

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

38.

MA 1021/2025 IN OA 3751/2024

Hav Patel JayeshKumar R (Retd)	Applicant
Versus		
Union of India & Ors.	Respondents
For Applicant	:	Mr. Nawneet Krishna Mishra, Advocate
For Respondents	:	Mr. Siddhant Kohli, Advocate
		Mr. Kaustabh Bhattacharjee, Advocate

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

ORDER
10.10.2025

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Respondents have brought before us a speaking order said to have been passed on 26.08.2025 denying grant of notional increment to the applicant on the ground that as the applicant was discharged on 31.12.2023 under Rule 13 (3) of Army Rules, 1954, he is not entitled to notional increment. This contention of the respondents for denying the notional increment to the applicant is wholly unsustainable, illegal and not in accordance to the law. The issue has been decided 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 following the same, many

orders have been passed by this Tribunal as well. The issue has also been settled by the Hon'ble Supreme Court 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] and finally on 19.05.2023, in the SLP (C) No.4722 of 2021, Union of India & Anr Vs. M. Siddaraj.

2. The increment is a service benefit which is earned by an employee as per the contract of service for having worked for 12 months preceding the date on which he becomes entitle for the increment. In the case in hand, the applicant was denied the notional increment for the period from 01.01.2023 to 31.12.2023 and, therefore, we allowed the OA 3751/2024. The respondents have now passed a speaking order and a perusal of the speaking order goes to show that the applicant sought grant of notional increment for the period from 01.01.2023 to 31.12.2023 on the ground that as he has completed 12 months of service before his discharge on 01.01.2024 and, therefore, he is entitled to one notional increment and we allowed the same. However, we gave an option to the respondents to examine the case of the applicant and pass a speaking order. Now, the respondents

have passed a speaking order and the decision contained in Para 7 reads as under:

“7. IN PURSUANCE WHEREOF, the undersigned asserts that you were discharged from service on 31 Dec 2023 (AN) at your own request before fulfilling the conditions of enrolment under item III (iv) of table annexed to Rule 13 (3) of Army Rules 1954. In terms of above rules and regulations, the benefits of notional increment are applicable to those individuals who have rendered the requisite qualifying service as on date of their superannuation. Hence, you are not entitled for grant of notional increment for the period from 01 Jan 2023 to 31 Dec 2023.”

3. Even though this is an execution application and normally the applicant should resort to the remedy available under Section 14 of the Armed Forces Tribunal Act, 2007, for challenging this order but if the decision taken is found to be apparently unsustainable in law and the implementation is refused on the grounds which are not tenable in law, by virtue of the inherent powers available to this Tribunal under the Armed Forces Tribunal Act, 2007, to do complete justice to the parties concerned, appropriate orders can be passed in an execution application as well.

4. The concept of grant of notional increment is that if a person has worked for 12 months preceding the period for which increment is claimed; he is entitled to the notional increment as it is a benefit of service as per the contract/rule earned by him having been in the rolls of the establishment

and worked for 12 months. Apparently, the last increment to the applicant was granted on 01.01.2023 and he was entitled to next increment after working for 12 months w.e.f. 01.01.2023 to 31.12.2023. The records indicate that the applicant was discharged from service in the afternoon of 31.12.2023 under Rule 13 (3) of the Army Rules, 1954 and because he was not in the roll of the Army on 01.01.2024, increment has been denied to him. In our considered view, this is unsustainable in law and contrary to the principles governing grant of notional increment. The applicant worked from 01.01.2023 up to 31.12.2023 and before his discharge w.e.f. 01.01.2024, he was in the roll of the establishment till 31.12.2023, the contract of employment was subsisting till 31.12.2023 and even salary was paid to him for the work performed by him on 31.12.2023, i.e., his last working day before his discharge.

5. Having been in the roll on 31.12.2023, he has earned one increment, having worked for the previous 12 months, i.e., from 01.01.2023 to 31.12.2023. Therefore, a vested legal right has been created in his favour and in accordance with the law laid down by the Hon'ble Supreme Court in the case of State of Jharkhand Vs. Jitendra Kumar Srivastava

[(2013) 12 SCC 210], Hon'ble High Court of Karnataka in the case of H Channaiah Vs. Chief Executive Officer (2024 SCC Online Karnataka 54, decided on 25.04.2024), Hon'ble High Court of Delhi in the case of Ex. Flying Officer Subhash Pandey Vs. Union of India & Ors. [W.P.(C) No.495/2008] and even by this Bench of this Tribunal in the case of Ex LAC Bhuwan Gaur Vs. Union of India & Ors. [OA (Appeal) No.3506/2024 decided on 10.03.2025], this right to claim increment is a property under Article 300 A of the Constitution of the India. In the cases decided by this Tribunal, the Hon'ble Supreme Court, the Hon'ble High Court of Karnataka and the Hon'ble High Court of Delhi, it has been held that once a person works for a particular period of time and earns an earned leave and when the earned leave is not granted to him, he has the right to encash that leave and the right to leave is right accruing to him by virtue of the work done by him, this is a property under Article 300 A of the Constitution of India and it cannot be taken away in any manner what so ever. Similarly, in the present case, the applicant having worked for 12 months from 01.01.2023 to 31.12.2023, a right has accrued to him and he has earned one increment by working for 12 months as required under the rule or the contract of service and merely, because he was

not in the roll of the establishment on 01.01.2024, the right which had already accrued to him on 31.12.2023 by virtue of the contract of appointment which was subsisting till forenoon of 31.12.2023 cannot be taken away.

6. Accordingly, we find that the reason given in Para 7 of the order dated 26.08.2025 to be unsustainable in law, we quash the same, direct the respondents to pay one notional increment to the applicant for the period from 01.01.2023 to 31.12.2023 and settle all his claim within a period of three months from the date of receipt of a copy of this order.

7. With the aforesaid, the MA stands disposed of.

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[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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