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

8.

OA 1174/2024 with MA 1452/2024

NC(E) Pradeep Kumar (Retd) ..... Applicant
VERSUS
Union of India and Ors. ..... Respondents

For Applicant : Mr. Tatsat Shukla, Advocate
For Respondents : Mr Shagun Shai, Advocate

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

ORDER
09.04.2024

MA 1452/2024

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 1554 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 1452/2024 is allowed and the delay of 1554 days in filing the OA 1174/2024 is thus condoned. The MA is disposed of accordingly.

OA 1174/2024

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

> *" (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 Jul 2018 to 30 Jun 2019 and re-fix his pension according to the increased pay.*
> *(b) To direct respondents to issue fresh/corrigendum PPO in respect of applicant in accordance with increased pay after granting notional increment.*
> *(c) 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. Notice of the OA was issued to the respondents which is accepted on their behalf.

3. The applicant was enrolled in the **Indian Air Force** on **03rd January, 1984** and was discharged on **30th June, 2019** after rendering more than 35 years of service. The last increment of pay was given to the applicant on 01.07.2018. 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 30.06.2019. He was given his last

annual increment on 1st **July, 2018** and was denied increment that fell due on 1st **July, 2019.** The applicant submits that he completed one full year of qualifying service on 30.06.2019 since the last date of increment and thus he is entitled for next increment due on 01.07.2019.

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 applicant for the period **1st July, 2018** to **30th June, 2019**, 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) 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/