

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(CIRCUIT BENCH AT NAINITAL)**

ORIGINAL APPLICATION No. 138 of 2022

Wednesday, this the 07th day of September, 2022

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 3180932P Ex. Nk. Kushal Singh, S/o Madan Singh, R/o B.E.G. Camp road, Adwani Plot, Village – Raiwala, Post Office – Raiwala, District – Dehradun. Presently posted as Review Officer, Legislation & Parliamentary Affairs Department, Government of Uttarakhand.

..... **Applicant**

Ld. Counsel for the Applicant : **Shri Kishore Rai**, Advocate.

Versus

1. Union of India, Ministry of Defence through its Secretary, South Block, New Delhi-110011.
2. P.C.D.A. (P), Allahabad, Uttar Pradesh.
3. Chief of the Army Staff, Army Headquarters, New Delhi-110011.
4. Senior Record Officer, Records, Garhwal Rifles, Lansdowne, Pauri Gahrwal.

.....**Respondents**

Ld. Counsel for the Respondents. : **Shri Rajesh Sharma**, Advocate
Central Govt. Counsel

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

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

- i. A direction to the respondents to grant one additional increment to the applicant on 01.07.2004 and revised*

his pension on the basis of last drawn salary after addition the increment with effect from 01.07.2004 along with the arrears.

- ii. Any other relief to which the applicant is found entitled may also very kindly be granted to the applicant.*

2. Briefly stated, applicant was enrolled in the Indian Army on 18.06.1987 and discharged on 30.06.2004 (AN) in the rank of **Naik** after fulfilling the terms of engagement under Rule 13(3) Item III (i) of the Army Rules, 1954. The applicant was granted service pension with effect from 01.07.2004 for life. The applicant is in receipt of service pension of Naik. The applicant preferred several representation dated 01.11.2021 for grant of notional increment which was due on 01.07.2004 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 of no avail. It is in this perspective that the applicant has preferred the present Original Application.

3. 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, thereafter, the applicant is entitled for grant of last increment due on **01.07.2004**. 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).

4. On the other hand, Ld. Counsel for the respondents contended that the applicant had not been granted annual increment as on the date of his discharge i.e. 30.06.2004 since the date of annual increment fall on the following day i.e. 01.07.2004 as per rules. The respondents have stated that the case was referred to Pay Accounts Office (Other Ranks), Garhwal Rifles, Lansdowne by Records The Garhwal Rifles vide letter dated 11.11.2021 and reminded vide letters dated 09.12.2021 and 15.01.2022 but no reply has been received yet. 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.

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 whether 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 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. 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 had completed one full year service as on 30.06.2004, but the increment fell due on 01.07.2004, on which date he was not in service. 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.

8. In view of the above, the **Original Application No. 138 of 2022** deserves to be allowed, hence **allowed**. The applicant shall be given one notional increment for the period from 01.07.2003 to 30.06.2004, as he has completed one full year of service, though his increment fell on 01.07.2004, 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

9. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 07 September, 2022

AKD/-