

Court No. 2**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 323 of 2023**Friday, this the 15th day of December, 2023**“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Maj Gen Sanjay Singh, Member (A)”**

Service No. 695888-H, Ex-WO Tarkeshwar Upadhyay, Son of Late Ram Naresh Upadhyay, presently residing at C/o Shri Joginder Singh, House No. 103, Garg Enclave, Picnic Spot Road, Post Office-CAMP, Lucknow (U.P.) PIN-226015.

..... Applicant

Ld. Counsel for the : **Shri VP Pandey**, Advocate
Applicant

Versus

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

.....Respondents

Ld. Counsel for the Respondents : **Shri Rajiv Pandey**,
Central Govt. Standing Counsel

ORDER

1. The instant Original Application has been filed 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 Sixth Central Pay Commission by granting increment in salary for the period of 01 year w.e.f. 01 January 2022 to 31.12.2022 along with consequential benefits.

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

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

2. Briefly stated, applicant was enrolled in the Indian Air Force on 24.04.1985 and was discharged on 31.12.2022 (AN). Applicant was granted service pension with effect from 01.01.2023 vide PPO No. 601202204154. The applicant was not granted annual increment on 01.01.2023 which was due. Now the applicant has filed this Original Application for grant of annual increment and re-fixation of pension and for issuance of fresh Corrigendum P.P.O. on the ground that after the Sixth 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 pleaded that after the Sixth Central Pay Commission, the Central Government fixed 1st July & 1st January, as the date of increment for all Government Employees, therefore, the applicant being discharged from service on 31.12.2022, is entitled for grant of annual increment due on 01.01.2023. He has relied upon **OA No. 366 of 2010** passed by this tribunal in the case of **Ex-HFL, Sarvesh Kumar Vs UOI & Ors** and also placed reliance on 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 dated 24.02.2023 passed in O.A. No. 1080 of 2022, ***Ex Sgt Ram Mohan vs. Union of India and Others.***

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 was not granted annual increment as on the date of his discharge i.e. 31.12.2022, since the date of annual increment fell on the following day i.e. 01.01.2023. Since the applicant was not on the effective strength of Indian Army on 01.01.2023, therefore, he has not been granted annual increment on 01.01.2023 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 31 December in terms of DoPT, Government of India letter No. 19/2/2018-Estt (Pay-1) dated 03.02.2021.

5. We have heard Ld. 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 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 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, 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.”

7. 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 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 has completed one full year service as on 31.12.2022, he is entitled to be granted one notional increment effective from 01.01.2023, though he was not in service on that date. In view of the above judgment, 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.

9. In view of the above, the Original Application is **allowed**. The applicant shall be given one notional increment for the period from 01.01.2022 to 31.12.2022, as he has completed one full year of service, though his increment fell on 01.01.2023, for the purpose of pensionary benefits and not for any other purpose. The respondents are directed to issue fresh Corrigendum P.P.O. to the 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. Default will invite interest @ 8% per annum till the actual payment.

10. No order as to costs.

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

12. Learned counsel 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.

(Maj Gen Sanjay Singh)
Member (A)

Dated : 15th December, 2023

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(Justice Anil Kumar)
Member (J)