CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

OA/021/00723/2020

Date of CAV : 13.11.2020
Date of Pronouncement : 23.11.2020

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

P.Venkata Subbaiah, Gr-C,
aged 62 years,
Occ : Retd Sorting Assistant,
R/o 9-1/85,Madhavi Nagar,
Hyderabad - 500 091, T.S. ...Applicant

(By Advocate : Mr. B.Gurudas)

Vs.

1.Union of India, rep. by
The Secretary to the Govt. of India,
Ministry of Communications & IT,
Dept. of Post, New Delhi-110 001.

2. The Chief Postmaster General,
Telangana Circle,
Hyderabad-500 001, (T.S.)

3.The Postmaster General,
Kurnool Region,
Kurnool, (A.P.)

4. The General Manager, Finance,
Vijayawada – 520 013, (A.P)

5. The Supdt RMS, POs, "AG" Division,
Guntakal Post (A.P.). ....Respondents

(By Advocate: Mr. A.Nageswara Rao, Addl. CGSC)

ORDER
(As per Hon'ble Mr. Ashish Kalia, Judicial Member)

This OA is by the applicant filed for grant of notional increment and enhanced dearness allowance due on 1st July 2018 having retired from service on the 30th June 2018 with consequential benefits.

2. The grievance of the applicant is that he was supposed to be granted increment and enhanced dearness allowance due on 1st of July 2018 after his retirement on 30.06.2018 having rendered one year service prior to the retirement. The applicant relied upon the order of the Hon'ble High Court of Madras in WP No.15732/2017 dt.15.09.2017, which has attained finality inasmuch as the SLP and the Review Petition filed before the Hon'ble Supreme Court have been dismissed. He also cited orders of various courts in support of his claim. He submits that the benefit of Dearness Allowance on all the retiral benefits was allowed by this Tribunal in OA Nos. 1199, 1200, 1201, 1202 & 1203 of 2018 subject to the outcome of the SLP pending before the Hon'ble Supreme Court. It is contention of the applicant that despite making representation to the authorities, the said benefits have not been granted to him. Aggrieved, the OA has been filed.

3. Heard both sides counsel and perused the material on record.

4. Learned counsel for the applicant submits that this Tribunal granted similar relief in several OAs. Learned counsel further pleaded that this Tribunal also passed several orders against the same respondents allowing the relief sought and therefore, this applicant is also entitled for similar

relief. Learned Senior Central Government Standing Counsel appearing for the respondents opposed the same and sought time for filing reply. However, considering the nature of relief sought and in view of the fact that this Tribunal has already passed orders in similar matters, we are of the view of that this OA is liable to be disposed of on the same lines. Therefore, the matter was taken up for hearing at the admission stage.

5. In one of the matters being OA No.1263/2018, this Tribunal passed an elaborate order discussing the issue on hand threadbare. Further, on 17.07.2020, in a batch of OAs being OA Nos. 325/2020 & Batch, filed against the same Department, wherein counter affidavits were filed opposing the OAs, this Tribunal passed a detailed order adverting to the averments and contentions of the respondents therein. Some of the observations, and the conclusions made in OA No. 325/2020 & batch, are reproduced 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:*
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> > *"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:-*
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> > > *"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.Rooplal vs Lt. Governor of Delhi***[1] *that precedents are to be strictly adhered to.*

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XIX. Respondents banking on the fact that the Hon'ble Madras Bench of this Tribunal has dismissed OAs 1710 to 1714/2018, 309/2019, 312/2019, 26/2019, 498/2019 and MA 226/2019 filed seeking similar relief in March and April 2019, urged that the instant OAs be dismissed. However, in the context of the Hon'ble Supreme Court dismissing the relevant SLP and Review Petition cited supra and in the context of the observation at para XVI above in regard to review of P. Ayyamperumal judgment, as well as the later judgments of the Hon'ble High Court of Delhi on 23.01.2020 plus that of the Hon'ble Ernakulam Bench of this Tribunal on 3.12.2019, which are later to the Hon'ble Madras Tribunal Bench orders, it is incumbent on the respondents to grant the increment on 1st July. Respondents did point out that even this Tribunal has also dismissed OA 1275/2013 on 20.6.2019 seeking the relief sought. However, it is to be observed that as on 20.6.2019, the dismissal decision of Hon'ble Apex Court in the Review Petition delivered on 8.8.2019 filed against P. Ayyamperumal verdict was obviously not available and therefore, the dismissal. Subsequently, this Tribunal, in the light of the dismissal of the review petition referred to, disposed of OA Nos.1263/2018, 1155/2018 & 229/2020 on 13.03.2020; OA No.430/2020 on 26.06.2020 & OA Nos. 431/2020 & 432/2020 on 08.07.2020. In addition, keeping in view of the law laid down by the Hon'ble Apex Court in ***Roop Lal,*** *to abide by the precedent, the respondents cannot afford to take any other view but are bound by the latest judgments of the superior judicial forums referred to above.*

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XXIII) Now coming to the aspect of DA on 1st July consequent to retirement of an employee, the matter is under adjudication by the Hon'ble Apex Court in SLP No.5646 of 2018 and 5647 of 2018 and therefore, applicants can pursue for appropriate remedies from the respondents based on the decision of the Hon'ble Supreme Court on the issue.

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.

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."

[1] (2000) 1 SCC 644

6. According to the applicant, he submitted a representation to the respondents on 10.10.2020 and the same is yet to be considered and disposed of by the respondents.

7. Therefore, in the interest of justice, it is deemed fit to direct the respondents to consider and dispose of the representation of the applicant for eligible relief with consequential benefits, keeping in view the orders of various Courts including this Tribunal 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 directions, the OA is disposed of. No order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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