

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

OA 2006/2022 with MA 2646/2022

Ex Sgt Aman Kant Budhiraja ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Shri Ramniwas Bansal, Advocate

For Respondents : Shri Niranjana Das, Advocate

OA 2016/2022 with MA 2665/2022

Ex Sub Clk Balraj Singh ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Shri Ved Prakash, Advocate

For Respondents : Shri Arvind Kumar, Advocate

OA 2017/2022

Sgt Sobhraj Singh Parihar (Retd) ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Shri Dhiraj Kumar, Advocate

For Respondents : Sgt Arjun, IAF

OA 2020/2022 with MA 2668/2022

Ex WO Niranjana Singh Bhamla ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Shri Ramniwas Bansal, Advocate

For Respondents : Shri Ranbir S. Chhillar, Advocate

OA 2024/2022**Ex Sgt Raj Romenskumar Rameshbhai ... Applicant****Versus****Union of India & Ors. ... Respondents****For Applicant :** Shri Ramniwas Bansal with Shri Navin Kumar, Advocate**For Respondents :** Shri D.K. Sabat, Advocate**OA 2025/2022****HFL Devendra Nath Rai (Retd) ... Applicant****Versus****Union of India & Ors. ... Respondents****For Applicant :** Shri Bipin Bihari, Advocate**For Respondents :** Shri Satya Ranjan Swain, Advocate**OA 2026/2022****Sgt (MACP) Anish George (Retd) ... Applicant****Versus****Union of India & Ors. ... Respondents****For Applicant :** Shri Tatsat Shukla, Advocate**For Respondents :** Shri Y.P. Singh, Advocate**OA 2052/2022****Sgt (AUP JWO) Balwant Singh ... Applicant****Versus****Union of India & Ors. ... Respondents****For Applicant :** Shri Manoj Kumar Gupta, Advocate**For Respondents :** Shri K.K. Tyagi, Advocate

CORAM :

**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN P.M. HARIZ, MEMBER (A)**

O R D E R

MA 2646/2022 (in OA 2006/2022), MA 2665/2022 (in OA 2016/2022) and MA 2668/2022 (in OA 2020/2022) :

Heard learned counsel for the parties on the point of delay. The applicant has explained reasons for delay of 3711 days in filing OA 2006/2022; 247 days in filing OA 2016/2022 and 413 days in OA No. 2020/2022. Keeping in view the averments made in the MA and finding the same to be bonafide and in the light of the decision in **Union of India and others Vs. Tarsem Singh [2008 (8) SCC 648]**, we allow the instant MA and condone the aforesaid delay in filing the OA. Both the above MAs stand disposed of accordingly.

OA 2006/2022, OA 2016/2022, OA 2017/2022, OA 2020/2022, OA 2024/2022, OA 2025/2022, OA 2026/2022 and OA 2052/2022 :

In these OAs, the only question that arises for consideration is as to whether the employees, who retired on 30th June of a year, are entitled to be extended the benefit of increment that falls due on 1st July of the concerned year.

2. We have numerous similarly placed cases pending for adjudication wherein the applicants have either retired on 31st December or 30th June and have been denied the increment due merely on the ground that the applicant is no longer in service the next day due to retirement.

3. The applicants in all the above cases have retired on 30th June of the year concerned. However, they were denied the benefit of increment, which was otherwise due to them, only on the ground that by the time the increment became due, they were not in service.

4. We have heard both parties at length and have examined the documents on record.

5. The 6th CPC submitted its Report on 24.03.2008 and the Govt promulgated the acceptance of the recommendations of 6th CPC with modifications through the Govt.

Extraordinary Gazette Notification 304 dated 29.08.2008. This notification was applicable to Central Govt. civilian employees in Group A, B, C & D; All India Civil Services and Regulatory Bodies (less RBI). This notification was thus also applicable to the armed forces personnel and implementation instructions for the respective Services were issued through Service specific instructions where in the provisions were identical. In the case of the Army, implementation instructions were issued through SAI 1/S/2008 and SAI 2/S/2008 for JCO/OR and officers respectively. These instructions clearly lays down that there will be a uniform date of annual increment, viz. 1st July of every year and that personnel completing 6 months and above in the revised pay structure as on 1st day of July, will be eligible to be granted the increment'. The relevant extracts of SAI 2/S/2008 pertaining to increment from both these SAI are extracted below and these hold good for Officers/JCOs/OR of both IAF and IN.

(e) In case of officers whose date of next increment falls on 1st day of January 2006, the increment will be drawn in the pre-revised scale and pay fixed after including this increment in accordance with the tables given at Appendices 'C' , 'D' and 'E' to this instruction. Such officers would also get their next increment on 01 Jul 2006.

8. xxx xxx

9. Rate of Increment in the Revised Pay Structure. The rate of increment in revised pay structure will be 3% of the sum of the pay in the pay band and grade applicable , which will be added to the existing pay in the pay band . Illustration 3 in Appendix 'B' to this instruction refers.

10. Date of Next Increment in the Revised Pay Structure. There will be a uniform date of annual increment, viz 1st July of every year . Officers completing 6 months and above in the revised pay structure as on 1st July will be eligible to be granted the increment after fixation of pay on 01 Jan 2006 in the revised structure will be granted on 01 Jul 2006, for those officers for whom the date of increment was between 01 Jul 2006 to 01 Jan 2007. Further, all officers who earned their last increment between 02 Jan 2005 and 01 Jan 2006 would get their next increment on 01 Jul 2006, provided that :

(a) In the case of officers who had been drawing maximum of the scale for more than a year as on the 1st day of January, 2006, the next increment in the revised pay structure shall be allowed on the 1st day of January, 2006. Thereafter, provision of Para 11 would apply.

(b) In cases where an officer reached the maximum of his pay band, he shall be placed in the next higher pay band after one year of reaching such maximum. At the time of placement in the higher pay band, benefit of one increment will be provided. Thereafter, he/ she will continue to move in the pay band till his/ her pay in the pay band reaches the maximum of PB-4 after which no further increments will be granted.

6. The rules for increment were however modified in the 7th CPC wherein increment was admissible either on 01 January or 01 July depending upon the date of appointment/ promotion/ upgradation. Extracts from 7th CPC (Army Pay Rule 2007

Officers) are reproduced below; similar provisions exist for JCO/men too.

“10. Date of increment in revised pay structure.-

(1) There shall be two dates for grant of annual increment namely, 1st January and 1st July of every year, instead of existing date of 1st July, provided that an Officer shall be entitled to only one annual increment, either on 1st January or 1st July depending on the date of his appointment or promotion or upgradation.

(2) The increment in respect of an Officer appointed or promoted or upgraded during the period between the 2nd day of January and 1st day of July (both inclusive) shall be granted on the 1st day of January and the increment in respect of an Officer appointed or promoted or upgraded during the period between the 2nd day of July and 1st day of January (both inclusive) shall be granted on 1st day of July.

Illustration:

(a) In case of an officer appointed or promoted or upgraded in the normal hierarchy during the period between the 2nd day of July, 2016 and the 1st day of January, 2017, the first increment shall accrue on the 1st day of July, 2017 and thereafter it shall accrue after one year on annual basis.

(b) In case of an officer appointed or promoted or upgraded in the normal hierarchy during the period between the 2nd day of January 2016 and the 1st day of July, 2016, who did not draw any increment on 1st day of July, 2016, the next increment shall accrue on the 1st day of January, 2017 and thereafter it shall accrue after one year on annual basis:

Provided that in case of Officers whose pay in the revised pay structure has been fixed as on 1st day of January, the next increment in the Level in which the pay was so fixed as on 1st day of January, 2016 shall accrue on 1st day of July, 2016.

Provided further that the next increment after drawal of increment on 1st day of July 2016 shall accrue on the 1st day of July 2017.”

7. In the case of **P. Ayyamperumal Vs. The Registrar, Central Administrative Tribunal, Madras Bench and Others** [W.P. No. 15732/2017] filed in the High Court of Madras, the petitioner had filed the Writ Petition to quash the order dated 21.03.2017 passed by the Central Administrative Tribunal (CAT), Madras Bench in OA/310/00917/2015 and to consequently direct the DG, Customs & Central Excise (the fourth respondent therein) to treat the retirement date of the petitioner as 01.07.2013 and grant him all the consequential benefits including the pensionary benefits. The High Court in its judgement dated 15.09.2017 held that the petitioner shall be given one notional increment for the period from 01.07.2012 to 30.06.2013, as he has completed one full year of service, though his increment fell on 01.07.2013, for the purpose of pensionary benefits and not for any other purpose. Paras 5, 6 and 7 of the aforesaid judgment dated 15.09.2017 read as under :

“5. The petitioner retired as Additional Director General, Chennai on 30.06.2013 on attaining the age of superannuation. After the Sixth Pay Commission, the Central Government fixed 1st July as the date of increment for all employees by amending Rule 10 of the Central Civil Services (Revised Pay) Rules, 2008. In view of the said amendment, the petitioner was denied the last increment, though he completed a full one year in service, ie., from 01.07.2012 to 30.06.2013. Hence, the petitioner filed the original application in O.A.No.310/00917/2015 before the Central Administrative Tribunal, Madras Bench, and the same was rejected on the ground that an incumbent is only entitled to increment on 1st July if he continued in service on that day.

6. In the case on hand, the petitioner got retired on 30.06.2013. As per the Central Civil Services (Revised Pay) Rules, 2008, the increment has to be given only on 01.07.2013, but he had been superannuated on 30.06.2013 itself. The judgment referred to by the petitioner in State of Tamil Nadu, rep. by its Secretary to

Government, Finance Department and others v. M. Balasubramaniam, reported in CDJ 2012 MHC 6525, was passed under similar circumstances on 20.09.2012, wherein this Court confirmed the order passed in W.P.No.8440 of 2011 allowing the writ petition filed by the employee, by observing that the employee had completed one full year of service from 01.04.2002 to 31.03.2003, which entitled him to the benefit of increment which accrued to him during that period.

7. *The petitioner herein had completed one full year service as on 30.06.2013, but the increment fell due on 01.07.2013, on which date he was not in service. In view of the above judgment of this Court, naturally he has to be treated as having completed one full year of service, though the date of increment falls on the next day of his retirement. Applying the said judgment to the present case, the writ petition is allowed and the impugned order passed by the first respondent-Tribunal dated 21.03.2017 is quashed. The petitioner shall be given one notional increment for the period from 01.07.2012 to 30.06.2013, as he has completed one full year of service, though his increment fell on 01.07.2013, for the purpose of pensionary benefits and not for any other purpose. No costs."*

8. However, CGDA vide its letter No. AN/XIV/19015/Govt Orders/2019 dated 09.02.2021 forwarded the copy of DoPT Office Memorandum F. No. 19/2/2018-Estt.(Pay-I) dated 03.02.2021 which stated that the issue had been examined in this Department in consultation with the Department of Legal Affairs and it has been observed that the judgment dated 15.09.2017 of the High Court of Madras in W.P. No.15732 of 2017 in the case of *P. Ayyamperumal (supra)* was 'in personam' in nature and that the decision to implement the Madras High Court judgement **in rem** had not been taken. This OM which has been communicated to all the Ministries and Departments to explain the Govt's position is reproduced below:

“OFFICE MEMORANDUM

Subject: References/Representations/Court cases for granting notional increment for pensionary benefits in pursuance of the judgement dated 15.09.2017 of Hon'ble High Court of Madras in W.P. No. 15732 of 2017 in the case of P. Ayyamperumal Vs Union of India & Ors-regarding.

The undersigned is directed to refer to references/representations/ court cases/ VIP references, received in this Department in large numbers on the issue of granting notional increment for pensionary benefits to those Central government servants who have retired on 30th June/ 31st December of a year, in pursuance of the judgement dated 15.09.2017 of Hon'ble High Court of Madras in W.P.No.15732 of 2017 in the case of P. Ayyamperumal Vs Union of India & Ors.

2. The issue has been examined in this Department in consultation with Department of Legal Affairs and it has been observed that the judgement dated 15.09.2017 of Hon'ble High Court of Madras in W.P. No.15732 of 2017 in the case of P. Ayyamperumal Vs Union of India & Ors. is 'in personam' in nature. A brief note reflecting the Government's stand on this issue is attached as Annexure-1.

3. Further, it is also mentioned that in a similar case, the Hon'ble Supreme Court, vide judgment dated 29.03.2019 (copy enclosed as Annexure-11), while dismissing the SLP (C)Dy.No.6468/2019 filed by D/o Telecommunications against the judgment dated 03.05.2017 of Hon'ble High Court, Lucknow Bench in WP No.484/2010 in the matter of UOI & Ors. Vs. Sakha Ram Tripathy & Ors., has, inter alia, observed the following:

*"There is delay of 566 days in filing the special leave petition. We do not see any reason to condone the delay. The Special leave petition is dismissed on delay, **keeping all the questions of law open.**"*

4. Since the question of law is open and not yet decided, decision for implementation of the judgment dated 15.09.2017 of Hon'ble High Court of Madras in W.P. No. 15732 of 2017 in Shri P. Ayyamperumal case, in rem has not been taken.

5. Accordingly, all Ministries/ Departments are, therefore, advised to dispose of all pending grievances seeking notional increment for pensionary benefits and also to defend the various pending Court Cases in this matter.

6. *In their application to the persons belonging to Indian Audit and Accounts Department, these orders are issued under Article 148(5) of the Constitution and after consultation with the Comptroller and Auditor General of India.*

7. *Hindi Version will follow.*

Sd/-3.2.21

(Murali Bhavaraju)

Deputy Secretary to the Government of India

9. In the explanatory Note reflecting the Govt's stand attached with this letter/OM is extracted below :-

"2. In light of the relevant provisions of the Fundamental Rules like 9 (21), 9(6), 17(1), 22, 26(a) and 56(a), as also the provisions of CCS (RP) Rules, 2008, a person appointed as a Government servant is entitled to pay, and is also entitled to draw the annual increment as long as such Government servant discharges duties of the post. However, such Government servant may not be entitled to draw the pay and allowances attached to the post as soon as he ceases to discharge those duties. In other words, as per F.R. 17 read with F.Rs. 24 and 26, annual increment is given to a Government servant to enable him to discharge duty and draw pay and allowances attached to the post. If such Government servant ceases to discharge duties by any reason say, by reason of attainment of age of superannuation, he will not be entitled to draw pay and allowances. Such an employee would not be entitled to any increment if it falls due after the date of retirement, be it on the next day of retirement or sometime thereafter. An employee must satisfy not only the condition of becoming entitled for increment, but also should continue to be on duty as a Government servant on the due date (1st July/ 1st January) to avail the increment.

3. *Further, in a similar matter, Hon'ble High Court of Andhra Pradesh at Hyderabad, in the year 2005, in the C. Subbarao case, has, inter alia, observed as under:*

"In support of the above observations, the Division Bench also placed reliance on Banerjee case (supra). We are afraid, the Division Bench was not correct in coming to the conclusion that being a reward for unblemished past service, Government

servant retiring on the last day of the month would also be entitled for increment even after such increment is due after retirement. We have already made reference to all Rules governing the situation. There is no warrant to come to such conclusion. Increment is given (See Article 43 of CS Regulations) as a periodical rise to a Government employee for the good behaviour in the service. Such increment is possible only when the appointment is "Progressive Appointment" and it is not a universal rule. Further, as per Rule 14 of the Pension Rules, a person is entitled for pay, increment and other allowances only when he is entitled to receive pay from out of Consolidated Fund of India and continues to be in Government service. A person who retires on the last working day would not be entitled for any increment falling due on the next day and payable next day thereafter (See Article 151 of CS Regulations), because he would not answer the tests in these Rules. Reliance placed on Banerjee case (supra) is also in our considered opinion not correct because as observed by us, Banerjee case (supra) does not deal with increment, but deals with enhancement of DA by the Central Government to pensioners. Therefore, we are not able to accept the view taken by the Division Bench. We accordingly, overrule the judgment in Malakondalah case (supra)."

4. *In addition, subsequent to the judgment of Hon'ble High Court of Madras in the P. Ayyamperumal case, Hon'ble CAT Madras Bench vide its Orders dated 19.03.2019 in O.A.No.310/00309/2019 and O.A. No.310/00312/2019 and Order dated 27.03.2019 in O.A. No.310/00026/2019 has also dismissed similar requests related with notional increment for pensionary benefits."*

10. The aspect of notional increment was also adjudicated by the CAT and the petitioners there were allowed the increment. CAT Order dated 15.07.2021 in **OA No.776/2019 [Society for Teachers' Cause & Ors. Vs. Union of India & Ors. and other connected cases]**, is reproduced below:-

"1. *In this batch of OAs, the only question that arises for consideration is as to whether an employee, who retired on 30th June of a year or 31st December of a preceding year,*

is entitled to be extended the benefit of increment that falls due on 1st July or 1st January of the next year, as the case may be. While the applicants in some of the cases have retired on 30th June, others retired on 31st December. They were denied the benefit of increment, which was otherwise due to them, only on the ground that by the time the increment became due, they were not in service.

2. The applicants contend there was absolutely no basis for the respondents in denying the benefit to them. Reliance is placed upon many orders passed by the Tribunal as well as the different Hon'ble High Courts. It is also stated that the judgments rendered by the Hon'ble High Courts were affirmed in some of the SLPs. Particulars thereof are also furnished.

3. The respondents filed the counter affidavits in respective OAs. Their stand is that with the retirement, the relationship of the employee with the Government ceases and once he is out of service, the Fundamental Rules do not permit extension of any benefit.

4. xxx xxx

5. The issue as mentioned above, fell for consideration in a large number of cases. The Benches of this Tribunal as well as the different Hon'ble High Courts have taken the view that the increment becomes payable on account of the satisfactory service rendered by the employee for the preceding six months, and the mere fact that he retired one day earlier, should not be factored to deny him the benefit. It is also a matter of record that some SLPs filed against the detailed orders passed by the Hon'ble High Courts were dismissed.

6. It is true that in Union of India Vs. M. Siddaraj (SLP No. 4722/2021), the Hon'ble Supreme Court passed an order recently on 05.04.2021, directing that the pension shall be granted to the respondents therein on the basis of the last pay drawn as on 30th June, 2014. Learned counsel for the applicants submit that they verified the record and found that the respondents in the said SLP were already extended the benefit of increment, at the last day of their service.

7. Be that as it may, once the various benches of the Tribunal, the Hon'ble High Courts and the Hon'ble Supreme Court held that the increment, which became due on 1st July or 1st January as the case may be, needs to be released for the employees, who retired one day earlier thereto, the applicants herein cannot be denied such benefit.

8. To protect the interests of the respondents, we direct that in case any different view is taken by the Hon'ble Supreme Court in SLP No. 4722/2021, the applicants shall

be under obligation to refund the benefit that is extended to them. In the corresponding orders, a clause can be incorporated to that effect.

9. *We make it clear that extension of benefit of increment shall be subject to their fulfilling other conditions under the relevant service rules.*

10. *For the foregoing reasons, the OAs are allowed, directing that:*

(a) for such of the employees, who retired on 30th June of any particular year, increment payable on 1st July shall be extended. Their pensions shall also be revised, subject to their fulfilling other conditions which are applicable. The arrears that become due shall be paid without interest;

(b) Similarly for employees, who retired on 31st December of a particular year, the increment payable on the 1st January of the next year shall be extended and pension revised, subject to same conditions in the same manner.

(c) While extending such benefits, a clause shall be incorporated to the effect that in case the Hon'ble Supreme takes a different view in the Civil Appeal arising out of SLP No. 4722/2021, they shall be under obligation to refund the entire benefit without any demur.

The aforesaid exercise shall be completed within a period of three months from the date of receipt of a copy of this order. Pending MAs shall also stand disposed of. There shall be no order as to costs."

11. Legitimate Expectation means that a person may have a reasonable expectation of being treated in a certain way by administrative authorities owing to some consistent practice in the past or an express promise made by the concerned authority. According to this doctrine, a public authority can be made accountable in lieu of a legitimate expectation. Thus, the doctrine of Legitimate Expectation pertains to the relationship between an individual and a public authority. Legitimate expectation, though not a legal right, is an expectation of a benefit, relief or remedy that may ordinarily flow from a promise or established practice. The term 'established practice' refers to a regular, consistent

predictable and certain conduct, process or activity of the decision-making authority. In short, a person can be said to have a '**legitimate expectation**' of a particular treatment, if any representation or promise is made by an authority, either expressly or impliedly, or if the regular and consistent past practice of the authority gives room for such expectation in the normal course. Therefore, every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of facts in each case.

12. Hon'ble Supreme Court in the case of **State of Kerala And Ors. Vs. K.G. Madhavan Pillai And Ors. [1989 AIR 49 = 1988 SCR Supl. (3) 94]** decided on 19.09.1988, held the following:-

"In many cases legal rights are affected, as where property is taken by compulsory purchase or someone is dismissed from a public office. But in other cases the person affected may have no more than an interest, a liberty or an expectation. An applicant for a licence, though devoid of any legal right to it, is as a general rule, entitled to a fair hearing and to an opportunity to deal with any allegations against him. The holder of a licence who applies for its renewal is likewise entitled to be fairly heard before renewal can be refused. So also is a race goer before he can be put under a statutory ban against entering a public race course.

In none of these situations is there legal right, but they may, involve what the courts sometimes call "legitimate expectation". This expression furnishes judges with a flexible criterion whereby they can reject unmeritorious or unsuitable claims. It was introduced in a case where alien students of scientology were refused extension of their PG NO 113 entry permits as an act of policy by the Home Secretary. The Court of Appeal held that they had no legitimate expectation of extension beyond the permitted time, and so no right to a hearing, though revocation of their permits within that time would have been contrary to

legitimate expectation. Likewise where car-hire drivers had habitually offended against airport byelaws, with many convictions and unpaid fines, it was held that they had no legitimate expectation of being heard before being banned by the airport authority. There is some ambiguity in the dicta about legitimate expectation, which may apparently mean either expectation of a fair hearing or expectation of the licence or other benefit which is being sought. But the result is the same in either case: absence of legitimate expectation will absolve the public authority from affording a hearing.

For the purpose of natural justice the question which matters is not whether the claimant has some legal right but whether legal power is being exercised over him to his disadvantage. It is not a matter of property or of vested interests, but simply of the exercise of governmental power in a manner which is fair and considerate”

13. The Delhi High Court in the case of **GNCT of Delhi & Ors. Vs. Naresh Kumar [W.P.(C) 4769/2010]** decided on 12.11.2010 held the following:

“21. After a survey of leading decisions on the point, the legal position with respect to legitimate expectation can be summarized as under:-

I. Firstly, mere reasonable or legitimate expectation of a citizen may not by itself be a distinct enforceable right, but failure to consider and give due weightage to it may render the decision arbitrary.

II. Secondly, legitimate expectation may arise if (a) there is an express promise given by a public authority; or (b) because of acceptance of a regular practice, a claimant can reasonably expect it to continue; and (c) such expectation may be reasonable.

III. Thirdly, for a legitimate expectation to arise, the decision of administrative authority must affect the person by depriving him of some benefit or advantage which he had in the past been permitted, by the decision maker, to enjoy and which he can legitimately expect to be permitted to continue, until some rational grounds for withdrawing it have been communicated to him.

IV. Fourthly, if the authority proposes to defeat a person's legitimate expectation, it should afford him an opportunity to make a representation in the matter.

V. Fifthly, the doctrine of legitimate expectation permits the court to find out if the change in policy which is the cause for defeating the legitimate expectation, is irrational

or perverse or one which no reasonable person could have made.

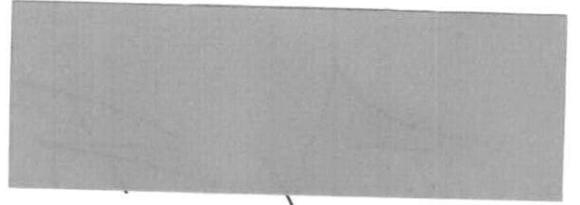
14. In the present cases, all the employees having served the requisite period which entitles them to certain remuneration for the services rendered have a legitimate expectation of receiving such entitlement. The Govt's stand in the explanatory Note forwarded by DoPT is that while annual increment is given to a Govt servant to enable him to discharge duty and draw pay and allowances attached to the post, the Govt. servant **may not be** entitled to draw the pay and allowances attached to the post as soon as he ceases to discharge those duties for any reason say, by reason of attainment of age of superannuation. Since an employee must satisfy not only the condition of becoming entitled for increment, but also should continue to be on duty as a Government servant on the due date (1st July/ 1st January) to avail the increment. However, this flies in the face of the Doctrine of Legal expectation since the entitlement is enshrined in the implementation instructions of various Pay Commissions and a Govt servant expects this to be paid. If indeed, the stance of the Govt that the twin condition of entitlement and being in service was mandatory, the Financial Rules/any other applicable rule needs to be modified to facilitate the payment of an entitlement which has been fully earned by the employee, by rendering requisite service for the stipulated period. Merely denying him such an entitlement is a gross violation of his fundamental rights of equal pay for equal work. Thus, a legitimate expectation to be paid for the services rendered has been arbitrarily denied by the actions of the Respondents.

15. Thus, there is no dispute that the applicants have completed the requisite service which entitles them the increment. Having served the period for which such entitlement, it is a matter of legitimate expectation that they will be paid the increment and thus cannot be denied their entitled dues, merely on the ground that on the next day when the increment became due, they were not in service. In the light of the above consideration, these OAs pertaining to payment of increment on **01 July** are allowed and the respondents are directed the following :-

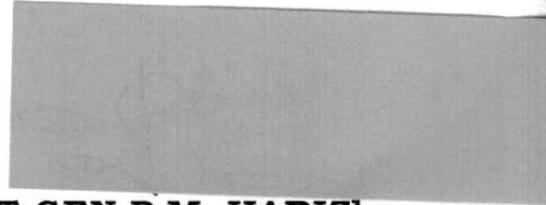
- (a) Increment due and payable on 1st of July in any particular year for all the applicants who retired on 30th June of any particular year, be paid the notional increment and retiral benefits including pension be accordingly calculated.
- (b) While extending such benefits, a clause shall be incorporated to the effect that in case the Hon'ble Supreme Court takes a different view in the Civil Appeal arising out of SLP No. 4722/2021, the applicants shall be under obligation to refund the entire benefit without any demur.
- (c) All arrears without interest be paid and Corrigendum to PPOs be issued within four months of this order.

16. In view of the above, pending MAs, if any, also stand disposed of. There shall be no order as to costs.

Pronounced in open Court on this 14th day of November, 2022.



**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**



**[LT GEN P.M. HARIZ]
MEMBER (A)**

/ng/