CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD.

OA No. 404/2020 with MA No.378/2020

This the 12th day of March, 2021

CORAM : Hon'ble Shri Jayesh V. Bhairavia, Member (J)
Hon'ble Dr. A.K.Dubey, Member (A)

Mukundbhai Chimanlal Patel
Aged : 61 years, Male, Occ. -Retired PA
Residing at & Post : Sonsak,
Olpad, Surat -394540. ....Applicant

(By Advocate : Ms. Vilas Purani)

Versus

1) Union Of India
Notice to be served through
The Secretary Ministry Of Communication & IT Dept,
Department Of Posts,
Daak Bhawan, Sansad Marg,
New Delhi-110001.

2) The Chief Postmaster General,
Gujarat Circle, Khanpur,
Ahmedabad-380001.

3) The Superintendent of Post office,
Surat Division,
Surat-395009. ……...Respondents

O R D E R (ORAL)

Per : Hon'ble Shri Jayesh V.Bhairavia, Member (J)

1. Considering the reasons and grounds stated in the MA 378/2020 for condonation of delay, the same is allowed.

2. In the present OA, the applicant being aggrieved in not granting the annual increment w.e.f. 01.07.2019 by the respondents has filed the present OA seeking reliefs to declare inaction on the part of the respondents in not granting annual increment, as illegal, arbitrary and in violation of Articles 14 & 16 of the Constitution, further prayed to declare that respondents have illegally withheld his annual increment accrued w.e.f. 01.07.2019 and the respondents have illegally denied to apply the decision of Madras High Court in case of *P.Ayyamperumal* v/s *Union of India* decided on 15.09.2017 as also prayed for a direction to respondents to extend the benefit of annual increment w.e.f. 01.07.2019 and accordingly, revise the pension of the applicant and pay the amount of arrears of pension from the date of his retirement till date of payment with 12% interest.

3. It is contended by the learned counsel for the applicant that applicant was appointed as Postman under the Respondents on 04.09.1982 and superannuated on 30.06.2019. In the year 2008, after the introduction of VIth CPC, the Railway Board fixed 1st July of every year as the date of increment. The Rule 10 of the Railway Services (Revised Pay) Rules 2008 stipulates that there will be uniform date of annual increment, viz. 1st July of every year, employees completing six months and above in the revised pay structure as on 1st of July will be eligible to be granted the increment. The said Rule 10 reads as under:-

> ***"10*** *Date of next increment in the revised pay structure – There will be a uniform date of annual increment, viz., 1st July of every year. Employees completing 6 months and above in the revised pay structure as on 1st of July will be eligible to be granted the increment. The first increment after fixation*

of pay on 1.1.2006 in the revised pay structure will be granted on 1.7.2006 for those employees for whom the date of next increment was between 1st July 2006 to 1st January 2007.

Provided that in the case of persons who had been drawing maximum of the existing scale for more than a year as on the 1st day of January, 2006, the next increment in the revised pay structure shall be allowed on the 1st day of January, 2006. Thereafter, the provision of Rule 10 would apply.

Provided that in cases where an employee reaches the maximum of his pay band, shall be placed in the next higher pay band after one year of reaching such a maximum. At the time of placement in the higher pay band, benefit of one increment will be provided. Thereafter, he will continue to move in the higher pay band till his pay in the pay band reaches the maximum of PB-4, after which no further increments will be granted.

Note:1 *In cases where two existing scales, one being a promotional scale for the other, are merged, and the junior Railway servant, now drawing his pay at equal or lower stage in the lower scale of pay, happens to draw more pay in the pay band in the revised pay structure than the pay of the senior Railway servant in the existing higher scale, the pay in the pay band of the senior Railway servant shall be stepped up to that of his junior from the same date and he shall draw next increment in accordance with Rule 10.*

4. According to the applicant, he has rendered service from 01st July 2018 till 30th June 2019, in view of completion of one year service, he became entitled for his increment which is otherwise not withheld. As such, the right was accrued and the respondents illegally deprived the legitimate right of applicant to receive the benefit of increment of his pay. It is also submitted that the Hon'ble

High Court of Madras in case of *P.Ayyamperumal* v/s *Union of India* decided on 15.09.2017 decided that the Government of India is required to grant annual increment falling on 1st July of the year to the employees who superannuated on 30th June of relevant year. However, the Hon'ble High Court directed the respondents to grant one notional increment for the period from 01.07.2009 to 30.06.2010 to the concerned petitioner, as he had completed one full year of service though their increments were on 01.07.2010, the said ratio on dismissal of SLP by the Hon'ble Apex Court attained finality. Therefore, the same is applicable to the facts of the present case.

5. The learned counsel submits that, when in a similar issue, the Hon'ble Court has taken a view then the similarly situated employees should be extended the said benefit without compelling them to knock the doors of court of law. To substantiate this submission, the applicant has placed reliance on various judgments of Hon'ble Apex Court and the High Court as mentioned in the OA.

6. Per contra; the respondents have filed their detailed reply and contested the case. The learned standing counsel for the respondents mainly submitted as under:-

6.1 The applicant retired on 30.06.2019, his monthly pension was fixed and the settlement of his retiral dues and grant of pension was done on the basis of extant rules. The said rule does not allow notional increment for the purpose of pensionary benefits after the date of retirement. In this regard, the counsel for the respondents referred certain provisions stipulated as per F.R.56(a) of CCS (CCA) Rules, 1965 which are as under:-

> *(FR 56)-(a) Except as otherwise provided in this rule, or any other rule or order for the time being in force, every Government* ***servant shall retire from service on the afternoon of the last day of the preceding month on attaining the age of 60 years.*** *(Annexure R-1).*

6.2 It is further submitted in view of Rule 49(2) of CCS (Pension) Rules, since the applicant was required to be retired from service on the afternoon of 30.6.2010 after attaining the age of 60 years, consequential benefits including arrears and pensionary benefits could not be acceded. (Annexure R-2).

6.3 It is submitted that as per the Rule 50(5) of CCS (Pension) Rules, 'emoluments' for the purpose of retirement/ death gratuity means 'pay' as defined in FR 9(21)(a)(i) i.e. basic pay (substantive or officiating), non-practicing allowance and dearness allowance on the date of retirement/ death. (Annexure R-3)

6.4 Further, as per Rule 54 of CCS(Pension) Rules, the monthly family pension is based on the 'pay' drawn on the date of death or on the date of retirement, as the case m ay be, and is admissible at a uniform rate of 30% of pay last drawn, subject to a minimum of Rs.9000/- p.m. (Annexure R-4).

6.5 As per Rule 39 of CCS (Leave) Rules, method of calculation of leave encashment at the time of retirement is, for EL= Pay +DA admissible on the date of cessation of service / 30 x No.of days of unutilized EL at credit subject to a maximum of 300 days. So far HPL is concerned, the method of calculation is as same as of EL.

6.6 In view of the above, as the applicant was not drawing the increased pay which was due on 01.07.2010, all the consequential benefits of arrears and pensionary benefits cannot be allowed as per the relief sought for by the applicant.

6.7 There is no provision in Rule 10 of the CCS (RP) Rules 2008 wherein a retired Government employee has to be granted increment after his date of retirement. As per the said rule, an uniform date of annual increment is mandated i.e. 1st July of every year for the purpose of revision of pay structure of the Government Employee. Since applicant retired on 30.06.2010, he is not eligible to claim any increment.

6.8 It is submitted that the judgment passed by Hon'ble High Court of Madras in case of *P. Ayyamperunal* are in ***personam*** and not in ***rem,*** the SLP filed thereon was dismissed inlimine. Therefore, the said judgment does not constitute any declaration of law or a binding precedent under Article 141 of the Constitution.

In this regard, learned counsel placed reliance on the judgment passed by Hon'ble Division Bench of Himachal Pradesh High Court in the case of *Hari Prakash R* v/s *State of Himachal Pradesh & Ors*. decided on 06th November, 2020 in CWP No.2503/2016, a/w CWPOA No.663 of 2020 wherein the Hon'ble High Court held that *"**In (2020) 5 SCC 421, titled UOI & Ors v/s M V Mohanan Nair, it was held that the law declared by the Supreme Court essentially understood as principle laid by the court and it is this principle which has the effect of a precedent. A principle***

can be delivered only after examination of the matter on merits and not on the basis of a decision delivered on technical grounds without entering into the merits at all. A decision unaccompanied by reason cannot be said to be a law declared by the Supreme Court though it will bind the parties inter se in the litigation."

The Hon'ble High Court after referring the para 48 of the judgments in case of *M V Mohanan Nair* (supra), further held that, "....*****Therefore, it cannot be said that dismissal of SLP against the judgment rendered in P. Ayyamperunal's case (supra), the Apex Court had laid down the binding principle of law that increment which falls due on 1st day post retirement of an employee is to be granted to him only for the reason that he has rendered twelve months of service on the day of his retirement***."*

Further, by upholding the impugned decision of the HP Administrative Tribunal dated 08.08.2016*, the Hon'ble High Court also observed that* ***"we have already held that petitioner had retired on 31.03.2003 on the basis of pay drawn by him on that day. His status as on 01.04.2003 was that of a pensioner. Therefore, increment which fell on 01.04.2003 cannot be granted in his favour."***

6.9 Learned counsel for the respondents by relying upon judgment passed by Hon'ble Andhra Pradesh High Court in the case of *B.E.Swaraiah* v/s. *The Presiding Officer, Labour Court – I, Hyderabad* and *Anr.* decided on 11.02.2014 in WP 1846/2006, it is submitted that the judgment passed by coordinate Bench after considering the principle laid down by Apex Court on the point of binding precedent and the relevant statutory provision, the said later judgment requires to be followed. Therefore, the

recent judgment passed by Division Bench of Himachal Pradesh wherein it has been that **"*in the case of P. Ayyamperumal, the Hon'ble Apex Court dismissed the SLP inlimine and had not laid down any binding principle",*** is required to be considered. Under the circumstances, the judgments relied upon by the applicant is not of any help to them.

7. Heard the learned counsel for the parties and perused the material placed on record.

8. In the present case, undisputedly the applicant superannuated on 30th June 2010 i.e. before the date of annual increment. In other word, as on 1st July 2010, he was not in service and became a pensioner.

8.1 It is noticed that, by following the observation and findings in the order passed by Division Bench of Hon'ble High Court of Madras in case of *P Ayyamperumal* v/s *Union of India* decided on 15.09.2017 WP No.15732 of 2017 various judgments and order passed by different High Courts and the Tribunals including the order passed by Hon'ble High Court of Gujarat in the case of *Union of India* v/s *Laxmanbhai Kalabhai Chavda* dated 27.1.2021 wherein in decision of the Tribunal that the employee superannuated on 30th June after completing entire previous year of service was entitled to next increment falling on 1st July was upheld.

8.2 At this stage, it is also important to mention that in an identical issue the Hon'ble Division Bench of Himachal Pradesh High Court in the case of *Hari*

Prakash R v/s *State of Himachal Pradesh & Ors* decided on 06th November, 2020 in CWP No.2503/2016, a/w CWPOA No.663 of 2020 wherein the Hon'ble High Court held that *"**In (2020) 5 SCC 421, titled UOI & Ors v/s M V Mohanan Nair, it was held that the law declared by the Supreme Court essentially understood as principle laid by the court and it is this principle which has the effect of a precedent. A principle can be delivered only after examination of the matter on merits and not on the basis of a decision delivered on technical grounds without entering into the merits at all. A decision unaccompanied by reason cannot be said to be a law declared by the Supreme Court though it will bind the parties inter se in the litigation."***

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pensioner. Therefore, increment which fell on 01.04.2003 cannot be granted in his favour."

8.3 It is also appropriate to mention that before passing the detailed order in this OA, the counsel for the parties have brought to the notice of this Tribunal that recently the Hon'ble Apex Court in identical case vide order dated 05.04.2021 in SLP (C) No.4722 of 2021 *UOI* v/s. *M. Siddaraj* arising out of impugned order dated 22.10.2020 in WP No.146967/2020 passed by High Court of Karnataka (Circuit Bench at Dharwad) has stayed the operation of order passed by CAT, Bangalore Bench dated 18.12.2019 in OA No.677/2019 in case of *M Siddaraj* v/s *Union of India*. It is noticed that the Bangalore Bench of this Tribunal in the case of *M. Siddaraj* by relying upon the order passed in Shri *P Ayyamperumal (supra)*, as also order passed in OA No.165/2009 directed the respondents to grant one notional increment as the employees had completed one entire year of service as on 30th June. The Hon'ble Apex Court vide order dated 05.04.2021 further directed the respondents that *"in the meanwhile prejudice to the rights and contentions of parties, the retiral dues of the employees be computed on the basis of last pay drawn by him on the date of his retirement, that is, 30.06.2014."*

9. In view of the above factual matrix, since the Hon'ble Apex Court has stayed the operation of direction of Bangalore Bench of this Tribunal with regard to grant of

notional increment on 1st July to the employees who superannuated on 30th June, we do not find any reason to interfere at this stage with the decision of the respondents. Accordingly OA stands disposed of. No costs.

(A.K.Dubey)
Member(A)

(Jayesh.V.Bhairavia)
Member(J)

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