

FORM NO. - 4
{See Rule 11 (1)}
ORDER SHEET

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

APPLICATION No. : O. A. No. - 88/2020

Applicant(s)

Ex Hav (Hony Nb Sub) Shib Narayan Datta

Legal Practitioner for Applicant(s)

Mr. Aniruddha Datta, Ld. Advocate

Respondent(s)

Union of India & Others

Legal Practitioner for Respondent(s)

Mr. Debu Chowdhury, Ld. Advocate

Notes of the Registry	<div style="text-align: center;"><u>ORDERS OF THE TRIBUNAL</u></div> <div>Order Ser. No. : _____</div> <div style="text-align: right;">Dated : 06.05.2022</div>
	<p style="text-align: center;"><u>OA 88/2020</u></p> <p>The applicant, Ex. Havildar (Hony Nb Sub) Shib Narayan Datta, has filed this application praying for issuance of directions to the respondents to implement Government of India, Ministry of Defence letter No. 1(8)/2008-D(Pen/Policy) dated 12th June.2009, and to grant him the notional fixation of pay in the rank of Naib Subedar and to fix his pension in terms thereof.</p> <p>2. It is the case of the applicant that he was enrolled in the Army as a Sepoy on 9th February, 1978 and was discharged from service on 28th February 2002 after putting in more than 24 years of service. It is further contended that after his discharge vide letter dated 15th August, 2002 (<i>Annexure A-1</i>) he was informed about conferment of Hony rank of Nb Sub on him. It is further contended that thereafter a corrigendum PPO increasing his service element of pension was also issued and, therefore, in view of the letter of MoD dated 12th June, 2009, he is entitled to notional promotion on the rank of Hony Naib Subedar and accordingly the pensionary benefits may be granted to him. The applicant,</p>

therefore, prays that the OA may be allowed.

3. Learned counsel for the respondents contended Government of India, MOD letter dated 12th June, 2009 is applicable to the Havildars, who were conferred with the rank of Honorary Naib Sub, on retirement, on or after 1st January, 2006 and the applicant who had been granted Honorary rank of Naib Subedar on 15th August, 2002 is not eligible for pension on the higher grade of Naib Subedar.

4. We have heard learned counsel on both sides.

5. The applicant's claim is mainly based on the letter dated 12th June, 2009 issued by the Government of India, Ministry of Defence. Under the aforesaid letter, Havildars who have been conferred Honorary rank of Naib Subedar have been granted regular pension with effect from 1st January, 2006 providing them notional promotion of higher grade of Naib Subedar. This letter reads thus:

"I am directed to say that in pursuance of Government 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 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 Hony rank of Naib Subedar as per Regulation 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 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 UO No. 2351/Finance/Pension dated 3.6.2009".

6. The issue involved in the case is no longer *res*

integra as it has already been decided by the AFT, Regional Bench, Kochi vide orders passed in O.A. No. 100 of 2012 and connected matters on 21st August 2012, as well as several Regional Benches of AFT including Regional Bench, Kolkata in OA 34/2017 and the Hon'ble Principal Bench, New Delhi.

7. In view of the above, the OA is allowed. The applicant is entitled to the benefits of letter No. 1(8)/2008-D (Pen/Policy) dated 12th June, 2009 issued by the Government of India, Ministry of Defence (Department of Ex-Servicemen Welfare), New Delhi (Annexure-A1) with effect from 1st January, 2006. The respondents are directed to issue necessary Corrigendum PPO to him and make payment of the amount due to the applicant within three months, including the entire arrears to be computed w.e.f 1st January 2006. The amount of Rs.100/- per month, which had already been paid to the applicant after 1st January, 2006 in terms of Government of India, MoD letter No. 1(1)/88/D(Pen/Sers) 06.11.1991, shall be adjusted against the amount due in terms of the order passed today and payment of that amount of Rs.100/- shall henceforth be discontinued.

8. The OA is thus allowed with no order as to costs.

(LT GEN BOBBY CHERIAN MATHEWS)
MEMBER (A)

/vks/

(JUSTICE ANJANA MISHRA)
MEMBER (J)