

RESERVED
Court No. 2

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 997 of 2023

Friday, this the 1st day of March, 2024

“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Maj Gen Sanjay Singh, Member (A)”

Sub Durga Shanker Pathak (Retd) (JC802808L)
R/o House No. 374-A, Ganga Vihar Colony Transport Nagar,
PO – Dhoomanganj, Prayagraj, (UP) - 211011

..... Applicant

Ld. Counsel for the Applicant : **Shri Tatsat Shukla,**
Shri Dhiraj Kumar and
Shri Rahul Pal, Advocates

Versus

1. Union of India, through Secretary Ministry of Defence, Room No9. 101A, South Block, DHQ PO, New Delhi, PIN-110011.
2. OIC Record, Sena Shiksha Corps Abhilekh Karyalaya, Army Education Corps Records, PIN-908777.
3. PAO (OR) Army Education Corps, Pachmarhi (MP), PIN-461881.
4. PCDA, Draupadi Ghat, Prayagraj-211012.

.....**Respondents**

Ld. Counsel for the Respondents: **Ms. Deepti Prasad Bajpai,**
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 direct the PAO (OR) to reply the letter of the AEC Record dt 03 Feb 2023 annexed as Annexure A1.*
- (b) To direct the Respondents to grant a notional annual increment on the payment of the applicant as on completion of his service from 01 July 2011 to 30 June 2012 and refix his pension according to the increased pay.*
- (c) To direct the respondents to give arrears to the applicant @ 12% interest from the date of release from service.*
- (d) To direct the respondents to issue fresh/corrigendum PPO in respect of applicant in accordance with increased pay after granting notional increment.*
- (e) To pass any other order or direction in favour of applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.*

2. Counter affidavit filed on behalf of the respondents is taken on record.

3. Briefly stated, applicant was enrolled in the Indian Army on 08.11.1983 and was discharged on 30.06.2012 (AN). The applicant represented his case vide Grievance dated 28.01.2023 for grant of increment which was due on 01.07.2012 and re-fixation of pension and for issuance of fresh Corrigendum P.P.O. on the ground that after the Six 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.

4. Learned Counsel for the applicant pleaded that after the Six 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 having served for complete one year from 01.07.2011 to 30.06.2012, due on 01.07.2012. He relied upon the law laid down by the Hon'ble Madras High Court in the case of ***P. Ayyamperumal 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, **HFL Sarvesh Kumar vs. Union of India and Others**, decided on 12.08.2021.

5. 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. 30.06.2012 since the date of annual increment fall on the following day i.e. 01.07.2012. Since the applicant was not on the effective strength of Indian Army on 01.07.2012, therefore, he was not granted annual increment on 01.07.2012 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 a 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 as per Govt. of India, Ministry of Personnel,

Public Grievance & Pensions (DoPT) letter dated 24.06.2021 circulated vide CGDA, Delhi Cantt letter dated 26.07.2021, the Hon'ble Supreme Court had stayed the operation of the order for grant of notional increment vide its order dated 05.04.2021 and pleaded that applicant is not entitled to notional increment.

6. 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?

7. The law on notional increment has already been settled by the Hon'ble Madras High Court in the case of ***P. Ayyamperumal 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.”*

8. The Civil Appeal No. 4339 of 2023, Arising out of Diary No. 16764 of 2023, **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.

9. 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 30.06.2012, though the date of increment falls on the next day of his retirement, i.e. on 01.07.2012 on which date he was not in service, is entitled to annual service increment.

10. 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 01.07.2011 to 30.06.2012, as he has completed one full year of service, though his increment fell on 01.07.2012, for the purpose of pensionary benefits and not for any other purpose. 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% per annum till the actual payment.

11. No order as to costs.

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

13. 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)

(Justice Anil Kumar)
Member (J)

Dated : March, 2024
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