CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.190/2020

Date of Decision: 6th March, 2020

CORAM: RAVINDER KAUR, MEMBER (J)

Shri Arvind Govind Kulkarni
Age 66 years,
Son of Govind Kulkarni
Suptd (Retd) Division-VI
Service Tax, Mumbai – II,
Navi Mumbai, 16th Floor, Satra Plaza,
Palm Beach Road, Sector – 19,
Vashi, Navi Mumbai – 400 705
Residing at 204, Prakash Apartment,
Dhobi Ali, Tembhi Naka,
Thane (West) – 400 601
Cell No.9833689090
Email id:arkul1953@gmail.com ... ***Applicant***

(By Advocate Shri Vishal Shirke)

Versus

1. Union of India
Through the Secretary,
Ministry of Finance,
South Block, New Delhi – 110 001.

2. Central Board of Indirect Taxes
and Customs, Through the Chairman,
North Block,
New Delhi – 110 001.

3. Commissioner of CGST & C.EX,
Navi Mumbai, 16th Floor, Satra Plaza,
Palm Beach Road, Sector – 19,
Vashi, Navi Mumbai – 400 705. ... ***Respondents***

ORDER (ORAL)

When the case was called out, heard Shri Vishal Shirke, learned counsel for the applicant on the point of admission. I have also carefully gone through the record.

2. The present OA has been filed by the applicant under Section 19 of the Administrative Tribunal Act, 1985 seeking the following reliefs:

> "a. This Hon'ble Tribunal may graciously be pleased to call for the records of the case from the Respondents and after examining the same, direct the Respondents to grant one increment to the Applicant on 1st of July, 2013 for his service from 01.07.2012 to 30.06.2013 with all consequential benefits.
>
> b. This Hon'ble Tribunal may further be pleased to direct the Respondents to re-fix the pension and pensionary benefits of the Applicant on account of grant of one increment and to pay them difference of pension and pensionary benefits along with interest @ 12% per annum.
>
> c. Costs of the application be provided for.
>
> d. Any other and further Order as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed."

3. The applicant retired as Superintendent, Service Tax, Mumbai-II with respondents 30.06.2013. It is claimed that under the provisions of CCS(Revised Pay) Rules, 2008(hereinafter referred as Rules 2008), employees who complete 6 months and above as on 01st July are eligible to be granted increment in terms of Rule 10 of Rules, 2008(Annex A-1). The applicant was granted last increment in the month of July 2012. He claims that thereafter he rendered

full one year of service upto 30.06.2013 i.e. the date of his retirement, therefore he is entitled to increment which was otherwise due on 01.07.2013 which has been illegally denied to him. Learned counsel for the applicant has brought to the notice of this Tribunal that identical issue has been dealt with by the Hon'ble Madras High Court in the case of ***P. Ayyamperumal Vs. Registrar, Central Administrative Tribunal and Others, W. P. No. 15732/2017 decided on 15.09.2017.*** It is observed that the Hon'ble High Court has held that the Petitioner (therein) had completed one full year of service as on 30.06.2013, the date of his retirement, whereas the increment due fell on 01.07.2013, the date on which he was no more in service. Relying upon its earlier judgment in the case of ***State of Tamil Nadu vs. Secretary to Govt. Finance & Ors vs. M. Balasubramaniam reported in CDJ 2012 MHC 6525,*** the Hon'ble High Court issued directions that the petitioner shall be given one increment between 01.07.2012 to 30.06.2013 since he had completed one full year of service.

4. Learned counsel also pointed out that the SLP preferred by the Govt of India against the aforesaid judgment of the Hon'ble High Court has been dismissed by the Hon'ble Supreme Court vide order dated 23.07.2018. Thereafter, the Review Petition (C) No. 1731/2019 preferred by the Govt of India before the Hon'ble Apex Court has also been dismissed on merits vide order dated 08.08.2019. All these orders have been placed on record as Annex A-2 to A-4.

5. During the course of argument, learned counsel for the applicant has drawn our attention to the judgment of Delhi High Court in the case of ***Arun Chhibber Vs. Union of India and Ors.*** decided on 13.01.2020 in W.P.(C) 5539/2019 whereby the Hon'ble High Court dealt with the identical issue and relying upon the judgment in the case of P. Ayyamperumal(supra) allowed the Writ Petition vide para 6 of the judgment which reads as under:

> *"6. Consequently, the petition is allowed and a direction is issued to the Respondents to grant one notional increment to the Petitioner for the period from 1st July, 2006 to 30th June, 2007, and re-fix the pension of the Petitioner by adding one notional increment and subsequently re-fix the pension after*

the Seventh CPC. The arrears thereof be paid to the Petitioner within eight weeks from today, failing which simple interest @6% per annum will be liable to be paid by the Respondents on the said sum for the period of delay."

6. Learned counsel for the applicant has also brought to the notice of the Tribunal the judgment of Hon'ble Madhya Pradesh High Court in case of ***S.S. Awasthi and Others Vs. State of Madhya Pradesh and Others*** decided on 20.01.2020 wherein relying upon the judgment in the case of P. Ayyamperumal (supra), the Petitioners who retired on 30th June were granted benefit of notional increment for the period of 1st July to 30th June and the relevant paragraphs of the judgment are reproduced as under:-

"Accordingly, the petition is allowed directing respondents to extend the benefit of annual increment to the petitioners which was due on 01.07.2016 and accordingly the retiral dues of the petitioners be revised and they be also paid arrears within a period of three months from the date of submitting certified copy of this order.

Accordingly, this Petition stands allowed and disposed of."

7. Learned counsel for the applicant has further relied upon the judgment of Hon'ble High Court of Bombay at Goa in W.P. No.115/2012 dated 25.02.2020. OA No.444/2010 involving identical issue was allowed by the

Tribunal vide order dated 15.03.2011 and the relevant para 10 of the judgment is reproduced as under:-

> *"10. Here we find that the applicant has rendered service to the Government for more than 40 years, and in view of the last one year's service he has definitely rendered his service for one complete year in the scale of Rs.14,150/- given to him on 1.7.2008. Hence, we have no hesitation to allow the application. Ordered accordingly.*

The respondents challenged the aforesaid order in the above noted Writ Petition. The Hon'ble High Court vide order dated 25.02.2020 dismissed the Writ Petition and upheld the order of this Tribunal while making following observations in paras 15 and 16:-

> *"15. The aforesaid principles also dissuade us from interfering with the view taken by the Tribunal, particularly since the view taken promotes substantial justice. Besides, we have also to keep in mind that the respondent herein retired almost a decade ago after rendering 40 years of service. The relief granted by the Tribunal relates to only one increment. The view taken by the Tribunal is not only plausible view but also promote substantial justice. Therefore, applying the aforesaid principles, we are satisfied that this is not a matter where discretion is required to be exercised in favour of the petitioner.*
>
> *16. For all the aforesaid reasons, we dismiss this petition. There shall be no order as to costs."*

8. In the present case, it is observed that the applicant had approached the

respondents vide representation dated 27.01.2020 (Annex A-6) for grant of all consequential benefits including pensionary benefits in the light of the judgment of **P. Ayyamperumal** (supra) and to grant him one increment on completion of one full year of service for the period from 01.07.2012 to 30.06.2013, however, he has not been granted any relief by the respondents.

9. The applicant claims that the impugned action of the respondents in not granting the increment to the applicant due on 1st July of the year of his retirement is arbitrary and illegal as he rendered full one year of service w.e.f. 01.07.2012 to 30.06.2013, on which date he retired.

10. I have given thoughtful consideration to all the above noted judgments which are binding upon the respondents. In the light of these judgments, the respondents are directed to consider the representation of the applicant dated 27.01.2020 and to dispose of the same vide reasoned and speaking order within a period of eight weeks from the date of receipt of certified

copy of this order and to communicate the order so passed to the applicant within one week thereafter.

11. With these directions, the Original Application is disposed of at the admission stage itself. No order as to costs.

(Ravinder Kaur)
Member (J)

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12/03/21