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

23.

OA 1785/2024 WITH MA 2249/2024

Hav Binod Kumar Swami (Retd) ..... Applicant
Versus
Union of India & Ors. ..... Respondents

For Applicant : Mr. Tatsat Shukla, Advocate
For Respondents : Mr. Nisarg Chaudhary, Advocate
CORAM

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

ORDER
29.05.2024

MA 2249/2024

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of ***Union of India and Ors.*** Vs. ***Tarsem Singh*** [2009 (1) AISLJ 371] and the reasons mentioned, in the MA, the same is allowed and the delay in filing the OA is thus condoned. The MA is disposed of accordingly.

OA 1785/2024

The applicant, vide the present OA, makes the following prayers:

> *"(a). To direct the respondent to grant a notional annual increment on the payment of the applicant as on*

completion of his service from 01 Jul 2022 to 30 Jun 2023 and re fix his pension according to the increased pay.

(b). To direct the respondent 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."

3. The applicant was enrolled in the DSC on 29th June, 2000 and retired on 30th June, 2023 after rendering about 23 years of service. The applicant submits that he was 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 though he completed one full year in service as on 30th June, 2023. He was given his last annual increment on 1st July, 2022 and was denied increment that fell due on 1st July, 2023 on the ground that after the 6th Central Pay Commission, the Central Government fixed 1st July/1st January as the date of increment for all Government employees.

4. 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

six months and above in the revised pay structure as on the 1st day of January/July, will be eligible to be granted the increment. In this regard learned counsel for the applicant relied upon the law laid down by the Hon'ble High Court of Madras 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 verdict of the Lucknow Regional Bench of the Armed Forces Tribunal in ***Ex Sgt Kapil Sharma*** *Vs.* ***Union of India and Ors.*** (OA 161/2021) decided on 27.05.2021. The Hon'ble High Court of Madras vide the said judgment referred to hereinabove held that the petitioner shall be given one notional increment for the purpose of pensionary benefits and not for any other purpose.

5. The respondents fairly do not dispute the settled proposition of law put forth on behalf of the applicant in view of the verdicts relied upon on behalf of the applicant.

6. The law on 'notional increment' has already been laid down by the Hon'ble High Court of Madras in the case of ***P. Ayyamperumal*** (supra) and in ***State of Tamil Nadu, rep. By its Secretary to Government, Finance Department and Others Vs. M. Balasubramaniam, reported in CDJ 2012 MHC 6525***, wherein vide paras 5, 6 and 7 of the said judgment it was observed to the effect:

> ***"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."

7. The issue raised in this OA is squarely covered by the judgment of the Hon'ble Supreme Court rendered in Civil Appeal

No. 2471 of 2023 decided on 11.04.2023 titled as ***Director (Admn. And HR) KPTCL and Others*** Vs. ***C.P. Mundinamani and Others*** (2023) SCC Online SC 401.

8. Thus, as the issue referred to under consideration in the present OA is no longer ***res integra*** in view of the SLP (Civil) Dy No.22283/2018 against the judgment dated 15th September, 2017 of the Hon'ble High Court of Madras in the case of ***P. Ayyamperumal*** (Supra) having been dismissed vide order dated 23rd July, 2018 and in view of the order dated 19.05.2023 of the Hon'ble Supreme Court in ***SLP (C) No. 4722 of 2021) Union of India & Anr vs M. Siddaraj,*** the OA is allowed.

9. The respondents are thus, directed to:

(a) grant one notional increment to the applicant for the period **1st July, 2022** to **30th June, 2023**, subject to verification that 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) 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.

10. Even though in all the cases we have been following and passing aforesaid order but recently it has come to our notice that in certain cases applicants have been granted increment and before completing the period of one year, they are again claiming the subsequent increment as well. Grant of benefit of notional increment, as directed hereinabove, shall be subject to the condition that the applicant has completed one full year of service after drawal of the earlier/last increment.

11. There shall be no order as to costs.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT GEN C.P. MOHANTY]
MEMBER (A)

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