

Court No. 2

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 671 of 2023

Tuesday, this the 21st day of November, 2023

**“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Lt Gen Anil Puri, Member (A)”**

Service No. 764708-H Ex Sgt Prateek Kumar Rai, S/o Shri Upendra Rai, resident of House No. 217, Sohsa, Post Office – Sohsa, Dist – Deoria (U.P.) PIN-274202.

..... Applicant

Ld. Counsel for the Applicant: **Maj SM Mustafa** (Retd), Holding brief of Shri VP Pandey, Advocate and Shri RK Singh, Addvocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi - 110011.
2. The Chief of the Air Staff, Integrated HQ of Ministry of Defence (Air), Vayu Bhawan, New Delhi - 110011.
3. Directorate of Air Veterans, Air HQs AFRO Building, Subroto Park, New Delhi - 110010.
4. Principal Controller Defence Accounts (Pension), Draupadighat, Prayagraj (U.P.) -211014.

..... Respondents

Ld. Counsel for the Respondents : **Mrs Anju Singh, Advocate**
Central Govt. Standing Counsel.

ORDER (ORAL)

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

“(a) To issue/pass an order or direction to the respondents to give effect to recommendation of Seventh Pay Commission by granting increment in salary for the period of 01 year w.e.f. 01 July 2017 to 30 June 2018 alongwith all consequential benefits.

(b) Any other relief as considered proper by this Hon’ble Tribunal be awarded in favour of applicant.

(c) Cost of Original Application be awarded to the applicant.”

2. Brief facts of the case are that the applicant was enrolled in the Indian Air Force on 19.06.1998 and he was discharged from service on 30.06.2018 (AN). Applicant was granted service pension vide P.P.O. No. 349201812285. Applicant’s increment was due on 01.07.2018 which was not granted as he was not in service on that date. As per Sixth Central Pay Commission, the Central Government fixed 1st July as the date of increment for all Government Employees but the respondents have not taken any action in this regard. It is in this perspective that the applicant has filed this Original Application.

3. Maj SM Mustafa (Retd), Advocate holding brief for learned Counsel for the applicant pleaded that after the Sixth Central Pay Commission, the Central Government fixed 1st July, as the date of increment for all Government Employees, therefore, the applicant is

entitled for grant of last increment due on 01.07.2018. He relied upon the law laid down by the Hon'ble High Court of Judicature Allahabad Bench at Lucknow in WP (C) No. 484 of 2010 titled ***Union of India and others V. Sri Sakha Ram Tripathi and others***, 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 AFT (RB), Lucknow judgment in ***O.A. No. 366 of 2020***, titled ***Ex HFL Sarvesh Kumar, vs. Union of India and Others***, decided on 12.08.2021.

4. 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. on 30.06.2018, since the date of annual increment fell on the following day i.e. 01.07.2018. Since the applicant was not on the effective strength of Indian Air Force on 01.07.2018, therefore, he was not granted annual increment on 01.07.2018 as per policy in vogue. Although, he conceded that against the Judgment dated 15.09.2017 passed by the Hon'ble Madras High Court in Writ Petition No.15753 of 2017 an Special Leave Petition (Civil) Diary No. 22282 of 2018 was filed by the Union of India before the Hon'ble Supreme Court which was dismissed vide order dated 23.07.2018. He also submitted that the notional increment could not be granted to the retirees of 30 June in terms of

DoPT, Government of India letter No. 19/2/2018-Estt (Pay-1) dated 03.02.2021.

5. We have heard brief holder for learned counsel for the applicant as also Ld. Counsel for the respondents and gone through the records and we find that the only question which needs to be answered is that whether the applicant is entitled for one notional increment?

6. The law on notional increment has already been settled by the Hon'ble Madra 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 passed by the Hon'ble Madras High Court is excerpted 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, 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.”

7. The Civil Appeal No. 4339 of 2023, Arising out of Diary No. 16764 of 2013, **Union of India & Others vs. Anand Kumar Singh** has been dismissed by the Hon'ble Supreme Court vide order dated 10.07.2023 in terms of earlier judgment passed by the Hon'ble Supreme Court in Civil Appeal No. 2471 of 2023, **The Director (Admn. and HR) KPTCL & Ors vs. C.P. Mundinamani & Ors** dated 11.04.2023 in which the Hon'ble Supreme Court has held that an employee, who has served for a complete year in an organisation, is entitled to annual increment on the last day of service for rendering one full year service.

8. In view of the law laid down by the Hon'ble Madras High Court and other courts and upheld by the Hon'ble Supreme Court, we are of the view that applicant has to be treated as having completed one full

year of service on 30.06.2018, though the date of increment falls on the next day of his retirement, i.e. on 01.07.2018, on which date he was not in service, is entitled to annual service increment.

9. In view of the above, the Original Application is **allowed**. The impugned order passed by the respondents 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. The respondents are directed to issue fresh Corrigendum P.P.O. in respect of applicant 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. However, due to law of limitations settled by the Hon'ble Supreme Court in the case of ***Shiv Dass v. Union of India and others*** (2007 (3) SLR 445), the arrear of service pension will be restricted to three years preceding the date of filing of the instant O.A. The date of filing of this O.A is 01.06.2023. The respondents are further directed to give effect to this order within a period of four months from the date of receipt of certified copy of this order. Default will invite interest @ 8% per annum till actual payment.

10. No order as to costs.

11. Pending Misc. Application(s), if any, shall be treated to have been disposed off.

12. Departmental Representative for the respondents orally submitted to grant leave to appeal against the above order, which we have considered and no point of law of general public importance being involved in this case, the plea is rejected.

(Lt Gen Anil Puri)
Member (A)

Dated: 21st November, 2023
rspal

(Justice Anil Kumar)
Member (J)