

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 767 of 2023**

Wednesday, this the 11th of October, 2023

Hon'ble Mr. Justice Anil Kumar, Member (J)

Hon'ble Maj Gen Sanjay Singh, Member (A)

JC-694903 L SUB Rakesh Kumar Tripathi S/o J.P. Tripathi, Sector-B, Vijay Nagar, Lucknow, Cantonment, Lucknow, Uttar Pradesh - 226002.

..... Applicant

Ld. Counsel for the Applicant: **Shri Satya Narayan Mishra**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, DHQ PO, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters of the Ministry of Defence (Army), South Block, DHQ, New Delhi – 110011.
3. Senior Record Officer, AMC Centre Lucknow, S.P Marg, Dilkusha, Lucknow, Uttar Pradesh – 226002.
4. Principal Controller of Defence Accounts (Pensions), Draupadi Ghat, Sadar Bazar, Prayagraj, Uttar Pradesh – 211014.

..... Respondents

Ld. Counsel for the Respondents : **Shri Pushendra Mishra**,
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 quash impugned PPO (Annexure A-I), the Pension Payment Order No. 203202200890 (Army) vide which notional increment has been illegally denied to the applicant.

(b) Pass an order re-calculating pension and other terminal benefits after taking into account the benefit of notional increment as on 30.06.2022.

(c) Pass an order granting interest @ 18% on the arrears of pension and other terminal benefits to which the applicant is held entitled in terms of the re-calculation after implementing the order at (b) above.

(d) Pass an order awarding cost of the present application for compelling the filing of the instant application.

(e) to issue/pass an order or directions of appropriate nature to the respondents to revise the pension with effect from 01.07.2022 after computing said Band Pay of Rs 55200/- and increment in last pay drawn and to pay the arrears alongwith suitable rate of interest as deem fit by the Hon'ble Tribunal.

(f) Pass any other or such further order(s) or direction(s) in favour of the applicant and against the respondents which this Hon'ble Tribunal feels necessary in the attendant circumstances of the case, to meet the ends of justice.

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 30.06.1992 and he was discharged from service on 30.06.2021 (AN). Applicant was granted service pension vide P.P.O. No. 203202200890. Applicant's increment was due on 01.07.2021 which was not granted. 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. 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 01.07.2021. 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. 30.06.2021, since the date of annual increment fell on the following day i.e. 01.07.2021. Since the applicant was not on the effective strength of Indian Army on 01.07.2021, therefore, he was not been granted annual increment on 01.07.2021 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 30.06.2021, though the date of increment falls on the next day of his retirement, i.e. on 01.07.2021 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 01.07.2020 to 30.06.2021, as he has completed one full year of service, though his increment fell on 01.07.2021, 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 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)

Dated: 11th October, 2023
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(Justice Anil Kumar)
Member (J)