

Court No. 2

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 433 of 2023

Monday this the 16th day of October, 2023

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

No. 4570713K Ex Nk Suresh Prasad (Retd.)
S/o Late Ramhit Yadav,
R/o SH 13/110A Yamuna Nagar Colony, Varanasi Uttar Pradesh
PIN 221003.

..... Petitioner

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

Versus

1. Union of India, through Secretary, Ministry of Defence (Army), DHQ PO, New Delhi.
2. The Chief of the Army Staff, Army Headquarters, Sena Bhawan, New Delhi.
3. The Officer-in-Charge, Records, The Mahar Regiment.
4. Pay and Account Office (OR), Records, The Mahar Regiment.

.....**Respondents**

Ld. Counsel for the Respondents: **Shri Ashish Kumar Singh**,
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) Issue/pass an order or direction of appropriate nature to respondents to grant Notional increment due after 30 June 2015, i.e. with effect from 01 July 2015.

(b) Issue/pass any other order or direction to respondent to re-fix the pay and allowances of the applicant after revision of his pay.

(c) Issue/pass an order or direction of appropriate nature to the respondents to award interest @ 24% per annum over the arrears accrued as a result of revision of pay and allowances of the applicant.

(d) Issue/pass any other order or direction to the respondent as this Hon’ble Tribunal may deem fit in the circumstances of the case.

(e) To allow the Original Application with cost in favour of Applicant against the respondents.”

2. Briefly stated, applicant was enrolled in the Indian Army on 14.01.1999 and was discharged from service on 30.06.2015 (AN). 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 preferred the present Original Application.

3. 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, thereafter, the applicant is entitled for grant of last increment due on 01.07.2015. He relied upon the law laid down by 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 AFT (RB), Lucknow judgment in O.A. No. 739 of 2022 **titled as Ex Sgt Ajeet Kumar vs. Union of India and Others**, decided on 25.01.2022.

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. 30.06.2015, since the date of annual increment fall on the following day i.e. 01.07.2015. Since the applicant was not on the effective strength of Indian Army on 01.07.2015, therefore, he was not been granted annual increment on 01.07.2015 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 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 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 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 law laid down by the Hon'ble Madras High Court and other courts, 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 as on 30.06.2015, though the date of increment falls on the next day of his retirement, i.e. on 01.07.2015 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 01.07.2014 to 30.06.2015, as he has completed one full year of service, though his increment fell on 01.07.2015, 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. Default will invite interest @ 8% per annum till the date of actual payment.

10. No order as to costs.

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

12. Ld. 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 the case, the plea is **rejected**.

(Lt Gen Anil Puri)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 16th October, 2023
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