

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD

(This the **07th** Day of **September**, 2021)

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

Original Application No.330/00048/2021

Hari Nath Tiwari, aged about 68 years, S/o Late Ram Adhar Tiwari, R/o 183/X-1, Krishna Puram, Kanpur.

..... **Applicant**

By Advocate: Shri Ashish Srivastava

Versus

1. Union of India through the Secretary, Ministry of (Defence Production) Government of India, South Block, New Delhi.
2. Director Genral of Defense Production, DGQA Organization, Government of India, 308, D-1 Wing, Sena Bhawan, New Delhi.
3. Assistant Director (DGQA), Ministry of Defense, Department of Defense Production, Government of Idnia, DGQA/Adm-7B, DHQ PO, New Delhi.

..... **Respondents**

By Advocate: Shri Chakrapani Vatsyayan

O R D E R

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

The applicant in this O.A. was working as Office Superintendent of Quality Assurance (Material) in the respondents' department, who retired on 30th June, 2012 as it was last working day of his service. He is aggrieved due to the reason that his requests for grant of one notional increment for the purpose of pensionary benefits, has not been acceded to by the respondents.

2. I have heard Shri Ashish Srivastava, learned counsel for the applicant and Shri M.K. Sharma holding brief of Shri Chakrapani

Vatsyayan, learned counsel for the respondents and perused the record.

3. As it is a covered matter, no useful purpose will be served in keeping this matter pending by calling counter and rejoinder affidavits. Therefore, with the consent of learned counsel for the parties, the instant OA is being decided at the admission stage in the light of earlier judgments, passed by various Benches of CAT and Hon'ble High Court, confirmed by Hon'ble Supreme Court.

4. Learned counsel for the applicant submitted that applicant had filed a representation before the respondent No.2 on 07.05.2020 for grant of one notional increment for the period from 01.07.2012 to 30.06.2012, but his representation was rejectd by the respondents on 26.08.2020 by following impugned order:-

“Tele: 23012418

Government of India
Ministry of Defence
Dept of Def Production
DGQA/Adm-7B
DHQ PO New Delhi-110011

A/93589/Pen Corres/DGAQ/Adm-7B

Hari Nath Tiwari,
183/X-1, Krishnapuram,
Kanpur-208007.

Grant of Annual Increment Retired
On 30th Jun 2012 for pensionary Benefit

1. Reference your application dated 07 May 2020.
2. Your personal application addressed to the Secretary (Defence Production), Government of India, South Block,

Delhi, has been received in this office. In this connection following in intimated:-

- (a) The application has been perused at appropriate level and after perusal you are hereby intimated that in case of Sh. P. Ayyamperumal, the judgment of Hon'ble High Court of Madras in personam.
- (b) A person is entitled for pay, increment and other allowances only when he/she is entitled to receive pay from out of Consolidated Fund of India and continues to be in government Service. In your case, as you retired from Government Service on 30 Jun 2012, you are not eligible for increment w.e.f 01 Jul 2012 as per the present provisions.

3. This is for you information.

(Shashi Kumari)
Asstt Dir/Adm-7B"

5. Being aggrieved, the applicant has approached this Tribunal seeking the following relief(s).

- “(i) This Hon'ble Tribunal be pleased to quash the impugned order dated 26.08.2020 issued by the respondent No.3 (Annexure No. A-1) accordingly.*
- (ii) This Hon'ble Tribunal may be pleased to direct the respondents to grant the applicant one notional increment for the period from 01.07.2011 to 30.06.2012 for purpose of pensionary benefits and accordingly re-fix his pension and other pensionary benefits and pay the arrears along with admissible interest thereupon.*
- (iii) Any other relief, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case may be given in favour of the applicant.*
- (iv) Award the costs of the original application in favour of the applicant.”*

6. Learned counsel for the applicant has vehemently contended that having fully completed last year of service coming from 1st July to 30th June, the applicant is rightful and bonafide claimants of the annual increment, which would have been granted to him but for

the fact that he retired on the last date of June on completion of the year while the increment would have been paid on 1st of July, he is deprived from getting it.

7. It is further contended that a similar matter was 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 Madras Bench of 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.

8. 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.

9. 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.

10. Learned counsel for the applicant 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.

11. It has been vehemently contended by learned counsel for the applicant 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 applicant 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 Hon'ble High Courts while dealing with the matter nowhere have stated that the judgment of Hon'ble Madras High Court is a judgment in *personam*.

12. The further submission of learned counsel for the applicant 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 applicant belonging to the same class is 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 penalize 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.....”

13. On the aforesaid grounds, it has been prayed by learned counsel for the applicant 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.

14. Respondents have opposed the O.A. mainly on the ground that the applicant has retired on 30th June whereas increment is payable on 1st July of every year, as per amended rule, therefore he is not entitled for notional increment.

15. My attention has also been drawn by learned counsel for the respondents to some manuals/rules and circulars which state that increment can be granted only when the employee is on duty. It is contended that in the instant case, the applicant having retired on 30th June, was not on duty on the date i.e. 1st July on which the increment became due or was to be granted, therefore it could not be given to him. It is next contended 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 and* DoPT vide letter dated 18.10.2019 has decided to implement the order of Hon'ble High Court of Madras in *personam*. The aforesaid DOP&T letter 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*.

16. It is lastly 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.

17. In so far as the issue as to 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*, is concerned, this issue can be decided in the light of several other judgments rendered by Hon'ble Apex Court, Hon'ble High Court and also by various Benches of Central Administrative Tribunal.

18. In the landmark judgment of ***Bharat Sanchar Nigam Limited v. Ghanshyam Dass (2011) 4 SCC 374*** decided on 17.02.2011, 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 every 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.”

19. Hon'ble Gujrati High Court in a 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.

20. Another recent judgment relied upon by the learned counsel for the applicant 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.

21. 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.

22. 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.

23. 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 applicant being retired on 30th June, he is 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. Balasubramaniam 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.” 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* .

24. Further, 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.”*

25. 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*.

26. 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 and the applicant cannot be denied the

benefit of notional increment on the basis of DOP&T letter dated 18.10.2019.

27. Learned counsel for the respondents has lastly contended that in the case of **Union of India Vs. M Siddharaj in SLP No. 4722/2021**, the Hon'ble Supreme Court has stayed the order of the Karnataka High Court by way of an interim order. An implication of this order is that the pension shall be granted to the respondents on the basis of the Last Pay Drawn as on 30th of June of the year of retirement. He points out that instructions to this effect have already been issued by the Railway Board to all their subordinate offices.

28. Learned counsel for the applicant, in reply to the above argument has contended that the order being quoted by the respondents' counsel is only an interim order, hence it cannot be a ground for denying the benefit which already stands accorded by way of several pronouncements/judgments. Moreover, this interim restraining order is only with respect to a particular case, and not an adjudication upon the issue at hand.

29. Learned counsel for the applicant has vehemently contended that the judgment dated 26.02.2021 passed by this Tribunal in **Pravesh Chandra Gupta and others in OA No.146 of 2020**, was challenged by the respondents by means of **Writ (A) No.7911**

of 2021, Union of India & 10 others vs. Pravesh Chandra Gupta and 11 others, in which the petitioner UOI & Ors had referred the aforesaid interim stay order dated 05.04.2021 of Hon'ble Apex Court passed in SLP No. 4722 of 2021 (M. Siddaraj's case) supra and had filed its copy as annexure No.7 to the writ petition. However, Hon'ble Allahabad High Court vide judgment dated 28.07.2021 dismissed the aforesaid writ petition and confirmed the judgment and order of this Tribunal passed in Pravesh Chandra Gupta's case, while at the same time directing the petitioners in the writ petition to compute the benefits payable to the respondents/applicants, as they were found entitled for the benefit of notional promotion for the period from 1st July to 30th June, for the respective years in which they had retired. In support of his arguments learned counsel for the applicant has placed before me the copy of order dated 28.07.2021 passed by Hon'ble Allahabad High Court along with copy of the writ petition.

30. It is lastly contended that after confirmation of the order of this Tribunal by Hon'ble High Court, now this Tribunal cannot hold otherwise.

31. This Bench of the Tribunal, earlier in several other OAs, has already adjudicated upon this matter unambiguously by holding that since annual increment is in lieu of duty performed and service rendered for the whole year, the employees are rightfully entitled to

it even though they may have retired on a date prior to the date on which the increment is to be paid. The issue has further been settled in a batch of several OAs by the Principal Bench as recently as 15th July 2021 (OA No. 776/2019 and batch).

32. Since the matter has already been well settled and identical view has been taken by several courts and Tribunals that increment is paid on account of satisfactory performance of service during the course of the year, it is unfair to deny it merely on the ground that despite having performed duty for an entire year cannot be paid it because on the particular date when it is due the employee retired from service. Moreover, the crucial fact to be noted is that the applicant seeks notional, not actual, increment. This notional increment would only be impacting his retirement dues which accrue with effect from 1st July. Therefore, In view of these categorical pronouncements and the fact that the judgment rendered by this Tribunal in Parvesh Chandra Gupta's case has been confirmed by Hon'ble Allahabad High Court there is no reason to hold any different opinion. In so far as the order of interim stay granted by Hon'ble Apex Court in Union of India vs. M. Siddharaj is concerned, the Principal Bench of CAT, recently in order dated 15.07.2021, passed in a batch of OAs, OA No.776 of 2019 being the leading one, has held as under:-

“.....

6. *It is true that in Union of India Vs. M. Siddaraj (SLP No. 4722/2021), the Hon'ble Supreme Court passed an order 32 OA No. 776/2019 and batch recently on 05.04.2021, directing that the*

pension shall be granted to the respondents therein on the basis of the last pay drawn as on 30th June, 2014. Learned counsel for the applicants submit that they verified the record and found that the respondents in the said SLP were already extended the benefit of increment, at the last day of their service.

7. *Be that as it may, once the various benches of the Tribunal, the Hon'ble High Courts and the Hon'ble Supreme Court held that the increment, which became due on 1st July or 1st January as the case may be, needs to be released for the employees, who retired one day earlier thereto, the applicants herein cannot be denied such benefit.*

8. *To protect the interests of the respondents, we direct that in case any different view is taken by the Hon'ble Supreme Court in SLP No. 4722/2021, the applicants shall be under obligation to refund the benefit that is extended to them. In the corresponding orders, a clause can be incorporated to that effect.*

.....

33. In view of the above discussions, **the OA is allowed.** The applicant shall be entitled to one notional increment which falls due on the succeeding 1st July and accordingly shall be extended all the benefit of this increment in their retirement dues. However, as held by the Principal Bench, a condition is imposed on the applicant to the effect that this benefit would be subject to the final outcome of SLP No.4722 of 2021 pending in the Hon'ble Supreme Court and the applicant shall be under obligation to refund the benefit that is extended to him, in case any different view is taken by the Hon'ble Supre Court in SLP No.4722/2021.

34. Needless to say that grant of increment shall be made after satisfying other requirements under the Rules. No order as to costs.

**(Justice Vijay Lakshmi)
Member (J)**

Sushil