



* IN THE HIGH COURT OF DELHI AT NEW DELHI
% Date of order : 9th August, 2023

+ W.P.(C) 2954/2021
JAGDISH SINGH SUDAN Petitioner
Through: Ms.Ann Mathew, Advocate

versus

INDRAPRASTHA POWER GENERATION COMPANY LIMITED
AND ORS Respondents

Through: Mr.Tariq Farooqui, Advocate for R-1
and 2
Mrs. Avnish Ahlawat, SC for R-1 and
2

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The present Writ Petition under Article 226/227 of the Constitution of India has been filed by the petitioner seeking the following reliefs:

“a) Issue a Writ, Order or Direction in the nature of Mandamus to the Respondents or their subordinates, agents, associates to perform their duty and expedite the grant of notional increment to the Petitioner for the purpose of pensionary benefits from the date of retirement till date without further delay;

b) Pass an appropriate Writ, Order or Direction in the nature of Certiorari to the Respondents or their subordinates, agents, associates to transmit all records and documents in the above matter to this Hon’ble High Court so that conscionable justice may be done;

c) Pass any other Order or Orders, Writ or Writs, or Direction or Directions that this Hon’ble Court may deem fit and



proper.”

2. The brief facts leading to the present petition being filed are as follows:

- i) The petitioner retired as a Manager (Finance) from the services of the respondent No. 1 on 30th June 2015, on attaining the age of superannuation. At the time of retirement, the petitioner's basic pay + grade pay drawn was Rs.40,330/- and next increment was due on 1st July 2015.
- ii) On 18th October 2018, the petitioner issued a letter to the Managing Director (finance) and Director (HR) of the respondent No. 1 requesting sanctioning of benefits to him since he had completed one full year of service i.e., from 1st July 2014 to 30th June 2015, and his increment was due on 1st July 2015, for the purpose of pensionary benefits.
- iii) Since the respondents were unresponsive, the petitioner sent another letter dated 11th February 2019. The petitioner again issued a letter dated 5th February 2020, to the Managing Director (Finance) and Director (HR) of the respondent No. 1 requesting sanction of one notional increment since he had worked for a whole year.
- iv) On 1st July 2020, the Deputy Manager (HR) of the respondent No. 1 issued a letter to the petitioner stating that his request for the sanction of notional increment for pension and pensionary benefits was considered but not found tenable as there are no such guidelines from Department of Personnel and Training



(hereinafter “DoPT”) at present. Thereafter, the petitioner made several representations on various occasions taking support of various judgments, but to no avail.

- v) On 1st October 2020, the petitioner filed an RTI application bearing No. 1326 seeking status of his request and in response dated 14th October 2020, the respondent stated that the same is under process. Hence, aggrieved by the same, the petitioner has approached this Court.

3. The present petition has been filed by the petitioner after being aggrieved by the act of the respondents wherein, the notional increment has not been granted to the petitioner despite him having completed one full year of service i.e., from 1st July 2014 to 30th June 2015.

4. Learned Counsel placed reliance on *State of Tamil Nadu, rep. by its Secretary to Government, Finance Department and others vs. M. Balasubramaniam*, CDJ 2012 MHC 6525, wherein the High Court of Madras had allowed the writ petition filed by the employee, by observing that employee had completed one full year of service, which entitled him to the benefit of increment accrued to him during that period. The said judgment was also upheld by the Hon’ble Supreme Court.

5. It is further submitted that the petitioner made several representations before the respondent requesting for grant of increment on the basis of the judgment passed by the High Court of Madras.

6. It is further submitted that since the petitioner is eligible for the grant of the notional increment, he must be treated equally because it is a settled law that when the date of increment of a government servant falls due on the day following superannuation on completion of one full year of service,



such service is ought to be considered for the benefit of notional increment purely for the purpose of pensionary benefits and not for any other purposes. However, the benefit of increment due to the petitioner was not given.

7. *Per Contra*, the learned counsel appearing on behalf of the respondent vehemently opposed the averments made by the petitioner and submitted that the present petition is devoid of any merit and thus, is liable to be dismissed.

8. It is submitted that the petition is not maintainable as the petitioner is seeking notional increment along with the pensionary benefits and the petitioner had failed to address the alleged grievances. The petitioner is required to approach the Pension Trust Fund which is a governing and executive body for dealing with the retirement benefits of the retired persons.

9. It is submitted that as per the Delhi Vidyut Board Employees Terminal Benefits Fund, 2002 (hereinafter 'Benefit Fund, 2002') and Terminal Benefits Rules, if there is any dispute regarding the pension and retirement benefit then the concerned employee must approach the Pension Trust Fund Authority. It is further submitted that in case the authority fails to adjudicate, then there is an alternate remedy of arbitration under Rule 7.19 of the Benefit Fund, 2002, for the resolution of the dispute of the petitioner.

10. It is further submitted that the petitioner has failed to exhaust the alternative remedy and has directly approached this Court. Hence, the present petition is not maintainable in view of the non-representation and non-impleadment of the Pension Trust Fund.

11. It is submitted that the respondents could not act upon the claims of



the petitioner because there is no provision in the DoPT guidelines to grant additional increment after retirement.

12. Hence, in view of the foregoing submissions, the respondent seeks that the instant petition be dismissed with cost.

13. Heard.

14. This Court has perused the material on record including the pleadings and the judicial precedents cited.

15. At this juncture, this Court finds it necessary to adjudicate upon the present petition by framing the following issue: -

Whether the petitioner is entitled to notional increment w.e.f. 1st July 2015, post superannuation on 30th June 2015?

16. Before delving upon the issue arising in this petition, it is necessary to set out the relevant facts here.

17. The petitioner, employed with the respondent organization, retired as a manager on 30th June 2015. The next increment of the petitioner was due on 1st July 2015, a day before his superannuation. However, despite completing a whole year of service i.e., from 1st July 2014 to 30th June 2015, the petitioner was not granted the said increment. The petitioner made several representations to the respondents, but no action was taken, and hence, the petitioner approached this Court.

18. During the course of the argument, the petitioner placed reliance upon the recent judgment of the Hon'ble Supreme Court in ***KPTCL v. C.P. Mundinamani*, 2023 SCC OnLine SC 401**. The petitioner contended to the effect that the Hon'ble Supreme Court had allowed the grant of one annual increment which the petitioners therein earned on the last day of their service, for rendering their service preceding one year from the date of



superannuation.

19. In the aforementioned judgment, the Hon'ble Supreme Court observed as under:

“18. Therefore, as such, he is entitled to the benefit of the annual increment on the eventuality of having served for a specified period (one year) with good conduct efficiently. Merely because, the government servant has retired on the very next day, how can he be denied the annual increment which he has earned and/or is entitled to for rendering the service with good conduct and efficiently in the preceding one year. In the case of Gopal Singh (supra) in paragraphs 20, 23 and 24, the Delhi High Court has observed and held as under:—

(para 20)

“Payment of salary and increment to a central government servant is regulated by the provisions of F.R., CSR and Central Civil Services (Pension) Rules. Pay defined in F.R. 9(21) means the amount drawn monthly by a central government servant and includes the increment. A plain composite reading of applicable provisions leaves no ambiguity that annual increment is given to a government servant to enable him to discharge duties of the post and that pay and allowances are also attached to the post. Article 43 of the CSR defines progressive appointment to mean an appointment wherein the pay is progressive, subject to good behaviour of an officer. It connotes that pay rises, by periodical increments from a minimum to a maximum. The increment in case of progressive appointment is specified in Article 151 of the CSR to mean that increment accrues from the date following that on which it is earned. The scheme, taken cumulatively, clearly suggests that appointment of a central government servant is a progressive appointment and periodical increment in pay from a minimum to maximum is part of the pay structure. Article 151 of CSR contemplates that increment accrues from the day following which it is earned. This increment is not a matter of course but is dependent upon good conduct of



the central government servant. It is, therefore, apparent that central government employee earns increment on the basis of his good conduct for specified period i.e. a year in case of annual increment. Increment in pay is thus an integral part of progressive appointment and accrues from the day following which it is earned.”

(para 23)

“Annual increment though is attached to the post & becomes payable on a day following which it is earned but the day on which increment accrues or becomes payable is not conclusive or determinative. In the statutory scheme governing progressive appointment increment becomes due for the services rendered over a year by the government servant subject to his good behaviour. The pay of a central government servant rises, by periodical increments, from a minimum to the maximum in the prescribed scale. The entitlement to receive increment therefore crystallises when the government servant completes requisite length of service with good conduct and becomes payable on the succeeding day.”

(para 24)

“In isolation of the purpose it serves the fixation of day succeeding the date of entitlement has no intelligible differentia nor any object is to be achieved by it. The central government servant retiring on 30th June has already completed a year of service and the increment has been earned provided his conduct was good. It would thus be wholly arbitrary if the increment earned by the central government employee on the basis of his good conduct for a year is denied only on the ground that he was not in employment on the succeeding day when increment became payable.”

“In the case of a government servant retiring on 30th of June the next day on which increment falls due/becomes payable loses significance and must give way to the right of the government servant to receive increment due to satisfactory services of a year so that the scheme is not



construed in a manner that if offends the spirit of reasonableness enshrined in Article 14 of the Constitution of India. The scheme for payment of increment would have to be read as whole and one part of Article 151 of CSR cannot be read in isolation so as to frustrate the other part particularly when the other part creates right in the central government servant to receive increment. This would ensure that scheme of progressive appointment remains intact and the rights earned by a government servant remains protected and are not denied due to a fortuitous circumstance.”

19. *The Allahabad High Court in the case of Nand Vijay Singh (supra) while dealing with the same issue has observed and held in paragraph 24 as under:—*

“24. Law is settled that where entitlement to receive a benefit crystallises in law its denial would be arbitrary unless it is for a valid reason. The only reason for denying benefit of increment, culled out from the scheme is that the central government servant is not holding the post on the day when the increment becomes payable. This cannot be a valid ground for denying increment since the day following the date on which increment is earned only serves the purpose of ensuring completion of a year's service with good conduct and no other purpose can be culled out for it. The concept of day following which the increment is earned has otherwise no purpose to achieve. In isolation of the purpose it serves the fixation of day succeeding the date of entitlement has no intelligible differentia nor any object is to be achieved by it. The central government servant retiring on 30th June has already completed a year of service and the increment has been earned provided his conduct was good. It would thus be wholly arbitrary if the increment earned by the central government employee on the basis of his good conduct for a year is denied only on the ground that he was not in employment on the succeeding day when increment became payable. In the case of a government servant retiring on 30th of June the next day on which increment



falls due/becomes payable loses significance and must give way to the right of the government servant to receive increment due to satisfactory services of a year so that the scheme is not construed in a manner that it offends the spirit of reasonableness enshrined in Article 14 of the Constitution of India. The scheme for payment of increment would have to be read as whole and one part of Article 151 of CSR cannot be read in isolation so as to frustrate the other part particularly when the other part creates right in the central government servant to receive increment. This would ensure that scheme of progressive appointment remains intact and the rights earned by a government servant remains protected and are not denied due to a fortuitous circumstance.”

20. *Similar view has also been expressed by different High Courts, namely, the Gujarat High Court, the Madhya Pradesh High Court, the Orissa High Court and the Madras High Court. As observed hereinabove, to interpret Regulation 40(1) of the Regulations in the manner in which the appellants have understood and/or interpreted would lead to arbitrariness and denying a government servant the benefit of annual increment which he has already earned while rendering specified period of service with good conduct and efficiently in the last preceding year. It would be punishing a person for no fault of him. As observed hereinabove, the increment can be withheld only by way of punishment or he has not performed the duty efficiently. Any interpretation which would lead to arbitrariness and/or unreasonableness should be avoided. If the interpretation as suggested on behalf of the appellants and the view taken by the Full Bench of the Andhra Pradesh High Court is accepted, in that case it would tantamount to denying a government servant the annual increment which he has earned for the services he has rendered over a year subject to his good behaviour. The entitlement to receive increment therefore crystallises when the government servant completes requisite length of service with good conduct and becomes payable on the succeeding day. In the present case the word “accrue” should be understood liberally and would mean*



payable on the succeeding day. Any contrary view would lead to arbitrariness and unreasonableness and denying a government servant legitimate one annual increment though he is entitled to for rendering the services over a year with good behaviour and efficiently and therefore, such a narrow interpretation should be avoided. We are in complete agreement with the view taken by the Madras High Court in the case of P. Ayyamperumal (supra); the Delhi High Court in the case of Gopal Singh (supra); the Allahabad High Court in the case of Nand Vijay Singh (supra); the Madhya Pradesh High Court in the case of Yogendra Singh Bhadauria (supra); the Orissa High Court in the case of AFR Arun Kumar Biswal (supra); and the Gujarat High Court in the case of Takhatsinh Udesinh Songara (supra). We do not approve the contrary view taken by the Full Bench of the Andhra Pradesh High Court in the case of Principal Accountant-General, Andhra Pradesh (supra) and the decisions of the Kerala High Court in the case of Union of India v. Pavithran (O.P.(CAT) No. 111/2020 decided on 22.11.2022) and the Himachal Pradesh High Court in the case of Hari Prakash v. State of Himachal Pradesh (CWP No. 2503/2016 decided on 06.11.2020).

21. In view of the above and for the reasons stated above, the Division Bench of the High Court has rightly directed the appellants to grant one annual increment which the original writ petitioners earned on the last day of their service for rendering their services preceding one year from the date of retirement with good behaviour and efficiently. We are in complete agreement with the view taken by the Division Bench of the High Court. Under the circumstances, the present appeal deserves to be dismissed and is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.”

20. The Hon’ble Supreme Court in **KPTCL v. C.P. Mundinamani (Supra)** has settled the dispute with regard to the grant of increment for rendering their one-year service prior to their superannuation. In view of the



same, this Court observes that the concerned employees who earned the annual increment for rendering one-year service prior to their retirement, cannot be denied the benefit of the annual increment which they actually earned.

21. Further, the Division Bench of this Court in ***Gopal Singh v. Union of India & Ors.***, W.P (C) No. 10509/2019, dealt with an identical issue. The petitioner therein, working at Central Industrial Security Force, had filed the petition praying *inter alia* for a direction to the respondents therein, to grant him notional increment w.e.f. 1st July 2019, for the service rendered by him from 1st July 2018 and 30th June 2019. The relevant paragraphs of the aforesaid judgment are reproduced herein:

“7. Having perused the judgment of the Madras High Court, the Court is of the view that the facts in the case at hand are identical to the facts in the petition before the Madras High Court, with the sole point of divergence being the fact that the Petitioner herein was serving in the CISF and the Petitioner before the Madras High Court was with the Customs and Excise Department. Further, it is seen that the SLP against the judgment of the Madras High Court has also been dismissed on merits.

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 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. Ayyamperuam 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.”

22. The ratio noted in the abovementioned judgments has also been followed in ***Secretary to Government, Finance Department and others v. M.Balasubramaniam***, CDJ 2012 MHC 6525; ***P. Ayyamperumal vs. The Registrar***, WP No. 15732 of 2017; ***Arun Chhiber vs Union of India***, W.P. (C) 13599/2019 and ***Arun Kumar Biswal v. State of Odisha***, W.P (C) No. 1771/2020. In light of the same, this Court is of the view that the government employees are entitled to the increment for the period for which services have been rendered by them. Denial of any such right is a way of inflicting punishment upon them without any reason. If there would have been any misconduct alleged on the part of the concerned employee, withholding the increment may suffice, but not otherwise.

23. In light of the instant petition, the petitioner neither has any



allegations of misconduct nor there is any order issued by the respondent stating if any punishment has been inflicted upon him. Since, there are no allegations of misconduct or any punishment inflicted against the petitioner, the right to increment cannot be denied.

24. Further, as per the contentions of the respondents that the petitioner is required to first approach the appropriate forum as per the Benefit Fund, 2002, it is also relevant to state that upon perusal of the said Benefit Fund, 2002, it is apparent that the same is for the purpose of providing pension for employees who are covered under the Central Civil Services (Pension) Rules (hereinafter 'CSR'). In such an event, the obvious application of the said scheme cannot be denied to the petitioner.

25. It is only arbitrary in nature if any such entitlement of the employee is denied. The same would tantamount to offending the spirit of the principle of reasonableness enshrined in Article 14 of the Constitution of India.

26. As far as the object and purpose of grant of annual increment is considered, it is granted to a government servant on the basis of his good conduct while rendering one-year service. Increments are given on annual basis to employees having good conduct, unless any such increments are withheld as a measure of punishment or linked with efficiency. Hence, the increment is earned for rendering service with good conduct in the concerned period. Therefore, the moment a government employee, covered under the relevant rules, has rendered the service for a specified period with good conduct, he is entitled to the annual increment.

27. Further, as per the Rule 35 (1) of CSR, a government employee is retired only on the afternoon of last day of the month in which the superannuation falls. Hence, a government employee is compulsorily



required to retire on the last day of the month as prescribed. In such a case, not considering their whole year of service while denying the annual increment would render an arbitrary and unjustified action against such an employee, thereby, violating the principles of fairness and justice.

28. The Hon'ble Supreme Court has applied the principle of 'purposive interpretation' and considered the object of granting annual increment to the government employees. It has held that since the government employee is entitled to annual increment based upon his good conduct, the day he retires from the service with such conduct, he shall become eligible for the increment irrespective of the fact that his retirement falls a day prior to his due increment.

29. This Court is of the view that there occurs a legitimate expectation on the part of an employee who becomes entitled to the due increment, having served the requisite service for one complete year, and the same cannot be denied. The employees who have rendered their services faithfully to the government organizations do not deserve such practices against them, as the same amounts to arbitrary conduct. Such act violates the principles of justice which this Court is empowered to protect.

30. Therefore, in light of the abovementioned judgements, it is held that the petitioner is entitled for the relief sought for the grant of notional increment which was due on 1st July 2015, for the service rendered by him from 1st July 2014 to 30th June 2015, after his superannuation on 30th June 2015. The respondents were wrong in denying the same to the petitioner.

31. Accordingly, the issue framed above is decided.

32. It is noted that as per the order dated 12th May 2021, by the predecessor bench of this Court, it was held that "*It is made clear, if the*



petitioner succeeds in the petition, the benefits if any, shall be paid for three years preceding the filing of the writ petition”.

33. In view of the above discussion of facts and law, this Court upholds the maintainability of this petition. It is held that the instant writ petition is allowed, thereby issuing the writ of Mandamus against the respondent No.

1. The following directions are issued to the respondent No. 1:

- a. The respondent No. 1 is directed to disburse the notional increment to the petitioner for the service rendered by the petitioner from 1st July 2014 to 30th June 2015.
- b. The respondent No. 1 shall disburse the increment along with interest @ 4 % per annum from 1st July 2015 till the date of actual payment.
- c. In terms of order dated 12th May 2021, the respondent No. 1 is also directed to disburse the calculated notional increment for the period of three years preceding the date of filing of this writ petition i.e., 8th February 2021.
- d. The above said directions are to be complied within a period of eight weeks from today.

34. Accordingly, this writ petition stands disposed of. Pending applications, if any, also stand disposed of.

35. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

AUGUST 9, 2023
SV/RYP

Click here to check corrigendum, if any