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

1.

OA 842/2024 with MA 1057/2024

Col Rakesh Kumar Shrivastava (Retd) ..... Applicant
Versus
Union of India & Ors. ..... Respondents

For Applicant : Mr. KR Verma, Advocate
For Respondents : Mr. Assem Kumar Sahay, Advocate

CORAM

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

ORDER
19.03.2024

MA 1057/2024

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.

MA stands disposed of.

OA 842/2024

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

> *"(a) Quash the Respondent's impugned Army Pay Rules 2017 to the extent that makes the benefits of next annual increments payable nly to those personnel who were physically present in service as on 01 Jan 2023.*

(b) Direct the respondents to grant the benefit of annual increment which had fallen due as on 01 Jan 2023, on notional basis.

(c) Direct the respondents to grant all the consequential benefit of next annual increment including retiral benefits and service pension.

(d) Direct the respondents to pay interest on arrears @ 09% per annum, from the date of grant of deemed Notional increment i.e. w.e.f. 01 Jan 2023 to till date of actual payment.

(e) Pass any other order that this Hon'ble Tribunal may deem fit in the facts and circumstances of the case.

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

3. The applicant was commissioned in the **Army** on **14.12.1991** and discharged from service on **31.12.2022.** 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 **31.12.2022**. He was given his last annual increment on **01.01.2021** and was denied increment that fell due on **31.12.2022** 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.

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 29.08.2008. 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 15.09.2017 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.*
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> *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 15.09.2017 of the Hon'ble High Court of Madras in the case of ***P. Ayyamperumal*** (supra) having been dismissed vide order dated 23.07.2018 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 **01.01.2021** to **31.12.2022,** 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 till date 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

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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