Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD

(This the 23rd **Day** of **July**, 2021)

Hon'ble Mrs. Justice Vijay Lakshmi, Member (Judicial)

Original Application No.330/00504/2021

1. Shivraj Singh Gangwar (Date of Birth – 01.07.1958) aged about 63 years S/o Late Shital Prasad Gangwar, R/o 42, Friends Vihar, Dayal Bagh, Agra – 282005 (U.P.). Retired as Assistant Director, Grade-II from M.S.M.E. Development Institute, 34, Nuhai Industrial Estate, Nuhai, Agra – 282006 (UP), a field office working under the O/o The Development Commissioner, MSME, 7th Floor, Nirman Bhawan, New Delhi – 110011.
2. Pramod Kumar Singh Rathore (Date of Birth – 01.07.1956) aged about 65 years S/o Late Shri Guru Datt Singh, R/o 46, Deep Nagar Part-2 Dehtora Road Bodla, Agra – 282007 (U.P.).
   Retired as Director from M.S.M.E. Development Institute, 34, Industrial Estate, Nuhai, Agra – 282006 (UP), a field office working under the O/o The Development Commissioner, MSME, 7th Floor, Nirman Bhawan, New Delhi – 110011.
3. Ved Prakash Sharma (Date of Birth – 18.06.1957), aged about 64 years S/o Late Kalu Ram Sharma, R/o III-E/139, Nehru Nagar, Ghaziabad-201001, U.P.
   Retired as Director from M.S.M.E. Development Institute, Polo Ground, Industrial Estate, Indore 452001 (M.P.), a field office working under the O/o The Development Commissioner, MSME, 7th Floor, Nirman Bhawan, New Delhi – 110011.
4. Rakesh Kumar Sharma (Date of Birth – 01.07.1958) aged about 63 years S/o Shri Munshi Lal Sharma, R/o 8/269, Adarsh Nagar, Gali No.3, Gurudwara Road, Modi Nagar – 201204 (U.P.).
   Retired as Assistant Director, Grade-I from the O/o The Development Commissioner, MSME, 7th Floor, Nirman Bhawan, New Delhi – 110011.
5. Brajendra Kumar (Date of Birth – 20.06.1958) aged about 63 years S/o Shri Hari Raj Singh, R/o Plot No.61, Flat A-3, Gyan Khand-1, Indirapuram, Ghaziabad-201010 (U.P.).
   Retired as Assistant Director, Grade-I from M.S.M.E. Development Institute, Captain Shaheed Gaur Marg, Okhla New Delhi, a field office working under the O/o The Development Commissioner, MSME, 7th Floor, Nirman Bhawan, New Delhi – 110011.
6. Satya Prakash (Date of Birth – 10.06.1958) aged about 63 years S/o Late Shri M.M. Srivastava, R/o C/o Shri Shaiwal Shankar Srivastava, House No.8, Chandrawati Kuteer, Bilandpur, Near DIG Bungalow, Gorakhpur-273001.
   Retired as Assistant Director, Grade-I from M.S.M.E. Development Institute, Industrial Estate West Cord Road, Rajaji Nagar, Banglore (Karnatka), a field office working under the O/o The Development Commissioner, MSME, 7th Floor, Nirman Bhawan, New Delhi – 110011.

7. Keshari Prasad Sharma (Date of Birth – 01.07.1955) aged about 66 years S/o Late Shri Sudama Sharma R/o Village Silhata, P.O. Bishunpura, District Gorakhpur (U.P.) 273405.
   Retired as Assistant Director, Grade-II from Br. M.S.M.E. Development Institute, Masat, Silvassa, UT of Dadra and Nagar Haveli-396230, a field office working under the O/o The Development Commissioner, MSME, 7th Floor, Nirman Bhawan, New Delhi – 110011.

Applicants

By Advocate: Sri Jastwant Singh

Versus

1. The Union of India through the Secretary, Ministry of Micro Small & Medium Enterprises, Udyog Bhawan, Rafi Marg, New Dehi-110011.
2. The Secretary, Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, Govt. of India, New Delhi.
3. The Development Commissioner, Micro Small & Medium Enterprises, 7th Floor, Nirman Bhawan, Maulana Azad Road, New Delhi-110108.
4. The Director, Micro Small & Medium Enterprises , Development Institute, 34, Industrial Estate, Nunhai,Agra-282006.

.....Respondents

By Advocate: Sri D.S. Shukla

O R D E R

Delivered by Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)

Shri Jaswant Singh, learned counsel for the applicants and, Shri D.S. Shukla , learned counsel for the respondents, both are present.

2. Heard ld. Counsel for the parties and perused the record.

3. By means of the instant O.A., the applicants have prayed for the following reliefs:-

i) That this Hon'ble Tribunal be pleased to hold and declare that the applicants are entitled to be placed and have their pension to be fixed with one notional increment with all consequential benefits, with effect from 1st July

of the year in which applicants retired from Government service.

ii) That this Hon'ble Tribunal be pleased to issue a suitable time bound order or direction to the respondents to release the entire arrears of pension and other emoluments payable to the applicants as a consequence of the aforesaid notional increment from the due date, along with interest at such rates as might be fought just and reasonable in the facts and circumstances of the case.

iii) The Hon'ble Tribunal may further be pleased to pass order or direction as deem fit and proper in the interest of justice.

iv) To award cost of the application in favour of the applicants.

4. All the applicants herein have retired on 30th June in different years, as it was the last working day of their service. A perusal of their PP orders, which have been collectively filed as Annexure No. A-1, shows that the Applicant No. 1 was superannuated on 30.6.2018 from the post of Assistant Director Gr.II, Applicant No. 2 was superannuated on 30.6.2016 from the post of Director, Applicant No. 3 was superannuated on 30.6.2017 from the post of Director, Applicant No. 4 was superannuated on 30.6.2018 from the post of Assistant Director Gr. I, applicant No. 5 was superannuated on 30.6.2018 from the post of Assistant Director Gr.I, applicant No. 6 was superannuated on 30.6.2018 from the post of Assistant Director Gr.I, and applicant No. 7 was superannuated on 30.6.2015 from the post of Assistant Director (Mech).

5. All the applicants being similarly placed made representations before the respondents to the effect that on retiring on 30th June on different years, they should be given an increment of 1st July on the basis of the decisions of the Hon'ble Madras High Court in **Writ Petition No. 15732/2017 affirmed by Hon'ble Supreme Court in SLP (C) No. 220088 of 2018 and Review Petition No. 1731 of 2019 in the case of Shri P. Ayyamperumal. However, their representations have not been responded uptill now.**

6. Learned counsel for applicants submitted that on the basis of above cited judgments, similar controversy has already been decided by this Tribunal in OA No.330/146/2020 (Pravesh Chandra Gupta & Ors. Vs. Union of India & Ors) and applicants will be satisfied, if this OA may also be disposed off in the same terms.

7. Learned counsel for respondents has opposed the prayer. However, he has fairly conceded that the controversy involved in the instant case is similar to the controversy in O.A. No. 146/2020, decided by this Bench.

8. We have perused the order dated 26th February, 2021, passed in OA No.330/146/2020, which is reproduced as below:-

"**Reserved**

CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD

(This the **26th Day** of **February**, 2021)

Hon'ble Mrs. Justice Vijay Lakshmi, Member (Judicial)

Original Application No.330/00146/2020

1. Pravesh Chandra Gupta (Date of Birth 01.07.1959) aged about 60½ yrs. S/o late Shri Kamta Prasad Gupta, R/o SG-119, Shastri Nagar, Ghaziabad 201002 (UP).
   Retired on 30th June,2019 as Superintendent from Office of the Commissioner of Customs, Noida Customs Commissionerate, ICD, Tilpata, Greater Noida, Gautam Budh Nagar – 201311 (UP).

2. Rajneesh Kumar Sharma (Date of Birth – 01.07.1958) aged about 61 ½ yrs S/o Shri Shiv Shankar Sharma R/o-65, Gali No.04, Mansarover, Meerut (UP).
   Retired on 30th June, 2018 as Assistant Commissioner from Office of the Commissioner (Audit), CGST Audit Commissionerate, Delhi Road, (Opposite Shaheed Smarak), Meerut (UP).

3. Rajesh Kumar Srivastava (Date of Birth – 01.07.1958) aged about 61 ½ yrs S/o Late Shri Ram Pyare Lal Srivastava R/o H-113, AWHO Manoj Vihar, Niti Khand-3, Indirapuram, Ghaziabad (UP).
   Retired on 30th June,2018 as Superintendent from Office of the Commissioner, CGST Commissionerate, Noida, C-56/42, Sector-62, Noida, Gautam Budh Nagar (UP).

4. Prakash Narain (Date of Birth – 01.07.1953) aged about 66 ½ yrs. S/o Late Shri Mewa Lal R/o Chetganj, Khandwalan, Mirzapur (UP).
   Retired on 30th June, 2013 as Assistant Commissioner Central Excise & Service Tax, Division – Jangi Road, Mirzapur (UP) under the then Office of the Commissioner of Central Excise & Service Tax, Allahabad (UP) now CGST Commissionerate, Allahabad (UP).

5. Prakash A Prasad (Date of Birth 15.06.1958) aged about 61 ½ yrs. S/o Shri Ayodhya Prasad R/o B-5, Christian Colony, 960 Civil Lines Saket, Meerut, 250003 (UP).
   Retired on 30tth June, 2018 as Assistant Commissioner from Office of the Commissioner (Audit), CGST Audit Commissionerate, Delhi Road, (Opposite Shaheed Smarak), Meerut (UP).

6. Vimal Kumar Shakya (Date of Birth 28.06.1954) aged about 65 ½ yrs S/o Late Shri L.R. Verma r/o Sl-61, Shastri Nagar, Ghaziabad 201002 (UP).
   Retired on 30th June, 2014 as Assistant Commissioner from the Office of the Commissioner of Central Excise, Central Excise Commissionerate, CGO Complex-II, Kamla Nehru Nagar, Ghaziabad (UP) 201002 now CGST Commissionerate, Ghaziabad (UP) 201002 now CGST Commissionerate, Ghaziabad, Compex-II, Kamla Nehru Nagar, Ghaziabad (UP) 201002.

7. Ranvir Singh (Date of Birth 26.06.1958) aged about 61 ½ yrs S/o Late Shri Harghyan Singh R/o B.M. 12 & 13, Naveen Nagar, MDA Colpony, Moradabad (UP).

Retired on 30th June, 2018 as Superintendent from CGST Division Moradabad under CGST Commissionerate, Meerut (Opposite Chaudhary Charan Singh University), Mangal Pandey Nagar, Meerut (UP).

8. Rakesh Chaturvedi (Date of Birth 30.06.1958) aged about 61 ½ yrs S/o Late Shri S.C. Chaturvedi R/o C-47, RDC, Raj Nagar, Ghaziabad (UP).
Retired on 30th June, 2018 as Assistant Commissioner from CGST Division-V under the Office of the Commissioner of CGST, CGO Complex-II, Kamla Nehru Nagar, Ghaziabad 201002 (UP).

9. Mukesh Chandra Verma (Date of Birth – 03.06.1958) aged about 61 ½ yrs S/o Late Shri Kali Charan Verma R/o 77/3/9, Sector-9, Shastri Nagar, Meerut 250004 (UP).
Retired on 30th June, 2018 as Superintendent from office of the Assistant Commissioner, CGST Division-II, Meerut under office of the Commissioner, CGST Commissionerate, Meerut (Opposite Chaudhary Charan Singh University), Mangal Pandey Nagar, Meerut (UP).

10. Ashok Pratap Singh (Date of Birth 30.06.1959) aged about 60 ½ yrs S/o Shri Thakur Prasad Singh R/o SC-129 Shastri Nagar, Ghaziabad 201002 (UP).
Retired on 30th June, 2019 as Assistant Commissioner, CGST Division-II, Meerut under Office of the Commissioner, CGST Commissionerate, Meerut (Opposite Chaudhary Charan Singh University), Mangal Pandey Nagar, Meerut (UP).

11. Vijai Prakash Singh Yadav (Date of Birth 01.07.1953) aged about 66 ½ yrs S/o Late Shri Ramchandra Singh R/o 170-A, Tagore Town, Allahabad 211002 (UP).
Retired on 30th June, 2013 as Superintendent from Office of the Commissioner, Central Excise, Commissionerate, 38, M.G. Marg, Civil Lines, Allahabad 211001 (UP).

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Applicants

By Advocate: Shri Jaswant Singh

Versus

1. Union of India through the Secretary, Ministry of Finance, Department of Revenue, Government of India, New Delhi.

2. The Secretary, Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, Government of India, New Delhi.

3. The Chairman, Central Board of Indirect Taxes and Customs, North Block, New Delhi.

4. The Principal Chief Commissioner (Cadre Controlling Authority), Central GST and Customs, Lucknow Zone, 7-A, Ashok Marg, Lucknow 226001 (UP).

5. The Chief Commissioner, CGST & Customs, Opposite Chaudhary Charan Singh University, Mangal Pandey Nagar, Meerut 250004 (UP).

6. The Commissioner of Customs, Noida Customs Commissionerate, CONCOR Complex, ICD, Tilapta, Gautam Buddh Nagar- 201311 (UP).

7. The Principal Commissioner, CGST & Customs, Opposite Chaudhary Charan Singh University, Mangal Pandey Nagar, Meerut 250004 (UP).

8. The Commissioner (Audit), CGST Audit Commissionerate, Delhi Road, Opposite Shaheed Smarak, Meerut 250004 (UP).

9. The Commissioner, CGST & Central Excise, 38 MG Marg, Civil Lines, Allahabad 211001 (UP).

10. The Commissioner, CGST & Central Excise, CGO Complex-II, Kamla Nehru Nagar, Ghaziabad-201002 (UP)

11. The Pr. Commissioner, CGST & Central Excise, Noida, C-56/42, Sector-62,Noida, Gautam Budh Nagar (UP).

.... Respondents

By Advocate: Shri Raghvendra Pratap Singh

O R D E R

Delivered by Hon'ble Mrs. Justice Vijay Lakshmi,

Member (J)

All the 11 applicants in this O.A. are the retired Superintendents/Assistant Commissioners of Central Excise and Customs department. All of them have retired on 30th June in different years and all of them are aggrieved due to the reason that their requests for grant of one notional increment for the purpose of pensionary benefits, has been rejected by the respondents on the ground that the judgment passed by the Hon'ble High Court of Madras in Writ Petition No.15732 of 2017, P. Ayyamperumal v. The Registrar, Central Administrative Tribunal, Madras Bench

and are, being the judgment in *personam* and not in *rem,* is not applicable in their case, hence, their requests for one notional increment cannot be acceded to.

2. I have heard Shri Jaswant Singh, learned counsel for the applicants and, Shri Raghvendra Pratap Singh, learned counsel for the respondents. Perused the pleadings of the parties as well as the written arguments filed by them along with the judgments relied upon.

3. The undisputed facts, in brief, are that all the applicants were initially appointed as Inspectors through a proper selection procedure. In due course, they got promotions and on reaching the age of superannuation, they retired as Superintendent/Assistant Commissioner in Central Excise and Customs, on 30th June in different years.

4. Generally, annual increments are given in a routine manner to all the government servants, after completion of one year of unblemished service, unless such is withheld as a measure of punishment, Until 1.1.2006, the date of implementing employees' annual increment was fixed on the basis of his/her date of appointment. After 6th Pay Commission, it was decided by the Central government that 1st July of each year would be the date of annual increment for all government employees, by amending Rule 10 of Central Civil Services (Revised Pay) Rules 2008. In view of the said amendment, all the applicants, who had retired on

30th June, were denied their last annual increment on the ground that it was to be payable only on 1st July. Being aggrieved, the applicants have approached this Tribunal seeking the following relief(s).

"(i) that this Hon'ble Tribunal be pleased to hold and declare that the applicants are entitled to be placed and have their pension to be fixed with one notional increment with all consequential benefits, with effect from 1st July of the year in which applicant s retired from Government Service, after quashing of the impugned orders.

(ii) That this Hon'ble Tribunal be pleased to issue a suitable time-bound order or direction to the respondents to release the entire arrears of pension and other emoluments payable to the applicants as a consequence of the aforesaid notional increment from the due date, along with interest at such rates as might be fought just and reasonable in the facts and circumstances of the case.

(iii) The Hon'ble Tribunal may further be pleased to pass order or direction as deem fit and proper in the interest of justice.

(iv) To award cost of the application in favour of the applicants."

5. Learned counsel for the applicants has contended that a similar matter was already agitated previously before CAT, Madras Bench of this Tribunal, by means of O.A. No.917 of 2015. However, the said O.A. was dismissed by the Tribunal vide order dated 21.3.2017. Aggrieved by the said order of the Tribunal, the applicant approached before the Hon'ble Madras High Court by means of ***Writ Petition No.15732 of 2017 (Shri P. Ayyamperumal vs. UOI & Ors)*** which was allowed by the Hon'ble Madras High Court vide judgment dated 15.09.2017. Accordingly, the Tribunal's order was set aside and the respondents were directed to grant one notional increment for the period from 01.07.2012 to

30.06.2013, as the petitioner had completed one full year of service before 01.07.2013.

6. The judgment of Hon'ble Madras High Court, was challenged by the respondents' department through ***SLP (C) No.22008 of 2018 by the Union of India*** before Hon'ble Supreme Court but the same was dismissed vide order dated 23.07.2018 by the Hon'ble Supreme Court on merits.

7. A review petitioner No.1731 of 2019 filed by the Union of India against the dismissal of aforesaid SLP was also dismissed on merits by Hon'ble Apex Court.

8. Learned counsel for the applicants has further contended that the identical controversy has also been settled by the Hon'ble High Court of Madhya Pradesh in ***Writ Petition No.2398 of 2019 Dr. Saiyad Ghazafar Istiaque vs. The state of M.P. & Ors,*** vide judgment dated 11.03.2019, whereby the respondents have been directed to consider the claim of the petitioner on the anvil of the decision of the Hon'ble Madras High Court and to grant the petitioner the relief claimed by him, after properly fixing the salary by adding the increment due to him on 01.07.2016. Hon'ble Allahabad High Court also, vide its judgment dated 17.07.2019 rendered in ***Writ (A) No.5959 of 2019 – Jagvir Singh Rohilla vs. State of U.P. & Ors,*** has given a similar direction for granting of notional increment w.e.f. 01.07.2017 to 30.06.2018 to the petitioner, keeping in view

the law laid down by Hon'ble Madras High Court and confirmed by Hon'ble Apex Court. Several other judgments of different Benches of Central Administrative Tribunal have also been cited by learned counsel in support his contention.

9. It has been vehemently contended by learned counsel for the applicants that despite the fact that the controversy involved in this case is no longer *res integra* and it has been settled by various judgments of Hon'ble High Courts and confirmed by Hon'ble Apex Court, the claims of the applicants for granting them notional increment have been denied by the respondents only on the ground that the judgment passed by the Hon'ble Madras High Court is a judgment in *personam*, not a judgment in *rem.* Whereas, from a bare perusal of all the these judgments cited above, it is quite obvious that the judgment of Hon'ble Madras High Court is a judgment in *rem* and not just in *personam*. Moreover, the different Hon'ble High Courts while dealing with the matter nowhere have stated that the judgment of Hon'ble Madras High Court is in *personam.*

10. The further submission of learned counsel for the applicants is that it is also well settled that one should not be compelled to come to Court or Tribunal for the same case again and again. All the similarly situated persons should be treated similarly and should be granted the same benefits without compelling them to approach the Court by

filing independent petitions. Hence, the applicants belonging to the same class are also entitled to the same benefits. In this regard, reliance has been placed on the judgment of Hon'ble Apex Court rendered in ***K.I. Shephard & Ors. V. Union of India & Ors, (1987) 4 SCC 431,*** in which Hon'ble Apex Court has observed that merely because some of the employees did not come to the court would not provide any justification to penalise them for not having litigated and they are also entitled to the same benefits as persons who have already succeeded.

Further, in ***Amrit Lal Berry vs. Collector, Central Excise (1975) 4 SCC 714***, wherein Hon'ble Apex Court has held as under:-

"*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 in 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 grievance to court.* "

Reliance has also been placed in the case of ***Indra Pal Yadav vs. Union of India, (1985) 2 SCC 648,*** wherein Hon'ble Apex Court has held as under:-

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

11. On the aforesaid grounds, it has been prayed by learned counsel for the applicants that the OA be allowed and a time bound direction be issued to the respondents to grant notional increment from the due date along with

interest and all the consequential benefits including arrears of pension etc.

12. Respondents have filed counter affidavit and have opposed the O.A. mainly on the ground that the judgment passed by Hon'ble Madras High Court in K. Ayyamperumal (supra) is the judgment in *personam* and not a judgment in *rem*. It has been contended that the applicants are not entitled to get increment, because they are retired on 30th June whereas increment is payable on 1st July of every year, as per amended rule. It has been contended that DoPT vide letter dated 18.10.2019 has decided to implement the order of Hon'ble High Court of Madras in *personam*, and in view of the CBICs (Central Board of Indirect Taxes and Customs) communication dated 18.10.2019, no relief can be granted to the applicants. Copy of the DoPT letter dated 18.10.2019 has been annexed as Annexure CA-1 to the counter affidavit. It is further contended that CBICs communication dated 18.10.2019 is based on the advice of Ministry of Law and Justice therefore, there is no violation of Articles 14 and 16 of Constitution of India.

13. The letter dated 18.10.2019 issued by the DoPT to all Pr. Commissioners/Chief Commissioners/Director General under CBIC, relied upon by the respondents, copy whereof has been annexed as Annexure CA-1, shows that after dismissal of review petition filed in the Hon'ble Supreme Court by the Department, CBIC has implemented the High Court's order in personam.

14. Now the issue which remains to be decided is whether, the judgment passed by the Hon'ble Madras High Court in the case of K. Ayyamperumal (supra) is a judgment in *rem* or a judgment in *personam.*

15. In the landmark judgment of ***Bharat Sanchar Nigam Limited v. Ghanshyam Dass (2011) 4 SCC 374*** decided on 17.02.20211, Hon'ble Supreme Court has laid down the criteria to ascertain as to which judgments can be treated as judgment in *rem* and which as judgment in *personam, by observing* as under:-

" It is not necessary for every person to approach the court for relief and it is the duty of the authority to extend the benefit of a concluded decision in all similar cases without driving evey affected person to court to seek relief only in the following circumstances:-

(a) where the order is made in a petition filed in a representative capacity on behalf of all similarly situated employees;

(b) where the relief granted by the court is a declaratory relief which is intended to apply to all employees in a particular category, irrespective of whether they are parties to the litigation or not;

(c) where an order or rule of general application to employees is quashed without any condition or reservation that the relief is restricted to the petitioners before the court; and

(d) where the court expressly directs that the relief granted should be extended to those who have not approached the court.

On the other hand, where only the affected parties approach the court and relief is given to those parties, the fence-sitters who did not approach the court cannot claim that such relief should have been extended to them thereby upsetting or interfering with the right which had accrued to others."

16. Hon'ble Gujrat High Court in the similar recent matter ***R/Special Civil Application No.10751 of 2020,***

relying upon the ratio decidendi of the decision of Madras High Court in the case of K. Ayyamperumal (supra), has granted annual increment to the petitioner, who had retired on 30th June, by holding that as he had completed one year of service prior to his retirement on 30th June, he was eligible to receive the increment notionally.

17. Another recent judgment relied upon by the learned counsel for the applicants is of CAT, Ahmedabad Bench passed on 01.06.2020 in ***OA No.145 of 2019 (Laxman Kalabhai Chavda vs. UOI & Ors.)*** wherein, relying upon the aforesaid judgment of Hon'ble Madras High Court, notional increment was granted to the applicant.

18. In **writ (A) No.5959/2019, decided on 17.07.2019** by Hon'ble Allahabad High Court, the respondent/department was directed to grant notional increment to the petitioner.

19. Hon'ble Lucknow Bench of CAT, in a recent judgment delivered on **20.01.2020 in OA No.332/00196/2020 Anil Kumar Srivastava and another v. Union of India & Ors.,** has rejected the plea raised by the respondents that the judgment of Hon'ble Madras High Court was passed 'in personam' and the benefits are admissible to the applicants of that case only. Placing reliance on the case of Indra Pal Yadav (supra), it has been held by Lucknow Bench of CAT that Hon'ble Apex Court has held that the relief granted by the Court is to be given to

other similarly situated employees without forcing them to come to court for similar benefits.

20. Hon'ble Allahabad High Court (Lucknow Bench) in a very recent case of 2021 reported in **2021 (91) ADJ 646 - P.P. Pandey vs. State of U.P. & Others**, has very elaborately dealt with a similar matter and has held that an employee superannuating prior to cut off date indicated in government order i.e. 1st July of the year, would be entitled for increment because the increment is earned/allowed to an officer for services rendered by him the past year. Para-37 of this judgment is relevant, which is quoted below:-

"37. It is also to be noticed that the impugned order has been passed only on the basis of that judgments passed by the High Court at Madras and by Hon'ble the Supreme Court are inapplicable because, the Corporation was not a party in those proceedings. It is settled law that it is the ratio decidendi which is applicable with regard to any lis and not as to the party in the dispute. The authority concerned should have appreciated that the present dispute is the same as was being agitated before High Court at Madras and there is no distinction whatsoever. However, this aspect has been lost sight of while passing the impugned order.

With regard to contention of the respondents that to earn an increment an employee must remain in service on the date of increment and the applicants being retired on 30th June, they are not entitled for that, Hon'ble Allahabad High Court (Lucknow Bench) in the aforesaid judgment while placing reliance on the judgment of ***Madras High Court dated 03.08.2011 passed in M. Balasubramanim v. State of Tamil Nadu & Ors. (writ petition No.8440 of 2011),*** has held that ***"there is no rule which stipulates that an employee must continue in service for being***

extended the benefits of the service already rendered by him."

21. It is noteworthy that none of the Courts or Tribunals has held that the judgment of Hon'ble Madras High Court passed in the case of K. Ayyamperumal (supra) is the judgment in personam and it will not be applicable in *rem* .

22. In the case of ***State of Karnataka & Others vs. C. Lalitha, (2006) 2 SCC 747,*** the Apex Court has held as under:-

"***29. Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court that would not mean that persons similarly situated should be treated differently.***"

23. In wake of the law laid down in above cited judgments/orders, it cannot be said that the judgment passed by Hon'ble Madras High Court in the matter of K. Ayyamperumal (supra) is a judgment in *personam* and not a judgment in *rem*. Moreover, all the matters relating to pay fixation, like present one under consideration, are governed by uniform policy of the Government and therefore, any judgment in these matters are always judgment in *rem* and cannot be interpreted as judgment in *personam*.

24. In view of the above discussion, this Tribunal is of the opinion that the DoPT letter dated 18.10.2019 is definitely in teeth of all the above cited judgments. In wake of the undisputed fact that all the applicants have

completed one year of service before their retirement on 30th June, although in different years, all the impugned orders rejecting the claim of the applicants for release of the increment are quashed and set aside. The respondents are directed to grant one notional increment to the applicants for the period from 1st July to 30th June for the respective years in which they have retired and to re-fix their pension accordingly, if the applicants are found otherwise eligible for grant of such notional increment. It is further directed that arrears be paid to the eligible applicants within three months from the date of receipt of certified copy of this order.

25. With the aforesaid direction, the O.A. stands disposed off. All the pending MAs as on date are also disposed off.

26. There shall be no order as to costs.

(Justice Vijay Lakshmi)
Member (J)"

9. A perusal of the aforesaid judgment clearly shows that the controversy involved in the instant O.A. is fully covered and has been decided in the above cited judgment. As it is a covered matter, no useful purpose will be served in keeping this matter pending by calling counter and rejoinder from the parties, as it may be disposed of finally at admission stage in the same terms as in O.A. No. 146/2020, quoted above.

10. Accordingly, the instant O.A. is disposed off finally at the admission stage with the direction to the respondents to ensure that

the benefit of the judgment passed by this Tribunal on 26.02.2020 in OA No. 146/2020- Pravesh Chandra Gupta and others V. Union of India others be also given to the applicants in this OA, if they are found otherwise entitled for the same as per merits of their individual case. This exercise is to be completed within a period of four months from the date of receipt of certified copy of this order.

11. No order as to costs.

(Justice Vijay Lakshmi)
Member (J)

HLS/-