CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

OA/20/392/2020

HYDERABAD, this the 5th day of August, 2020

Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member

T. Venkateswara Rao, (Gr-A)
S/o. T. Ramachandra Rao,
Aged about 60 years,
Retired Asst. Commissioner of Central Tax,
R/o. H.No.29, Manoj Nagar,
Tadigadapa Village,
Penamaluru Mandal,
Krishna District.

... Applicant

(By Advocate: Mr. N. Vijay)

Vs.

1. Government of India,
   Ministry of Finance,
   Department of Revenue,
   North Block, New Delhi rep. by its Secretary.

2. Central Board of Indirect Taxes and Customs,
   North Block, New Delhi rep. by its Chairman.

3. Chief Commissioner of Central Tax,
   Visakhapatnam Zone,
   Visakhapatnam.

4. Commissioner of Customs (Preventive).
   Vijayawada.

... Respondents

(By Advocate: Mrs. K. Rajitha, Sr. CGSC)

O R D E R (ORAL)

(Hon'ble Mr. B.V. Sudhakar, Admn. Member)

Through Video Conferencing

2. This OA is filed for grant of notional increment on 1st July 2020 having retired from service on the 30th June 2020.

3. Brief facts of the case are that the applicant retired from the respondents organization on 30th June 2020 as Asst. Commissioner of Central Tax. The grievance of the applicant is that he was supposed to be granted increment on 1st July 2020, but it was not granted on the ground that he retired on 30th June 2020. Aggrieved, the OA has been filed.

4. The contentions of the applicant are that the relief sought by him in regard to the notional increment to be granted to him on the 1st July 2020 has already been decided by the superior judicial fora viz., the Hon'ble High Court of Madras in WP No. 15732/2017 vide order dt. 15.09.2017 and when the said order was challenged before the Hon'ble Supreme Court in SLP (Civil) Diary No. 22283/2018, the same was dismissed on 23.07.2018. Further, review petition filed by the department vide RP (C) No. 1731/2019 was also dismissed by the Hon'ble Supreme Court on 08.08.2019. It is also submitted by the applicant that the Hon'ble Delhi High Court in WP (C) No.5539/2019 vide order dt. 13.01.2020 and in WP (C) No. 10509/2019, vide order dt. 23.01.2020, allowed similar reliefs following the judgment of the Hon'ble High Court of Madras (supra). Applicant further contends that Ernakulam Bench of this Tribunal in OA No.1055/2018 & batch, vide order dt. 03.12.2019, granted relief following the order of the

Hon'ble Madras High Court (supra). The applicant, therefore, contends that, in view of the above orders of superior judicial fora, he is entitled for the relief sought. Despite making representation, he has not been granted the said benefit.

5. Heard both sides and perused the material on record.

6. We have carefully gone through various orders referred to by the applicant. Hon'ble Ernakulam Bench of this Tribunal in OA No. 180/1055/2018 and batch, vide order dt. 03.12.2019, extended the same relief as sought by the applicant, with the following directions:

> *"… The applicants shall be given one notional increment for the purpose of calculating the pensionary benefits and not for any other purpose as held by the Hon'ble Madras High Court in P. Ayyamperumal's case (supra) upheld by the Hon'ble apex court. The respondents shall implement the order of this Tribunal within three months from the date of receipt of a copy of this order. There shall be no order as to costs."*

Hon'ble High Court of Delhi in W.P (C) 10509/2019 in Gopal Singh v U.O.I has also granted a similar relief on 23.01.2020, as under:

> *"10. Accordingly, the impugned order dated 3rd May, 2019 is set aside. A direction is issued to the Respondents to grant notional increment to the Petitioner with effect from 1st July, 2019. The Petitioner's pension will consequentially be re-fixed…."*

This Tribunal also granted similar relief in several OAs. One of them is OA No.1263/2018 wherein vide order dt.13.3.2020, while granting the similar relief, passed an elaborate order discussing the issue on hand threadbare. Concluding part of the Order of this Tribunal after discussing the judgments referred to above at length in about 27 pages, is extracted as under:

" ..Increment, axiomatically, is an integral and inseparable part of pay and as per the provisions of Rule 64 of the Receipt and Payment Rules, 1983, pay of a Government servant together with allowances becomes due and payable on the last working day of each month. Thus, the increment which accrued over 12 months becomes payable on the last working day of the month of June. Had the same been paid on that date, the last pay drawn would mean the pay with the increment for that year, whereas, since the pay was not disbursed on that day, the increment has not been taken into account while reckoning the last pay drawn. Last pay drawn is significant in view of the fact that all the terminal benefits and pension are calculated on the basis of last pay drawn. Non- disbursement of pay on the last working day of June of the year when the applicants superannuated is not on account of any of the fault of the applicants. As such, they cannot be penalized in this regard. The only possible way to right the wrong is to consider the increment due for the last year of service of the applicant as deemed one and the pay with increment is thus the deemed last pay. All the pensionary benefits are, therefore, to be calculated reckoning the deemed last pay as the basis and various pensionary benefits worked out accordingly and also revised PPO issued after revising the extent of pension and fixing the rate of family pension.

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XXIII) In view of the aforesaid discussion and decisions, the OA succeeds. It is declared that the applicants are entitled to reckon the increment due for the last year of their service before superannuation for the purpose of working out the last pay drawn and it is this revised pay that would form the basis for working out pension, family pension and pensionary benefits. Necessary orders including PPO shall be passed accordingly within a period of three months from the date of receipt of certified copy of this order.

*XXIV) As regards disbursement of arrears of pay for the last month of service as also the arrears of difference in pension, the judgment of Hon'ble Apex Court in **Union of India & Ors** Vs. **Tarsem Singh**[1] has to be borne in mind and followed."*

Recently, this Tribunal allowed OA Nos. 325/2020 & batch, on 17.07.2020, wherein a detailed order has been passed adverting to the several contentions raised by the respondents therein.

In order to maintain judicial discipline, orders of the higher judicial fora as well as the Coordinate Benches of this Tribunal have to be abided by. It is well settled that similarly placed employees are entitled to be granted similar relief, as

[1](2008) 8 SCC 648

held by the Hon'ble Supreme Court in its judgments viz., ***Amrit Lal Berry vs Collector Of Central Excise, (1975) 4 SCC 714; Inder Pal Yadav Vs. Union of India, 1985 (2) SCC 648; Uttaranchal Forest Rangers' Assn (Direct Recruit) Vs. State of UP (2006) 10 SCC 346.***

7. In the result, the respondents are directed to grant eligible relief to the applicant keeping in view the orders cited supra, with consequential benefits, within a period of 3 months from the date of receipt of this order.

The OA is disposed accordingly. There shall be no order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

(ASHISH KALIA)
MEMBER (JUDL.)

pv/evr