

FORM NO.4
(SEE RULE 11 (1))
IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA
ORDER SHEET

APPLICATION No. O.A. No. 35/2014

APPLICANT (S)	Ex-Hony Nb Sub K. K. Hati
RESPONDENT (S)	Union of India & 3 Others
Legal Practitioner for Applicant (s)	Legal practitioner for Respondents
Mr. S. K. Choudhury	Mr. Dipak Kumar Mukherjee

ORDERS OF THE TRIBUNAL

Order Serial Number:

8

Dated : 29.06.2015

This is an application under Section 14 of the Armed Forces Tribunal Act, 2007 (AFT Act, 2007) by an ex serviceman from Army for payment of arrears of his enhanced pension. Mr. S K Choudhury, learned counsel appears for the applicant and Mr. Dipak Kumar Mukherjee, learned counsel appears for the respondents.

The admitted fact on record is that the applicant retired on 30.04.1997 in the rank of Havildar from the Corps of Signal. He was granted Honorary rank of Naib Subedar post retirement on 15.08.1997. The applicant was getting an additional sum of Rs. 100/- per month for his honorary rank of Naib Subedar. The payment of said sum of Rs. 100/- has been stopped by the PCDA(P) vide their Circular No. 350 dated 19.05.2006. The said circular provides that the benefit of such payment shall be made available only when the persons retired after 01.01.2006. By another circular dated 12.06.2009 from Ministry of Defence provides that Hony. Rank of Naib Subedar granted to Havildars will be notionally considered as a promotion and benefit of fitment in the pay band and the higher grade pay will be allowed notionally for the purpose of fixation of pension. The submission of the learned counsel for the applicant is that the applicant and other similarly placed persons have been deprived of the benefit of fixation of their pension in spite of the circular of the Ministry of Defence. Attention has been drawn to an order dated 08.02.2010 passed by the Armed Forces Tribunal, Chandigarh Bench in OA No. 42/2010 (Virender Singh & Ors. vs Union of India & Ors.) wherein the Hon'ble Chandigarh Bench of AFT, after considering the questions, held that it would be arbitrary and discriminatory to deprive the benefits to those who have retired prior to 01.01.2006 and the enhanced pension should

be awarded to the Honorary Naib Subedar. It is held by the Hon'ble Bench that the date of implementation of the order would be 01.01.2006 and it is not the cutoff date for awarding the benefits. The relevant portion of the order (supra) is reproduced below:-

" This letter takes effect from 1st January 2006 implies that these benefits are applicable to those who retired as honorary Naib Subedars on granted "January 2006" In other words this was the cutoff case 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 nationally 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 nationally for the purpose of fixation of pension only. Accordingly additional element of person 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.

National fixation for pension is done for past cases and not for person are 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 no cease to be payable. Para 2 of the letter stating that it will take effect from 1st January 2006 is the date of implementation of these instructions it is not a cutoff 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 disparate with the same class and category of individuals honorary Naib Subedar 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 Nos 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 Record offices to implement the government instructions in letter and spirit. "

The SLP(C)) filed by the Union of India against the order (supra) before the Hon'ble Supreme Court has been dismissed (annex A-5 to the OA).

In another identical matter, in OA No. 447 of 2012, the Hon'ble AFI, Regional Bench, Lucknow held vide their order dated 22.10.2012 that *"we are in agreement with and follow the decision of Chandigarh Bench of the Tribunal in OA No. 42 of 2020 (Virendra Singh & Ors vs Union of India & Ors. and dispose of this Original Application with the direction to the respondents 1 to 3 to implement the Government instructions and release the entitled pension with arrears w.e.f 01.01.2006 to the applicant (Honrary Naib Subedar) within three months from the date of receipt of this order"* (annex A-6 to the OA).

We have been informed that almost every Bench of the AFI have granted leave to file appeal before the Hon'ble Supreme Court and followed the order of the Hon'ble Chandigarh Bench and the SLP against the said order has been dismissed by the Hon'ble Supreme Court. Accordingly, there appears no reason to differ with the decision of the Hon'ble Chandigarh Bench of the AFI.

In view of the above, the application is allowed. The respondents shall ensure that the applicant is paid henceforth his enhanced pension in terms of the Government of India order (supra) and the arrears of such enhanced pension shall be paid within three months from the date of receipt of this order along with simple interest at 9% per annum.

While parting with the case, we take notice of the facts of the case that a number of identical applications are filed from time to time before the different Benches of the Tribunal for payment of enhanced pension(supra). Once the Hon'ble Supreme Court has settled the matter in view of the Government of India order and PCDA(P)'s letter is held to be arbitrary and discriminatory, there appears no reason for the ex-army personnel to file petitions on the same subject. Hence it shall be obligatory on the part of the respondents to provide to all the ex-servicemen who are covered by the aforesaid order and the applicants may not be compelled to approach the Tribunal time and again. Let the Chief of the Army Staff and the ADG(PS) look into the matter and ensure that benefit of the order of the Tribunals to the ex-servicemen who are entitled be extended without compelling them to approach the Tribunal. The filing of multiple applications for the same cause of action should come to an end immediately and the benefit should be provided to all the similarly placed ex-servicemen.

Let a copy of this order be sent to the Chief of the Army Staff as well as ADG(PS) by the Registry for execution of this order expeditiously in terms of observations made (supra).

A plain copy of the order, duly countersigned by the Tribunal Officer, be given to the parties upon observance of all usual formalities.

(Lt Gen Gautam Moorthy)
Member (Administrative)

(Justice Devi Prasad Singh)
Member (Judicial)