

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 13th day of **August**, 2021

Original Application No. 330/00526/2021

Hon'ble Mr. Tarun Shridhar, Member (Administrative)

1. Manik Lal Gupta, a/a 73 years, Son of Late Sri Moti Lal Gupta, Resident of 56 Deen Dayal Nagar, Kanpur Nagar -208002.
2. Kaushalya Tandon a/a 73 years, Wife of Late Sri T.N. Tandon, R/o 8/179-A, Arya Nagar, Kanpur Nagar.
3. Nirmal Kapoor, a/a 71 years, W/o Sri Dinesh Kapoor, R/o Flat No.2-A Laxmi Narayan Niwas, Patkapur, Kanpur Nagar-208001.
4. Santosh Kumar Mishra, a/a 70 years, S/o Late Sri Brij Mohan Lal Resident of 124/31, Block-C, Govind Nagar, Kanpur Nagar-208006.
5. Ashok Kumar Srivastava, a/a 68 years, Son of Late Adinath Srivastava, R/o Flat No.101, Zoo View Apartment, 2A/377A, (2) Azad Nagar, Kanpur Nagar – 208002.
6. Ashok Kumar Mishra, a/a 68 years, Son of Late Sri Mahesh Prasad Misra, R/o 117/31, K Block, Sarvodaya Nagar, Kanpur Nagar-208025.
7. Shri Ram Singh, a/a 67 years, S/o Late Sri Jaidrath Singh R/o Flat No.169, 3rd Floor, K block Manoj Vihar, Indirapuram, Ghaziabad – 201014.

. . .Applicants

**By Advocate : Shri B.N. Singh
Shri J.S. Bundela**

V E R S U S

1. Union of India through the Chairman, Central Board of Direct Taxes (CBDT), North Block, New Delhi 110001.
2. Union of India through the Secretary, Department of Personnel and Training, North Block, New Delhi -110001.
3. The Principal Chief Commissioner of Income Tax Aayakar Bhawan 16/69 Civil Lines Kanpur Nagar 208001.
4. The Principal Commissioner of Income Tax-1, Kanpur Aayakar Bhawan 16/69 Civil Lines Kanpur Nagar – 208001.
5. The Director of Income Tax (Intelligence and Criminal Investigation), 15/295-A, Vaibhav Bhawan, Civil Lines, Kanpur Nagar-208001.
6. The Commissioner of Income Tax (T.D.S.) 7/119 Radiance Town Swaroop Ngar, Kanpur Nagar-208002.

. . .Respondents

By Adv: Shri Vinod Kumar Shukla

O R D E R

By Hon'ble Mr. Tarun Shridhar, Member (Administrative)

I have joined this Bench online through video conferencing facility.

2. Shri B.N. Singh, learned counsel for the applicants and Shri Vinod Kumar Shukla, learned counsel for the respondents are present in Court.

3. Learned counsel for the applicants informs that the relief sought in this case is limited to grant of one notional increment to the applicants, who retired on 30.06.2007, 30.06.2009, 30.06.2011, 30.06.2012 and 30.06.2013, for the purpose of all pensionary benefits. He further informs that this matter is covered in a catena of judgments/orders by different Benches of the Central Administrative Tribunal including this very Bench and the Principal Bench.

4. Learned counsel for the respondents prays for one week's time to seek instructions in the matter. He vehemently argues that there have been certain developments in the meanwhile and pleads for awaiting the outcome of the case in the Hon'ble Supreme Court where the order of Hon'ble High Court of Karnataka to this effect has been stayed.

5. He also refers to the DOP&T circular in this regard wherein it has been categorically mentioned that the increment is due only when the employee is actually on duty and merely the fact of having performed duty for one year is not a sufficient ground for grant of increment to a person who has retired on the day prior to the date when the increment was due.

6. Having heard the learned counsels for both the parties, I am of the considered view that this matter is fully covered by the various judgments passed by this Tribunal and the latest order of the Principal Bench of the Tribunal in OA No 776 of 2019 and several other OAs tagged. In that order while allowing the benefit of one notional increment to the applicants

who retired on 30th June, it has also been mentioned that any benefits which may accrue to the retired employees by way of grant of notional increment would be subject to the outcome of the decision of Hon'ble Apex Court and in the event the Hon'ble Apex Court decides to quash the orders of this Tribunal the additional amount paid to the employees by way of these benefits shall be recovered.

7. Accordingly, the present OA is disposed of strictly in terms of the order passed by this Bench of the Tribunal on 03.08.2021 in OA No.08/2021, which reads as under :-

“RESERVED

***CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH
ALLAHABAD***

This is the 03rd day of August 2021

ORIGINAL APPLICATION NO. 330/00008 of 2021

HON'BLE MR. TARUN SHRIDHAR, MEMBER (A)

- 1. R.P. Srivastava, aged about 66 years, son of late T.P Srivastava, R/o 312/165E, Himmatganj, Prayagraj, 211016.*
- 2. Manjar Karrar, S/o Late Karrar Hussain, R/o 265A, Ranimandi, Allahabad 211003.*
- 3. P.N Bose, S/o Late R.B. Bose, R/o C/o Shri P.K. Agarwal, G-1/42, Kalindipuram, Near Jagriti Chauraha, Prayagraj 211011.*
- 4. Mohd. Javed Khalid S/o Late Mohd. Hussain Siddiqui R/o 539A, Atarsuiya, Prayagraj, 211003.*
- 5. Sharda Nand Singh, S/o Late Ram Sewak Singh, R/o C/o A.K. Singh, House NO. 86, Phase – II, Dev Ghat, Devprayagam Yojana Jhalwa, Prayagraj, 211012.*

.....Applicants.

Advocates for the Applicant : Mr. Ashish Srivastava

VERSUS

1. Union of India through General Manager, North Central Railway, Headquarter, Subedarganj, Allahabad.
2. Divisional Railway Manager, North Central Railwa, Headquarter Subedarganj, Allahabad.Respondents

Advocate for the Respondents : Mr. Rishi Kumar

ORDER

The applicants having retired in different years on 30th of June seek one notional increment for the last year of their service for the purpose of fixation and payment of their retirement dues. Their claim to this effect has been rejected by the respondents. To lend the matter greater clarity, below is quoted verbatim paragraph No. 8 of the OA wherein the reliefs have been sought.

- “(i) This Hon’ble Tribunal may graciously be pleased to quash the impugned order dated 17.09.2020 passed by respondent No.1 in respect of applicant NO.2 and 4 (Annexure No. 9)*
- (iii) This Hon’ble Tribunal may be pleased to direct the respondents to grant the applicant one notional increment for the period from 01st July to 30th June in respect of all applicants as per their year of retirement for purposes of pensionary benefits and accordingly re-fix their pension and pensionary benefit and pay the arrears along with admissible interest thereupon.*
- (iii) Any other relief, which the Hon’ble Tribunall may deem fit and proper in the circumstances of the case may be given in favour of the applicants.*
- (iv) Award the costs of the original applications in favour of the applicants”.*

2. *There is only one limited question that needs to be settled in the present OA that whether an employee, who retires on 30th of June is entitled to receive the annual increment of pay which in the normal course falls due on 1st July.*

3. *The learned counsel for the applicants argues this issue is squarely covered in a catena of judgments and has already been settled. In particular he quotes from the several orders of the different Benches of this Tribunal, the most important being the one delivered by this very Bench in OA No. 146 of 2020 on 26.02.2021. This order also quotes from the various pronouncements made by the different courts as also the order of Hon'ble Madras High Court in Writ Petition No. 15732 of 2017 on which the learned counsel lays great reliance. The learned counsel also refers to the judgment rendered by Delhi High Court in Writ Petition No. 10509 of 2009 to further support his arguments.*

4. *The learned counsel for the applicants would argue that having completed one full year of service, the applicants are rightful and bonafide claimants of the annual increment, which would have been granted to them but for the fact that they retired on the last date of June on completion of the year while the increment would have been paid on 1st of July.*

5. *Learned counsel for the respondents, on the other hand, categorically argues that increment would be due and payable only if the employee is on service. He points out that the date of grant of increment is 1st of July and the applicants themselves admit that they have retired on 30th June and hence were not in service on 1st of July. He also draws attention to the circular of Railway Board and the related manuals/rules which state that increment can be granted only when the employee is on duty and in the instant case, the applicants having retired, were not on duty on the date on which the increment was to be granted. Hence, they cannot be given the benefit of the increment which they are claiming.*

6. *Learned counsel for the respondents further points out 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.

7. Learned counsel for the applicant, on the other hand, argues 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.

8. It is true that this very Bench of the Tribunal, as referred to above in paragraph 3 has already adjudicated upon this matter unambiguously and held that since annual increment is in lieu of duty performed and service rendered for up to the 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).

9. 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, he cannot be paid because on the particular date when it is due the employee stands retired from service. Moreover, the crucial fact to be noted is that the applicants seek notional, not actual, increment. This notional increment would only be impacting their retirement dues which accrue with effect from 1st July. Therefore, In view of these categorical

pronouncements and the fact that this very Bench and the Principal Bench have also given unambiguous judgments of the fact, there is no cause for us to hold any different opinion.

10. *Therefore, we allow this OA with the direction that applicants who have retired on 30th of June in different years shall be entitled to one notional increments which falls due on the succeeding 1st of July and accordingly shall be extended all the benefit of this increment in their retirement dues. However, as held by the Principal Bench, we also impose a condition that this benefit would be subject to the final outcome of SLP No. 4722/2021 pending in the Hon'ble Supreme Court. Needless to say that the grant of increment shall be made after satisfying other requirements under the Rules. No order as to costs."*

8. The purport of this is that the OA is allowed holding that the applicants shall be awarded one notional increment for the purpose of computing their pension and other retirement dues.

9. With these directions, the OA is disposed of. No order as to costs.

(Tarun Shridhar)
Member(Administrative)

RKM/