IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ::HYDERABAD BENCH
AT HYDERABAD

OA/020/ 430/2020

HYDERABAD, this the 26TH day of June, 2020

THE HON'BLE MR.ASHISH KALIA : JUDICIAL MEMBER
THE HON'BLE MR.B.V.SUDHAKAR : ADMINISTRATIVE MEMBER

BETWEEN:

1. Neelam Chinnaiah, S/o. Mugaiah,
Aged about 62 years, Occ: Retired ELECT HS-I,
PPO No. 403201800803, Garrison Engineer,
Naval Base, CWE, Visakhapatnam,
R/o. D. No. 9-146/1, Pullaiah Nagar, Kaja,
Mangalagiri, Guntur – 522 503.

2. Kuna Lakshmana Rao, S/o. Kondayya,
Aged about 64 years, Occ: Retired FGM SK,
PPO No. C/ENG/18455/2015,
Garrison Engineer (NS), CWE, Visakhapatnam,
R/o. D. No. 38-19-44/14A, Jyothinagar,
Marripalem, Visakhapatnam – 530018.

……..APPLICANTS.

(By advocate: Sri KRKV Prasad)

A N D

1. Union of India represented by
The Secretary, Ministry of Defence,
Government of India, South Block, New Delhi – 110 011.

2. The Engineer-in-Chief, Integrated Headquarters,
MoD (Army), New Delhi – 110 011.

3. The Commander Works Engineer,
Military Engineer Service,
Station Road, Visakhapatnam – 530 004.

4. The Secretary, Government of India,
Ministry of Personnel, Public Grievances & Pensions,
Department of Personnel & Training,
North Block, New Delhi – 110 001.

5. The Ministry of Finance, Rep. by
The Secretary, Government of India,
Department of Expenditure,
North Block, New Delhi – 110 001.

…RESPONDENTS

(By Advocate: Smt. B. Gayatri Varma, Sr. PC for CG)

Oral Order
(per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

Through Video Conference

The OA is filed for denying notional increment to the applicants who retired on 30.06.2018 & 30.06.2016 respectively.

3. Brief facts of the case are that the applicants retired a Chief Engineers (Navy), Military Engineering Service from the respondents organization on 30.0.2018 & 30.06.2016 respectively on attaining the age of superannuation. The applicants claim that they should be granted notional increment on the 1st July of the year of retirement for having rendered one full year of service preceding the retirement date. However, the same was rejected by the respondents on the ground that they have not received any orders from the Ministry of Defence/ DOPT. Aggrieved, the OA has been filed.

4. The contentions of the applicants are that the grant of notional increment is covered by the Rule 10 of CCS (Revised Pay) Rules, 2008 and that the issue was dealt with by the Hon'ble High Court of Madras vide WP No. 15732/2017 wherein favourable orders were given to the petitioner therein on 15.09.2017, who retired as Additional Director General of Customs & Central Excise. The order of the Hon'ble High Court was challenged before the Hon'ble Supreme Court in SLP (C) Diary No. 22283/2018 which was dismissed. Even the Review Petition (C) No.1731/2019 in the said SLP filed by the Union of India met the same fate on 08.8.2019. Therefore, the issue has attained finality, is the major contention of the applicants. Claim of the applicants is that they are similarly placed and therefore, they also need to be granted notional increment as per the orders of the Hon'ble High Court of Madras, as upheld by the Hon'ble Supreme Court.

5. Heard both the counsel and perused the material on record.

6. The case pertains to grant of notional increment for the last year of service rendered by the applicants before retirement. Applicants retired on 30.06.2018 & 30.06.2016 respectively. The issue was adjudicated by the Hon'ble High Court of Madras in WP No. 15732/2017 and the order of the Hon'ble High Court is extracted as under:

> *"5. The petitioner retired as Additional Director General, Chennai on 30.06.2013 on attaining the age of superannuation. After the Sixth Pay Commission, the Central Government fixed 1st July as the date of increment for all employees by amending Rule 10 of the Central Civil Services (Revised Pay) Rules, 2008. In view of the said amendment, the petitioner was denied the last increment, though he completed a full one year in service, ie., from 01.07.2012 to 30.06.2013. Hence, the petitioner filed the original application in O.A.No.310/00917/2015 before the Central Administrative Tribunal, Madras Bench, and the same was rejected on the ground that an incumbent is only entitled to increment on 1st July if he continued in service on that day.*
>
> *6. In the case on hand, the petitioner got retired on 30.06.2013. As per the Central Civil Services (Revised Pay) Rules, 2008, the increment has to be given only on 01.07.2013, but he had been superannuated on 30.06.2013 itself. The judgment referred to by the petitioner in State of Tamil Nadu, rep. by its Secretary to Government, Finance Department and others v. M.Balasubramaniam, reported in CDJ 2012 MHC 6525, was passed under similar circumstances on 20.09.2012, wherein this Court confirmed the order passed in W.P.No.8440 of 2011 allowing the writ petition filed by the employee, by observing that the employee had completed one full year of service from 01.04.2002 to 31.03.2003, which entitled him to the benefit of increment which accrued to him during that period.*
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> *7. The petitioner herein had completed one full year service as on 30.06.2013, but the increment fell due on 01.07.2013, on which date he was not in service. In view of the above judgment of this Court, naturally he has to be treated as having completed one full year of service, though the date of increment falls on the next day of his retirement. Applying the said judgment to the present case, the writ petition is allowed and the impugned order passed by the first respondent-Tribunal dated 21.03.2017 is quashed. The petitioner shall be given one notional increment for the period from 01.07.2012 to 30.06.2013, as he has completed one full year of service, though his increment fell on 01.07.2013, for the purpose of pensionary benefits and not for any other purpose. No costs."*

The above order was challenged before the Hon'ble Supreme Court, unsuccessfully, as referred to above. In view of the above, the issue has attained finality.

7. Further, this Tribunal has also dealt with a similar issue in OA No.1263/2018 vide order dt. 20.3.2020, wherein it was observed as under:

V). Delving further into the subject, an increment is a raise in salary as a certain percentage of the basic pay the periodicity of which is as provided for in the rules governing the services of an employee. It is in the form of an incentive and in recognition of the contributions of the employees to the Organisation they serve. A simple pay raise, whatever be the rate of increase, can boost morale, increase employee satisfaction and encourage hard work. Rise, it is paramount to note, is related to performance. However, for administrative and accounting convenience, Govt. has decided that the awarding of increment will be on an annual basis and crystallizes for payment at the end of the year without any pro-rata increment for a period less than completion of one year. The yearly time interval is presumed to be reasonable to assess the performance of an employee. In the case of the applicants, no doubts were cast in regard to their performance and in such a scenario if the grant of annual increment were to be split into 12 parts with each one granted on the 1st of the subsequent month, they would not have been any occasion for the applicants to be before the Tribunal, at least for the 11/12th portion of the annual increment under dispute. Hence, there could be no offence attributed, if stated that the convenience of the respondents organisation cannot be a bane to its employees and that too, for not being found fault with.

VI). True to speak, the issue per se, has cropped up with the recommendation of the 6th CPC wherein it was decided to fix a uniform date for drawal of increment on 1st of July/January and later restricted to 1st July in 7th CPC, in order to avoid the rigmarole of granting increments throughout the year to employees depending on the date of joining the service. However, this has given rise to the issue of non grant of increment to those who retire on 30th June since they have become pensioners on 1st July resulting in applicants being docked. A enviable answer to the mind racking question is found in Rule 10 of the CCS (Revised Pay) Rules 2008 wherein it was stipulated as under:

> *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 applicants retirement has been dated as 30th June in the years 2007 to 2018 and applying Rule 10 read with FR 26 (a) cited supra, they are entitled for the increment as they have completed more than 6 months unblemished service in the revised pay structure. Even the Revised Rules framed in 2016 consequent to the implementation of 7th CPC do not prohibit release of the increment in question. Rules, if not adhered to by the respondents, then who would, will be a serious question to be introspected by the concerned in the respondents organisation. In regard to rules Hon'ble Apex Court has made it crystal clear that deviation from rules has to be snubbed and curbed, in an array of judgements, extracted below:

> *The Hon'ble Supreme Court observation in **T.Kannan and ors vs S.K. Nayyar**[1] held that "Action in respect of matters covered by rules should be regulated by rules". Again in **Seighal's case**[2] the Hon'ble Supreme Court has stated that "Wanton or deliberate deviation in implementation of rules should be curbed and snubbed." In yet another judgment[3] the Hon'ble Apex court held " the court cannot de hors rules"*

In view of the above respondents cannot afford to ignore the rule cited supra.

[1](1991) 1 SCC 544
[2](1992) (1) supp 1 SCC 304
[3](2007) 7 SCJ 353

VII) One another point of view which favours the applicants is that a right, to be granted the increment, has been vested in the applicants as per rules referred to, since they have served for 12 months without any remark whatsoever. In fact had the date of uniform increment as 1st July was not stipulated, majority of the employees would not have been placed in this piquant situation. The view point of the 6th CPC to bring in rationalisation of grant of increment is a welcome measure but in the same vein the genuine grievance of the applicants has to be redressed in implementing a measure of intrinsic administrative importance. Applicants are not at fault for the shift of the increment to a single date. There are provisions under FRSR 26 to defer the increment when an employee is on extra ordinary leave for the purpose of study or training and if this be so, under the same analogy the applicants who have been otherwise eligible for annual increment can be considered for the increment on the 1st day of retirement as a deferred increment. Rules are to be uniform and should not be discriminative in nature. When employees who are not on duty due to extraordinary leave but granted deferred increment, it does not stand to reason as to why the eligible increment of employees transformed into pensioners, like the applicants who obviously could not be on duty on the 1st day of retirement which is the increment date, should not be drawn on advancing the drawal by a day which is the last working day in service.

*VIII) Going further, it is clearly discernable that the employees who have served for 12 months are granted the annual increment for the reason that they continue in service but the applicants who have also rendered 12 months service are denied a similar benefit since on the due date of increment their designation changed over to a pensioner for being born in June due to quirk of fate. The important point to note is the rendering of 12 months of service. Increment is granted for satisfactory service rendered and not for the service that is going to be rendered. In other words, it is the past, and not the future in respect of service rendered which is critical to be rendered for being granted the annual increment. In this regard, both serving employees and the applicants have served the same period of 12 months to earn the annual increment due, excepting for the later taking the avatar of a pensioner on the due date of increment in respect of the aspect under adjudication. Therefore, granting increment to the serving employees and not to the applicants with the same standing of serving for 12 months without blemish, is no more than hostile discrimination impermissible under law and is evidently violative of Article 14 of the Constitution of India. Extrapolating the observation of the Hon'ble Apex Court in **Syed Khalid Rizvi** Vs. **Union of India** in 1993 Supp (3) SCC 575, wherein it was stated that unequals cannot be treated as equals offending Articles 14 and 16(1) of the Constitution of India, so too applicants/pensioners who are equals to the serving employees in regard to the completion of residency period of one year to earn the annual treatment, the applicants who are pensioners, cannot be treated as unequals for granting the legitimate annual increment due to them.*

IX) Indeed, applicants have served the organization until the last day of their service and it is for the services rendered by them during the last one year of their service the increment for that year has not been paid. Once an employee renders uninterrupted service for full one year, he stands to gain increment in terms of certain % of his pay. This is a statutory right vested with every government servant. Such a right cannot be denied save under due process of law and after affording an opportunity to the individual affected. Reply statement furnished by the respondents is devoid of any measures taken under law to deny the right accrued. Measures taken which have adverse civil consequences are to be based on a reasoned order, as observed by the Hon'ble Supreme Court as under:

(a) In Mohinder Singh Gill & Ors. v. The Chief Election Commissioner, New Delhi & Ors.[4], Krishna Iyer, J. speaking for the Constitution Bench observed:

[4](2007) 7 SCJ 353

> *"But what is a civil consequence, let us ask ourselves, by passing verbal booby-traps?"Civil consequences" undoubtedly cover infraction of not merely property or personal rights out of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence."*

(b) ***Vice Chancellor, Banaras Hindu University*** *Vs.* ***Shrikant****, reported in 2006 (11) SCC 42. In this case, the Hon'ble Apex court observed that*

> *"An order issued by a statutory authority inviting civil or evil consequences on the citizen of India, must pass the test of reasonableness."*

The reply statement is barren in regard to submission of issue of such an order. Besides, executive power can be used only to fill in the gaps but the instructions cannot and should not supplant the law, but only supplement the law as observed by Hon'ble Apex Court in ***J & K Public Service Commission*** *v.* ***Dr. Narinder Mohan****, 1994 (2) SCC 630. The executive instruction of claiming that albeit applicants have completed one year of service required, yet denying the same stating that the applicants were no more employees on 1st July, is to supplant the law instead of supplementing it by honouring the vested right accrued rather than decrying it with legally invalid reasons.*

(X) In fact, if the date of uniform increment as 1st July was not stipulated, majority of the employees would not have been placed in a peppery situation as is agitated upon by the applicants before the Tribunal. The view point of the 6th CPC is to usher in rationalisation of grant of increment but not to deny eligible increment to those entitled. Applicants have no role in the shift of the increment and, therefore, denying them their due for decisions of the those concerned, goes against the legal tenets laid down by the Hon'ble Supreme Court as under:

(a) A.K. Lakshmipathy v. Rai Saheb Pannalal H. Lahoti Charitable Trust[5]

> *"they cannot be allowed to take advantage of their own mistake and conveniently pass on the blame to the respondents."*

(b) Rekha Mukherjee v. Ashis Kumar Das[6]*:*

> *36. The respondents herein cannot take advantage of their own mistake.*

Mistake of the respondents is that the applicants though rendered one year unblemished service they were denied the eligible increment and justifying it by claiming that since applicants have become pensioners they are ineligible, does not go well with the above observations of the Hon'ble Apex Court.

XI) Setting forth a hyper technical argument that though the applicants have put in 12 months service, yet for not being on duty on 1st July, they are ineligible, is invalid since the very object of rationalising the grant of increment is defeated. The object was to rationalise and not deny a legitimate benefit, which is contrary to the doctrine of legitimate expectations. Under the said doctrine, a procedural angularity and impropriety has crept in and therefore, requires correction. The administrative decision of denying the benefit sought can be firmly

[5], *(2010) 1 SCC 287*
[6], *(2005) 3 SCC 427*

*and authoritatively questioned based on grounds of illegality, irrationality & procedural impropriety as laid in **Union of India** vs. **Hindusthan Development Corporation**[7]. Applicants have exercised such a right in filing the present OA deprecating the decision of rejection, which for reasons discussed so far, warrants judicial interference.*

*(XII) It requires no reiteration that decisions of the respondents are to be in harmony with the constitutional provisions of Articles 14 & 16 and the laws of the land. Further, respondents decisions invariably are not to be directed towards unauthorised ends of rejecting an acceptable request, but ought to be in tandem with the purpose of bringing forth of a uniform date of granting increment in consonance with the legal principle laid by the Hon'ble Supreme Court in **Murthy Match Works** vs. **Collector, Central Excise**, **1974 (3) SCR 121**:: **1974 AIR 497**, as under:*

> *"The legislative project and purpose turn not on niceties of little verbalism but on the actualilities or rugged realism and so, the construction of ... must be illumined by the goal, though guided by the word."*

*(XIII)In addition, when an interpretation of the objective of the 6th / 7th CPC to fix a uniform date for grant of increment is to be made, it has to be necessarily broad based so that the purported object is not defeated. In the instant case, there are two interpretations, one of which is pedantic denying increment on 1st July, though eligible but for becoming a pensioner and the other is broader one supported by rules calling for grant of increment based on the one year service rendered to earn the same. Ignoring the broader and purposive interpretation, sure enough, was never the intent of the 6th/ 7th CPC recommendation in going in for a uniform date of grant of annual increment, subject to, of course, fulfilling other conditions to earn the increment other than fulfilling the proviso of rendering one year of service. Adopting the broader interpretation is the choice, which the respondents should have chosen in regard to the dispute on hand, as has been expressly made explicit in **Nokes** v. **Doncaster Amalgamated Collieries**[8] as under:*

> *"If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the broader construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result."*

Respondents have attempted a narrow interpretation rather than a broader one in allowing the increment on a uniform date as recommended by 6th / 7th CPC. Such an interpretation is thus unsound in view of the aforesaid legal principle expounded.

XIV) In fact, the principles of interpretation permit a court to remove the mischief in interpreting the intent of a rule or a legislative enactment. The principle referred to is as under:

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[7][(1993) 3 SCC 499]
[8](1940) AC 1014

The main aim of the mischief rule of interpretation, is to determine the "mischief and defect" that the statute in question has set out to remedy, and pronounce the ruling that would "suppress the mischief by advancing an appropriate remedy".

Tribunal, taking support of the above legal axiom spoken of, is exercising the power to remove the mischief in denying the increment legally due to the applicants and advance the remedy of granting it.

XV) Further, substantive aspect of an issue requires profound consideration rather than the procedural aspects associated with it. In ***Bihar State Electricity Board*** *vs.* ***Bhowra Kankanee Collieries Ltd****.*[9] *, the Hon'ble Supreme Court opined as under:*

"Substantive justice must always prevail over procedural or technical justice."

The substantive aspect of the issue on hand is to grant the increment to the applicants for being eligible as per rules and the procedural aspect was the convenience of having a uniform date as 1st July of a year to grant increment. The procedural convenience of grant of the due increment on 1st july can thus be no ground to refuse the increment earned by the applicants by toiling for a year without any adverse remarks and that too after being found eligible to be granted under relevant rules, which is the substantive side of the coin conveniently uncared for by the respondents. Hence, respondents decision of rejection would not get through the filter of the legal principle laid by the Hon'ble Apex Court cited supra.

XVI) Even more, grant of increment on rendering 12 months service is a service condition. Any change in the same cannot be made without putting those adversely effected on notice, as per Principles of Natural Justice. Such an attempt, if made, would have enabled the respondents to work out remedies within the ambit of rules and law. Alas it was not to be and hence the dispute. Applicants, with diminished resources in all respects, and lacking bargaining power to enforce their legal rights, is all the more reason for the respondents who are model employers and be role models for others, to go into the gentility of the claim and resolve it, rather than forcing the applicants, who are in the evening of their lives with little strength and debilitated finances, to approach the Tribunal. Role of a model employer as highlighted by Hon'ble Supreme Court in ***Bhupendra Nath Hazarika & Anr*** *vs* ***State Of Assam & Ors***[10]*, as under, is the underlying theme which has to be adhered to by the respondents:*

48. Before parting with the case, we are compelled to reiterate the oft- stated principle that the State is a ***model employer*** *and it is required to act fairly giving due regard and respect to the rules framed by it. But in the present case, the State has atrophied the rules. Hence, the need for hammering the concept.*

49. Almost a quarter century back, this Court in Balram Gupta vs Union of India & Anr[11]*. had observed thus:*

"As a ***model employer*** *the Government must conduct itself with high probity and candour with its employees."*

[9] 1984 Supp SCC 597,
[10] Decided on 30 November, 2012 in CA Nos 8514-8515 of 2012
[11] *[1987 (Supp) SCC 228]*

*50. If the present factual matrix is tested on the anvil of the aforesaid principles, there can be no trace of doubt that both the States and the Corporations have conveniently ostracized the concept of "**model employer**"*

*51. In Secretary, State Of Karnataka And vs. Umadevi And Others [12] the Constitution Bench, while discussing the role of state in recruitment procedure, stated that if rules have been made under Article 309 of the Constitution, then the Government can make appointments only in accordance with the rules, for the State is meant to be a **model employer**.*

*53. We have stated the role of the State as a **model employer** with the fond hope that in future a deliberate disregard is not taken recourse to and deviancy of such magnitude is not adopted to frustrate the claims of the employees. It should always be borne in mind that legitimate aspirations of the employees are not guillotined and a situation is not created where hopes end in despair. Hope for everyone is gloriously precious and a **model employer** should not convert it to be deceitful and treacherous by playing a game of chess with their seniority. A sense of calm sensibility and concerned sincerity should be reflected in every step. An atmosphere of trust has to prevail and when the employees are absolutely sure that their trust shall not be betrayed and they shall be treated with dignified fairness then only the concept of good governance can be concretized. We say no more.*

Dignified fairness, expected candour are missing in the decision of rejecting the request and in fact, the said rejection has guillotined the legitimate aspiration of the applicants to aspire for what is due to them.

*XVII) Another interesting and pertinent aspect of relevance to the issue disputed is FR 56, which rules the roost, in respect of age of retirement by declaring that an employee superannuates on the last date of the month in which month he attains the age of the 60 years. The exception being, that if the date of birth is the 1st of the month, then the retirement date would be preponed to the last working day of the previous month. Interestingly, the rule carves an exception to shift the date of retirement to a day before. This gives the cue that in respect of applicants a similar exception can be made by preponing the date of increment to the last working day i.e. 30th June instead of 1st July. The pragmatism in advancing the retirement date, which is valid to the core, is woefully missing considering the applicative similarity of the facts of the case of the applicants for advancing the increment as an exception. However, neat logic that the applicants have become pensioners has been advanced to deny what has been asked for. It is the facts of life/situation which are more important in resolving a dispute rather than relying on neat logic. Facts present a pragmatic option for implementing what has been aimed at, by applying the canons of law, as can be found in the landmark case of **Ridge Vs. Baldwin[13]**, as under:*

> *The legal choice depends not so much on neat logic but the facts of life -- a pragmatic proposition. Where the law invests an authority with power to affect the behaviour of others what consequence should be visited on abuse or wrong exercise of power is no abstract theory but experience of life and must be solved by practical considerations woven into legal principle. Verbal rubrics like illegal, void, mandatory, jurisdictional, are convenient cloaks but leave the ordinary man, like the petitioner here, puzzled about his remedy. Rubinstein poses the issue clearly:--*

[12] *[(2006)4SCC1],*
[13] (1963) 2 All.E.R. 66

"How does the validity or nullity of the decision affect the rights and liabilities of the persons concerned? Can the persons affected by an illegal act ignore and disregard it with impunity? What are the remedies available to the aggrieved parties? When will the courts recognize a right to compensation for damage occasioned by an illegal act? All these questions revert to the one basic issue; has the act concerned ever had an existence or is it merely a nullity?

Voidable acts are those that can be invalidated in certain proceedings; these proceedings are especially formulated for the purpose of directly challenging such acts ..... On the other hand, when an act is not merely voidable but void, it is a nullity and can be disregarded and impeached in any proceedings, before any court or Tribunal and whenever. It is relied upon. In other words, it is subject to 'collateral attack'. "

20. .... But we do hold that an order which is void may be directly and collaterally challenged in legal proceedings. ...."

Rule 10 of Revised Pay Rules 2008, which were framed consequent to the 6th CPC recommendations, on being read with FR 26 (a) provides for grant of increment once an employee completes 6 months service in the revised pay structure. Therefore the pragmatic preposition was to take the norm of completion of 6 months and allow it on 1st July which was fixed for convenience. On application of the above legal principle, it is apparent that the right of earning the increment has been vested in the applicants and therefore denying the same is prone to collateral attack. Besides the rubric that the applicant has donned the role of a pensioner is a convenient cloak to deny the undeniable legitimate benefit of an annual increment, practical considerations woven into the legal principle of rejecting discrimination amongst the equals should have been the guiding principle to resolve a fair and just demand of the applicants. For having not done so by the respondents, applicants can do no more but be puzzled about the denial of the increment. The pronounced proposition that applicants are ineligible for having been transformed into pensioners albeit they served the period prescribed for grant of annual increment as per statutory provisions is liable to be termed as void. Hence the legal choice for the Tribunal is to depend on facts rather than on the assumed neat logic, attempted by the respondents. The facts are that the applicants are entitled for the benefit for the simple reason that they did what they were expected to do as per the rules, to claim what they should.

XVIII) A similar issue fell for consideration by the Madurai Bench of Hon'ble High Court of Madras in ***S.Kandaswamy v The District Collector, Thuthukudi & anr***[14] *and relief was granted by the Hon'ble Court following the verdict of the Hon'ble Andhra Pradesh High Court in* ***Union of India*** *vs.* ***R. Malakondaiah,*** *2002 (4) ALT 500(DB), wherein it was held as under :*

"6. The facts that the emoluments of a Government Servant have to be taken as the basic pay, which he was receiving immediately before his retirement, is not at all in controversy. Similarly, the proposition that an increment accrues from the date following that on which it is earned is also not in dispute. Increment in pay is a condition of service. In a way, it is reward for the unblemished service rendered by an employee, which get transformed into a right. Once an employee renders the service for the period, which takes with it an increment, the same cannot be denied to him/her. It is not in dispute that both the respondents rendered unblemished service for one year before the respective dates of their retirements. The periodicity of increment in the service is one year. On account of rendering the unblemished service, they became entitled for increment in their emoluments.

7. The only ground on which the respondents are denied the increment is they were not in service to receive or to be paid the same. Strictly speaking, such a hyper

[14] in W.P. (MD) No. 20658 of 2016

technical plea cannot be accepted. As observed earlier, with the completion of the year's service, an employee becomes entitled for increment, which is otherwise not withheld. After completion of the one – year service, the right accrues and what remains thereafter is only its enforcement in the form of payment. Therefore, the benefit of the year-long service cannot be denied on the plea that the employee ceased to be in service on the day on which he was to have been paid the increment. There is no rule, which stipulates that an employee must continue in service for being extended the benefit for the service already rendered by him. "

Further the verdict of the Hon'ble High Court of Madras in P. Ayyamperumal case which covers the present case, was challenged by way of filing the SLP (C) No.22008 of 2018 and review petition R.P.(C) 1731/2019 which were dismissed on 23.07.2018 & 08.08.2019 respectively. Hence the issue has attained finality. By telescoping the principle laid down to the case of the applicants, it is seen that they too have served for one year and for doing so the increment was due on 1st of July but by reason of superannuation they were not in service and that should not infringe the right accrued for earning the increment. Respondents have not cited any rule, which requires that the applicant must have to continue in service for extending the benefit already accrued. The grounds taken by the respondents that the executive instruction received from the Dept. of Expenditure on 24.08.1974 does not permit allowing the relief sought and that the DOPT has not issued any guidelines on the issue, would not hold good as the law on the subject has been firmly and well settled by the superior judicial forums as expounded above. Law prevails in the absence of executive instructions and as well as in their presence, if they infringe legal principles. The legal principle detailed above is invariably applicable to applicants for reasons illustrated and furthermore in accordance with the directions in the latter case of ***Uttaranchal Forest Rangers' Assn (Direct Recruit)*** *Vs.* ***State of UP***[15]*, wherein the Hon'ble Apex Court has referred to the decision in the case of* ***State of Karnataka*** *Vs.* ***C. Lalitha,***[16] *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."

Consequentially, based on the above, applicants have to be granted the same relief, as has been granted by the Hon'ble High Court of Madras supra, which attained finality consequent to dismissal of SLP and Review petition filed before the Hon'ble Apex Court challenging the verdict. The dispute having thus been resolved by superior judicial forums, the outcome thereof, has to be abided by in reverence to judicial discipline. Thus, there are two judgments, one in respect of ***Sri S.Kandasamy*** *and the other in* ***P.Ayyamperumal*** *wherein the Hon'ble High Court of Madras has granted relief as is being sought by the applicants in the instant case. Nevertheless, at the cost of the repetition, it must be stated that the case of* ***P.Ayyamperumal*** *was tested in the highest forum i.e. Hon'ble Supreme Court and it was upheld leading to finality on the issue.*

XIX) In addition, the Hon'ble High Court of Delhi in W.P (C) 10509/2019 in Gopal Singh v U.O.I has also granted a similar relief on 23.01.2020, as under:

"8. More recently, this Court in its decision dated 13th January, 2020 in W.P.(C) 5539/2019 (Arun Chhibber v. Union of India) has discussed the judgment in P. Ayyamperumal at some length in the context of the prayer of an

[15] *(2006) 10 SCC 346*
[16] *2006 (2) SCC 747*

officer of the Central Reserve Police Force ('CRPF') who had retired on 30th June, 2007 for notional increment. The Court rejected the contention of the Respondents therein that the judgment in P. Ayyamperuamal had to be treated as one that was in personam and not in rem. In relation to the Respondent's attempt to distinguish the applicability of the judgment in P. Ayyamperumal to CRPF personnel, the Court observed as under:-

> *"5. The Court finds that the only difference, if any, between P. Ayyamperumal (supra) and this case is that the former was an employee of the Central Government, whereas here the Petitioner superannuated from the CRPF. The Court, therefore, finds no reasons to deny the Petitioner same relief granted to Mr. P. Ayyamperumal by the Madras High Court. The similarity in the two cases is that here too, the Petitioner has completed one year of service, just one day prior to 1st July, 2007."*

9. The position here as regards CISF personnel can be no different and it was not, therefore, open to the Respondents to refuse to grant to the Petitioner notional increment merely because he superannuated a day earlier than the day fixed by the CPC for such benefit to accrue.

10. Accordingly, the impugned order dated 3rd May, 2019 is set aside. A direction is issued to the Respondents to grant notional increment to the Petitioner with effect from 1st July, 2019. The Petitioner's pension will consequentially be re-fixed. The appropriate orders will be issued and arrears of pension will be paid to the Petitioner within a period of 6 weeks, failing which the Respondents would be liable to simple interest at 6% per annum on the arrears of period of delay."

Besides, the Hon'ble Ernakulam Bench of this Tribunal in OA No. 180/1055/2018 and batch, vide order dt. 03.12.2019, extended the same relief as sought by the applicants by opining as under:

> *"9. We find that the Hon'ble Madras High Court had already considered the issue raised by the applicants in the present OAs are we are in full agreement with the judgment passed by the Hon'ble Madras High Court in P. Ayyamperumal's case (supra) upheld by the Hon'ble apex court.*
>
> *10. Therefore, the impugned orders of rejection Annexure A4 in OA No. 180/654/2019 and Annexures A5 in OAs Nos. 180/1055/2018 and 180/61/2019 are quashed and set aside. The applicant in OA No. 180/109/2019 had sought relief to quash Annexure A6 which is only a reply to the question posed by a Member of Parliament in Lok Sabha. The applicants shall be given one notional increment for the purpose of calculating the pensionary benefits and not for any other purpose as held by the Hon'ble Madras High Court in P. Ayyamperumal's case (supra) upheld by the Hon'ble apex court. The respondents shall implement the order of this Tribunal within three months from the date of receipt of a copy of this order. There shall be no order as to costs."*

Xxx

XXI) Lastly, it is to be borne in mind that Pension is a welfare measure. Pension Rules as also any other rules kindred to or associated with Pension are to receive a liberal construction. In ***D.S. Nakara v. Union of India[17], the Apex Court has held as under: :***

> ***"29.*** *Summing up it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a*

[17] ***(1983) 1 SCC 305***

broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and, therefore, one is required to fall back on savings. One such saving in kind is when you give your best in the hey-day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to a government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation or for service rendered. In one sentence one can say that the most practical raison d'etre for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon."

Increment, axiomatically, is an integral and inseparable part of pay and as per the provisions of Rule 64 of the Receipt and Payment Rules, 1983, pay of a Government servant together with allowances becomes due and payable on the last working day of each month. Thus, the increment which accrued over 12 months becomes payable on the last working day of the month of June. Had the same been paid on that date, the last pay drawn would mean the pay with the increment for that year, whereas, since the pay was not disbursed on that day, the increment has not been taken into account while reckoning the last pay drawn. Last pay drawn is significant in view of the fact that all the terminal benefits and pension are calculated on the basis of last pay drawn. Non- disbursement of pay on the last working day of June of the year when the applicants superannuated is not on account of any of the fault of the applicants. As such, they cannot be penalized in this regard. The only possible way to right the wrong is to consider the increment due for the last year of service of the applicant as deemed one and the pay with increment is thus the deemed last pay. All the pensionary benefits are, therefore, to be calculated reckoning the deemed last pay as the basis and various pensionary benefits worked out accordingly and also revised PPO issued after revising the extent of pension and fixing the rate of family pension.

Thus, this Tribunal has also granted relief to similarly placed persons. As such, the applicants herein are also entitled to be granted similar relief as held by the Hon'ble Supreme Court in its judgments viz., ***Amrit Lal Berry vs Collector Of***

Central Excise, (1975) 4 SCC 714; Inder Pal Yadav Vs. Union of India, 1985 (2) SCC 648; Uttaranchal Forest Rangers' Assn (Direct Recruit) Vs. State of UP (2006) 10 SCC 346,

In view of the above, the respondents are directed to grant eligible relief to the applicants keeping in view the orders cited supra, with consequential benefits, within a period of 3 months from the date of receipt of this order. However, monetary relief like arrears, etc. shall be restrained for a period of 3 years from the date preceding the date of filing of the OA in respect of the applicant No.2, who retired on 03.06.2016, as per the orders of the Hon'ble Supreme Court in ***Union of India & Ors Vs. Tarsem Singh*** in Civil Appeal Nos. 5151-5152 of 2008.

With the above directions, the OA is allowed. No order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVEMEMBER

(ASHISH KALIA)
JUDICIALMEMBER

/evr/