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No. AIBSNLREA/CHQ/2023/39

Date: 17^h April 2023

To

Shri V. Srinivas,
Secretary (Pension),
Department of Pension & Pensioners' Welfare,
New Delhi 110003.

Sub: Grant of one notional increment for pensionary benefits to those employees whose increment falls due on the day following superannuation

Ref: Hon'ble Supreme Court of India Judgement in CA No.2471/2013 pronounced on 11th April 2023.

Sir,

We have been repeatedly pursuing this issue ever since the Government of Tamilnadu issued a G.O on 31.12.2014 conveying its decision that "a Government Servant whose increment falls due on the day following superannuation, on completion of one full year of service which are countable for increment under Fundamental Rule 26, be sanctioned with one notional increment purely for the purpose of pensionary benefits and not for any other purpose".

2. Subsequently many courts have ruled in favour of granting such notional increment for pensionary benefit and the Supreme Court has rejected several SLPs filed against such court decisions. The Government has been unusually adamant in this matter, refusing to issue a common order granting the benefit of notional increment to all similarly placed persons and insisting that the court orders are to be implemented "in personam" and not "in rem".

3. Meanwhile a large number of applications were being filed in various courts by the affected pensioners praying for extension of the benefit. The government on the other hand had been quoting one or other pending case to deny the benefit to all similarly placed pensioners. We had therefore suggested that "It will be a good gesture on behalf of the UOI to voluntarily order extension of the benefit IN REM to all similarly placed pensioners, without waiting for the disposal of the court cases." On the basis of an unanimously passed resolution

on this issue in the All India Conference of this Association held in January 2023, we had submitted a representation to the Hon'ble Prime Minister too.

4. In these circumstances, the Hon'ble Supreme Court of India in Civil Appeal No.2471 of 2023 has, on 11th April 2023, dismissed the appeal against the judgement of Division Bench of High Court of Karnataka directing the appellants (KPTCL & Ors) to grant one annual increment which the employees-respondents (C.P.Mundinamani & Ors) had earned prior to their retirement on attaining the age of superannuation.

5. Hon'ble Supreme Court has discussed the merits of the case elaborately, observing that "A government servant is granted the annual increment on the basis of his good conduct while rendering one year service. Increments are given annually to officers with good conduct unless such increments are withheld as a measure of punishment or linked with efficiency. Therefore, the increment is earned for rendering service with good conduct in a year/specified period. Therefore, the moment a government servant has rendered service for a specified period with good conduct, in a time scale, he is entitled to the annual increment and it can be said that he has earned the annual increment. for rendering the specified period of service with good conduct. 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. [emphasis added]** 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."

6. Hon'ble Supreme court has also put on record its "**complete agreement [emphasis added]** 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)."

7. Hon'ble Supreme Court has also emphatically stated that "**We do not approve the contrary view taken by [emphasis added]** 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)."

8. After this decisive judgement by the Hon'ble Supreme Court of India, there can't be any iota of justification for the Government to continue to deny this benefit to all similarly placed pensioners. DoP&PW which has been assigned with the larger duty of ensuring and safeguarding Pensioners' Welfare needs to act fast now to ensure issue of a common order for allowing the benefit of one notional increment in similar cases for the purpose of pensionary benefits, as the issue has been dragging on for long with many of the affected pensioners breathing their last during the period and also because the number of such beneficiaries is negligibly limited and the expenditure on this count will be inconsequential.

9. We therefore request you to kindly have the matter re-examined with compassion and get orders issued for extension of the benefit of notional increment for pensionary benefits to all the similarly placed pensioners.

With kind regards,

Yours sincerely,



(R.R.Balasubramanian)
General Secretary

Encl: As stated

Copy to: 1. Dr. T V Somanathan
Secretary, Expenditure, DoE
2. Shri S Radha Chauhan,
Secretary, Personnel, DoP&T

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2471 OF 2023

(@ SLP (C) No. 6185/2020)

**The Director (Admn. and HR)
KPTCL & Ors.**

..Appellant(s)

Versus

C.P. Mundinamani & Ors.

...Respondent(s)

J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Karnataka at Bengaluru in Writ Appeal No. 4193/2017, by which, the Division Bench of the High Court has allowed the said appeal preferred by the employees -

respondents herein by quashing and setting aside the judgment and order passed by the learned Single Judge and directing the appellants to grant one annual increment which the respondents had earned one day prior to they retired on attaining the age of superannuation, the management – KPTCL has preferred the present appeal.

2. The undisputed facts are that one day earlier than the retirement and on completion of one year service preceding the date of retirement all the employees earned one annual increment. However, taking into consideration Regulation 40(1) of the Karnataka Electricity Board Employees Service Regulations, 1997 (hereinafter referred to as the Regulations), which

provides that an increment accrues from the day following that on which it is earned, the appellants denied the annual increment on the ground that the day on which the increment accrued the respective employees – original writ petitioners were not in service. The writ petition(s) filed by the original writ petitioners claiming the annual increment came to be dismissed by the learned Single Judge. By the impugned judgment and order and following the decision of the Andhra Pradesh High Court in the case of **Union of India and Ors. Vs. R. Malakondaiah and ors. reported in 2002(4) ALT 550 (D.B.)** and relying upon the decisions of other High Courts, the Division Bench of the Karnataka High Court has allowed the appeal and has directed that the appellants to grant one

annual increment to the respective employees-respondents by observing that the respective employees as such earned the increment for rendering their one-year service prior to their retirement.

2.1 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the Division Bench of the High Court, the management – KPTCL has preferred the present appeal.

3. Shri Huzefa Ahmadi, learned Senior Advocate has appeared on behalf of the appellants and Shri Mallikarjun S. Mylar, learned counsel has appeared on behalf of the respective employees – respondents.

3.1 Shri Ahmadi, learned Senior Advocate appearing on behalf of the appellants has vehemently submitted that the decision of the Andhra Pradesh High Court in the case of **R. Malakondaiah (supra)** which has been relied upon by the Division Bench of the High Court while passing the impugned judgment and order has been subsequently overruled by the Full Bench of the Andhra Pradesh High Court in the case of **Principal Accountant-General, Andhra Pradesh and Anr. Vs. C. Subba Rao reported in 2005 (2) LLN 592.**

3.2 It is further submitted by Shri Ahmadi, learned Senior Advocate appearing on behalf of the appellants that there are divergent views of different High Courts on the issue. It is submitted that the Madras High Court, the

Delhi High Court, the Allahabad High Court, the Madhya Pradesh High Court, the Gujarat High Court have taken a contrary view than the view taken by the Full Bench of the Andhra Pradesh High Court, the Kerala High Court and the Himachal Pradesh High Court. It is submitted that various High Courts taking the contrary view have as such followed the decision of the Madras High Court in the case of **P. Ayyamperumal Vs. The Registrar and Ors. (W.P. No. 15732/2017 decided on 15.09.2017).**

3.3 On merits, Shri Ahmadi, learned Senior Advocate appearing on behalf of the appellants has vehemently submitted that the words used in Regulation 40(1) of the Regulations are very clear and unambiguous.

It is submitted that it categorically provides that “an increment accrues from the day following that on which it is earned.” It is submitted that therefore, when the right to get the increment is accrued the employee must be in service. It is submitted that in the present case when the right to get the increment accrues in favour of the respective respondents they were not in service but on their superannuation retired from the services. It is submitted that therefore, they shall not be entitled to the annual increment which might have been earned one day earlier i.e., on the last day of their service.

3.4 It is further submitted by Shri Ahmadi, learned Senior Advocate appearing on behalf of the appellants that the annual increment is

in the form of a good service and it is an incentive so that the concerned employee may serve effectively and may render good services. It is submitted that therefore, when the concerned employees are not in service due to their retirement there is no question of grant of any annual increment which as such is in the form of incentive to encourage the employee for better performance.

3.5 Shri Ahmadi, learned Senior Advocate appearing on behalf of the appellants has also taken us to the definition of the word “accrue” in the Law Lexicon (the encyclopaedic law dictionary) and the definition of the word “increment.” It is submitted that as per the Law Lexicon, “increment” means a unit of increase in quantity or value. It means a

promotion from a lower grade to a higher grade. As per the definition “increment” means an upward change in something. It is submitted that as per the Law Lexicon the word “accrue” means to come into existence as an enforceable claim or right. It is submitted that therefore, on true interpretation of Regulation 40(1) of the Regulations, an increment accrues from the day following that on which it is earned. It is submitted that therefore, the Division Bench of the High Court has materially erred. It is submitted that therefore, the view taken by the Division Bench of the High Court and other High Courts that the concerned employees shall be entitled to the benefit of one annual increment which they earned one day prior to their retirement is erroneous and

is on mis-interpretation of the relevant statutory provisions. Making the above submissions, it is prayed to allow the present appeal.

4. Learned counsel appearing on behalf of the respective employees – respondents, has heavily relied upon the decision of the Madras High Court in the case of **P. Ayyamperumal (supra)** and the decisions of the Gujarat High Court, the Delhi High Court, the Allahabad High Court, the Madhya Pradesh High Court and the Orissa High Court taking the view that the concerned employees who earned the annual increment for rendering one year service prior to their retirement they cannot be denied the benefit of the annual increment which they actually earned, solely on the

ground that they retired on attaining the age of superannuation on the very next day. It is submitted that therefore, the Division Bench of the High Court has not committed any error in allowing one annual increment in favour of the respective employees which they actually earned.

- 4.1 Making the above submissions, it is prayed to dismiss the present appeal.
5. We have heard learned counsel appearing on behalf of the respective parties.
6. The short question which is posed for the consideration of this Court is whether an employee who has earned the annual increment is entitled to the same despite the

fact that he has retired on the very next day of earning the increment?

6.1 In the present case, the relevant provision is Regulation 40(1) of the Regulations which reads as under: -

“Drawals and postponements of increments

40(1) An increment accrues from the day following that on which it is earned. An increment that has accrued shall ordinarily be drawn as a matter of course unless it is withheld. An increment may be withheld from an employee by the competent authority, if his conduct has not been good, or his work has not been satisfactory. In ordering the withholding of an increment, the withholding authority shall state the period for which it is withheld, and whether the postponement shall have the effect of postponing future increments.”

6.2 It is the case on behalf of the appellants that the word used in Regulation 40(1) is that an increment accrues from the day following that on which it is earned and in the present case the increment accrued on the day when they

retired and therefore, on that day they were not in service and therefore, not entitled to the annual increment which they might have earned one day earlier. It is also the case on behalf of the appellants that as the increment is in the form of incentive and therefore, when the employees are not in service there is no question of granting them any annual increment which as such is in the form of incentive.

6.3 At this stage, it is required to be noted that there are divergent views of various High Courts on the issue involved. The Full Bench of the Andhra Pradesh High Court, the Himachal Pradesh High Court and the Kerala High Court have taken a contrary view and have taken the view canvassed on behalf of

the appellants. On the other hand, the Madras High Court in the case of **P. Ayyamperumal (supra)**; the Delhi High Court in the case of **Gopal Singh Vs. Union of India and Ors. (Writ Petition (C) No. 10509/2019 decided on 23.01.2020)**; the Allahabad High Court in the case of **Nand Vijay Singh and Ors. Vs. Union of India and Ors. (Writ A No. 13299/2020 decided on 29.06.2021)**; the Madhya Pradesh High Court in the case of **Yogendra Singh Bhadauria and Ors. Vs. State of Madhya Pradesh**; the Orissa High Court in the case of **AFR Arun Kumar Biswal Vs. State of Odisha and Anr. (Writ Petition No. 17715/2020 decided on 30.07.2021)**; and the Gujarat High Court in the case of **State**

of Gujarat Vs. Takhatsinh Udesinh Songara (Letters Patent Appeal No. 868/2021) have taken a divergent view than the view taken by the Full Bench of the Andhra Pradesh High Court and have taken the view that once an employee has earned the increment on completing one year service he cannot be denied the benefit of such annual increment on his attaining the age of superannuation and/or the day of retirement on the very next day.

6.4 Now so far as the submission on behalf of the appellants that the annual increment is in the form of incentive and to encourage an employee to perform well and therefore, once he is not in service, there is no question of grant of annual increment is concerned, the

aforesaid has no substance. In a given case, it may happen that the employee earns the increment three days before his date of superannuation and therefore, even according to the Regulation 40(1) increment is accrued on the next day in that case also such an employee would not have one year service thereafter. It is to be noted that increment is earned on one year past service rendered in a time scale. Therefore, the aforesaid submission is not to be accepted.

6.5 Now, so far as the submission on behalf of the appellants that as the increment has accrued on the next day on which it is earned and therefore, even in a case where an employee has earned the increment one day prior to his retirement but he is not in service

the day on which the increment is accrued is concerned, while considering the aforesaid issue, the object and purpose of grant of annual increment is required to be considered. A government servant is granted the annual increment on the basis of his good conduct while rendering one year service. Increments are given annually to officers with good conduct unless such increments are withheld as a measure of punishment or linked with efficiency. Therefore, the increment is earned for rendering service with good conduct in a year/specified period. Therefore, the moment a government servant has rendered service for a specified period with good conduct, in a time scale, he is entitled to the annual increment and it can be said that he has earned the annual increment

for rendering the specified period of service with good conduct. 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 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.”

6.6 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

looses 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.”

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 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 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).**

7. 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.

I.A. No. 149091/2022 stands disposed of
in terms of the above.

.....J.
[M.R. SHAH]

.....J.
[C.T. RAVIKUMAR]

NEW DELHI;
APRIL 11, 2023