(2024) 08 CAT CK 0016

In the Central Administrative Tribunal

Case No : Original Application No. 301 Of 2024

Pradeep Kumar Srivastava & Ors — APPELLANT

Vs

Union Of India Through Comptroller & Auditor General Of India,9 Deen Dayal Upadhyay Marg, New Delhi 110006 & Ors. — RESPONDENT

Date of Decision : 24-08-2024

Acts Referred:

Citation : (2024) 08 CAT CK 0016

Hon'ble Judges : Om Prakash VII, Member (J)

Bench : Single Bench

Advocate : S.J. Ishtiaque, Rakesh Kumar Srivastava

Final Decision : Allowed

Judgement

Om Prakash VII, Member (J)

1. Shri S.J. Ishtiaque, learned counsel for the applicants and Shri Rakesh Kumar Srivastava, learned counsel for the respondents, are present.

2. Although the matter has been listed under the head of ?After Notice (Not Ready For Hearing)? the same is heard and decided finally today itself with the consent of learned counsels appearing for both the parties.

3. It is submitted by the applicants? counsel that the Applicants were retired on 30.06.2013, 30.06.2009, 30.06.2018, 30.06.2018, 30.06.2013 and 30.06.2015 respectively. One increment falling due on the very next date i.e. 01st July of the relevant years was not granted to them. He also placed reliance on catena of judgments pronounced by the Hon?ble Supreme Court followed by Hon?ble High Court as well as various Tribunals and submitted that the present case may also be decided by this Tribunal in the light of the aforesaid judgments/orders.

4. On the other hand, learned counsel for the respondents submits that the issue involved in this Original Application has already been set at rest by Hon?ble

Supreme Court. However, he submits that applicants have filed the instant case after the period of three years.

5. As far as the question of granting the notional increment is concerned, the law on the point has already been settled by the Hon?ble Supreme Court in the case of Director (Admn. and HR) KPTCL & Ors. vs. C.P. Mundinamani & Ors., reported in (2023) SCC online S.C. 401 (Civil Appeal No.(s) 2471/2023 decided on 11.04.2023). The Hon?ble Supreme Court considered the divergent views of different Hon?ble 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 Hon?ble 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 Hon?ble Supreme Court did not approve the contrary view taken by 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 Hon?ble Supreme Court has observed as under:-

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, the controversy has been settled by the Hon?ble Supreme Court and it has been held that the increment payable from 01st July of the relevant years will also be payable to the applicants who were retired on 30th June of the relevant years because the increment is payable for the service, already rendered by the applicants.

7. The respondents? counsel cited the case of "Union of India and Others v. Tarsem Singh, (2008) 8 SCC 648" and submitted that if the claim is allowed then, the arrears will not be payable for the period exceeding of three years. The arrears can be paid only for a period of three years before the date of filing of the OA.

8. Whether the arrears for the whole period can be granted or the arrears should be restricted only for the period of three years before filing the present O.A.?

9. In the case of Rushibhai Jagdish bhai Pathak Vs.Bhavnagar Municipal Corporation, 2022[3] AISLJ 45 [Supreme Court] [18.5.2022] the ?continuing? cause of action and ?recurring? cause of action has been considered in the light of M.R. Gupta v. Union of India and Others,[(1995) 5 SCC 628] and Union of India and Others v. Tarsem Singh, (2008) 8 SCC 648 = 2009[1] SLJ 371 [SC]. The question of arrears in service matter was also considered.

10. In Tarsem Singh (supra), the delay of 16 years in approaching the courts affected the consequential claim for arrears and thus, this Court set aside the direction to pay arrears for 16 years with interest. The Court restricted "the relief relating to arrears to only three years before the date of writ petition, or from the date of demand to date of writ petition, whichever was lesser". Further, the grant of interest on arrears was also denied.

11. The aforesaid ratio in Tarsem Singh (supra) has been followed in State of Madhya Pradesh and Others v. Yogendra Shrivastava [(2010) 12 SCC 538] and Asger Ibrahim Amin v. Life Insurance Corporation of India[(2016) 13 SCC 797].

12. Therefore, it can be said that the matter regarding arrears has already been settled by the Hon?ble Supreme Court and the case of Tarsem Singh (supra) also

defined in the case of Rushi bhai (supra). Hence, the arrears cannot be granted for the period of more than three years.

13. Therefore, looking to the aforesaid certain positions of law, the OA is allowed and ordered:-

(i) Applicants are entitled for one notional increment falling due on the very next date i.e. 01st July of the relevant years if eligible otherwise and have not been granted earlier.

(ii) The respondents are directed to issue the revised PPOs within a period of four months and will pay the arrears thereof in favour of the applicants, within the aforesaid period of four months from the date of receiving the certified copy of this order, otherwise the simple interest will also be payable at the rate of 6% per annum from the date of filing of this O.A. till the date of actual payment. However, the arrears of Applicants will be payable only for the period of three years just before the date of filing of this O.A..

14. All associated MAs stand disposed of accordingly.

15. There shall be no order as to costs.