

COURT NO. 1, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

56.

MA 3247/2023 IN OA 1256/2023

In the matter of :

Sgt Satyanath Mishra (Retd)

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri Tatsat Shukla, Advocate

For Respondents : Shri Kumar Gaurav, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C P MOHANTY, MEMBER (A)

O R D E R
16.08.2023

MA 3247/2023

This application is filed under Rule 25 of the Armed Forces Tribunal (Procedure) Rules, 2008 for Revial of OA duly supported by an affidavit. For the averments made in this application. The same is allowed. The OA is restored to its original file. MA stand disposed of.

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2. OA is taken on board.
3. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has prayed for the following reliefs:-

(a) To direct the respondents to grant a notional annual increment on the payment of the applicant as on completion of his service from 01 Jan 2022 to 31 Dec 2022 and refix his pension according to the increased pay.

(b) To direct the respondents to give arrears to the applicant @ 12 % interest from the date of release from service.

(c) To direct the respondent to issue fresh/corrigendum PPO in respect of applicant in accordance with increased pay after granting notional increment

(d) To pass any other order or direction in favour of applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.

2. In this OA, the only question that arises for our consideration is as to whether an employee who retired on 30th June or 31st December of a year is entitled to the benefit of increment that falls due on 1st July of that year or 1st January of the next year. The applicant in this case was enrolled in the **Indian Air Force** on **16th December, 2002** and discharged from service on **31st December, 2022**. He was, however, denied the benefit of increment, which was otherwise due to him. He was given his last annual increment on **1st January, 2022** and was denied

the increment that fell due on **1st January, 2022** on the ground that he was not in service on the day when it fell due.

3. According to the applicant merely because the applicant on being superannuated was not in service on the 1st day of July of the year from which he was to be paid the increment, the denial of increment to him, which he had earned by working for a year, is unsustainable in law. Placing reliance on an order passed by the Madras High Court on 15th September, 2017, in WP No.15732/2017 in the case of **P Ayyamperumal** Vs. **The Registrar, Central Administrative Tribunal, Madras Bench and Ors.**, and the order passed by the Central Administrative Tribunal on 21st March, 2017 in OA No.310/00917/2015, applicant has prayed for the relief claimed in this OA.

4. Learned counsel for the respondents has brought to our notice two interlocutory orders passed by the Hon'ble Supreme Court in CA Diary No.875/2023 and 2853/2023, wherein orders passed by the Regional

Bench, Lucknow, granting similar relief, as claimed for in this OA, have been stayed.

5. However, learned counsel for the applicant has further brought to our notice an order passed by the Hon'ble Supreme Court on 11th April, 2023 in Civil Appeal No.2471 of 2023, namely, **The Director (Admn and HR) KPTCL and Ors. Vs. C.P. Mundinamani and Ors.**, and in the aforesaid judgment the Hon'ble Supreme Court has taken note of the judgment rendered by the Madras High Court in the case of **P Ayyamperumal** (supra), the provisions of the Regulations in the matter of payment of increment, decisions of the Gujarat High Court, the Delhi High Court, the Allahabad High Court, the Madhya Pradesh High Court and the Orissa High Court and finally after taking note of various aspects of the matter, the issue has been discussed in detail in Para 6.2, 6.4 and 6.5 in the following manner:-

“6.2 It is the case on behalf of the appellants that the word used in Regulation 40(1) is that an increment accrues from the day following that on which it is earned and in the present case the increment accrued on the day when they retired and therefore, on that day they were not in service and therefore, not entitled to the annual increment which they might have earned one day earlier. It is also the

case on behalf of the appellants that as the increment is in the form of incentive and therefore, when the employees are not in service there is no question of granting them any annual increment which as such is in the form of incentive.

6.4 Now so far as the submission on behalf of the appellants that the annual increment is in the form of incentive and to encourage an employee to perform well and therefore, once he is not in service, there is no question of grant of annual increment is concerned, the aforesaid has no substance. In a given case, it may happen that the employee earns the increment three days before his date of superannuation and therefore, even according to the Regulation 40(1) increment is accrued on the next day in that case also such an employee would not have one year service thereafter. It is to be noted that increment is earned on one year past service rendered in a time scale. Therefore, the aforesaid submission is not to be accepted.

6.5 Now, so far as the submission on behalf of the appellants that as the increment has accrued on the next day on which it is earned and therefore, even in a case where an employee has earned the increment one day prior to his retirement but he is not in service the day on which the increment is accrued is concerned, while considering the aforesaid issue, the object and purpose of grant of annual increment is required to be considered. A government servant is granted the annual increment on the basis of his good conduct while rendering one year service. Increments are given annually to officers with good conduct unless such increments are withheld as a measure of punishment or linked with efficiency. Therefore, the increment is earned for rendering service with good conduct in a year/specified period. Therefore, the moment a government servant has rendered service for a specified period with good conduct, in a time scale, he is entitled to the annual increment and it can be said that he has earned the annual increment for rendering the specified period of service with good conduct. Therefore, as such, he is entitled to the benefit of the annual increment on the eventuality of having served for a specified period (one year) with

good conduct efficiently. Merely because, the government servant has retired on the very next day, how can he be denied the annual increment which he has earned and/or is entitled to for rendering the service with good conduct and efficiently in the preceding one year.

[emphasis supplied]

6. Thus, the Hon'ble Supreme Court having considered the judgements of various High Courts in this matter finally issued directions as given at Para 7, which is reproduced herein below:-

“7. In view of the above and for the reasons stated above, the Division Bench of the High Court has rightly directed the appellants to grant one annual increment which the original writ petitioners earned on the last day of their service for rendering their services preceding one year from the date of retirement with good behaviour and efficiently. We are in complete agreement with the view taken by the Division Bench of the High Court. Under the circumstances, the present appeal deserves to be dismissed and is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.”

7. From the aforesaid, it is clear that as per the law laid down by the Hon'ble Supreme Court in the case of **C.P. Mundinamani and Ors.** (supra), an employee earns his annual increment on the last day of the specified period for rendering service during the preceding one year, i.e., on account of good behaviour and efficiency. The Hon'ble Supreme Court agrees with the decisions of

various High Courts and holds that an employee is entitled to increment which according to him he earns on the last day of the specified period, i.e., one year. It has been observed that the increment which the employee earns a day before the date of his retirement cannot be denied to him only because he has superannuated on the same day when he earned the increment or was not in service on the next day. In sum and substance, the Hon'ble Supreme Court in its detailed judgment, after referring to various principles of law, has approved not only the law laid down by the Madras High Court in the case of **P Ayyamperumal** but also similar views taken by various other High Courts and also disagreed with the view taken by the Full Bench of Andhra Pradesh High Court. That being so, we have no hesitation in holding that in the light of the latest judgment of the Hon'ble Supreme Court in the case of **C.P. Mundinamani** (supra) this application is to be allowed. Accordingly, we allow the application and dispose of the matter in the following terms:-

8. For the foregoing reasons, the OA is allowed. The respondents are directed to:

- (a) Grant one notional increment to the applicant for the period **1st January, 2022** to **31st December, 2022**, as he has completed one full year of service, for the purpose of pensionary benefits and not for any other purpose;
- (b) Issue fresh corrigendum PPO to the applicant accordingly;
- (c) Give effect to this order within a period of four months from the date of receipt of a certified copy of this order. The arrears that become due shall be paid without interest.

9. There shall be no order as to costs.

[RAJENDRA MENON]
CHAIRPERSON

[C. P. MOHANTY]
MEMBER (A)

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