IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA/020/00811/2019

HYDERABAD, this the 12th day of August, 2020.

THE HON'BLE MR.ASHISH KALIA : JUDICIAL MEMBER
THE HON'BLE MR.B.V.SUDHAKAR : ADMINISTRATIVE MEMBER

1.Ch.Venkata Ramanaiah Pantulu,
S/o Late Rama Rao, Age 72 years,
Retd. SPM, R/o H.No.3-18, Old Panchat Office Street,
Madhuranagar, Kakinada 533 004, PPO No.17983/LPR

2. Adabala Suryanarayana S/o late Akkulu,
Age 72 years, Retd. BCR O.A.,
R/o H.No.67-9-3, Ashoknagar,
Behind Andhra Bank, Kakinada 533 003, PPO No.17818/LPR

3. K.V.Satyanarayana S/o Late K.Narasayya,
Age 64 years, Retd. MACP III P.A Samalkot HO,
R/o H.No.18-7-47, Ganapathinagaram,
Samalkot – 533 440, PPO No.31081/AP

4.K.Venkata Rao S/o Late Nagaraju,
Age 72 years, Retd. Dy Postmaster,
Kakinada HPO, R/o No.2-21/2, RAzgundupalem,
Near APSP Camp, Kakinada – 533 005, PPO No.17889/LPR

5. Sangisetti Kasi S/o Suranna,
Age 71 years, Retd. SPM,
R/o Flat No.102, Swathi Towers,
Ramaraopeta, Kakinada 533 004,
PPO No.18648/LPR

6. M.Nageswara Rao S/o Late Narayani,
Age 64 years, Retd. PRI(P), Kakinada,
R/o H.No.3/18/1, Panchayat Office Street,
Kakinada 533 004, PPO No.AP/31241

7. Ch. L. Ganapathi S/o Late Ch. V. Ramaiah,
Red SPM, R/o H.No.3-197, Madhuranagar,
Vinayaka Temple Street, Kakinada-533 004.

8. Baki Appa Rao S/o Late B. Tatabbi,
Retd.SPM, R/o H.No.3-17-47/6,
Durganagar, Godari Gunta, Kakinada 533 003,
PPO No.19363/LPR

9. K.Abraham S/o K. Prakasam,
Age 63 years, Retd. Postal Assistant,
Yanam, R/o Georgepeta M.L.K.Nagar,
Tallarevu Mandal, East Godavari-533 464.

10. Smt.K.Lalitha Kumari ,W/o S.Narendra Babu,
Age 62 years, Retd. SPM, R/o H.No.8-415-5/4A,
Pratap Nagar, Kakinada-533 004,
PPO No.AP/32582.

11. Ch.Nageswara RAo S/o Late Ch.Veeraraghavulu,
Retd. Postman, R/o H.No.2-166, Madhuranagar,
Kakinada 533 004, PPO No.20034/LPR ...Applicants

(By Advocate : Mr.M.Venkanna)

Vs.

1. The Union of India represented by,
Its Secretary, Government of India,
Ministry of Communications and I.T,
Department of Posts-India, Dak Bhavan,
Sansad Marg, New Delhi – 110001.

2. The Chief Postmaster General,
A.P.Circle, Vijayawada-520 013.

3. The Director of Accounts (Postal),
A.P. Circle, Vijayawada.

4. The Senior Superintendent of Post Offices,
Kakinada Division, KAKINADA. ....Respondents

(By Advocate : Mr.A.Praveen Kumar Yadav, Addl. CGSC)

Oral Order

(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

Through Video Conferencing

2. This OA is filed for grant of notional increment and enhanced dearness allowance due on 1st July of the year of retirement after having retired from service on the 30th June, with consequential benefits.

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:

S.No	Name	Desig	Date of Retirement	Due date of Increment
1)	CH. VENKATA RAMANAIAH PANTULU	SPM	30-06-2006	01-07-2006
2)	ADABALA SURYANARAYANA	BCR O.A.	30-06-2006	01-07-2006
3)	K.V. SATYANARAYANA	MACP-III P.A	30-06-2014	01-07-2014
4)	K. VENKATA RAO,	DY.POSTMASTER	30-06-2006	01-07-2006
5)	SANGISETTI KASI.	SPM	30-06-2007	01-07-2007
6)	M. NAGESWARA RAO	PRI(P)	30-06-2014	01-07-2014
7)	CH.L.GANAPATHI	SPM	30-06-2010	01-07-2010
8)	BAKI APPARAO	SPM	30-06-2008	01-07-2008
9)	K. ABRAHAM	P.A.	30-06-2016	01-07-20160
10)	SMT. K. LALITHA KUMARI	SPM	30-06-2016	01-07-20160
11)	CH. NAGESWARA RAO	Postman	30-06-2008	01-07-2008

The applicants retired from the respondents organization on 30th June of different years. Their grievance is that they were supposed to be granted increment and enhanced dearness allowance on 1st of July of the year of retirement, but they were not granted despite making representations to the authorities on the ground that they stood retired on 30th June of the relevant year. Aggrieved, the OA has been filed.

4. Respondents have filed reply statement opposing the OA.

5. Heard learned counsel for both sides and perused the pleadings on record.

6. This Tribunal earlier granted similar relief in several OAs. One of them is OA No.1263/2018 in which, this Tribunal passed an elaborate order discussing the issue on hand threadbare. Subsequently on 17.07.2020, in OA Nos. 325/2020 & Batch, filed seeking similar relief against the same Department, wherein also similar counter affidavits were filed opposing the OAs, this Tribunal passed a detailed order while 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 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."*
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> > *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.*
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> > *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.*
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> *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

[1] (2000) 1 SCC 644

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.*

XX) The respondents did not leave any stone unturned by contending that the OAs filed are to be dismissed on grounds of limitation. Such a limitation does not apply to pension which is a continuous cause of action as held by the Hon. Apex Court in the case of Union of India v. Tarsem Singh,(2008) 8 SCC 648, relating to the limitation aspect xxxxx

XXI. XXXX

The respondents attempted to curtail the pension and pensionary benefits by denying the increment due to the applicant on the date of retirement though they were fully eligible to be granted as per relevant rules discussed at length in the preceding paras and therefore has to be termed as arbitrary and illegal. There has been no undue delay in seeking the relief as explained above. Therefore, the judgments of the Hon'ble Apex Court cited by the respondents in Bhoop Singh v Union of India, JT 1992 (3) SC 332; Rup Diamonds v Union of India (1989) 2 SC 356; State of Karnataka V S.M. Motrayya (1996) 6 SCC 263; Jagdish Lal v State of Haryana (1997) 6 SCC 538 to assert that only the vigilant merit consideration and not the fence sitters would not been relevant as they are predated to its own judgment of Tarseem Singh delivered in 2008 by the Hon'ble Supreme Court. Besides, the judgment of the Hon'ble Apex Court in State of Orissa v Mamata Mohanty (2011) 2 SCC 538 relates to grant of pay scale and thus, is not relevant to the case on hand. The other judgments of Hon'ble Supreme court cited by the respondents cited viz., Cicily Kallarackal v Vehicle factor (2012) 8 SCC 524; Brijesh Kumar & ors v State of Haryana & ors (2014) 13 SCC 291 in regard to delay in filing OAs are irrelevant since there is sufficient cause and bonafide reasons in filing the OAs by the applicants, particularly in the context of the respondents modifying the quantum of pension against rules which is against law as laid down by the Hon'ble Apex Court in a catena of Judgments.

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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."

7. The above order of this Tribunal passed in OA Nos. 325/2020 & batch, squarely applies to this case also. Accordingly, this OA is liable to be disposed on the same lines in so far as the notional increment is concerned. In so far as Enhanced Dearness Allowance is concerned, applicants can pursue remedies after the verdict of the Hon'ble Supreme Court in the SLP referred above. Consequently, the respondents are directed as under:

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

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 thereof, 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.

With the above directions, the OA is disposed. No order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

pv/evr