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

1.

OA No. 1165/2025 with MA 1753/2025

702917-R MWO Devi Sharan(Retd) ..... Applicant
VERSUS
Union of India and Ors. ..... Respondents

For Applicant : Mr. Madan Pal Vats &
Dr. Abhay Kant Upadhyay, Advocates
For Respondents : Mr. D.K Sabat, Advocate

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

ORDER
29.04.2025

MA 1753/2025

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 463 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 1753/2025 is allowed and the delay of 463 days in filing the

OA 1165/2025 is thus condoned. The MA is disposed of accordingly.

OA No. 1165/2025

The applicant, **702917-R MWO Devi Sharan(Retd)**, vide the present OA makes the following prayers:

a) *" To issue an order or direction to the respondents to set aside/quash the impugned order dated 19 Jul 2024(ANNEXURE A-1)*
b) *To issue an order or direction to respondents directing to grant the applicant notional increment wef 01 Jan 2024 with all consequential benefits.*
c) *To issue an order or direction to the respondents to issue revised PPO to the applicant and to pay the arrears wef 01 Jan 2024 with interest @18% p.a. on the consequential benefits till realization of payment.*
d) *To pass any such further order or orders as deemed fit to this Hon'ble Tribunal to secure the ends of justice.*
e) *Allow this application with exemplary costs."*

2. The applicant was enrolled in the **Indian Air Force** on **17th September,1986** and was discharged on **31st December, 2023** after rendering more than 37 years of service. 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. He was given his last annual increment on **1st January, 2023** and was denied the increment that fell due on **1st January, 2024** on the ground that after the 7th Central

Pay Commission, the Central Government fixed 1st July/1st January as the date of increment for all Government employees.

3. 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 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 6 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. 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.

4. The respondents fairly do not dispute the settled proposition of law put forth on behalf of the applicant in view of the verdict(s) 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.***
>
> ***2. 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.

3. 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 vide the judgment rendered in Civil Appeal No. 2471 of 2023 by the Hon'ble Supreme Court on 11.04.2023 titled as ***Director (Admn. And HR) KPTCL and Others*** Vs. ***C.P. Mundinamani and Others (2023)*** SCC Online SC 401 observing vide Para 6.7 thereof to the effect:

"Similar view has also been expressed by different High Courts, namely, the Gujarat High Court, the Madhya Pradesh

High Court, the Orissa High Court and the Madras High Court. As observed hereinabove, to interpret Regulation 40(1) of the Regulations in the manner in which the appellants have understood and/or interpreted would lead Page 23 of 28 to arbitrariness and denying a government servant the benefit of annual increment which he has already earned while rendering specified period of service with good conduct and efficiently in the last preceding year. It would be punishing a person for no fault of him. As observed hereinabove, the increment can be withheld only by way of punishment or he has not performed the duty efficiently. Any interpretation which would lead to arbitrariness and/or unreasonableness should be avoided. If the interpretation as suggested on behalf of the appellants and the view taken by the Full Bench of the Andhra Pradesh High Court is accepted, in that case it would tantamount to denying a government servant the annual increment which he has earned for the services he has rendered over a which he has already earned while rendering specified period of service with good conduct and efficiently in the last preceding year. It would be punishing a person for no fault of him. As observed hereinabove, the increment can be withheld only by way of punishment or he has not performed the duty efficiently. Any interpretation which would lead to arbitrariness and/or unreasonableness should be avoided. If the interpretation as suggested on behalf of the appellants and the view taken by the Full Bench of the Andhra Pradesh High Court is accepted, in that case it would tantamount to denying a government servant the annual increment which he has earned for the services he has rendered over a behaviour and efficiently and therefore, such a narrow interpretation should be avoided. We are in complete agreement with the view taken by the Madras High Court in the case of P. Ayyamperumal (supra); the Delhi High Page 25 of 28 Court in the case of Gopal Singh (supra); the Allahabad High Court in the case of Nand Vijay Singh (supra); the Madhya Pradesh High Court in the case of Yogendra Singh Bhadauria (supra); the Orissa High Court in the case of AFR Arun Kumar Biswal (supra); and the Gujarat High Court in the case of Takhatsinh Udesinh Songara (supra). We do not approve the contrary view taken by the Full Bench of the Andhra Pradesh High Court in the case of Principal Accountant-General, Andhra Pradesh (supra) and the

decisions of the Kerala High Court in the case of Union of India Vs. Pavithran (O.P.(CAT) No. 111/2020 decided on 22.11.2022) and the Himachal Pradesh High Court in the case of Hari Prakash Vs. State of Himachal Pradesh & Ors. (CWP No. 2503/2016 decided on 06.11.2020)."

7. Furthermore, vide order dated 18.12.2024 of the Hon'ble Supreme Court, the Review Petition being Review Petition(C) Diary No.36418/2024 in Civil Appeal No.(s) 2471/2023 seeking a review of the aforesaid verdict was dismissed *inter alia* on merits observing to the effect:

> *"Moreover, there is inordinate delay of 461 days in preferring the Review Petition, which has not been satisfactorily explained.*
>
> *Even otherwise, having carefully gone through the Review Petition, the order under challenge and the papers annexed therewith, we are satisfied that there is no error apparent on the face of the record, warranting reconsideration of the order impugned."*

8. Moreover, 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) in W.P. 15732/2017 having been dismissed vide order dated 23.07.2018 by the Hon'ble Supreme Court. Vide 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,*** further modified by the Hon'ble Supreme Court of India on 06.09.2024 in Misc. Application Dy. No. 2400/2024 filed in SLP (C) No. 4722/2021 it was directed to the effect.

> *"It is stated that the Review Petition in Diary No.36418/2024 filed by the Union of India is pending. The issue raised in the present applications requires consideration, insofar as the date of applicability of the judgment dated 11.04.2023 in Civil Appeal No. 2471/2023, titled "Director (Admn. and HR) KPTCL and Others v. C.P. Mundinamani and Others", to third parties is concerned.*
>
> *We are informed that a large number of fresh writ petitions have been filed.*
>
> *To prevent any further litigation and confusion, by of an interim order we direct that:*
>
> *(a) The judgment dated 11.04.2023 will be given effect to in case of third parties from the date of the judgment, that is, the pension by taking into account one increment will be payable on and after 01.05.2023. Enhanced pension for the period prior to 31.04.2023 will not be paid.*
>
> *(b) For persons who have filed writ petitions and succeeded, the directions given in the said judgment will operate as res judicata, and accordingly, an enhanced pension by taking one increment would have to be paid.*
>
> *(c) The direction in (b) will not apply, where the judgment has not attained finality, and cases where*

an appeal has been preferred, or if filed, is entertained by the appellate court.

(d) In case any retired employee has filed any application for intervention/impleadment in Civil Appeal No. 3933/2023 or any other writ petition and a beneficial order has been passed, the enhanced pension by including one increment will be payable from the month in which the application for intervention/impleadment was filed."

9. Significantly, vide letter dated 14.10.2024 vide Para 7, the Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel and Training issued an Office Memorandum No. 19/116/2024-Pers.Pol (Pay) (Pt) wherein para 7 reads to the effect:

"Subject: Grant of notional increment on Ist July/Ist January to the employees who retired from Central Govt. service on 30th June/3Ist December respectively for the purpose of calculating their pensionary benefits-regarding.

"7. The matter has been examined in consultation with D/o Expenditure and D/o Legal Affairs. It is advised that in pursuance of the Order dated 06.09.2024 of the Hon'ble Supreme Court referred above, action may be taken to allow the increment on Ist July/IstJanuary to the Central Government employees who retired/are retiring a day before it became due i.e. on 30th June/31st December and have rendered the requisite qualifying service as on the date of their superannuation with satisfactory work and conduct for calculating the pension admissible to them. As specifically mentioned in the Orders of the Supreme Court, grant of the notional increment on Ist January/Ist July shall be reckoned only for the purpose of calculating the pension admissible and not for the purpose of calculation of other pensionary benefits"

Vide letter dated 23.12.2024 of the Govt of India, Ministry of Defence, vide para 2, it was stated to the effect:

"2. It is to convey the sanction of the Competent Authority to extend the provisions contained in DoP&T O.M. No.19/ 116/2024. Pers/Pol(Pay)(Pt) dated 14th October,2024 to Armed Forces Personnel. A copy of ibid DoP&T O.M. is enclosed herewith for reference."

10. Thereafter, Miscellaneous Application Diary No.2400/2024 in Civil Appeal No.3933/2023 has been finally decided by the Hon'ble Supreme Court on 20.02.2025 and the final directions while disposing of the matter read as under:

> ***"Miscellaneous Application Diary Nos. 2400/2024, 35783/2024, 35785/2024 and 35786/2024.***
>
> ***Delay condoned.***
>
> ***We had passed the following interim order dated 06.09.2024, the operative portion of which reads as under:***
>
> ***"(a) The judgment dated 11.04.2023 will be given effect to in case of third parties from the date of the judgment, that is, the pension by taking into account one increment will be payable on and after 01.05.2023. Enhanced pension for the period prior to 31.04.2023 will not be paid.***
>
> ***(b) For persons who have filed writ petitions and succeeded, the directions given in the said judgment will operate as res judicata, and accordingly, an enhanced pension by taking one increment would have tobe paid.***
>
> ***(c) The direction in (b) will not apply, where the judgment has not attained finality, and cases where an***

appeal has been preferred, or if filed, is entertained by the appellate court.

(d) In case any retired employee has filed any application for intervention/impleadment in Civil Appeal No. 3933/2023 or any other writ petition and a beneficial order has been passed, the enhanced pension by including one increment will be payable from the month in which the application for intervention/ impleadment was filed."

" We are inclined to dispose of the present miscellaneous applications directing that Clauses (a), (b), and (c) of the order dated 06.09.2024 will be treated as final directions. We are, however, of the opinion that clause (d) of the order dated 06.09.2024 requires modifications, which shall now read as under:

> *"(d) In case any retired employee filed an application for intervention/impleadment/ writ petition/original application before the Central Administrative Tribunal/High Courts/ this Court, the enhanced pension by including one increment will be payable for the period of three years prior to the month in which the application for intervention/ impleadment/writ petition/original application was filed.*
>
> *Further, clause (d) will not apply to the retired government employee who filed a writ petition/original application or an application for intervention before the Central Administrative Tribunal/High Court/ this Court after the judgment in "Union of India & Anr. Vs. Siddaraj", as in such cases, clause (a) will apply.*
>
> *Recording the aforesaid, the miscellaneous applications are disposed of.*
>
> *We, further, clarify that in case any excess payment has already been made, including arrears, such amount paid will not be recovered.*

It will be open to any person aggrieved by non-compliance with the directions and the clarification of this Court, in the present order, to approach the concerned authorities in the first instance and, if required the Administrative Tribunal or High Court, as per law.

Pending applications including all intervention/impleadment applications shall stand disposed of in terms of this order."

Contempt Petition (Civil) Diary Nos. 38437/2023, 38438/2023, 11336/2024 and 20636/2024.

In view of the order passed today in the connected matters, that is, M.A. Diary No. 2400 OF 2024 and other connected applications, the present contempt petitions will be treated as disposed of with liberty to the petitioners to take recourse to appropriate remedies, if required and necessary, as indicated supra. It goes without saying that the respondents shall examine the cases of the petitioners/ applicants in terms of the order passed today and comply with the same expeditiously.

Pending application(s), if any, shall stand disposed of.

11. In view of the above, the claim of the applicant is required to be decided by the concerned authority for the grant of increment as prayed in accordance with the directions issued by the Hon'ble Supreme Court on 20.02.2025 in MA Diary No.2400/2024 in Civil Appeal

No.3933/2023.

12. Accordingly, the OA is disposed of with a direction to the Competent Authority to adhere to the order of the Hon'ble Supreme Court on 20.02.2025 in MA Diary No.2400/2024 in Civil Appeal No.3933/2023, as detailed hereinabove and settle the claim of the applicant in accordance with the said directions within a period of three months from the date of receipt of a copy of this order.

13. That apart, if, on verification, the respondents find that the applicant is not entitled to the benefit of one notional increment, they shall pass a speaking order in relation thereto.

14. There shall be no order as to costs.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

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

/CHANANA/