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

34.

OA 448/2024 WITH MA 544/2024

Ex JWO Amar Kumar & Ors. ..... Applicant
Versus
Union of India & Ors. ..... Respondents

For Applicant : Mr. Hemant Kumar and
Mr. Harsh Yadav and
Mr. Shashank Shri Tripathi, Advocates
For Respondents : Mr. Rakesh Dhawan, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
09.02.2024

MA 544/2024

Vide this MA, filed under Rule 4(5) of the Armed Forces Tribunal (Procedure) Rules 2008, three applicants arrayed in the OA seek permission to institute the present OA. In view of the factum that each of them submit to the effect that they impugn the letter dated 18th August, 2023 issued by respondentss with regard to clarification on notional increment and they have a common interest and in view of the fact that all the applicants are being represented by the same counsel whose authorization and Vakalatnama is placed on the record, the MA is allowed and the applicants are allowed to join together to institute the present OA.

2. MA stands disposed of.

OA 448/2024

3. The applicants, vide the present OA makes the following prayers:

> *"(i) Quash the impugne order (Annexure-A/1), vide which notional increment has been illegally denied to the applicant.*
> *(ii) Pass an order re-calculating pension and other terminal benefits after considering the benefit of notional increment as on 31.12.2021.*
> *(iii) pass an order granting interest @19% on the arrear of pension and other terminal benefit for which the applicants are entitled in terms of the re-calculation after implement the order at above.*
> *(iv) Award cost of the present application.*
> *(v) Pass any other order which this Hon'ble Tribunal deems fit under the circumstances of the case."*

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

5. The applicants were enrolled in the **Indian Air Force** on **16th December, 2001** and retired on **31st December, 2021** The applicants submits 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 **31st December, 2021**. They were given their last annual increment on **01st January, 2021** and were denied increment that fell due on **01st January, 2022** 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.

6. Learned counsel for the applicants 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.

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

8. 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."

9. 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.

10. 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.

11. The respondents are thus, directed to:

(a) grant one notional increment to all 03 applicants for the period **01st January, 2021 to 31st December, 2021** subject to verification that 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 applicant accordingly subject to their 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.

12. There shall be no order as to costs.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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