CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

OA/20/800/2019

HYDERABAD, this the 17th day of July, 2020

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

1) S. SUBRAMANYAM
S/o. Late S.Venkataappa
Age 69 years
Retd. P.R.I. (P)
TIRUPATI H.O.
R/o. Flat No.402, 4th Floor
Mithra Apartment,
SBI Colony
TIRUPATI – 517 501
PPO NO: 20020/LPR

2) P. NAGI REDDY
S/o. Late P.Gangi Reddy
Age: 61 years
Retd. In-charge CPC (LSG)
Tirupati H.O
R/o. H.No.19-13-35, Narayanapuram
Tiruchanur Road
TIRUPATI – 517 503
PPO NO:34173

3) A. BHUPATHY
S/o. Late B.Avanakshaiah
Age: 64 years
Retd. SPM
SVM College S.O.
Tirupati
R/o. Flat No.316, 3rd Floor
Radheyshyam Apartment
Opp: Vinayaka Sagar
Reddigunta
TIRUPATI – 517 507
PPO NO: 31715

4) B. MUNI REDDY
S/o. Late B.Krishna Reddy
Age 61 Years
Retd. SPM, Tirupati West P.O.
Tirupati Division
R/o. H.No.3-62,
Perumallapalle
Tirupati Rural

Chittoor District – 517 505
PPO NO: 34118

5) VELLERU VENKATESULU NAIDU
S/o.Late V.Krishnama Naidu
Age 64 years Retd. PRI (P) Tirupati H.P.O.
R/o. H.No.18-1-32/1C (old)
New No.18-35-51-12
Khadi Colony
TIRUPATI 517 507
PPO NO:31828

6) V. BABU
s/O. Late G.Venkatappa
Age 61 years
Retd. M.T.S., HRO RMS TP Division
R/o. D.No.1-483
Eswar Temple Street
Kattamanchi
CHITTOOR 517 001
PPO NO:34156

7) G. PURUSHOTHAM
S/o. Late G.Muniratnam Chetty
Age 68 years
Retd. A.H.RO RMS TP Division
R/o. D.No.10-35,Gandhi Road Extension
Chittoor 517 001
PPO NO:20776/LPR

8) R.GURU SWAMY
S/O. Late R.Rajaiah
Age: 66 years
Retd. Postmaster Gr.I
Renigunta S.O.
R/o. H.No.7/139 NCBN Colony
Mangalam, TIRUPATI - 517 507
PPO No: 30378

9) BALUMURU RAJAGOPALA RAO
S/o. Ramanaiah
Age: 73 years
Retd. H.M.M, SRO Nellore
R/o. H.No.22/511
Buduruari Street, Velamapalem
VENKATAGIRI TOWN – 524 132
PPO NO: 17847/LPR

10) S. BRAHMAM
S/o. S. Veeraiah
Age: 73 Years
REtd. BCR Sorting Assistant. RMS AG Dn
R/o. H.No.51—1028D1 Sri Seetharamnagar
KURNOOL 518 003
PPO NO:17816

11) K.V. BRAHMAM
S/o.Late K.Narayanappa
Age: 66 years
Retd. Sorting Assistant
R/o. H.No.64-43, Saibaba Sanjeevaiah Nagar,
KURNOOL
PPO No.30372

… APPLICANTS

(By Advocate: Sri B. Gurudas)

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

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

4) The Superintendent of Post Offices,
Tirupati Division, , TIRUPATI -517 001

5) The Superintendent of RMS
TPT – Division
TIRUPATI

… RESPONDENTS

(By Advocate: Mrs. K. Rajitha, Sr. CGSC
for Mrs. B. Gayatri Varma, Sr. PC to CG)

O R D E R (ORAL)

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

Through Video Conferencing

2. This Original Application has been filed in regard to grant of notional increment and enhanced DA. Incidentally, several OAs have been filed seeking notional increment and enhanced DA on 1st July on retiring from service and the OAs have been taken up for hearing. In some of the OAs, the claim is for the increment as well as DA referred to and in some others, it is only in regard to grant of increment.

3. Brief facts of the case are that the applicants retired in the respective OAs from service as depicted hereunder:

S. No	OA	Name of the applicant	Date of retirement	Relief sought- Increment + DA or only increment
1	325/2020	P. Ujjinaiah	30.06.2008	Increment
2	326/2020	K. Venugopal Rao	30.06.2012	-do-
3.	327/2020	R. Hanumantha Naidu	30.06.2015	-do-
4.	328/2020	T. Diwakar Babu	30.06.2018	-do-
5.	329/2020	K. Ghouse Mohiddin	30.06.2018	-do-
6.	330/2020	S. Rama Krishnaiah	30.06.2016	-do-
7.	331/2020	T. Narasimhulu	30.06.2012	-do-
8.	334/2020	K. Nagendraiah	30.06.2018	-do-
9.	335/2020	M. Chakrapani	30.06.2013	-do-
10.	322/2019	D. Kishan Rao	30.06.2018	-do-
11.	323/2019	M. Samuel	30.06.2018	-do-
12.	628/2019	Y. Nagabhushanam	30.06.2008	Increment + DA
		M. Lakshmana Swamy	30.06.2011	-do-
		P. Narayana Raju	30.06.2008	-do-
		K. Nageswara Rao	30.06.2007	-do-
		M. Sudhakar Rao	30.06.2008	-do-
		G Ramakrishna	30.06.2018	-do-
13.	799/2019	P S Prasad	30.06.2016	Increment + DA
		K. Vasudeva Rao	30.06.2015	-do-
		BSR Ch. Murthy	30.06.2018	-do-
		K. Gurunadham	30.06.2010	-do-
		KVSB Sundara Siva Rao	30.06.2017	-do-

		S. Akku Naidu	30.06.2012	-do-
		B. Prasada Rao	30.06.2012	-do-
		P. Bapuji Rao	30.06.2011	-do-
		KKV Appa Rao	30.06.2018	-do-
		M. Lakshmana Rao	30.06.2009	-do-
14.	800/2019	S. Subramanyam	30.06.2009	Increment + DA
		P. Nagi Reddy	30.06.2018	-do-
		A. Bhupathy	30.06.2015	-do-
		B. Muni Reddy	30.06.2018	-do-
		V. Venkatesulu Naidu	30.06.2015	-do-
		V. Babu	30.06.2018	-do-
		G. Purushotham	30.06.2010	-do-
		R. Guru Swamy	30.06.2013	-do-
		B. Rajagopala Rao	30.06.2006	-do-
		S. Brahamam	30.06.2006	-do-
		KV Brahmam	30.06.2013	-do-
15	803/2019	B. Narendra Prasad	30.06.2011	Increment + DA
		Ch Balasubrahmanyam	30.06.2016	-do-
		K. Elia	30.06.2013	-do-
		Sk. Humayun	30.06.2014	-do-
		Mahamood Sharif	30.06.2016	-do-
		Yakasiri Lakshminarasu	30.06.2008	-do-
		Neelavala Jaya Prasad	30.06.2014	-do-
16.	805/2019	D. V. Ramanaiah	30.06.2016	Increment + DA
		P. Mahaboob Khan	30.06.2010	-do-
		Pokala Chandra Sekhara Rao	30.06.2017	-do-
		Shaik Maqbool Basha	30.06.2006	-do-
		J. Samrajyam	30.06.2007	-do-
		M. Diwakaraiah	30.06.2012	-do-
		S.K. Fayazuddin	30.06.2016	-do-
		S.K. Ameerjan	30.06.2007	-do-
		Devarakonda Venkataiah	30.06.2011	-do-
17.	807/2019	B. Pardhasaradhi	30.06.2018	Increment + DA
		S. Ramakrishna	30.06.2016	-do-
		K. Appala Raju	30.06.2015	-do-
		M. Satya Mallikaharjuna Rao	30.06.2013	-do-
		GVVSSN Murthy	30.06.2012	-do-
		Kona Raja Babu	30.06.2016	-do-
		M. Venkata Swamy	30.06.2013	-do-
		Rajaram	30.06.2016	-do-
18.	808/2019	N V Appa Rao	30.06.2008	Increment + DA
		Gajjjarapu App Rao	30.06.2016	-do-
		L. Nooka Raju	30.06.2014	-do-
		Rikki Samudrudu	30.06.2008	-do-
		TSN Murthy	30.06.2017	-do-
		K. Giri Raju	30.06.2008	-do-
		Vaddi Malleswara	30.06.2008	-do-

		Rao		
		Jetti Ramu	30.06.2018	-do-
		M. Veerabhadra Rao	30.06.2016	-do-
		R. Ranga Rao	30.06.2007	-do-
		S. Tatabbai	30.06.2007	-do-
		KVD Satyanarayana Rao	30.06.2010	-do-
19.	810/2019	A. Kumara Swamy	30.06.2010	Increment + DA
		K. Ramakrishna	30.06.2008	-do-
		Ch. Poornayya Pantulu	30.06.2010	-do-
20.	812/2019	P. Bhaskara Rao	30.06.2013	Increment + DA
		Kuruba Sunkanna	30.06.2011	
		M. Anantha Rama Krishnan	30.06.2007	-do-
21.	814/2019	JS Subrahmanyam	30.06.2013	Increment + DA
		Ch. Dharmaraju	30.06.2007	-do-
		V. Radhakrishna	30.06.2007	-do-
		Isukapati Seshaiah	30.06.2008	-do-
		Vemula Ananda Rao	30.06.2009	-do-
		Smt. J. Kannamma	30.06.2010	-do-
		PSS Chandra Rao	30.06.2016	-do-
		P. Bhagyalaxmi	30.06.2010	-do-
		Md. Khadar Khan	30.06.2008	-do-
		Burra Satyanarayana	30.06.2016	-do-
22.	815/2019	PVBK Prasad	30.06.2012	Increment + DA
		Ballarapu Yesudas	30.06.2018	-do-
		Karra Jayantha Rao	30.06.2008	-do-
		Dasari Koteswara Rao	30.06.2014	-do-
		Badiga Ramamohan Rao	30.06.2009	-do-
		CBV Nageswara Rao	30.06.2008	-do-
		Md. Azeem	30.06.2008	-do-
		A.Sivakakuleswara Rao	30.06.2009	-do-
		P. Purnachandra Rao	30.06.2008	-do-
23.	834/2019	TC Reddeppa	30.06.2007	Increment + DA
24.	835/2019	K. Venkataiah	30.06.2011	Increment + DA
25.	836/2019	B. Narasimhulu	30.06.2013	Increment + DA
26.	838/2019	T. Yellaiah	30.06.2018	Increment + DA
27.	922/2019	E. Anjaneyulu	30.06.2014	Increment + DA
28.	923/2019	A.Viswanatha Reddy	30.06.2006	Increment
29.	924/2019	A.Narayana Reddy	30.06.2007	Increment
30.	950/2019	A.Thikkaiah	30.06.2014	Increment
31.	1102/2019	G. Chandra Mouli	30.06.2014	Increment
32.	1103/2019	C.V. Ramana	30.06.2013	Increment
33.	1104/2019	C. Narsimhulu Naidu	30.06.2015	Increment

As can be seen from the above, the applicants have retired from service on the 30th of June in the relevant year and they claim that they are eligible for drawal of notional increment and enhanced DA along with consequential retiral benefits on 1st July for having rendered one year of service, though they were not on duty on the said date. Respondents have not extended the relief sought and hence, the OAs.

4. The contentions of the applicants are that they have been put to heavy financial loss by not drawing the eligible increment and enhanced DA on 1st July. The crux of the arguments of the applicants is that they have rendered one year of service preceding the retirement date of 30th June in the relevant year, which is prescribed under rules and hence need necessarily be granted the increment on 1st July after the implementation of 6th / 7th CPC wherein the uniform date of drawal of annual increment was recommended as 1st July and accepted by the Government. Increment, by definition, provides for automatic increase of salary after putting up one year of service on the afternoon of the last day of the relevant year, though payable from the next day. In the present cases, it has to be 1st July vide Rule 10 of CCS (RP) Rules 2008. The Rule only speaks about the uniform date of drawal of increment and that there are no other changes in regard to allowing annual increments. FR 24 and FR 26 support the cause of the applicants. Annual increment has to be drawn after rendering one year service unless withheld on disciplinary grounds or for any other reason by putting on notice the concerned employee. There are no disciplinary cases pending against the applicants nor were they put on notice. It is irrelevant as to whether the applicants are on duty or not on 1st July of the relevant

year since no rules specify so. Respondents relying on the technical aspect of the applicants not being in service on 1st July is incorrect since they glossed over the substantive aspect of one year of service rendered as on the date of retirement. Even employees, who go on extraordinary leave are granted the eligible increment after they join duty. The same analogy can be applied to the applicants for drawing the notional increment in question. The respondents have discriminated the applicants vis-à-vis the regular employees in denying the notional increment by stating that they are pensioners, even though the condition of rendering one year of service for granting the increment has been fulfilled as is the case in regard to the regular employees. Applicants claim that the relief sought is squarely covered by the judgments of the Hon'ble High Courts of Madras, Andhra Pradesh, Madhya Pradesh, Delhi and that of Hon'ble Ernakulam Bench of this Tribunal. Hon'ble Supreme Court has even dismissed the SLP/ Review Petition filed against the judgment of the Hon'ble High Court of Madras and hence, the issue has attained finality. Action of respondents in denying the notional increment sought is, therefore, illegal, arbitrary and against rules.

Coming to the aspect of grant of enhanced DA on 1st July subsequent to their retirement on 30th June, the applicants submit that the Tribunal has allowed OA 252/2015 granting the relief sought and the same was upheld by the Hon'ble A.P & Telangana High Court in W.P. No.No 19385/2016 on 17.6.2016. By reckoning the enhanced DA and the notional increment claimed, the pension and pensionary benefits are to be revised.

5. Respondents have filed the replies in the following OAs.

Sl.No	OA No.	Sl.No	OA No.
1	322/2019	13	815/2019
2	323/2019	14	834/2019
3	629/2019	15	835/2019
4	799/2019	16	836/2019
5	800/2019	17	838/2019
6	803/2019	18	922/2019
7	805/2019	19	923/2019
8	807/2019	20	924/2019
9	808/2019	21	950/2019
10	810/2019	22	1102/2019
11	812/2019	23	1103/2019
12	814/2019	24	1104/2019

Learned Senior Central Government Standing Counsel for the respondents, who led the arguments along with other Ld. Applicant Counsel, submitted that based on the replies given in the above OAs the cases in which replies were not filed can also be heard and adjudicated upon. We agreed with the contention since the issues under dispute are one and the same in all the OAs and exhaustive replies have been given in OAs cited supra covering comprehensively the aspects under adjudication. Hence, all the OAs have been accordingly taken up and heard.

The thrust of the defence of the respondents is that after the 6th CPC a uniform date for drawal of annual increment has been fixed as 1st July. FR 56 is clear that an employee shall retire on the afternoon of the last date of the month in which he has attained 60 years of service. As applicants were not on duty on 1st July they are ineligible for drawal of increment on 1st July as per F.R. 24. Increment is drawn based on the pay fixed. Applicants are pensioners drawing pension from 1st July and hence the question of pay and increment thereon does not arise. Retirement benefits are drawn as per Last Pay drawn on 30th June of the relevant year in accordance with Rule 50(5) of CCS (Pension) Rules 1972. Last pay drawn on 30th June cannot include the increment due on 1st July, since they have become pensioners on the said date. In particular, Rule 10 does not permit taking into consideration emoluments which are due after retirement. Increment is not like bonus which is paid based on the period worked for in the years under consideration. It is granted based on the work efficiency of the employee and that too, if he were to continue in service. Further increment is granted from a future point of view. Respondents have cited FR 9 (6), FR 9 (21) (a), FR 9 (31), FR (17) (1) and Rules 14, 33, 34, 83 of CCS (Pension) Rules, which are statutory in nature to bolster their defence. Besides, they relied on Rule 151 of Civil Service Regulations and OM dated 19.3.2012 of Dept of Expenditure to fortify their submissions. Drawal of increment for a retired employee would be brazenly violative of the Fundamental Rules (FR) and Pension Rules referred to. In fact, some of the applicants whose annual increment fell between February and June 2006 stood to gain as their increment was advanced to 1.1.2006 and as usual another increment from 1.7.2006, as per 6th CPC recommendations communicated vide OM dated 19.3.2012 of Dept. of Expenditure and as per Rule 10 of CCS (RP) Rules 2008. Therefore, the question of the applicants being put to financial loss is distorting the truth. Rebutting the claim of the applicants that the increment be drawn on par with those employees who have gone on extraordinary leave, the respondents assert that the employees referred to are granted increment due after they join back duty, but whereas applicants having retired from service having no scope to join back duty. The applicants have not been discriminated in the context of regular employees being granted the increment on 1st July since they were on duty on the said date whereas the applicants were not. On the contrary, granting an increment to retired employees would tantamount to grant of advance increment and thereby, usher in an element of inequality between those in service and the retired. The issue under dispute is a policy matter and it is well settled in law that courts should refrain from interfering in policy matters. DOPT, the competent authority in regard to the issue, has not been made a party and hence, the OAs suffer from the inadequacy of non-joinder of appropriate parties. The OAs attract the provisions of limitation as provided under Section (21)(1) of Administrative Tribunals Act, 1985, since they have been filed belatedly without explaining the reasons for delay by moving MAs as is prescribed under law. Respondents cited the Judgment of the Hon'ble High Court of A.P. in Principal Accountant General, Andhra Pradesh & others vs. C.Subba Rao & Ors in 2005 (2) ALD 1 = 2005 (2) ALT 25 and the dismissal of OA No.1275/2013 by this Tribunal dealing with the similar issue under adjudication. The Hon'ble Supreme Court has dismissed in limine, the SLP/Review Petition filed against the judgment of the Hon'ble High Court of Madras in P. Ayyamperumal case, heavily banked upon by the applicant, by issuing a non speaking order and hence, can be reviewed by the concerned Hon'ble High Court as laid down in ***Kunnhayammed v State of Kerala (2000) 6 SCC 359***. Therefore, it cannot be said that the issue has attained finality. Moreover, the Hon'ble High Court of Delhi has dismissed a similar plea in WP No.9062/2018 & CM No.34892/2018 vide judgment dated 23.10.2018 wherein the P. Ayyampermual case decided by Hon'ble High Court of Madras was also referred to. Besides, the decision in P.Ayyamperumal case of the Hon'ble High Court of Madras is in *personam* as clarified by

DOPT. The Hon'ble Madras Bench of this Tribunal has rejected similar relief. Moreover, the Hon'ble High Court of A.P. in the judgment cited has dealt with the relevant FRs whereas Hon'ble High Court of Madras in the case cited has not dealt with the FRs. Further, only the vigilant has to be granted relief based on relief granted to similarly situated employees and not to the fence sitters like the applicants as per the orders of Hon'ble Apex Court. In regard to enhanced DA, the Hon'ble High Court of A.P. while granting enhanced DA as sought, has relied upon S.Banerjee v Union of India adjudicated upon by the Honble Supreme Court. However, the case of S. Banerjee relates to grant of enhanced DA consequent to his voluntary retirement whereas the applicants have retired in the normal course and hence, not applicable. Some of the applicants have not even represented for the respondents to take a view.

6. Heard both the counsel and perused the pleadings on record. Ld counsel for the applicants have submitted that applicants are eligible for enhanced DA and notional increment on 1st July as per rules and in accordance with the Judgments of the superior Judicial forums referred to in the preceding paras. Ld Senior Standing Counsel for the respondents while leading the defence has pointed out that the OAs deserve to be dismissed on grounds of limitation, non-joinder of appropriate parties, the Judgment of Hon'ble High Court of Madras being *in personam* and rules do not *per se* provide for grant of increment/enhanced DA to a retired employee. Besides, she has also referred to certain judgments of the superior judicial forums and that of the Hon'ble Madras Bench of this Tribunal cited in the reply statements, wherein relief sought was refused.

In regard to grant of enhanced DA on 1st July, the matter is under adjudication by the Hon'ble Supreme Court in SLP Nos.5646 of 2018 and 5647 of 2018.

7. There are two issues which are under dispute namely, grant of enhanced Dearness Allowance and notional increment on 1st July of the relevant year after retiring from service on 30th June. In regard to grant of enhanced DA, the matter is being adjudicated by the Hon'ble Apex Court in the SLPs cited supra. Hence, the dispute in respect of grant of notional increment is analyzed for arriving at a fair conclusion based on rules and law.

I) Essentially the dispute relates to drawal of annual increment due to be drawn on completion of one year of service in respect of employees retiring on 30th June pursuant to the recommendations of the 6th / 7th CPC. The governing provision for drawal of increment is FR 26, which reads as under:

> *Sub-rule (a) runs as follows:-*
>
> *(a) All duty in a post on a time-scale counts for increments in that time-scale:*
>
> *Provided that, for the purpose of arriving at the date of the next increment in that time-scale, the total of all such periods as do not count for increment in that time-scale, shall be added to the normal date of increment.*
>
> *Sub-Rule (b) prescribes that*
>
> *b) in case of Extra-Ordinary Leave, taken otherwise than on medical certificate, the period will not count for purposes of increments.*

The key words are that "*all duty in a scale of pay counts for drawal of increment*". There is no dispute in regard to the all duty performed by the applicants for an year to be eligible for drawing the increment nor were there increments postponed to a future date due to availing of EOL or unauthorised absence or a penalty befalling them. The rule does not specify that the applicant has to be on duty to be eligible for drawing the increment but only speaks of "all duty in a post" is to be reckoned. The contention of the respondents that applicants have to be on duty to draw increment, is thus incongruent to the provisions of FR 26. Tribunal takes support of the Hon'ble Supreme Court observations in ***State of Sikkim v. Dorjee Tshering Bhutia, AIR 1991 SC 2148***, para 15 to assert what has been stated, as under:

> *"It is well settled law that any order, instruction, direction or notification issued in exercise of the executive power of the State which is contrary to any statutory provisions is without jurisdiction and is a nullity."*

The action of the respondents in rejecting the drawl of increment on 1st July is against the statutory Fundamental Rule referred to. Denial was for having adorned the tag of a pensioner on 1st July though they have rendered one year service required to be eligible for the annual increment to be drawn. The rejection of the request of the applicants is therefore against the very grain of the judgment cited.

II) Delving further into the subject an increment is a raise in salary as a certain percentage of the basic pay. Raises can be given annually, monthly, daily based on performance. It's important to give employees raise on a regular basis because it shows that they are valued and in recognition of their contributions to the Organisation they serve. A simple pay raise can boost morale, increase employee satisfaction and encourage hard work. As has been said the incremental raise in salary can be made on a monthly basis or even on a daily basis. Rise, it is paramount to note is related to performance. However, for convenience, Govt. has decided that the awarding of increment will be on an annual basis and that the yearly time interval would be reasonable to assess the performance of an employee. Based on performance as has been pointed out by the respondents the annual increment has to be granted. In the case of the applicants no doubts were cast in regard to their performance/efficiency and in such a scenario if the grant of annual increment were to be split into 12 parts with each one granted on the 1^{st} of the subsequent month there would not have been any occasion for the applicants to be before the Tribunal. Hence, there could be no offence attributed, if stated that the convenience of the respondents organisation cannot be a bane to its men and that too, for not being found fault with.

III) Reverting to the issue per se, it has cropped up with the recommendation of the 6^{th} CPC wherein it was decided to fix a uniform date for drawal of increment on 1^{st} of July/January and later restricted to 1^{st} July in 7^{th} CPC, in order to avoid the rigmarole of granting increments throughout the year to employees depending on the date of joining the service. However, this has given rise to the issue of non grant of increment to those who retire on 30^{th} June since they have become pensioners on 1^{st} July resulting in applicants being docked. An answer to the mind racking question is found in Rule 10 of the CCS (Revised Pay) Rules 2008 wherein it was stipulated as under:

> *"There will be a uniform date of annual increment viz. 1^{st} July of every year. Employees completing 6 months and above in the above in the revised pay structure as on 1^{st} of July will be eligible to be granted the increment. "*

The applicants' retirement has been dated as 30th June in different years from 2007 onwards and applying Rule 10 read with FR 26 (a) cited supra, they are entitled for the increment as they have completed more than 6 months unblemished service in the revised pay structure. Even the Revised rules framed in 2016 consequent to the implementation of 7th CPC do not prohibit release of the increment in question. Rules if not adhered to by the respondents then who would, will be a serious question to be introspected by the concerned in the respondents organisation. In regard to rules Hon'ble Apex court has made it crystal clear that deviation from rules has to be snubbed and curbed as under, in an array of judgements extracted below.

> (i) The Hon'ble Supreme Court observation in **T.Kannan and ors vs S.K. Nayyar (1991) 1 SCC 544** held that "*Action in respect of matters covered by rules should be regulated by rules*".
>
> (ii) Again in **Seighal's case (1992) (1) supp 1 SCC 304** the Hon'ble Supreme Court has stated that "*Wanton or deliberate deviation in implementation of rules should be curbed and snubbed.*"
>
> (iii) In another judgment reported in (2007) 7 SCJ 353 the Hon'ble Apex court held " *the court cannot de hors rules*"

In view of the above, respondents cannot afford to ignore the rule cited supra.

IV) One another point of view which favours the applicants is that a right of being granted an increment has been vested in the applicants as per the rules referred to, since they have served for 12 months without any remark whatsoever. Therefore the assertion of the respondents that drawing increment to a retired employee will be violative of Fundamental rules and Pension rules lacks meaningful force, since the right to be eligible for drawal of annual increment has accrued before the retirement of the applicants. Such a right cannot be denied except under law. Reply statements are devoid of any measures taken under law to deny the right accrued. Measures taken which have adverse civil consequences are to be based on a reasoned order, as observed by the Hon'ble Supreme Court as under:

a. In ***Mohinder Singh Gill & Ors. v. The Chief Election Commissioner, New Delhi & Ors.***, ***[1978] 2 SCR 272***, *Krishna Iyer, J. speaking for the Constitution Bench observed:*

> *"But what is a civil consequence, let us ask ourselves, by passing verbal booby-traps? "Civil consequences" undoubtedly cover infraction of not merely property or personal rights out of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence."*

b. ***Vice Chancellor, Banaras Hindu University Vs. Shrikant***, reported in ***2006 (11) SCC 42***.
In this case, the Hon'ble Apex court observed that "An order issued by a statutory authority inviting civil or evil consequences on the citizen of India, must pass the test of reasonableness."

Rejecting the relief sought has adverse civil consequences. We do not find any reasonableness in doing so and hence not in tune with the above observations.

Besides, executive power can be used only to fill in the gaps and supplement law but not supplant it as observed by Hon'ble Apex Court in ***J & K Public Service Commission v. Dr. Narinder Mohan, 1994 (2) SCC 630***. The executive instruction of claiming that albeit applicants have completed one year of service required, yet denying the same stating that the applicants were no more employees on 1st July, is to supplant the law instead of supplementing it by honouring the vested right accrued rather than decrying it with legally invalid reasons.

(V) In fact, if the date of uniform increment as 1st July was not stipulated, most of the employees would not have been placed in a piquant situation as is agitated upon by the applicants before the Tribunal. The view point of the 6th CPC to bring in rationalisation of grant of increment is welcome but in the same vein the genuine grievance of the applicants has to be redressed in implementing a measure of profound administrative importance. Applicants are not at fault for the shift of the increment to a single date and denying them their due goes against the legal tenets laid down by the Hon'ble Supreme Court as under:

(a) A.K. Lakshmipathy v. Rai Saheb Pannalal H. Lahoti Charitable Trust, (2010) 1 SCC 287

"they cannot be allowed to take advantage of their own mistake and conveniently pass on the blame to the respondents."

(b) Rekha Mukherjee v. Ashis Kumar Das, (2005) 3 SCC 427 :36**.** The respondents herein cannot take advantage of their own mistake.

Mistake of the respondents is that the applicants though they have rendered one year unblemished service they were denied the eligible increment and on the contrary, asserting that the applicants have become pensioners thereby becoming ineligible does not go well with the above observations of the Hon'ble Apex Court.

VI. Moreover, it was never the intention of the 6th /7th CPC to deny the increment by ushering in a uniform date for awarding an increment. Setting forth a hyper technical argument that though the applicants have put in 12 months service, yet for not being on duty on 1st July, they are ineligible, is invalid since the very object of rationalising the grant of increment is defeated. The object was to rationalise and not deny a legitimate benefit, which is contrary to the doctrine of legitimate expectations. Under the said doctrine, a procedural angularity and impropriety has crept in and therefore, requires correction. The administrative decision of denying the benefit sought can be firmly and authoritatively questioned based on grounds of illegality, irrationality & procedural impropriety as laid in ***Union of India vs. Hindustan Development Corporation [(1993) 3 SCC 499].*** Applicants have exercised such a right in filing the present OA deprecating the decision of rejection, which for reasons discussed so far, call for a view to be taken in favour of the applicants.

(VII) It requires no reiteration that it is settled law that decisions of the respondents are to be in harmony with the constitutional provisions of Articles 14 & 16 and the laws of the land. Further, respondents decisions invariably are not to be directed towards unauthorised ends of rejecting an acceptable request, but ought to be in rhythm with the purpose of bringing forth of a uniform date of granting increment. In addition, when an interpretation of the objective of the 6th / 7th CPC to fix a uniform date for grant of increment is to be made, it has to be necessarily broad based so that the purported objective is not defeated. In the instant case, there are two interpretations, one which is narrower denying increment on 1st July though eligible but for becoming a pensioner and the other broader one supported by rules calling for grant of increment based on the one year service rendered to earn the same. Ignoring the broader interpretation, is for sure, was never the intent of the 6th/ 7th CPC recommendation in going in for a uniform date of grant of annual increment, subject to, of course, fulfilling other conditions to earn the increment other than fulfilling the proviso of rendering one year of service. Adopting the broader interpretation is the choice which the respondents should have chosen in regard to the dispute on hand as has been expressly made explicit in Nokes v. Doncaster Amalgamated Collieries (1940) AC 1014 as under:

> *"If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the broader construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result."*

Respondents have attempted a narrow interpretation rather than a broader one in allowing the increment on a uniform date as recommended by 6^{th} / 7^{th} CPC. Such an interpretation is thus unsound in view of the aforesaid legal principle expounded. In fact, the principles of interpretation, permit a court to remove the mischief in interpreting the intent of a rule or a legislative enactment. The principle referred to is as under:

> The main aim of the mischief **rule of interpretation** is to determine the "**mischief** and defect" that the statute in question has set out to remedy, and what ruling would "suppress the **mischief**, and advance the remedy".

Tribunal taking support of the above legal axiom spoken of, has to exercise the power to remove the mischief in denying the increment legally due to the applicants and advance the remedy of granting it.

(VIII) Forget not that, there are provisions under FRSR 26 to defer the increment when an employee is on extraordinary leave for the purpose of study or training and if this be so, under the same analogy the applicants who have been otherwise eligible for annual increment can be considered for annual increment on the 1^{st} day of retirement as an increment deferred by a day. Respondents submission is that the employees who go on extraordinary leave joining back duty after availing the leave whereas the applicants having retired from service have no scope to join duty. Therefore it cannot be said that the applicants have been discriminated vis-à-vis those who continue to be in service and in fact if an employee in service does not join duty after availing extraordinary leave no increment would be drawn. In this context, the aspect of paramount importance is as to whether the applicants rendered one year unblemished service to be eligible for grant of duty under the relevant rule. As applicants complied with this norm they are eligible and therefore the submission of the respondents that since they have no scope to rejoin duty and hence ineligible holds no water. Rules are to be uniform and should not be discriminative in nature. When a group of employees who are not on duty due to extraordinary leave are granted deferred increment, it does not stand to reason, as to why pensioners who are not on duty on the 1st day of retirement, which is the increment date, be granted the eligible annual increment, as deferred by a day. Discrimination is the antithesis to equality. Equality, the bedrock of our Constitution, is to be upheld and not let down as in the case of the applicants. Further, the respondents claiming that the grant of increment on 1st July would tantamount to grant of advance increment and thereby favouring the pensioners like the applicants would be discriminative since those in service have not been extended such a benefit, lacks appreciative value. Respondents without hesitation submit that such a decision would usher in inequality between pensioners and regular employees with the former favoured without a reasonable basis. This argument lacks logic since the increment is granted after rendering one year of service and therefore by no stretch of imagination it can be referred to as an advance increment for the service to be rendered as has been attempted to be made out by the respondents nor would the inequality arise as claimed for the reason stated. Another similar assertion made by the respondents is that the increment has to be granted from the future point of time. This submission is difficult to accept since the grant of increment is based on the fundamental premise of past performance and service rendered. Respondents by making the above submissions were frequently hovering around technical aspects leaving the substantive aspects open to challenge. It is not out of place to state that substantive justice should prevail over the technical one as observed by the Hon'ble Supreme Court in ***Bihar State Electricity Board vs. Bhowra Kankanee Collieries Ltd.,*** in 1984 Supp SCC 597, as under:

> *Substantive justice must always prevail over procedural or technical justice.*

Substantive justice was to grant the increment due and not bank on the procedural aspect of a non existing norm of being on duty or grant of advance increment etc as advanced by the respondents.

(IX) Going further, it is clearly discernable that the employees in service who have served for 12 months are granted the annual increment for the reason that they continue in service but the applicants who have also rendered 12 months service are denied a similar benefit since on the due date of increment their designation changed over to a pensioner for being born on 30th June or retired on the said date due to quirk of fate. The important point to note is the rendering of 12 months of service. Increment is granted for satisfactory service rendered and not for the service that is going to be rendered. In other words it is the past and not the future in respect of service rendered, which is critical to grant the annual increment. In this regard both serving employees and the applicants have served the same period of 12 months to earn the annual increment due, excepting for the later taking the avatar of a pensioner and the former continuing to enact the role of an employee. Therefore, granting increment to the serving employees and showing empty hands to the applicants with the same standing of serving for 12 months without blemish is no more than hostile discrimination which is not permitted under law and is evidently violative of Article 14 of the Constitution. Hence the repeated assertions of the respondents that the applicants have not been discriminated have no legs to stand. To be precise, action of the respondents has treated equals as unequals offending Articles 16(1) & 14 of the Constitution of India.

(X) Grant of increment on rendering 12 months service is a service condition. Any change in the same cannot be made without putting those adversely effected on notice, as per Principles of Natural Justice. Such an attempt, if made, would have enabled the respondents to work out remedies within the ambit of rules and law. In this regard the respondents submitted that some of the applicants represented, some have not and therefore, there they had no opportunity to take a view in respect of those who did not represent. We are surprised at this submission since grant of increment is a service condition and any change in the same for whatever reason it may be, the respondents need to have taken the initiative to make it clear as to what their stand is in regard to the issue rather than making a meek submission that there is no representation from some of the applicants. More so, applicants lacking bargaining power, is all the more reason for the respondents, who are model employers and be role models for others, to go into the pros and cons of the issue and resolve it, rather than forcing the applicants who are in the evening of their life with little strength and debilitated finances, to approach the Tribunal. Role of a model employer, as highlighted by Hon'ble Supreme Court in ***Bhupendra Nath Hazarika & Anr vs State Of Assam & Ors*** on 30 November, 2012 in CA Nos. 8514-8515 of 2012, as under, is the underlying theme, which has to be adhered to by the respondents:

> *48. Before parting with the case, we are compelled to reiterate the oft-stated principle that the State is a **model employer** and it is required to act fairly giving due regard and respect to the rules framed by it. But in the present case, the State has atrophied the rules. Hence, the need for hammering the concept.*
>
> *49. Almost a quarter century back, this Court in Balram Gupta vs Union of India & Anr. [1987 (Supp) SCC 228] had observed thus:*
>
> > *"As a **model employer** the Government must conduct itself with high probity and candour with its employees."*
>
> *50. If the present factual matrix is tested on the anvil of the aforesaid principles, there can be no trace of doubt that both the States and the Corporations have conveniently ostracized the concept of "**model employer**"*
>
> *51.* In Secretary, State Of Karnataka And vs. Umadevi And Others *[(2006)4SCC1], the Constitution Bench, while discussing the role of state in recruitment procedure, stated that if rules have been made under* Article 309 *of the Constitution, then the Government can make appointments only in accordance with the rules, for the State is meant to be a model employer.*
>
> *53. We have stated the role of the State as a model employer with the fond hope that in future a deliberate disregard is not taken recourse to and deviancy of such magnitude is not adopted to frustrate the claims of the employees. It should always be borne in mind that legitimate aspirations of the employees are not guillotined and a situation is not created where hopes end in despair. Hope for everyone is gloriously precious and a model employer should not convert it to be deceitful and treacherous by playing a game of chess with their seniority. A sense of calm sensibility and concerned sincerity should be reflected in every step. An atmosphere of trust has to prevail and when the employees are absolutely sure that their trust shall not be betrayed and they shall be treated with dignified fairness then only the concept of good governance can be concretized. We say no more."*

Dignified fairness, expected candour are missing in the decision to reject the request and in fact the said rejection has guillotined the legitimate aspiration of the applicants to aspire for what is due to them. Hence the decision to reject the relief is not in symmetry with the above observations,

XI) Another interesting and pertinent aspect of relevance to the issue disputed is FR 56 which rules the roost in respect of age of retirement by declaring that an employee superannuates on the last date of the month in which month he attains the age of the 60 years. The exception being, that if the date of birth is the 1st of the month then the retirement date would be preponed to the last working day of the previous month. Interestingly the rule carves an exception to shift the date of retirement to a day before. This gives the cue that in respect of applicants a similar exception can be made by preponing the date of increment to the last working day i.e. 30th June instead of 1st July by applying the canons of law, as can be found in the landmark case of Ridge Vs. Baldwin (1963) 2 All.E.R. 66, wherein it was held that:

> *The legal choice depends not so much on neat logic but the facts of life -- a pragmatic proposition. Where the law invests an authority with power to affect the behaviour of others what consequence should be visited on abuse or wrong exercise of power is no abstract theory but experience of life and must be solved by practical considerations woven into legal principle. Verbal rubrics like illegal, void, mandatory, jurisdictional, are convenient cloaks but leave the ordinary man, like the petitioner here, puzzled about his remedy. Rubinstein poses the issue clearly:--*
>
> *"How does the validity or nullity of the decision affect the rights and liabilities of the persons concerned? Can the persons affected by an illegal act ignore and disregard it with impunity? What are the remedies available to the aggrieved parties? When will the courts recognize a right to compensation for damage occasioned by an illegal act? All these questions revert to the one basic issue; has the act concerned ever had an existence or is it merely a nullity?*
>
> *Voidable acts are those that can be invalidated in certain proceedings; these proceedings are especially formulated for the purpose of directly challenging such acts ...... On the other hand, when an act is not merely voidable but void, it is a*

nullity and can be disregarded and impeached in any proceedings, before any court or Tribunal and whenever. It is relied upon. In other words, it is subject to 'collateral attack'. "

20. .... But we do hold that an order which is void may be directly and collaterally challenged in legal proceedings. ...."

Rule 10 of CC (Revised Pay) Rules 2008, which were framed consequent to the 6th CPC recommendation, on being read with FR 26 (a) provides for grant of increment once an employee completes 6 months service in the revised pay structure. Therefore, the pragmatic preposition was to take the norm of completion of 6 months and allow it on 1st July which was fixed for convenience. On application of the above legal principle it is apparent that the right of earning the increment has been vested in the applicants and therefore denying the same is prone to collateral attack. Besides, the rubric that the applicant has donned the role of a pensioner is a convenient cloak to deny the undeniable legitimate benefit of an annual increment, practical considerations woven into the legal principle of rejecting discrimination amongst the equals should have been the guiding principle to resolve a fair and just demand of the applicants. For having not done so by the respondents, applicants can do no more but be puzzled about the denial of the increment. The pronounced proposition that applicants are ineligible for having been transformed into pensioners albeit they served the period prescribed for grant of annual increment as per statutory provisions, is liable to be termed as void. Hence, the legal choice for the Tribunal is to depend on facts rather than on neat logic, attempted by the respondents. The facts are that the applicants are entitled for the benefit for the simple reason that they did what they were expected to do as per the rules, to claim what they should.

XII) Yet the respondents dug in and persisted that the applicants are ineligible by professing that the increment has to be drawn only on pay and in case of the applicants it is the last pay drawn. Besides, increment is not like bonus which should be drawn in respect of the year in which the Government servant served for 12 months or part etc. The applicants who are pensioners are entitled for pension and not pay and hence the question of drawing increment does not arise on retirement. In this regard, it is to be borne in mind that the denial of the increment sought has adversely impacted the pension of the applicants. Pension is a welfare measure. Pension Rules as also any other rules kindred to or associated with Pension are to receive a liberal construction. In ***D.S. Nakara v. Union of India***[1], the Apex Court has held as under:

> ***"29.*** *Summing up it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and, therefore, one is required to fall back on savings. One such saving in kind is when you give your best in the hey-day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to a government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation or for service rendered. In one sentence one can say that the most practical raison d'etre for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon."*

Non drawal of the Increment sought in the instant case impinged on the quantum of pension and pensionary benefits of the applicants with adverse consequences. 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 (hereinafter referred to as "***Rule 64***" in short), pay of a

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[1]***(1983) 1 SCC 305***

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. This answers the questions raised by the respondents that increment shall be granted only when there is an element of pay as well as their submissions that respondents granting an increment to a retired employee is not provided for in the pension rules and that even if it is granted to a retired employee on 1st July then it would tantamount to grant of advance increment which is not available for in service employees and therefore, such a decision would be discriminative.

XIII) Further, respondents relied on FR 17 which states that a Government Servant shall begin to draw the pay and allowances attached to his post with effect from the date when he assumes duty of that post until he ceases to discharge those duties. Applicants satisfy this norm since as per Rule 64 of the Receipt and Payment Rules, 1983, pay 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 i.e. before he ceases to discharge the duties associated to the posts applicants were holding. Besides, as per F.R. 9 (21)(a), which was cited by the respondents to deny the increment sought, pay is defined as the amount drawn monthly by a Government Servant which also includes the increment given at an anterior date. In respect of the applicants, increment has become payable on the last working day in view of rule 64 cited and therefore it has become part of the amount to be drawn and paid in the last month of retirement. Hence, to be truthful, it is the respondents who have infringed Rule FR 21 (a). Even FR 24 was quoted by the respondents to defend their decision of denying the drawal of increment which reads as under:

> *F.R.24. An increment shall ordinarily be drawn as a matter of course unless it is withheld. An increment may be withheld from a Government servant by a local Government, or by any authority to whom the local Government may delegate this power under rule 6, if his conduct has not been good or his work has not been satisfactory. In ordering the withholding of an increment, the withholding authority shall state the period for which it is withheld , and whether the postponement shall have the effect of postponing future increments.*

FR 24 makes it abundantly clear that the increment has to be drawn as a matter of course unless it is withheld for bad conduct. The increment in question was due to be drawn as a matter of course and included in the last pay drawn as per rule 64 referred to above. Besides, the respondents have no where stated that the conduct of the applicants was bad. Hence denying increment is violative of FR 24 by the respondents.

XIV. Other rules referred to by the respondents in support of their contentions are Rules 14 (2), 33 &34 of CCS (Pension) Rules. As per rule 14(2) of CCS (Pension) Rules, 1972,

> *service was defined as the service under the Government and paid by that Government from the consolidated fund of India or a local fund administered by that Government but does not include service in a non – pensionable establishment unless such service is treated as qualifying service by that Government.*

Applicants served in a pensionable post and paid from the consolidated fund of India and they were in service till the last day of their retirement complying with Rule 14 (2) but the respondents have not compensated by paying the increment in question which was due to be drawn as part of last pay drawn as per Rule 64 cited in letter and spirit. Coming to Rule 33, it defines 'Basic Pay' as stated in Rule 9(21) (a) (i) which the Government servant was receiving immediately before his retirement or on the date of his death. Basic pay shall include the increment due and the applicants have deviated from fixing the basic pay and allowances which was due to the applicant on the last day of service as per Rule 64. Rule 9 (21) (a) (i) defines pay which has been sanctioned for a post held substantively or in officiating capacity or for reason of his holding position in a cadre. Applicants have held posts in a substantive/officiating capacity on the last day of retirement as stipulated under Rule 5 of pension rules and their pay has to necessarily include the increment due for rendering 12 months service as per rule 64 under reference. Focussing on Rule 34 of Pension

Rules, it states that the average emoluments shall be determined with reference to the emoluments drawn by a Government Servant during the last ten months of his service. The last 10 months emoluments includes the contested increment to be drawn in view of rule 64 discussed above. FR 56 when read with Rule 64 the respondents have no ground to deny the increment prayed for. From the above discussion it is evident that the respondents have heavily relied on Rules 14, 33, 34 of the Pension Rules, ignoring Rule 64 of the Receipt and Payment Rules, 1983. Even Rule 83 of CCS (Pension) Rules cited by the respondents, which states that pension becomes payable from the date on which the government servant ceases to be on the establishment is complied with when read with rule 64. Same is the case in respect of Rules 5, 35 and Rule 50 (5) of CCS (Pension) Rules relied upon by the respondents and hence, require no further elaboration when viewed in the context of the requirement of Rule 64. Lastly, Rule 151 of the Civil Service Regulations cited by the respondents would not come to their rescue in view of the legal principles enunciated by the Hon'ble Apex Court in the various judgments discussed above. Respondents need to harmonise the rules and apply them but not select rules in a disjointed manner particularly when it comes to pension , which is indeed a welfare measure and on which Government, as matter of policy, gives utmost importance leaving no room for any divergence from the rules. This being so the respondents have digressed from the rules as expounded in paras supra. To cover their flanks, the respondents have also claimed that some of the applicants have got their increments advanced in the year 2006 in view of OM dated 19.3.2012 of Ministry of Finance (R-2) which alas will have no say on the relief sought. Reason being applicants did not seek the same but the Government extended the relief to avoid any heartburning to those who retired between February and June 2006. It cannot be termed as suppression of facts as advanced by the respondents.

XV) A similar issue fell for consideration by the Madurai Bench of Hon'ble High Court of Madras in ***S.Kandaswamy v The District Collector, Thuthukudi & anr in W.P. (MD) No. 20658 of 2016*** wherein it was held as under, on 26.10.2016:

> *"6. The facts that the emoluments of a Government Servant have to be taken as the basic pay, which he was receiving immediately before his retirement, is not at all in controversy. Similarly, the proposition that an increment accrues from the date following that on which it is earned is also not in dispute. Increment in pay is a condition of service. In a way, it is reward for the unblemished service rendered by an employee, which get transformed into a right. Once an employee renders the service for the period, which takes with it an increment, the same cannot be denied to him/her. It is not in dispute that both the respondents rendered unblemished service for one year before the respective dates of their retirements. The periodicity of increment in the service is one year. On account of rendering the unblemished service, they became entitled for increment in their emoluments.*
>
> *7. The only ground on which the respondents are denied the increment is they were not in service to receive or to be paid the same. Strictly speaking, such a hyper technical plea cannot be accepted. As observed earlier, with the completion of the year's service, an employee becomes entitled for increment, which is otherwise not withheld. After completion of the one – year service, the right accrues and what remains thereafter is only its enforcement in the form of payment. Therefore, the benefit of the year-long service cannot be denied on the plea that the employee ceased to be in service on the day on which he was to have been paid the increment. There is no rule, which stipulates that an employee must continue in service for being extended the benefit for the service already rendered by him. "*

Later, the Hon'ble High Court of Madras relying on its previous judgments has granted a similar relief on 15.09.2017 in W.P. No.15732 of 2017 filed by Sri P. Ayyamperumal, who retired on 30.6.2013 and was due for notional increment w.e.f. 01.07.2013. The above verdict was challenged before the Hon'ble Supreme Court by way of filing the SLP No.22283 of 2018 and Review Petition R.P. (C) 1731/2019, which were dismissed on 23.07.2018 & 08.08.2019 respectively. Hence, the issue has attained finality since there has been no review of the Hon'ble Madras High Court judment. The grounds taken by the respondents that the DOPT has not issued any guidelines on the issue except to state that the Ayyanpeurmal judgment is *in personam*, would not hold good as per law. In essence the objection taken by the respondents which requires to be responded to is that the Ayyamperumal judgment cited supra, is applicable only to parties who were before the Hon'ble High Court and that the applicants being non-parties to the judgment, it cannot be extended to them. The said objection flies in the face of well settled law that if a relief is extended to a set of employees then the same needs to be extended to similarly situated employees without forcing them to go over to the courts for an identical relief. It is not out of place to affirm that if the authorities discriminate amongst persons similarly situated, in matters of concessions and benefits, the same directly infringes the constitutional provisions enshrined in Articles 14 and 16 of the Constitution of India. In fact, observations of the Hon'ble Supreme Court in the following cases would set at rest the doubts lingering in the minds of the respondents about the inevitability to extend the benefit of the judgment to the applicants.

***Amrit Lal Berry v. Collector of Central Excise,*[2] :**

"We may, however, observe that when a citizen aggrieved by the action of a Government Department has approached the Court and obtained a declaration of law is his favour, others, in like circumstances, should be able to rely on the sense of responsibility of the Department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to Court."

Inder Pal Yadav Vs. Union of India, [3]**:**

"...those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly

[2] ***(1975) 4 SCC 714***
[3] ***(1985) 2 SCC 648***

situated, they are entitled to similar treatment if not by anyone else at the hands of this Court."

The V Central Pay Commission, as well, in its recommendation, in regard to extension of benefit of court judgment to similarly situated, observed as under:-

"126.5 – Extending judicial decisions in matters of a general nature to all similarly placed employees. - We have observed that frequently, in cases of service litigation involving many similarly placed employees, the benefit of judgment is only extended to those employees who had agitated the matter before the Tribunal/Court. This generates a lot of needless litigation. It also runs contrary to the judgment given by the Full Bench of Central Administrative Tribunal, Bangalore in the case of C.S. Elias Ahmed and others v. UOI & others[4]*, wherein it was held that the entire class of employees who are similarly situated are required to be given the benefit of the decision whether or not they were parties to the original writ. Incidentally, this principle has been upheld by the Supreme Court in this case as well as in numerous other judgments like G.C. Ghosh v. UOI*[5]*, dated 20-7-1998; K.I. Shepherd v. UOI*[6]*; Abid Hussain v. UOI*[7] *etc. Accordingly, we recommend that decisions taken in one specific case either by the judiciary or the Government should be applied to all other identical cases without forcing the other employees to approach the court of law for an identical remedy or relief. We clarify that this decision will apply only in cases where a principle or common issue of general nature applicable to a group or category of Government employees is concerned and not to matters relating to a specific grievance or anomaly of an individual employee."*

Hence, law being candid in all its hues in regard to extending a judicial relief to similarly situated employees, there cannot be any iota of doubt in extending the relief of deemed increment to the applicants as was granted by the Hon'ble High Court of Madras, referred to in paras supra. In particular, by telescoping the principle laid down to the case of the applicants, it is seen that they too have served for one year and for doing so, the increment was due on 1st of July but by reason of superannuation, were not in service and that should not infringe the right accrued for earning the increment. Respondents have not cited any rule, which requires that the applicant must have to continue in service for extending the benefit extendable for the service already rendered. We would like to further state that law prevails over the absence or presence of executive instructions infringing legal principles in the context of the

[4] O.A. No. 451 and 541 of 1991
[5] (1992) 19 ATC 94 (SC)
[6] (JT 1987 (3) SC 600)
[7] JT 1987 (1) SC 147,

repeated submissions about DOPT line of response that Ayyamperumal judgment *is in personam*.

XVI) Nevertheless, respondents submit that the dismissal of the SLP and the review petition on merits, filed against the judgment of the Hon'ble High Court of Madras in P.Ayyamperumal case does not mean that the issue has attained finality, since the P.Ayyamperumal judgment can be reviewed by the Hon'ble Madras High Court, if challenged, as laid by the Hon'ble Apex Court in ***Kunhayammed v State of Kerala, (2000) 6 SCC 359***. As seen from the records on file, there is no such review and hence, as on date the Judgment of the Hon'ble High Court of Madras holds good. The other judgments of the Hon'ble Supreme Court in ***Uday Pratap Singh v State of Bihar [1994 (5) SLR 608 (SC)], Workman of Cochin Port Trust v Board of Trustees, [1978 (3) SCC 119], Indian Oil Corporation Ltd. V State of Bihar [JT 1986 SC 132]*** would not come into play as the P. Ayyamperumal Judgment rules the roost as on date with the SLP/Review Petition against the verdict being dismissed and there being no review as per records submitted. Therefore, there can be no other conclusion that can be arrived at, except to adhere to the Judgment of P.Ayyamperumal, which, in the circumstances described, has attained finality.

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 = 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**[8] that precedents are to be strictly adhered to. The Apex Court has categorically held therein as under:-

[8] (2000) 1 SCC 644

*"**12. …….** Precedents which enunciate rules of law form the foundation of administration of justice under our system. This is a fundamental principle which every presiding officer of a judicial forum ought to know, for consistency in interpretation of law alone can lead to public confidence in our judicial system. ……….A subordinate court is bound by the enunciation of law made by the superior courts."*

Referring to another judgment in the case of **Tribhovandas Purshottamdas Thakkar v. Ratilal Motilal Patel** [9] the Apex Court has observed as under:-

> *This Court in the case of **Tribhovandas Purshottamdas Thakkar v. Ratilal Motilal Patel** while dealing with a case in which a Judge of the High Court had failed to follow the earlier judgment of a larger Bench of the same Court observed thus:*
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> > *The judgment of the Full Bench of the Gujarat High Court was binding upon Raju, J. If the learned Judge was of the view that the decision of Bhagwati, J., in **Pinjare Karimbhai case**[10] and of Macleod, C.J., in **Haridas case**[11] did not lay down the correct law or rule of practice, it was open to him to recommend to the Chief Justice that the question be considered by a larger Bench. Judicial decorum, propriety and discipline required that he should not ignore it. Our system of administration of justice aims at certainty in the law and that can be achieved only if Judges do not ignore decisions by courts of coordinate authority or of superior authority. Gajendragadkar, C.J., observed in Bhagwan v. Ram Chand[12] :*
> >
> > *'It is hardly necessary to emphasise that considerations of judicial propriety and decorum require that if a learned Single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a Single Judge, need to be reconsidered, he should not embark upon that inquiry sitting as a Single Judge, but should refer the matter to a Division Bench, or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. That is the proper and traditional way to deal with such matters and it is founded on healthy principles of judicial decorum and propriety.'*

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

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[9] (1987) 4 SCC
[10] 1962(3) Guj LR 529
[11] *Haridas* v. *Ratansey*, AIR 1922 Bom 149(2)
[12] AIR 1965 SC 1767

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.

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 as under:-

> *"7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a* ***continuing wrong.*** *Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong*

*commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and **if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained.** For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But **if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied**. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.”*

Respondents are trying to project that there has been undue delay in filing the OAs for seeking the claim which is not true. Though the applicants have retired from the years 2007 onwards it cannot be denied that their class was agitating in different judicial forums culminating in the rejection of the Review Petition filed against the judgment of P.Ayyamperumal by the Hon’ble Apex Court on 8.8.2019. Taking note of the said rejection, the OAs have been filed and therefore, it cannot be stated that there has been undue delay and that the applicants are fence sitters. In fact, the Hon’ble Supreme Court in the above verdict has held that even if there is a delay in seeking relief in respect of pension, it has to be examined.

XXI. Therefore, pension being a continuous cause of action, with the continuing wrong of not granting the increment sought causing a continuing source of injury of diminishing the pension and pensionary benefits of the applicant to some extent, the claim of the respondents that the limitation clause under Section 21(1) of the Administrative Tribunals Act 1985 would be attracted is not maintainable in view of the above judgment. Moreover, pension is a property under Article 300-A of the Constitution of India and the respondents cannot curtail pension by an executive order as held by Hon’ble Supreme Court in **Deokinandan Prasad vs State Of Bihar & Ors (1971 AIR 1409, 1971 SCR 634)** as under:

> *"The question whether the pension granted to a public servant is property attracting Art. 31(1) came up for consideration before the Punjab High Court in Bhagwant Singh v. Union of India (1). It was held that such a right constitutes "property" and any interference will be a breach of Art. 3 1 (1) of the Constitution. It was further held that the State cannot by an executive order curtail or abolish altogether the right of the public servant to receive pension. This decision was given by a learned Single Judge. This decision was taken up in Letters Patent Appeal by the Union of India. The Letters Patent Bench in its decision in Union of India v. Bhagwant Singh (2)approved the decision of the learned Single Judge. The Letters Patent Bench held that the pension granted to a public servant on his retirement is "property" within the meaning of Art. 31(1) of the Constitution and he could be deprived of the same only by an authority of law and that pension does not cease to be property on the mere denial or cancellation of it. It was further held that the character of pension as "property" cannot possibly undergo such mutation at the whim of a particular person or authority.*
>
> *Having due regard to the above decisions, we are of the opinion that the right of the petitioner to receive pension is property under Art. 31(1) and by a mere executive order the State had no power to withhold the same. Similarly, the said claim is also property under Art. 19(1)(f) and it is not saved by sub-article (5) of Art. 19. Therefore, it follows that the order dated June 12, 1968 denying the petitioner fight to receive pension affects the fundamental right of the petitioner under Arts. 19(1)(f) and 31(1) of the Constitution, and as such the writ petition under Art. 32 is maintainable. It may be that under the Pension Act (Act 23 of 1871) there is a bar against a civil court entertaining any suit relating to the matters mentioned therein. That does not stand in the way of a Writ of Mandamus being issued to the State to properly consider the claim of the petitioner for payment of pension according to law.*
>
> *"The payment of pension does not depend upon the discretion of the Government but is governed by the relevant rules and anyone entitled to the pension under the rules can claim it as a matter of right."*

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.

XXII) The respondents made one another submission stating that courts should not interfere in policy matters. This is not a tenable ground since the challenge is not in respect of policy but respondents are under the scanner for not following the Rules laid to grant the increment pleaded for and also for not following various laws as discussed in paras supra. Respondents have also pleaded that DOPT has not been made a party, which is the nodal department in regard to the issue under adjudication. One of the parties arrayed is Union of India represented by the Secretary, Dept. of Posts. When Union of India is made a party, then it encompasses the Dept. of Personnel and Training as well, since it comes under the ambit of Union of India. It is also seen that the respondents did seek inputs from the DOPT in regard to the defence as is seen from their defence that the DOPT has opined that the Ayyamperumal judgment is *in personam*. Therefore, the OAs filed do not suffer from non joinder of parties as claimed by the respondents for reasons stated.

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 OA fully succeeds. 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 OA is allowed to the extent stated above. No order as to costs.

(B.V. SUDHAKAR)
ADMN.MEMBER

(ASHISH KALIA)
JUDL. MEMBER

/evr/