as to costs.

12. A plain copy of this order, duly countersigned by the Tribunal Officer, to be furnished to both the sides after observance of all usual formalities.

(LT GEN GAUTAM MOORTHY)  
MEMBER (ADMINISTRATIVE)

(JUSTICE INDIRA SHAH)  
MEMBER (JUDICIAL)