

COURT No.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

11.

OA 2880/2022 WITH MA 3987/2022

Ex MWO Jagdish Prasad Gupta Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Ramniwas Bansal, Advocate
For Respondents : Mr. Arvind Patel, Advocate

CORAM

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

ORDER
14.12.2022

MA 3987/2022

Keeping in view the averments made in the miscellaneous application and finding the same to be bona fide, in the light of the decision in Union of India and others Vs. Tarsem Singh (2008) 8 SCC 648, the same is allowed condoning the delay in filing the O.A.

OA 2880/2022

2. In this OA, the only question that arises for consideration is as to whether an employee who retired on 30th June of a year is entitled to be extended the benefit of increment that falls due on 1st July of that year. The applicant in this case, though enrolled on **Indian Air Force**

on 15th June, 1983 and discharged from service on 30th June, 2020. He was, however, denied the benefit of increment, which was otherwise due to him, only on the ground that by the time the increment became due, he was not in service. He was given his last annual increment on 1st July, 2019 and was denied increment that fell due on 1st July, 2020 on the ground that after the 7th Central Pay Commission, the Central Government fixed 1st July/1st January as the date of increment for all Government employees.

3. Learned counsel for the applicant contends that after the 6th CPC submitted its report, the Government promulgated the acceptance of the recommendations with modifications through the Govt. Extraordinary Gazette Notification dated 29th August, 2008. This notification was also applicable to the Armed Forces personnel and implementation instructions for the respective Services clearly lay down that there will be a uniform date of annual increment, viz. 1st January/1st July of every year and that personnel completing 6 months and above in the revised pay structure as on 1st day of January/July, will be eligible to be granted the increment. In this regard learned counsel relied

upon the law laid down by the Hon'ble Madras High Court in the case of *P. Ayyamperumal Vs. The Registrar, Central Administrative Tribunal, Madras Bench and Ors.* (WP No.15732/2017) decided on 15th September, 2017 and the Lucknow Bench of this Tribunal in *HFL Sarvesh Kumar Vs. Union of India and Ors.* (OA 366/2020) decided on 12th August, 2021. The High Court in its judgment held that the petitioner shall be given one notional increment for the purpose of pensionary benefits and not for any other purpose.

4. Learned counsel for the respondents, on the other hand, contended that with the retirement of the applicant, 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. It was further submitted that since the applicant was not on the effective strength of the **Indian Air Force** on **1st July, 2020**, he was not granted annual increment on **1st July, 2020** as per policy in vogue. Although, learned counsel conceded that against the judgment of the Madras High Court a Special Leave Petition (Dy No.22282/2018) was filed before the Hon'ble Supreme Court the same was dismissed vide order

dated 23rd July, 2018. He further submits that the notional increment could also not be granted to the retirees of 30th June in terms of DoPT, Government of India Letter No.19/2/2018-Estt (Pay-1) dated 3rd February, 2021.

5. We have heard learned counsel for both parties at length and have examined the documents on record.

6. The sole question that needs to be answered in this case is ‘whether the applicant is entitled to notional increment that fell due on 1st July, 2020?’

7. The law on ‘notional increment’ has already been settled by the Hon’ble Madras High Court in the case of *P. Ayyamperumal* (supra). Relevant paras 5, 6 and 7 of the aforesaid judgment 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. It has been brought to our notice that in Union of India Vs. M. Siddaraj (SLP No. 4722/2021), the Hon’ble Supreme Court vide its order dated 5th April, 2021, directed that the

pension shall be granted to the respondents therein on the basis of the last pay drawn as on 30th June.

9. 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 January or 1st July, as the case may be, needs to be released to the employees, who retired one day earlier thereto, the applicant herein cannot be denied such benefit. However, to protect the interests of the respondents, we direct that in case a different view is taken by the Hon'ble Supreme Court in the Civil Appeal arising out of SLP No.4722/2021, the applicants shall be under an obligation to refund the benefit that is extended to them.

10. The issue involved in this matter has been examined exhaustively by this Tribunal in the case of *Ex WO Santosh Nagar Vs. Union of India and Ors.* (OA 918/2022) decided on 29th August, 2022.

11. 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 July, 2019 to 30th June, 2020, as he has

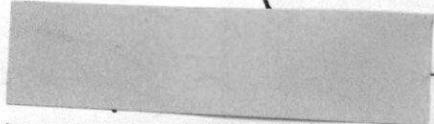
completed one full year of service, for the purpose of pensionary benefits and not for any other purpose;

(b) issue fresh corrigendum PPO to the applicant accordingly subject to his fulfilling other conditions which are applicable;

(c) obtain an undertaking from the applicant while extending such benefits that in case the Hon'ble Supreme Court takes a different view in the Civil Appeal arising out of SLP (Civil) No.4722/2021, he would refund the entire benefits with interest;

(d) 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.

12. There shall be no order as to costs.


(RAJENDRA MENON)
CHAIRPERSON


(P.M. HARIZ)
MEMBER (A)