**(2023) 07 CAT CK 0002**

**In the Central Administrative Tribunal**

**Case No :** Original Application No. 495 Of 2023

Dinesh Kumar Sharma & Ors APPELLANT

Vs

Union Of India Through General Manager, North Central Railway, Prayagraj (Allahabad) (U.P.). & Ors RESPONDENT

**Date of Decision :** 04-07-2023

**Acts Referred:**

**Citation :** (2023) 07 CAT CK 0002

**Hon'ble Judges :** B.K. Shrivastava, Member (J)

**Bench :** Single Bench

**Advocate :** Rakesh Kumar Dixit, Chakrapani Vatsyayan

**Final Decision :** Allowed

# Judgement

B.K. Shrivastava, Member (J)

1. This O.A. has been filed by the applicants for the following relief(s):-

"(i) That this Hon'ble Tribunal may graciously be pleased to hold and declare that the Applicants are entitled to be placed and his pension to be fixed with one notional increment with all consequential benefits, with effect from 1st July of the year in which Applicants retired from Government Service i.e. 2019.

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

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

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

2. It is not in dispute that the applicant No. 1 Dinesh Kumar Sharma was

 

appointed on 21.11.1980 and superannuated on 30.06.2011 from the post of Senior Goods Guard. The applicant No. 2 Anil Kumar Sharma was appointed on 09.05.1973 and superannuated on 30.06.2014 from the post of Loco Pilot Mail TDL and applicant No. 3 Praveen Kumar Sharma was appointed on 01.09.1976 and superannuated on 30.06.2011 from the post of Mail Guard TDL.

3. Copies of the PPOs have been annexed as annexure A-1 from page Nos. 31 to 38. Because the applicants were retired on 30th June, therefore, the department did not grant the increment which was due on 01st July i.e. just next day from their retirement.

4. Respondents orally opposed the claim. It is submitted by Respondents that the increment was payable on 1st July, while the applicants retired on 30th June i.e. one day before.

5. At present, the law has been settled by Hon'ble Supreme Court in the Director (Admn. and HR) KPTCL & Ors. vs. C.P.Mundinamani & Ors., (2003) SCC online S.C. 401 (Civil Appeal No.(s) 2471/2023 decided on 11.04.2023). The Supreme Court considered the divergent views of different High Courts on the issue:-

"Whether an employee who has earned the annual increment is entitled to the same despite the facts that he has retired on the very next day of earning the increment?"

The Supreme Court discussed the manner and importance of increment and observed that denying the benefit of annual increment which he has already earned while rendering a specified period of service with good conduct and efficiency in the last preceding year, would be punishing a person for no fault. The Supreme Court did not approve the contrary view taken by the Full Bench of Andhra Pradesh High Court and the view of Kerala and Himachal Pradesh, High Courts and approved the view of Madras, Allahabad, M.P., Orissa, and Gujrat High Courts. In para 6.7, the Supreme Court said:-

"6.7 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 interpretated 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 Vs. Pavithran (O.P.(CAT) No. 111/2020 decided on 22.11.2022) and the Himachal Pradesh High Court in the case of Hari Prakash Vs. State of Himachal Pradesh & Ors. (CWP No. 2503/2016 decided on 06.11.2020)."

6. Therefore, applicants are entitled to the benefit of one notional increment which falls due on 1st July of their year of retirements. Hence, OA is allowed. The respondents are directed to grant the benefit of one annual increment which fall due on 01.07.2011 (to applicant No.1 and 3) and on 01.07.2014 (to applicant No.2) and also to revise their retiral dues and be paid to them. Let the whole exercise be completed within three months from the date of receipt of a certified copy of this order. Needless to say that grant of increment shall be made after satisfying other requirements under the Rules.

7. No order as to costs.

 