

Court No. 2
(SI No.15)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 1331 of 2023

Thursday, this the 9th day of May, 2024

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

Sub Sushil Kumar Singh (Retd) (Army No-JC-761901P) R/O-Vill-Pahrajpur, PO-Pur, Dist-Balia, Uttar Pradesh-277124.

..... Applicant

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

Versus

1. Union of India, Through Secretary Ministry of Defence Room No. 101 A, South Block, DHQ PO, New Delhi, PIN 110011.
2. OIC Record, EME Record, Secunderabad.
3. PAO (ORs), Corps of EME, Secunderabad.
4. PCDA, Draupadi Ghat, Prayagraj – 211014

.....Respondents

Ld. Counsel for the : **Shri Devesh Kumar Mishra**, Advocate
Respondents Central Govt. Counsel

ORDER (Oral)

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

“(a) To quash the Impugned Order of the Respondents annexed as Annexure A-1.

- (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 Jul 2019 to 30 Jun 2020 and re-fix his pension according to the increased pay.*
- (c) *To direct the respondents to give arrears to the Applicants @ 12% interest from the date of release from service.*
- (d) *To direct the respondent 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. Briefly stated, applicant was enrolled in the Indian Army on 26.06.1992 and was discharged on 30.06.2020 (AN). The applicant preferred an application dated 08.09.2023 for grant of increment, which was due on 01.07.2020 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 as the date of increment for all Government Employees but the respondents have denied for the grant of notional increment vide their letter dated 16.09.2023. 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, therefore, the

applicant is entitled for grant of last increment due on 01.07.2020. He has relied upon the law laid down by the Hon'ble Madras High Court in the case of ***P. Ayyamperumal vs 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 and O.A. No. 632 of 2020, ***Ex Nk Anand Kumar vs. Union of India and Others***, decided on 04.01.2019.

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. 30.06.2020 since the date of annual increment fell on the following day i.e. 01.07.2020. Since the applicant was not on the effective strength of Indian Army on 01.07.2020, therefore, he was not granted annual increment on 01.07.2020 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 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. He pleaded for dismissal of O.A.

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. 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, 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. 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 30.06.2020, though the date of increment falls on the next day of his retirement, i.e. on 01.07.2020 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, if any, is set aside. The applicant shall be given one notional increment for the period from 01.07.2019 to 30.06.2020, as he has completed one full year of service, though his increment fell on 01.07.2020, 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.

10. No order as to costs.

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

(Maj Gen Sanjay Singh)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 9th May, 2024
RPM/rathore