

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/020/00653/2020

HYDERABAD, this the 19th day of October, 2020

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

B. Subbarayudu, Age 70 years,
S/o late B. Mallanna,
Plot No. 91/1, D. No. 6-42/1c,
Temple Road, Vivekananda Nagar Colony,
Kukatpally, Hyderabad - 500072.Applicant

(By Advocate: Mr. N. A. J. A. Shyambabu)

Vs.

1. Union 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,
Chennai Zone, 26/1 Mahatma Gandhi Road,
Nugambakkam, Chennai-600034.
4. Commissioner of C G & S Tax,
North Commissionerate, 110,
Nugambakkam High Rd, Sadras,
Thousand Lights, Chennai,
Tamil Nadu – 600006. ... Respondents

(By Advocate: Mr. N. Parameswara Reddy, Sr. PC for CG)

ORDER (ORAL)

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



2. This OA is filed for grant of notional increment due to the applicant

on 1st July of 2010 having retired from service on the 30th June 2010, with consequential benefits.

3. Brief facts of the case are that the applicant retired as Assistant Commissioner from the respondents organization on 30th June 2010. The grievance of the applicant is that he was supposed to be granted increment due on 1st of July of the year of retirement, but he was not granted despite making representations. Aggrieved, the OA has been filed.

4. The contentions of the applicant are that he is entitled for the relief sought in the OA, basing upon the judgment of the Hon'ble Madras High Court in WP 15732/2017, which attained finality. Applicant also relied on the order of the Hon'ble High Court of Delhi in WP (C) Nos.5539/2019 and 10509/2019. He also cited the orders of Hon'ble Ernakulam Bench this Tribunal in OA No. 145/2019 dt. 01.06.2020, OA No. 55/2018 & batch, dt. 03.12.2019 and orders of this Bench in OA 1155/2018 dt. 13.03.2020, OA No. 392/2020, dt. 5.08.2020, OA No. 486/2020 dt. 21.08.2020 and contends that he is also similarly placed as that of the applicants therein and therefore, he is entitled for similar relief as per the Apex Court judgment in Inder Pal Yadav v. Union of India. The applicant also submits that the precedents are to be strictly adhered to as per the judgment of Apex Court in S.I. Roop Lal v. Lt. Governor of Delhi. The applicant submitted representations dt. 28.09.2012, 28.03.2019 and 15.02.2020

and in pursuance thereto, the respondents issued a communication dt. 18.03.2020 informing that the increment cannot be granted.

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

6. This Tribunal earlier granted similar relief in some OAs. In OA No.1155/2018, this Tribunal passed an elaborate order discussing the issue on hand threadbare and following the same, some other OAs were disposed. Subsequently, on 17.07.2020, in OA Nos. 325/2020 & Batch, this Tribunal passed a detailed order on the same subject. Some of the observations, and the conclusions made in OA No. 325/2020 & batch, are as under:

"XVII. Continuing their defence, respondents have stated that the Hon'ble High Court of Delhi in W.P (C) No. 9062/2018 & C.M No 34892/2018 has rejected similar relief in regard to increment and enhanced DA on 23.10.2018 even by referring to P. Ayyamperumal Judgment. However, the Hon'ble Delhi High Court in its later judgment in W.P (C) 10509/2019 in Gopal Singh v U.O.I did grant a similar relief on 23.01.2020, as under:

*"8. More recently, this Court in its decision dated 13th January, 2020 in W.P.(C) 5539/2019 (Arun Chhibber v. Union of India) has discussed the judgment in P. Ayyamperumal at some length in the context of the prayer of an officer of the Central Reserve Police Force ('CRPF') who had retired on 30th June, 2007 for notional increment. The Court rejected the contention of the Respondents therein that the judgment in P. Ayyamperuamal had to be treated as one that was *in personam* and not *in rem*. In relation to the Respondent's attempt to distinguish the applicability of the judgment in P. Ayyamperumal to CRPF personnel, the Court observed as under:-*

*"5. The Court finds that the only difference, if any, between P. Ayyamperumal (*supra*) and this case is that the former was an employee of the Central Government, whereas here the Petitioner superannuated from the CRPF. The Court, therefore, finds no reasons to deny the Petitioner same relief granted to Mr. P. Ayyamperumal by the Madras High Court. The similarity in the two cases is that here too, the Petitioner has completed one year of service, just one day prior to 1st July, 2007."*

9. The position here as regards CISF personnel can be no different and it was not, therefore, open to the Respondents to refuse to grant to the Petitioner notional increment merely because he superannuated a day earlier than the day fixed by the CPC for such benefit to accrue.

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. The appropriate orders will be issued and arrears of pension will be paid to the Petitioner within a period of 6 weeks, failing which the Respondents would be liable to simple interest at 6% per annum on the arrears of period of delay."



It requires no reiteration that the later judgment of Hon'ble High Court of Delhi on 13.1.2020 on the same issue holds the ground. It must be noted that the Hon'ble High Court of Delhi has rejected the contention that P.Ayyamperumal Judgment is in personam on which the respondents harped by stating that the nodal Ministry i.e. DOPT has taken such a stand. Moreover, the judgment of the Hon'ble High Court of A.P. in Principal Accountant General, AP & others v C. Subba Rao & others in 2005(2) ALD 1 = 2005 (2) ALT 25 cited by the respondents to back their defence would not be relevant in view of the latest Judgment of the Hon Delhi court on 23.1.2020 referred to above and the dismissal of both the SLP (C) No.22008/2018 plus the Review Petition vide RP (C) No.1731/2019 filed thereupon against Ayyamperumal judgment in WP No.15732/2017 dt. 15.9.2017, by the Hon'ble Apex Court on 23.7.2018 and 8.8.2019 respectively, for reasons expounded in para XVI. It is also pertinent to point out that when the C. Subba Rao judgment was delivered in 2005 by the Hon'ble High Court of A.P. the rule for granting increment was the date of joining of the service/ date of promotion. The 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 of 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 C. Subba Rao judgment have made it irrelevant.

XVIII) Further, the 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 by opining as under:

"9. We find that the Hon'ble Madras High Court had already considered the issue raised by the applicants in the present OAs, we are in full agreement with the judgment passed by the Hon'ble Madras High Court in P. Ayyamperumal's case (supra) upheld by the Hon'ble apex court.

10. Therefore, the impugned orders of rejection Annexure A4 in OA No. 180/654/2019 and Annexures A5 in OAs Nos. 180/1055/2018 and 180/61/2019 are quashed and set aside. The applicant in OA No. 180/109/2019 had sought relief to quash Annexure A6 which is only a reply to the question posed by a Member of Parliament in Lok Sabha. 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."

It is the cardinal principle of judicial discipline, as held by the Apex Court in the case of S.I.Roopal vs Lt. Governor of Delhi¹ that precedents are to be strictly adhered to.

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XXIV) In view of the aforesaid, it is evident that the respondents have transgressed the rules and laws related to the issue adjudicated upon. Therefore, the OAs fully succeed. Hence, there can be no better conclusion other than to direct the respondents to consider as under:

i) Re-fix the pension of applicants by allowing the eligible increment for rendering an year of service due on 1st July.

¹ (2000) 1 SCC 644

- ii) *Release pension and pensionary benefits with all consequential benefits thereof, based on (i) above.*
- iii) *While releasing benefits as at (ii) above, in regard to the quantum of arrears to be released, the judgment of Hon'ble Apex Court in Union of India & Ors Vs. Tarsem Singh in Civil Appeal Nos. 5151-5152 of 2008 vide para 5, has to be borne in mind and followed.*
- iv) *Time calendared to implement the judgment is 3 months from the date of receipt of this order.*

XXV. *With the above directions, the OAs are allowed to the extent stated above."*



In the communication issued to the applicant on 18.03.2020 which is filed as Annexure A-II to the OA, the respondents stated that judgment of the Hon'ble Madras High Court in Ayyamperumal v. Union of India is in personam and not in rem and therefore, his request cannot be considered. However, this Tribunal is of the view that the reason cited by the respondents is not sustainable, in view of the various Court orders referred to above.

In view of the above, the respondents are directed to consider the request of the applicant for grant of the eligible relief with consequential benefits, keeping in view the orders cited supra, by passing a speaking and reasoned orders, within a period of 3 months from the date of receipt of this order.

With the above direction, the OA is disposed of at the admission stage itself. No order as to costs.

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

(ASHISH KALIA)
MEMBER (JUDL.)

/evr/