**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP No. 31879 of 2024
Reserved on: 18.12.2024
Pronounced on: 18.01.2025**

Jagdish Singh

.....Petitioner

Versus

Union of India and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Argued by: Mr. Bhim Sen Sehgal, Advocate
for the petitioner.

Ms. Bhavana Datta, Sr. Panel Counsel
for the respondents-UOI.

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<u>SURESHWAR THAKUR, J.</u>

1. The petitioner herein becomes aggrieved from the order rendered by the Ld. Armed Forces Tribunal, Chandigarh, on 09.10.2024 upon, O.A. No.1414 of 2021, whereby the said O.A., has been dismissed, and, the relief qua grant of benefit of one rank one pension has been declined, rather on the ground that benefit of one rank one pension would be received by the Honorary Naib Subedars, as and when, the revision is made vis-a-vis the minimum pension payable to the regular Naib Subedars, operative paragraph whereof becomes extracted hereinafter.

> *"Pension Tables issued vide notification dated 21.02.2022 have been upheld and grant of benefit of one rank one pension has been refused on the ground that benefit of one rank one pension would be received by the Honorary Naib*

> *Subedars as and when the minimum pension payable to a regular Naib Subedar is revised.*
>
> *In view of the above, the issue is covered by the judgment aforementioned and this Bench has no jurisdiction to review the same.*
>
> *Accordingly, all these cases are disposed of in terms of Ex. Hony Nb Sub Ram Kishan's case (supra)."*

BRIEF FACTS OF THE CASE

2. The petitioner whose date of birth is 15.11.1957 was enrolled in the Army on 22.03.1977 and he was discharged on 31.03.2001 after rendering a total service of 24 years against the rank of Havildar. However, he was granted the Honorary Rank of Naib Subedar, at the time of retirement and this was to be considered only as Notional Promotion(s), thus only for the purpose of fixation of his pension. The above was done in terms of the recommendations of Sixth Central Pay Commission. Moreover, the Ministry of Defence Govt of India issued circular dated 12 June 2009 which however was to take effect from 01 January 2006, relevant portion whereof becomes extracted hereinafter.

> *"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 Havildar 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 of Havildars granted Hony rank of Naib Subedars 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 Ist 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."*

3. The hereinabove underlined portion of the (supra) circular thus makes graphic underscorings, qua excepting endowments upon the Hony Rank of Naib Subedars, rather becoming notionally considered as promotion thereto, besides also notionally becoming considered for the purpose of fixation of pension only, thus the said conferment of the Hony Rank of Naib Subedar, but was not to result in payment of retirement gratuity, encashment of leave, composite transfer grant etc., to the individuals concerned.

4. That a large number of Havaldars who had been granted Hony Naib Subedar Rank prior to 01.01.2006, had also desired that they should be given benefits from the date they attained rank of Hony Naib Subedar. Ultimately a petition bearing O.A. No.42 of 2010 became filed by five persons seeking therebys the grant of benefits to them (i.e. pre 01.01.2006) alike the ones as become endowed to the soldiers post 01.01.2006. The said O.A. was allowed, wherebys irrespective of the date of retirement, thus of/from the Hony. Rank of Naib Subedar, yet therebys the latter became endowed the benefit of the (supra) circular.

5. The operative part of the said decision made, on 08.02.2010, upon O.A. No.42 of 2010, becomes extracted hereinafter.

> *"In view of the facts and circumstances of the case the application is allowed. Respondents No.1 to 6 are directed to implement the government instructions and release the entitled*

pension with arrears w.e.f. 01.01.2006 to honorary Naib Subedar within three months of the receipt of this order."

6. The apposite Special Leave petition, as become filed thereagainst, by the Union of India became dismissed on 13.12.2010, whereupons all concerned, became eligible besides became entitled to receive the grant of service pension vis-a-vis the rank of Naib Subedar w.e.f. 01.01.2006, thus irrespective of the date of retirement.

7. Thereafter, a case was filed to get further benefits whenever the pension was revised and this was allowed by the Bench of the AFT to the extent that as and when the pension become revised, thereupons, the benefit thereofs becoming assigned to the soldiers concerned. However, subsequently, the Government of India brought into being the policy of One Rank One Pension, but the benefit of the said policy was not given to these persons, which resulted in the filing of case bearing O.A. No.1414 of 2021, for the grant of One Rank one Pension from 01.07.2014, 01.07.2019 and then from 01.07.2024. However, the said O.A. became dismissed, through a verdict becoming rendered on 09.10.2024 (Annexure P-1). The reason for making an order of dismissal upon the O.A. (supra) by the Chandigarh bench of AFT, becomes anchored upon the judgment of the Full Bench of the Principal Bench, AFT, New Delhi, which is argued to be not applicable to the petitioner category of persons. In other words, the impugned dismissal order (supra), as made upon O.A. No.1414 of 2021, and as become banked upon the verdict as made by the Full Bench of the Principal Bench, AFT, New Delhi, is however stated to be not applicable to the facts at hand. Resultantly, a prayer is made that the said impugned verdict drawn by the AFT concerned, be nullified.

8. Therefores, the hereinafter formulated substantial questions of law are required to be answered by this Court;

> *a) whether the denial through the impugned verdict to the present petitioner qua the policy promulgated by the Government of India, wherebys contemplations were made for bestowing to the superannuated defence personnel the benefit of one rank one pension becomes well founded upon the judgment rendered by the Full Bench of the Principal Bench of the Principal Bench, AFT, New Delhi.*
>
> *b) whether the conferment of hony rank of Naib Suedar upon the petitioner, thus also endowing an entitlement upon the aforesaid to also become entitled to be construed to become promoted to the rank of regular Naib Subedar.*

<u>Answers to the (supra) questions of law</u>

9. Regulation No.180 of the Regulations for the Army – 1987, provides for, on the apposite retirement, thus the grant of Hony Rank of Naib Subedar, to the Havaldars, provisions whereof becomes extracted hereinafter.

> *"**180. Hony Rank of Naib Subedar on Retirement**; - The following are eligible for the grant of honorary rank of Naib Subedar, on retirement:-*
>
> *(a) Dafadar and Havildar Clerks (including those employed in recruiting offices) with twenty eight years pensionable service.*
>
> *(b) Dafedars and Havildars (other than clerks) who have not less than 21 years meritorious pensionable service and have served for two years in the rank of Dafedar/Havildar in substantive capacity.*
>
> *(c) Individuals in (a) and (b) above whose pensionable service is not sufficient to qualify under those clauses but who have rendered specially meritorious service."*

10. For the reasons to be assigned hereinafter, the decision rendered by the Full Bench of the Principal Bench, AFT, New Delhi, became well applied by the learned AFT concerned, in its making

dependence thereons.

11. The judgment of the Full Bench of the Principal Bench, AFT, New Delhi, became rendered on the apposite reference. The formulated reference for an answer becoming meted thereto by the Full Bench of the Principal Bench, AFT, New Delhi, becomes extracted hereinafter.

> *"(a) The calculation of pension for pre-2006 Hony Nb Sub @ Rs.7,750/- w.e.f. 1.01.2006 as allowed by the Hon'ble Supreme Court was held to be valid.*
> *(b) That the benefit of revision of pension undertaken by the CCS had not been extended to the Hony Nb Sub who had retired prior to 01.01.2006.*
> *(c) The tables annexed with the MoD letters dated 08.03.2010 and 17.01.2013 were quashed and the Union of India was directed to work out the requisite tables afresh.*
> *(d) That the benefit should be reckoned based on a notional minimum in the post-2006 revised pay scale s per the fitment table, corresponding to the maximum of the pre 6th CPC pay scale."*

12. The answers rendered thereons become embodied in paragraph 84 of the verdict (supra), paragraph whereof becomes extracted hereinafter.

> *"(a) A pre-2006 retiree Hony Nb Sub is entitled to the pension of a Hony Nb Sub as promulgated vide MoD notification dated 21.02.2010 and implementation instructions issued vide PCDA(P) Circular No.631 dated 05.03.2020.*
> *(b) The individual is not entitled to be pension of a regular Nb Sub as he is only entitled to the pension of a Hony Nb Sub which is calculated based on a notional promotion to the rank of a regular Nb Sub at the minimum of the pay band, including the grade pay, MSP and group pay as applicable.*
> *(c) This pension will be reckoned with reference to a notional maximum in the post 01.01.2006 revised pay structure*

> *corresponding to the maximum of the previous pay scales as per the fitment table for each rank, determined on the basis of notional maximum for the rank and group across the three Services, as applicable in fixing the pension of all pre-2006 retirees."*

13. The crystallized position of law as become declared in the above extracted paragraph, as carried in the verdict (supra), is that;

> *a) All pre 2006 retirees from the Hony rank of Naib Subedars, becoming entitled to the pension of regular Naib Subedar, in terms of MoD notification dated 21.02.2020 and implementation instructions issued vide PCDA(P) Circular No.631 dated 05.03.2020.*
> *b) Any individual become declared to not become entitled to the benefit of a regular Naib Subedar but he is only entitled to the pension of a Hony Naib Subedar, which is to be calculated on the base of the said calculation through endowing qua him a notional promotion to the rank of a regular Naib Subedar at the minimum of the pay band, including the grade pay, MSP and group pay as applicable.*
> *c) The said pension was reckoned with reference to a notional maximum in the post 01.01.2006 revised pay structure corresponding to the maximum of the previous pay scales as per the fitment table for each rank, determined on the basis of notional maximum for the rank and group across the three services, as applicable in fixing the pension of all pre-2006 retirees.*

14. As such the conferment of hony rank of Naib Subear, upon the Havaldars in contemporaneity to their superannuation taking place, does not make the conferment of the said hony rank, rather to be a promotion to the regular rank of Naib Subedar, but is only notional as such, besides is only for the purpose of endowment of benefits of pension, which however, is to be calculated at the minimum of the pay band, including the grade pay, MSP, and group pay as applicable to the

regular Naib Subedars. In addition, as and when the revision takes place in the pension payable to regular Naib Subedars, therebys there is to be a consequent endowment of escalation even to the hony rank of Naib Subedars.

15. Pursuant to the affirmation being made by the Apex Court to the verdict made on 08.02.2010, upon O.A. No.42 of 2010, the present petitioners filed OA No. 1414 of 2021, before the AFT, Chandigarh. However, the said OA became dismissed, thus through the making of the impugned order.

16. Consequently, since the basis of the verdict of dismissal, as made by the learned AFT concerned, becomes anchored upon the rendition of judgment (supra) by the Full Bench of the Principal Bench, AFT, New Delhi. Resultantly, this Court is required to discern the gravamen of the impugned order. The relevant paragraphs, as become carried in the judgment made by the Full Bench of the Principal Bench, AFT, New Delhi, which become depended upon in the impugned order, are embodied in paragraph Nos.29, 46 and 82, paragraph whereofs become extracted hereinafter.

> *"29. Mr. S.M. Dalal, learned counsel for the applicant in OA 589/2019 then concluded that a Hony Nb Sub was entitled to the same scale of pension as is fixed for a regular Nb Sub of the same Group. He emphasised that there cannot be a class of employees, wherein, pension was being calculated on different scales; the pension of pre-2006 retirees being calculated based on the pay scale of a Hav while the pension of post-2006 retirees being calculated based on the scale of a regular Nb Sub. He further added that the pension of a Hony Nb Sub in Group-Y with the length of service of 24 years was thus entitled to pension @ Rs.9,382/- w.e.f 01.07.2009/-; @ Rs.9429/- w.e.f 01.07.2014 (OROP) and Rs.24,233/- w.e.f 01.01.2016 in the 7th CPC. Similarly, the Hony Nb Sub in Group-X*

was entitled to have his pension fixed at Rs.10,115/- w.e.f 01.01.2016 to 30.06.2014, after which he would draw a pension based on OROP.

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46. Referring to the query regarding the disparity in the OROP table, the counsel emphatically stated that the fixation of pension in the cases at hand had no connection with OROP. He emphasized that once the pension was fixed as per the letter dated 21.02.2020/Circular No.631, it would automatically be assimilated by OROP as per the policy in vogue. Thus, the contention of the applicant that different parameters, had been adopted for fixing the pension of Hony Nb Sub in Group-X and Group-Y w.e.f. 01.07.2014 in the OROP table was incorrect The counsel stated that in preparing the OROP table applicable from 01.07.2014, the same principles and policies have been adopted for all ranks (Officers and JCOS/ORS). Elaborating on the principles of OROP, the counsel stated that pension was to be re- fixed for all pensioners based on the average of minimum and maximum pension of retired personnel as per the live data of 2013 for OROP-I w.e.f. 01.07.2014 and as per the live data of 2018 for OROP-II w.e.f. 01.07.2019 in the same rank/group and with the same length of service. He further elaborated that wherever, the rates of higher qualifying service in a rank were lower than the rates of lower qualifying service in the same rank/group, or where data is/are blank for higher qualifying service, then the same has been protected by the higher rate of lower qualifying service in the same group. Thus, due to this, many rates in the same column appear equal. He further added that similarly, wherever the revised rate of pension under OROP is lower in the higher rank than the rate in the lower rank in the same qualifying service, then the same has been protected with higher rates of lower rank resulting in similar rate i two adjacent columns for certain qualifying service.

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82. As regards the observations on the OROP Table, the counsel for the respondents has explained the rationale. We have no hesitation in upholding the fact that once the pension of pre-2006 Hony Nb Subs are re-fixed as per the Tables given in the notification dated 21.02.2020, their pension under OROP will be automatically scaled. We do not wish to examine the OROP issue any further as this is beyond the issue in Reference to this Large Bench."

17. However, though in the relevant paragraph 82, as carried in the judgment rendered by the Full Bench of the Principal Bench, AFT, New Delhi, the learned Full Bench concerned, proceeded to unhesitatingly uphold, the fact that once the pension of pre-2006 Hony. Naib Subdars, are re-fixed as per the tables given in the notification dated 21.02.2020, thereupons the pension of the (supra) under OROP scheme, thus become automatically scaled. However, in the last sentence of the said paragraph, the Full Bench of the Principal Bench, AFT, New Delhi, declared that it does not intend to examine the OROP issue any further as this is beyond the issue in reference to the Full Bench concerned.

18. Though, the learned counsel for the petitioner argues, that the (supra) last sentence which occurs in paragraph 82 of the verdict pronounced by the Full Bench of the Principal Bench, AFT, New Delhi, thus makes the prior thereto observations relating to the upholdings of the quantum of pension endowed vis-a-vis pre-2006 Hony. Naib Subdars, which is declared to become calculated in consonance with the table given in the notification dated 21.02.2020, besides with the further declaration therein, that therebys the pension under OROP would become automatically scaled, rather to be of no consequence, given the same being orbiter dicta. In other words, he submits that since therebys the earlier thereto apposite upholdings, thus also becomes obiter dicta, as the (supra) last sentence makes them, to be so construed.

19. However, the (supra) argument is mis-founded inter alia for the following reasons:-

a) Unless the upholdings (supra) become reversed by the Apex Court through a SLP becoming successfully made thereagainst by the aggrieved-petitioners, thereby the said upholding holds force.

b) Needless to state that (supra) last sentence which occurs in paragraph 82, wherebys the Full Bench of the Principal Bench, AFT, New Delhi, proceeded to not further dilate upon the issue relating to OROP, on the ground, that the same is beyond the issue in reference to the Full Bench concerned, thus cannot dilute the strength of the upholdings (supra), as occur in the prior thereto sentence, especially when the said sentence acquires binding and conclusive force, given the same remaining unsuccessfully challenged before the Apex Court, in the apposite SLP, rather as reared at the instance of the soldiers concerned.

c) It is further needless to state that the said last sentence, is neither obiter dicta nor it overshadows the effective impact of the prior thereto binding and conclusive upholdings of notification dated 21.02.2020 nor does it eclipse the effective binding decision made thereins, qua the pension of the retirees under the OROP, thus becoming automatically become scaled but only upon the makings of revision of the pensions of the regular Naib Subedars.

d) The aforesaid penultimate sentence which as stated (supra), acquires complete effectivity, thus is also in alignment with the apposite bestowment made through letter dated 12.06.2009, wherebys vis-a-vis the hony. Rank of Naib Subedar, a declaration is made that the said conferred hony. Rank, will be only a notional promotion to the higher grade of Naib Subedar and only for the benefit of computation of pension.

e) Since the answers (supra), as made to the (supra) reference by the Full Bench of the Principal Bench, AFT, New Delhi, also pronounced the relevant reckoners' for calculating the pension vis-a-vis the Hony. Naib Subedars, inasmuch, as the said reckoner becoming grooved on calculations of pension to the Hony. Naib Subedars, rather being made at the minimum of the pay band, including the grade pay, MSP and group pay as applicable to the regular Naib Subedars. Moreover, with the corresponding revision taking place in the pension to be endowed to the regular Naib Subedars, therebys the benefits of the said escalations becoming also concomitantly endowed to the Hony Naib Subedars, thus is in consonance with the circular (supra), wherebys there is no breach to the principle of OROP.

20. Consequently, the argument raised before this Court by the learned counsel for the petitioner, that the said last sentence, is merely obiter dicta and nor therebys any reliance was amenable to be placed on the prior thereto sentence, which occurs in paragraph 82 of the verdict rendered by the Full Bench of the Principal Bench, AFT, New Delhi, but is legally unworthwhile, and, as such, is rejected.

21. In consequence, the revision of pension as claimed by the

present petitioner in terms of OROP is a pre mature claim and would become bestowed upon him only upon the happening of revisions in the pension payable to a regular Naib Subedar. The said reason is thus completely in alignment with the (supra) extracted answers, as become meted to the relevant reference, thus by the Full Bench of the Principal Bench, AFT, New Delhi, especially when the said decision became in toto affirmed by the Apex Court in SLP (supra).

22. In aftermath, this Court finds no merit in the instant writ petition and with the observation(s) aforesaid, the same is dismissed.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

January 18th, 2025

Whether speaking/reasoned	**:**	**Yes/No**
Whether reportable	**:**	**Yes/No**