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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 10509/2019**

GOPAL SINGH Petitioner

Through: Mr. P. Sureshan, Advocate.

versus

UNION OF INDIA AND ORS. Respondent

Through: Mr. Naginder Benipal, Advocate.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

% **23.01.2020**

1. The Petitioner, who was appointed in the Central Industrial Security Force ('CISF') on 4th June, 1981 as Lance Naik and retired from service on 30th June, 2019 as Assistant Sub-Inspector ('ASI'), has filed this petition praying *inter alia* for a direction to the Respondents to grant to him notional increment with effect from 1st July, 2019 for the service rendered by him from 1st July, 2018 and 30th June, 2019, and consequentially re-fix his pensionary benefits.

2. The case of the Petitioner is that the Respondents have declined granting the aforesaid notional increment to him on the ground that he retired one day before the increment became due. He states that the position adopted in the orders dated 25th April, 2019, 30th April, 2019 and 3rd May, 2019 of the CISF is contrary to the decision of the Madras High Court dated 15th September, 2017

in W.P.(C) No. 15732/2017 (*P. Ayyamperumal v. Registrar, CAT*).

3. The facts constituting the subject matter in *P. Ayyamperumal (supra)* were that the Petitioner who was serving in the Customs and Excise Department and had retired as an Additional Director General, Chennai on 30th June, 2012 upon attaining the age of superannuation. Having approached the CAT, Madras Bench for being granted notional increment and consequent pay fixation for the purpose of pension, and being denied such relief, the Petitioner filed a writ petition in the Madras High Court.

4. The question before the Madras High Court was whether the fact that the Petitioner retired on 30th June, 2012 i.e. day before 1st July, which was fixed by the 6th Central Pay Commission ('CPC') as the date on which the increment became due, could operate as bar to denying the last increment to the Petitioner even though he had completed one year of service from 1st July, 2012 to 30th June, 2012?

5. Relying on its earlier decision in *State of Tamil Nadu v. M. Balasubramaniam CDJ 2012 MHC 6525*, the Court allowed the petition observing as under:-

“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

6. The Respondents before the Madras High Court challenged the above order dated 15th September, 2017 by way of Special Leave Petition [Diary No. 22283/2018] in the Supreme Court, which came to be dismissed by order dated 23rd July, 2018.

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. Ayyamperumal* 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.

11. The petition is disposed of.

S.MURALIDHAR, J.

TALWANT SINGH, J.

JANUARY 23, 2020/pa