

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/20/538/2020

HYDERABAD, this the 26th day of August, 2020



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

1. Poola Rajanna, S/o. P. Venkataiah,
Aged about 65 years, Occ: Loco Pilot (Retired),
SC Railway, Vijayawada Division,
R/o. D. No. 20-6-81, FF1, Ramalingeswarpet,
Vijayawada, Andhra Pradesh.
2. Kommoju Prasad, S/o. Mrutyanjaya Rao,
Aged about 62 years, Occ: Sr. Section Engineer (Retd.),
SC Railway, Vijayawada Division,
R/o. D. No. 31-10-24, Ganesh Bhavan,
Rajahmundry, Andhra Pradesh.

... Applicants

(By Advocate: Mr. M.C. Jacob)

Vs.

1. Union of India rep. by
The Secretary,
Railway Board, Ministry of Railways,
Rail Bhavan, New Delhi.
2. The General Manager,
South Central Railways, Rail Nilayam,
Secunderabad.
3. The Divisional Railway Manager,
South Central Railways,
Vijayawada Division, Vijayawada,
Krishna District, Andhra Pradesh.

... Respondents

(By Advocate: Mr. S.M. Patnaik, SC for Railways)

OR D E R (ORAL)**(as per Hon'ble Mr. B.V. Sudhakar, Admn. Member)****Through Video Conferencing:**

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



3. Brief facts of the case are that the applicants retired from the respondents organization on 30th June of the corresponding year, as listed below:

Sl. No	Name	Designation	Retired on	Increment Due
1	Poola Rajanna	Loco Pilot	30.06.2015	01.07.2015
2	K. Prasad	Sr. Section Engineer	30.06.2018	01.07.2018

The grievance of the applicants is that they were supposed to be granted increment on 1st of July of the retirement year, but it was not granted on the ground they retired on 30th June of the relevant year. They also submitted representations to the concerned authorities, but of no avail. Aggrieved, the OA has been filed.

4. The contentions of the applicants are that the relief sought by the applicants in regard to the notional increment to be granted to them on the 1st July of the relevant year 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 applicants that the Hon'ble Delhi High Court in WP (C) No. 10509/2019, vide order dt. 23.01.2020, allowed a similar relief following the judgment of the Hon'ble High Court of Madras (supra). Applicants further contend 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 applicants, therefore, contend that, in view of the above orders of superior judicial fora, they are entitled for the relief sought.

5. Heard both sides and perused the material on record.
6. We have carefully gone through various orders referred to by the applicants. 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 applicants, 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.

XXX

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 Singh¹ has to be borne in mind and followed.”*

This Tribunal granted similar benefit in OA filed against the contesting Railways vide OA 432/2020, vide order dt. 08.07.2020. 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.

¹(2008) 8 SCC 648

7(I) When the matter came up for hearing, ld. Counsel for the respondents has submitted that the Hon'ble Madras High Court has not considered the judgment of the Full Bench of the Hon'ble High Court of A.P in WP No. 22042/2003 & Batch, dt.27.01.2005 wherein enhanced DA after retirement on 1st July was allowed, but not the increment. Therefore, granting relief to the applicants based on the Hon'ble Madras High Court Judgment is improper, is the submission of the learned counsel for the respondents.

(II) In this regard, it is to be adduced that the judgment of the Hon'ble High Court of A.P. in Principal Accountant General & others v. C.Subba Rao & others, [(2005(2) ALD 1 = 2005 (2) ALT 25] cited by the Ld. respondents counsel to beef up the defense would not be relevant for the reason that when the judgment was delivered by the Hon'ble A.P High Court in 2005 in the above case, the rule for granting increment was the date of joining of the service/ date of promotion. This rule has been changed after the 6th CPC with the date of increment being taken as a uniform date of 1st July and as per CCS (Revised Pay) Rules, 2008, after completion of 6 months of service in the grade/pay scale, one would become eligible for grant of an increment. Moreover, the concept of taking 50% of last pay drawn for granting of pension has been brought into vogue from 2006 onwards. The change in the Rules subsequent to the judgment of the Full Bench cited supra, have thus made it irrelevant.

(III) Coming to the judgment of the Hon'ble Madras High Court in WP No. 15732/2017 delivered on 15.9.2017, the same was challenged in Hon'ble Supreme Court in SLP (C) Diary No. 22283/2018 which was dismissed on 23.07.2018. Further, the review petition filed in the above SLP was dismissed



on merits on 8.8.2019. The implication would then be that, the Hon'ble Apex Court was disinclined to interfere with the Hon'ble Madras High Court judgment under Article 136 of the Constitution of India.

(IV) Nevertheless, there would be one another argument which would arise that the order of the Hon'ble Supreme Court in SLP/review petition is not a speaking order and therefore, the law has not been laid on the subject. In other words, the judgment of the Hon'ble High Court has not merged with any order of the Hon'ble Supreme Court on the subject. However, as on the date, Judgment of the Hon'ble Madras High Court in WP No. 15732 of 2017 holds good till it is subjected to review and such an outcome is known. As on date, there is no legal document to the contrary and neither contested at the time of admission. Consequently, the legal principle laid by the Hon'ble Madras High Court, a superior legal forum, has to be followed to maintain judicial discipline.

(V) Further, it is not out of place to state that in the later judgment of Hon'ble High Court of Delhi on 13.1.2020 in WP (C) No. 5539/2019, while granting the relief sought on the same issue based on Madras High Court verdict, has rejected the contention that P. Ayyamperumal Judgment is *in personam* thereby expanding the application of the verdict to similarly placed employees like the applicant(s) in the case on hand.

(VI) One another submission made by the Ld. Counsel for the respondents is that this Tribunal, on 26.04.2019, dismissed OAs 1110/2018 & 1111/2018, which were filed seeking similar relief, following the Judgment of the Full Bench Hon'ble High Court of AP cited supra. The reason for the dismissal on dates adduced was that the review petition filed in regard to the issue under



dispute was pending before the Hon'ble Supreme Court. The review petition was dismissed on 08.08.2019 and therefore, in judgments delivered thereafter by this Tribunal, relief sought was granted for reasons as expounded above. Hence, this contention too renders no assistance to the respondents.



(VII) It is well settled that similarly placed employees are entitled to be granted similar relief, as held by the Hon'ble Supreme Court in its judgments viz., *AmritLal 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.*

8. In the result, the respondents are directed to grant eligible relief to the applicants keeping in view the orders cited supra, with consequential benefits, within a period of 3 months from the date of receipt of this order. However, monetary relief like arrears, etc. payable to the applicants, shall be restricted for a period of 3 years prior to the date of filing of the OA as observed by the Hon'ble Supreme Court in *Union of India v Tarsem Singh* cited supra.

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

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

(ASHISH KALIA)
MEMBER (JUDL.)

al/evr