

COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

23.

OA 2943/2023 with MA 3291/2024 & MA 3292/2024

Sgt Rajnish Kumar(Retd) & Ors. Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr Pradeep Shukla, Advocate

For Respondents : Ms Reetesh Agarwal, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE LT.GEN. P.M.HARIZ, MEMBER (A)

ORDER
13.08.2024

MA 3292/2024

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 393 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of *UoI & Ors Vs Tarsem Singh* 2009(1)AISLJ 371 and in *Ex Sep Chain Singh Vs Union of India & Ors* (Civil Appeal No. 30073/2017 and the reasons mentioned, the MA 3292/2024 is allowed and the delay of 393 days in filing the OA 2943/2024 is thus condoned. The MA is disposed of accordingly.

MA 3291/2024

The five applicants vide the present MA seek to join together for the institution of the OA submitting to the effect that the

same cause of action and the nature of the relief prayed by all applicants is same in as much as the grant of notional increment on 01.01.2023 as all of them have completed 01 year of qualifying service on 31.12.2022 i.e. the date of their discharge. In view of the submissions made MA 3291/2024 is allowed and the five applicants are allowed to join together for the institution of the OA 2943/2024.

OA 2943/2024

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

- a) *“ Direct the respondents to grant 01 Notional Increment to all the applicants with effect from 01.01.2023 for the purpose of pensionary benefits.*
- b) *Direct respondents to pay due arrears of pension with interest @12% p.a. from the date of retirement with all the consequential benefits.*
- c) *Any other relief which the Hon’ble Tribunal may deem fit and proper in the fact and circumstances of the case alongwith cost of the applicant in favour of the applicant and against the respondents.”*

2. Notice of the OA was issued to the respondents which is accepted on their behalf.

3. The applicants were enrolled in the **Indian Air Force** on **16th December, 2002** and were discharged on **31st December, 2022** after completion of their initial term of engagement i.e. 20 years. All the applicants were given their last annual increment of pay on 01.01.2022

but were not given any increment of pay on 01.01.2023 though all the applicants were discharged from service of the Air Force on 31.12.2022. The applicants submit that 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 though they completed one full year in service as on 31.12.2022. They were given their last annual increment on 1st January, 2022 and were denied increment that fell due on 1st January, 2022. The applicants submit that they completed one full year of qualifying service on 31.12.2022 since the last date of increment and thus they are entitled for next increment due on 01.01.2023.

4. 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.

5. 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.”

6. The issue raised in this OA is squarely covered by a judgment 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.

7. 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 11.04.2023 in *SLP (C) No. 4722 of 2021) Union of India & Anr vs M. Siddaraj*, the OA is allowed.

8. The respondents are thus, directed to:

(a) Grant one notional increment to the applicants for the period 1st January, 2023 to 31st December, 2023, as they have 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 applicants 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. There shall be no order as to costs.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(LT.GEN. P.M.HARIZ)
MEMBER (A)

/CHANANA/