

Form No. 4
{See rule 11(1)}
ORDER SHEET
 ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Court No. 3

O.A. No. 1075 of 2022 with M.A. No. 1278 of 2022

Ex Sgt Krushna Chandra Rout

Applicant

By Legal Practitioner for the Applicant

Versus

Union of India & Others

Respondents

By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>04.01.2023</u> <u>Hon'ble Mr. Justice UC Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Atul Kumar Jain, Member (A)</u></p> <p><u>M.A. No. 1278 of 2022</u></p> <p>1. Heard Shri VP Pandey and Shri Rakesh Kumar Singh, Ld. Counsel for the applicant and Mrs Amrita Chakraborty, Ld. Counsel for the respondents on delay condonation application.</p> <p>2. This is an application for condonation of delay in filing Original Application. There is a delay of 02 years, 11 months and 26 days in filing original application.</p> <p>3. Submission of learned counsel for the applicant is that this being a pensionary matter, bar of limitation is not applicable. His further submission is that delay is not deliberate.</p>

4. On the other hand, learned counsel for the respondents has opposed the prayer and submitted that delay has not been properly explained.

5. Considering the facts and circumstances of the case, we find that cause shown is sufficient. Accordingly, delay is condoned. M.A. No. 1278 of 2022 is disposed of.

O.A. No. 1075 of 2022

6. Matter needs adjudication.

7. Admit.

8. Heard learned counsel for the parties.

9. Learned Counsel for the applicant submits that after the Six Central Pay Commission, the Central Government fixed 1st July as the date of increment for all Government Employees, thereafter, the applicant being enrolled on 19.06.1998 and retired on 30.06.2018 is entitled for grant of last increment due on 01.07.2018 as per decision of the Hon'ble Madras High Court in the case of ***P. Ayamperumal Versus the Registrar, Central Administrative Tribunal, Madras Bench and Others***, (W.P. No. 15732 of 2017, decided on 15.09.2017) and this Tribunal judgment passed on 12.08.2021 in O.A. 366 of 2020, ***Ex HFL Sarvesh Kumar vs. Union of India & Ors.***

10. On the other hand, Ld. Counsel for the respondents contended that the applicant had served for complete one year from the date of his last annual increment, but he had not been granted annual increment as on the date of his discharge i.e.

30.06.2018 as per policy in vogue. Since the date of annual increment falls on the following day i.e. 01.07.2018, therefore, benefit of the Hon'ble Madras High Court order being *in personal* cannot be extended to the applicant and hence, Original Application is liable to be dismissed.

11. The law on notional increment has already been settled by the Hon'ble Madras High Court in the case of ***P. Ayamperumal Versus the Registrar, Central Administrative Tribunal, Madras Bench and Others***(Supra). Against the said Judgment the Union of India had preferred Special Leave Petition (Civil) Diary No.22282 of 2018 which was dismissed by the Hon'ble Supreme Court vide order dated 23.07.2018. The relevant portion of the Judgment, for convenience sake, is quoted below:-

“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, i.e., 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.”

12. In view of the law laid down by the Hon'ble Madras High Court, upheld by the Hon'ble Apex Court, we are of the view that since the applicant had completed one full year service as on 30.06.2018, but the increment fell due on the next day of his retirement i.e. 01.07.2018, on which date he was not in service, he has to be treated as having completed one full year of service.

	<p>13. In view of the above, the Original Application is allowed. The impugned order, if any, is set aside. The applicant shall be given one notional increment for the period from 01.07.2017 to 30.06.2018, as he has completed one full year of service, though his increment fell on 01.07.2018, for the purpose of pensionary benefits and not for any other purpose, subject to verification of antecedents. The respondents are directed to issue fresh Corrigendum P.P.O. accordingly. The respondents are further directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @ 8% p.a.</p> <p>14. No order as to costs.</p> <p>15. Miscellaneous applications, pending if any, stand disposed of.</p> <p>(Vice Admiral Atul Kumar Jain) Member (A) rsp/-</p> <p>(Justice Umesh Chandra Srivastava) Member (J)</p>
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