

SEE RULE 102 (1)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

APPLICATION : O.A. : 175/2018

DATED : THE FIRST 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. 14208138K HONY NB SUB
SUKUMAR DEY (RETIRED)
S/O Late Kamakhya Dey
R/O Village – Nadipar Girls School Para,
PO – Chakvrigu, TO & Teh – Balurghat
Dist – Dakshin Dinajpur
(West Bengal) – PIN – 733 102

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
The Records Signals
PIN – 908 770
c/o 56 APO

(4) The Principal Controller of Defence Accounts
(Pensions), Sadar Bazar
Draupadi Ghat
ALLAHABAD (UP) – 211 001

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. – 175/2018) has been filed by the applicant under Section 14 of The Armed Forces Tribunal Act, 2007 (The Act) for non grant of pension of the rank of Honorary Naib Subedar w.e.f. 26 January, 1994 (The date the Hony Rank was awarded to the applicant, i.e., on the eve of Republic Day 1994) 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 vide OIC Records, Signals Records vide his D.O. letter No. 3477/CA-4/T-15/RD-94 dated 31 January, 1994 (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 Corps of Signals on 21 August, 1969 as a Signaller (Carpenter & Joiner) and he was subsequently attested on 10 April, 1971. During the course of his service, he was promoted to the rank of Havildar. On completion of 24 years and 11 days of qualifying service, the applicant was discharged on completion of his terms of engagement on 01 September, 1993. He was duly issued with his P.P.O. and discharge book on retirement. At a later date, in keeping with the policy in vogue, a Corrigendum PPO was issued on

21 June, 1994 (Annexure – A/3 of the O.A.), wherein the rank of the applicant had been shown as Hony Nb Sub. 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, 1994 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. 25th 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, The Signals Records, PIN – 908770, c/o 56 APO (Annexure – A/5 of the O.A.) for grant of pension corresponding to his present rank i.e., Hony Naib Subedar. The Records Signals vide letter No. 14208138K/SP/NER/T-1 (Imp) dated 14 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 :-

14208138K/SP/NER/T-1 (Imp)

Ex Hav & Hony Nb Sub
Sukumar Dey
Vill : Nadipar Girls School Para
PO : Chakvrigu
Dist : Dakshin Dinajpur
West Bengal-733102

"The Records Signals
PIN – 908 770
c/o 56 APO
14 July 2018

GRANT OF SERVICE PENSION IN RESPECT OF
NO-14208138K EX HAV & HONY NB SUB SUKUMAR DEY

1. Refer to your Legal Notice dated 25 Jun 2018 served by Mr. MK Sikdar, Advocate on your behalf.

2. It is intimated that, as per government of India, Ministry of Defence letter No. 1(8)/2008-D(Pen/Policy) dated 12 June 2009, Hony rank of Nb Sub granted to Hav will notionally considered a promotion to the higher grade of Nb Sub and benefit of fitment in the pay band and higher grade will be allowed notionally for the fixation of pension only. The letter was issued in pursuant to Govt decision on the recommendations of the 6th CPC. Since recommendation of 6th CPC were implemented wef 01 Jan 2006, the provisions of above Govt letter are applicable to Hav granted Hony rank of Nb Sub wef 01 Jan 2006.

3. Since, you were retired before 01 Jan 2006, the ibid benefit is not applicable in your case. Further, benefit of said order of Hon'ble AFT is applicable to the petitioner / applicant only.

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

Copy to

Mr. MK Sikdar, Advocate - for your information
Kirti Complex, 1st Floor
No. 31, Palavedu Rd,
Mittanamalli, IAF Avadi
Chennai – 55

NOO

Legal Cell - For info wrt your ION P/5492/LC/T-1/LN/323 dated 03 Jul 2018."

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. 173 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 also extended this benefit with regard to the pension of Hony Nb Sub to those Havildars who were discharged pre-2006, from 01.01.2006 onwards.

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. 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 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. – 175/2018) 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)