

RESERVED

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A NO. 13305 OF 2024

R.K. Prasad and othersPetitioners

Versus

Union of India and othersRespondents

Appearance :-

For Petitioners : Mr. Ramesh Chandra Tiwari,
Advocate

For Respondents : Mr. Sudarshan Singh, Central
Government Counsel

HON'BLE J.J. MUNIR, J.

This writ petition has been filed by twelve petitioners, all employees of the Railway Protection Force¹, who retired from service during different years, but on 30th of June. Since they were not in service on 1st of July of the year in which they retired, the annual increment they earned for the period commencing 1st July of the year preceding their retirement and 30th of June was denied to them on ground that they were not in service on 1st of July of the year that they retired, when the increment for the relative year would fall due. In substance, therefore, what the petitioners claim is that though they have earned the annual increment during the relative year of retirement, working for the entire period of one year from 1st July to 30th of June of the year they retired, it

¹ 'RPF' for short

has been denied to them on the specious ground that on the day the increment actually fell due i.e. 1st July in the year of their respective retirements, they were not in service. All the petitioners pray that a *mandamus* be issued, ordering the respondents to grant one notional increment to them as on 1st July of the respective years of their retirement, which, in each case, fell on 30th of June of that year, for the limited purpose of determining their pensionary benefits. They further seek a command to the respondents to re-determine the basic pay payable to each of the petitioners, after grant of notional increment, revise their pension benefits accordingly and pay arrears accrued along with interest.

2. The details of the twelve petitioners are set forth in tabular form below :

Petitioner No.	Petitioner's name	Post held at the time of retirement	Date of retirement	Claim
1	R.K. Prasad	Assistant Security Commissioner	30.06.2009	Notional increment for the year 2009
2	Shiv Pujan	Inspector	30.06.2017	Notional increment for the year 2017
3	Vindhyachal	Inspector	30.06.2014	Notional increment for the year 2014
4	Chhedi Lal	Sub-Inspector	30.06.2024	Notional increment for the year 2024
5	Kedar Nath	Assistant Sub-Inspector	30.06.2017	Notional increment for the year 2017
6	Virendra Prasad Sharma	Constable	30.06.2023	Notional increment for the year 2023
7	Moti Lal	Head Constable	30.06.2021	Notional increment for the year 2021
8	Ram Prasad Ram	Assistant Sub-Inspector	30.06.2011	Notional increment for the year 2011
9	Krishnanand Mall	Assistant Sub-Inspector	30.06.2008	Notional increment for the year 2008
10	Virendra Prasad	Head Constable	30.06.2008	Notional increment for the

				year 2008
11	Rama Shanker Singh	Head Constable	30.06.2022	Notional increment for the year 2022
12	Ram Prasad	Sub-Inspector	30.06.2018	Notional increment for the year 2018

3. The petitioners say that they have been denied the accrued increment on 30th June, otherwise due to them, merely because they retired a day before 1st of July, when increment would fall due. The petitioners have relied on preponderant authority of High Courts as well as the Supreme Court in **Director (Administration and Human Resources) KPTCL and others v. C.P. Mundinamani and others**², where it was held that increment payable to a government servant retiring on 30th June was to be granted to him notionally and his post-retiral benefits calculated on the basis of basic pay determined, with notional increment added.

4. This Court issued a notice of motion *vide* order dated 31.08.2024, and after a reference to the settled position of law, in view of the law laid down by the Supreme Court in **C.P. Mundinamani (supra)**, required the Director General, RPF, Railway Board, New Delhi to file his own affidavit, showing cause why notional annual increment applicable in case of each of the twelve petitioners has not been awarded and their post-retiral benefits revised accordingly. In answer, Manoj Yadav, Director General, RPF, Railway Board, New Delhi has filed his own affidavit.

5. When this petition came up for admission on 20.09.2024, the aforesaid personal affidavit of the Director General was filed in Court. The Court proposed to treat the personal affidavit as counter affidavit to the writ petition, to which, Mr. Sudarshan Singh, learned Central Government Counsel did not object. Learned Counsel for the petitioner waived his right to file a rejoinder. The petition was admitted to hearing, which proceeded forthwith. Judgment was reserved.

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6. Heard Mr. Ramesh Chandra Tiwari, learned Counsel for the petitioners and Mr. Sudarshan Singh, learned Central Government Counsel appearing on behalf of the respondents.

7. Now, in **C.P. MUNDINAMANI**, their Lordships of the Supreme Court considered the opinions of various High Courts across the country, as already said, and laid down in unmistakable terms that it would lead to arbitrariness if a government servant were denied annual increment, which he had already earned during the preceding year of his service, merely because he retired a day before the annual increment actually fell due and would have been added to his salary, if he had continued in service for a day more. This is the clear purport of the law laid down in **C.P. MUNDINAMANI**, where their Lordships have remarked :

16. 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.

17. 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 timescale, 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 efficiency in the preceding one year.

18. In *Gopal Singh [Gopal Singh v. Union of India, 2020 SCC OnLine Del 2640]* (sic *Nand Vijay Singh [Nand Vijay Singh v. Union of India, 2021 SCC OnLine All 1090]*) in paras 20, 23 and 24, the Delhi (sic Allahabad) High Court has observed and held as under : (*Nand Vijay Singh case [Nand Vijay Singh v. Union of India, 2021 SCC OnLine All 1090]* , SCC OnLine All)

"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.

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.

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 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 *Nand Vijay Singh [Nand Vijay Singh v. Union of India, 2021 SCC OnLine All 1090]* while dealing with the same issue has observed and held in para 24 as under : (SCC OnLine All)

“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 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.”

20. Similar view has also been expressed by different High Courts, namely, the Gujarat [*State of Gujarat v. Takhatsinh Udesinh Songara, 2022 SCC OnLine Guj 2522*] High Court, the Madhya Pradesh [*Yogendra Singh Bhadauria v. State of M.P., 2020 SCC OnLine MP 4654*] High Court, the Orissa [*Arun Kumar Biswal v. State of Odisha, 2021 SCC OnLine Ori 2368*] High Court and the Madras [*P. Ayyamperumal v. Central Administrative Tribunal, 2017 SCC OnLine Mad 37963*] 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 efficiency 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 [*Principal Accountant-General, A.P. v. C. Subba Rao*, 2005 SCC OnLine AP 47] 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.

21. 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.

22. We are in complete agreement with the view taken by the Madras High Court in *P. Ayyamperumal* [*P. Ayyamperumal v. Central Administrative Tribunal*, 2017 SCC OnLine Mad 37963] ; the Delhi High Court in *Gopal Singh* [*Gopal Singh v. Union of India*, 2020 SCC OnLine Del 2640] ; the Allahabad High Court in *Nand Vijay Singh* [*Nand Vijay Singh v. Union of India*, 2021 SCC OnLine All 1090] ; the Madhya Pradesh High Court in *Yogendra Singh Bhadauria* [*Yogendra Singh Bhadauria v. State of M.P.*, 2020 SCC OnLine MP 4654] ; the Orissa High Court in *Arun Kumar Biswal* [*Arun Kumar Biswal v. State of Odisha*, 2021 SCC OnLine Ori 2368] ; and the Gujarat High Court in *Takhatsinh Udesinh Songara* [*State of Gujarat v. Takhatsinh Udesinh Songara*, 2022 SCC OnLine Guj 2522] . We do not approve the contrary view taken by the Full Bench of the Andhra Pradesh High Court in *Principal Accountant-General, A.P.* [*Principal Accountant-General, A.P. v. C. Subba Rao*, 2005 SCC OnLine AP 47] and the decisions of the Kerala High Court in *Union of India v. Pavithran K.* [*Union of India v. Pavithran K.*, 2022 SCC OnLine Ker 5922] and the Himachal Pradesh High Court in *Hari Prakash v. State of H.P.* [*Hari Prakash v. State of H.P.*, 2020 SCC OnLine HP 2362]

8. **C.P. Mundinamani** was, therefore, unequivocal in its answer. The annual increment earned by a government employee during the previous year could not be denied to him for the purpose of determining his pensionary benefits, merely because he was not in service on the day the increment actually fell due, that is, if he had retired a day before it fell due, though completing one full year of service, otherwise entitling him to increment. The increment had to be notionally granted and its benefit extended for the purpose of determining the employee's post-retiral benefits. But, it seems that after the judgment in **C.P. Mundinamani, Special Leave Petition (Civil) No. 4722 of 2021, Union of India and**

another v. **M. Siddaraj** came up before the Court, where their Lordships opined that that issue was the same as that in **C.P. Mundinamani**. Their Lordships, therefore, after granting leave, disposed of the civil appeals in terms of the judgment in **C.P. Mundinamani**. This should have given a quietus to the issue. But, it was not to be.

9. This Court finds the stand of the Director General taken in the personal affidavit to be utterly illegal, in fact, contumacious, in one part of it. The stand, though carried in a long-winded pleading, must be set out for every word of it. It reads :

7. That, after the pronouncement of judgments in the aforesaid SLPs, the policy regarding grant of such benefits was required to be promulgated by DOP&T as the nodal Ministry for issuance of policy instructions on the subject. Such policy will be applicable to all the Ministries/Departments under the aegis of Govt. of India.

8. That, Security Directorate headed by Director General/RPF is one of the Directorates of Ministry of Railways. As per the existing provisions, the Pay Commission Directorate and Finance Directorate of Ministry of Railways are dealing with the matters of pension related issues of a retired railway employee subsequent to the judgment passed by the Hon'ble Supreme Court of India in the matter of SLP (C) no. 6185/2020 dated 11.04.2020. Further, the Security Directorate of Railway Board has not received any directions from any of these directorates (Pay Commission Directorate & Finance Directorate). Hence, Director General/RPF is not in position to extend the benefits of one notional increment to the petitioners who retired on 30th of June as per the judgment.

9. Further, keeping in view of the fact that there are no specific policy guidelines on the issue of grant of increment due on 1st of July or 1st of January, as the case may be, notionally on the date of retirement i.e. 30th June and 31st December in FR SR. It is beyond the domain of Ministry of Railways, under Govt. of India (Transaction of Business) Rules, 1961 to take any unilateral decision to extend the benefit of notional increment to all similarly placed pensioners. In order to further elucidate, it is stated that in terms of Para-4 of the aforesaid rules regarding 'Inter-Departmental Consultations sub-para-2 thereof stipulated as under;

“(2) Unless the case is fully covered by powers to sanction expenditure or to appropriate or re-appropriate funds, conferred by any general or special orders made by the Ministry of Finance, no department shall, without the previous concurrence of the Ministry of Finance, issue any orders which may-

(a) Involve any abandonment of revenue or involve any expenditure for which no provision has been made in the appropriation act,

(b) Involve any grant of land or assignment of revenue or concession, grant, lease or license of mineral or forest rights or a right to water power or any easement or privilege in respect of such concession,

*(c) Relate to the number or grade of posts, or to the strength of a service, or to **the pay or allowances of Government servants or to any other Conditions of their service having financial implications; or***

*(d) Otherwise have a financial bearing whether involving expenditure not, Provided that no orders of the nature specified in clause (c) shall be issued in respect of the Ministry of Finance without the previous concurrence of the Department of Personnel and Training. "In this connection Govt. of India (Transaction of Business) Rules, 1961 dated 14.01.1961 is being filed herewith for kind perusal of this Hon'ble court and marked as **ANNEXURE NO. PA-4** to this Affidavit.*

10. That, considering the provisions contained in sub-para 2 (c) above and the huge ramifications & financial implications involved on granting the benefit of notional increment to similarly placed pensioners across all Indian Railways, the matter had been referred to the nodal department viz. DOP&T in conformity of the provisions of "The Government of India (Transaction of Business) Rules, 1961'

11. That, pursuant to above, DOP&T vide their O.M. dated 14.06.2023 had apprised Ministry of Railways as under:

*"The matter relating to grant of national increment to those Govt servants who superannuated on 30th June or 31st December is presently under examination in consultation with the Deptt. of Expenditure in light of orders pronounced by the Hon'ble Apex Court in Civil Appeal No. 2471 of 2023 arising out of SLP (C) No. 6185 of 2020 (The Director (Admn. and HR) KPTCL &Ors Vs CP. Mundinamani&Ors) and SLP (C) No. 4722/2021 Union of India &Ors Vs M. Siddaraj). Further action, as may be required will be taken on completion of the consultation process. "In this connection the letter issued by the Govt. of India Ministry of Personnel Public Grievance and Pensions DOP&T dated 14.06.2023 is being filed herewith for kind perusal of this Hon'ble court and marked as **ANNEXURE NO. PA-5** to this Affidavit.*

12. That based on the above clarification of DOP&T, necessary instructions were issued to all Zonal Railways/ PUs vide Board's letter dated 20.06.2023 to file a Miscellaneous Application before the respective Courts/ Tribunals seeking further time to comply with their orders granting the benefit of notional increment. Meanwhile, Indian Railways being one of the largest organizations, wherein, around 1.5 lakhs of retired employees/ pensioners will be the beneficiaries of notional increment and among which thousands had approached various courts of law seeking the benefit of notional increment. These cases were decided in favour of the petitioners duly granting the benefit of notional increment. In this connection Ministry of Railways has issued the letters regarding court cases of notional increment filed by the retired employees are being filed herewith collectively for kind perusal of this Hon'ble court and marked as **ANNEXURE NO. PA-6** to this Affidavit.

13. That, as per practice in vogue, when an order having huge financial implications is to be implemented, the same is referred to Board's ANA office by the concerned Zonal Railway which in turn needs Expiryohcurrence/approval from the nodal department i.e. DOP&T and 'is referred to DOP&T by Ministry of Railways. Considering the ramifications/implications involved; the matter is further consulted by DOP&T with the Ministry of Finance and Sr. Law Officers of the Govt. of India which indeed takes a considerable time. A copy of communication received in this regard is enclosed as **ANNEXURE NO. PA-7** to this affidavit.

14. That, on dismissal of SLP (C) No. 4722/2021 (Union of India & Ors. Vs. M. Siddaraj), a large number of cases were allowed by various judicial forums at the admission stage itself. The huge volume of cases caused practical problems in implementation of orders as each case needs to be examined and cross verified to ensure the eligibility. In certain cases, the applicants preferred contempt petitions immediately on expiry of the time period granted by the respective courts for implementation of orders.

15. That, owing to unforeseen delay in implementation of orders, in certain cases. Contempt petitions were also filed by the petitioners on the grounds of non-compliance of orders. Accordingly, DOP&T was again requested to advise further course of action to be adopted in the matter. Pursuant to which, DOP&T vide had advised this Ministry to take an administrative decision regarding compliance of orders pronounced by various courts of law in contempt cases taking due Rognizance of the advice of Department of Legal Affairs.

16. That, in view of the above advice of the nodal department i.e. DOP&T & in order to avoid any delay in decision making process and also with due respect to the judicial orders pronounced by various courts of law and to ensure that the same are complied expeditiously in a time bound manner, it was decided to grant the benefit of notional increment instantaneously and accordingly, powers were delegated to all Zonal Railways/PUs to take immediate necessary action in such contempt cases to ensure timely compliance of orders pronounced by various courts of law in letter & spirit vide Board's letter dated 09.02.2024 and examine and refer to Railway Board if required.

17. That, during implementation of orders pronounced by various courts of law in contempt cases, certain procedural challenges were being faced by the Railways like cut-off date of implementation of orders, extant of benefit to be extended to the petitioners etc. The same was brought to the notice of DOP&T, who in turn, had advised Ministry of Railways to explore the possibility of filing a clarificatory petition before the Apex Court seeking clarifications on the issue. Accordingly, the matter was placed before Ld. Attorney General of India who had opined to file a Misc. Application before the Hon'ble Supreme Court seeking clarification on the implementation of judgements dated 19.04.2023 in SLP (C) No. 4722/2021 (Union of *India & Ors. Vs M. Siddaraj). Accordingly, a Misc. Application has been filed before the Hon'ble Apex Court vide Dy. No. 2400/2024, seeking clarification on various important aspects and also requested the Apex Court to grant stay on the implementation of the impugned judgement till the clarification on the issues raised in the clarificatory petition is given by the Hon'ble Apex Court keeping in view the huge ramification and maintain uniformity, which pending for adjudication. In this connection a copy of the Misc. clarification application filed by the Union of India is being filed herewith

for kind perusal of this Hon'ble court and marked as **ANNEXURE NO. PA-8** to this Affidavit.

18. That, subsequently, DOP&T has also filed an Intervention Application before Hon'ble Supreme Court in the aforesaid Clarificatory Petition primarily on the grounds that DOP&T being the nodal department could not place their arguments before the Hon'ble Apex Court while the issue of notional increment was decided vide orders dated 11.04.2023 & 19.05.2023 Further, they have vital stake in the outcome of the above mentioned Clarificatory Petition and hence Hon'ble Apex Court ought to hear them in the interest of justice while deciding the Clarificatory Petition. DOP&T in the said Intervention Application has requested to grant stay on the implementation of the impugned judgement till such time the petition before the Hon'ble Apex Court is decided as non grant of stay will result in pronouncing DANA 19718 of favorable judgments by subordinate courts in a continuous manner thereby making the Intervention Application infructuous. The said Intervention Application (IA) filed by the nodal department i.e. DOP&T is still pending before Hon'ble Apex Court for adjudication. In this connection, a copy of Intervention Application before Hon'ble Supreme Court filed by the DOP&T in the aforesaid Clarificatory Petition is being filed herewith for kind perusal of this Hon'ble court and marked as **ANNEXURE NO. PA-9** to this Affidavit.

19. That, during the hearing of the aforesaid clarificatory petition on 22.07.2024, Hon'ble Supreme Court made the following observations:

*"In the meantime, learned counsel for the Union of India shall examine as to whether the Union of India needs to file an application in Civil Appeal No. 2471/2023, titled "The Director (Admn. And HR) KPTCL & Ors. VC P. Mundinamani & Ors", which was disposed of vide judgment dated 11.04.2023 Respondents are permitted to file additional documents. "In this connection the order passed by the Hon'ble Supreme court on 22.07.2024 is being filed herewith for kind perusal of this Hon'ble court and marked as **ANNEXURE NO. PA-10** to this Affidavit.*

20. That, vide aforesaid orders, Hon'ble Supreme Court has directed the nodal department i.e. DOP&T to file additional documents in the matter. Accordingly DOP&T has filed a Review Petition vide Dy. No. before Hon'ble Supreme Court seeking review of their 19718der dated 11.04.2023 pronounced in Civil Appeal No. 2471 of 2023 arising out of SLP (C) No. 6185 of 2020 (The Director (Admn. and HR) KPTCL &Ors Vs C. P. Mundinamani & Ors). As such, the issue of notional increment has not yet attained finality and the judicial procedures involved in the matter to finalize the issue of grant of benefit of notional increment are still underway for final adjudication by Hon'ble Apex Court.

21. That, it is also humbly submitted that in order to ascertain the eligibility & applicability of notional increment to a retired employee/pensioner, a close examination of the credentials of the applicant with regard to eligibility of increment needs to be done in order to ensure that no undue financial benefit is extended inadvertently. This procedure takes time as all the service particulars/pay progression/career progression/ financial upgradation/ increments granted to the employees in the entire service needs to be cross-checked thoroughly which is a time consuming procedure. It is humbly submitted that in this context only it has been clarified by Railway Board to all the field units to refer such orders other than contempt cases to Railway Board.

22. That, in order to stress upon the intricacies involved in this important task, it is humbly submitted that in few cases pertaining to various Railways viz. Northern Railway tin O.A. No. 3071/2023 (Shri Naresh ARY Kumar Gupta Vs UOI & Ors.) & North Central Railway (in C.P No 19718 28/2024 filed by Shri Suresh Narayan Vyas arising out of O.A. No.330/1085/2023 (Shri Vijay Kumar Verma & Ors. Vs. UOI & Ors.) wherein the Hon'ble Tribunals had directed to grant the benefit of notional increment to these petitioners. However, on scrutiny of their service particulars, it was found that both were not eligible for grant of benefit of notional increment owing to various reasons and also that they had not completed 12 months of service since the date of accrual of last annual increment which happens to be the main principle/primary condition to be fulfilled for being eligible for grant of notional increment as decided by the Hon'ble Apex Court vide their judgement dated 11.04 2023. Accordingly, the concerned Railways were advised not to grant the benefit of notional increment and challenge the orders pronounced by respective Tribunals before High Court. In this connection Copies of correspondence done with Northern Railway & North Central Railway are being filed herewith collectively and marked as **ANNEXURE P.A-11** to this affidavit.

23. That, it is re-iterated that the issue of notional increment has not yet attained finality and is still sub-judice/ pending for adjudication before Hon'ble Supreme Court, as such, general policy guidelines on the issue of notional increment has not yet been promulgated by the nodal department i.e. DOP&T as & when the general policy decision in the matter is received from DOP&T consequent to adjudication of AR aforesaid Clarificatory Petition/ Intervention Application/ Review Petition, the same would be duly implemented on Indian Railways extending the benefit of notional increment to all similarly situated pensioners.

24. That, it may be observed from the submissions made in aforesaid paras that the issue of notional increment is still sub-judice before the Hon'ble Supreme Court for adjudication and has not yet attained finality. As such, it is most humbly and graciously prayed that:

(i) The aforesaid positions of Ministry of Railways may kindly be considered in compliance of order dated 31.08.2024 passed by this Hon'ble High Court of Allahabad in the instant W.P. No. 13305/2024 till the aforesaid Review Petition and Intervention Application filed by the nodal department viz. DOP&T are adjudicated by the Hon'ble Supreme Court and the issue of notional increment attains finality.

(ii) The instant W.P. No. 13305/2024 may be adjourned sine die and a final decision thereon may only be taken after the aforesaid Review Petition and Intervention Application filed by the nodal department viz. DOP&T are adjudicated by Hon'ble Supreme Court and the issue of notional increment attains finality.

(emphasis by Court)

10. It is true that every litigant has the right to seek a clarification of an order passed by a Court, even a Constitutional Court, but it is not open to any officer of the Government to say that the benefit of the Supreme Court's judgment or compliance of the High Court's order, if not stayed or

set aside by the Supreme Court, will depend upon the policy decision of the Department of Personnel & Training³, Government of India. The Government of India cannot sit in judgment on a writ of the Court, once issued. A writ stops only if it is stayed in competent proceedings, like an appeal, if allowed from the order or a review or a clarification or some such proceedings. An order cannot be disregarded by a sundry officer of the government, saying that he will disregard the law laid down by a Constitutional Court in a judgment, and more than that, a writ *inter partes* awaiting a policy decision of the Government. It is all the more contumacious on the part of the Director General, RPF, Railway Board to say in paragraph No. 8 of the personal affidavit that he is “not in a position to extend benefit of one notional increment to the petitioners who retired on the 30th June as per the judgment”.

11. The Director General has much harped upon the fact that the judgment of the Supreme Court in **C.P. Mundinamani** and **M. Siddaraj** (*supra*) have not attained finality, because an application for clarification, a review petition and an intervention application have been filed by the DOPT. After the Supreme Court passes a judgment, there is nothing not final about it. There is no Court above the Supreme Court, and once a judgment is passed by their Lordships, it is the end of the road for both litigants. Nevertheless, it is true that a litigant may apply for a review or clarification, as in this case. Invariably, for the principle of law laid down in a judgment by the Supreme Court not *inter partes*, where a clarification has been sought by one of the parties, this Court would normally await the outcome of orders passed by their Lordships on the clarification application, but, pendency of the application does not entitle the respondents, including an officer of the said respondents, to say that they are not in a position to carry out the orders of this Court made following the law laid down by the Supreme Court, merely because clarification

3 'DOPT' for short

applications have been filed. Most certainly, this Court is bound by the law declared by the Supreme Court under Article 141 of the Constitution and every officer of the respondent is bound to carry out every writ of this Court, unless it is set aside or stayed in appeal.

12. The contents of paragraph Nos. 7 and 8 of the personal affidavit filed by Manoj Yadav, Director General, Railway Protection Board, Railway Board, New Delhi are contumacious in nature. We would have issued a notice to show cause why this matter may not be directed to be laid before the Hon'ble Judge hearing contempt applications, but, in the totality of circumstances obtaining, we think that that course is not necessary. All that needs to be done is that we caution Manoj Yadav, Director General, Railway Protection Board, Railway Board, New Delhi to be careful in future while putting in his pleadings, which he must do after necessary legal advice, and not of his own commonsense, which appears to be the case here.

13. Now, so far as the merits of the case are concerned, the review petition made on behalf of the Union of India in **M. Siddaraj**, besides other clarification applications and intervention applications, came up before the Supreme Court on 06.09.2024, when their Lordships passed the following order :

It is stated that the Review Petition in Diary No. 36418/2024 filed by the Union of India is pending.

The issue raised in the present applications requires consideration, insofar as the date of applicability of the judgment dated 11.04.2023 in Civil Appeal No. 2471/2023, titled "Director (Admn. and HR) KPTCL and others v. C.P. Mundinamani and others", to third parties is concerned.

We are informed that a large number of fresh writ petitions have been filed.

To prevent any further litigation and confusion, by of an interim order we direct that:

(a) The judgment dated 11.04.2023 will be given effect to in case of third parties from the date of the judgment, that is, the pension by taking into account one increment will be payable on and after 01.05.2023. Enhanced pension for the period prior to 31.04.2023 will not be paid.

(b) For persons who have filed writ petitions and succeeded, the directions given in the said judgment will operate as res judicata, and accordingly, an enhanced pension by taking one increment would have to be paid.

(c) The direction in (b) will not apply, where the judgment has not attained finality, and cases where an appeal has been preferred, or if filed, is entertained by the appellate court.

(d) In case any retired employee has filed any application for intervention/impleadment in Civil Appeal No. 3933/2023 or any other writ petition and a beneficial order has been passed, the enhanced pension by including one increment will be payable from the month in which the application for intervention/impleadment was filed.

This interim order will continue till further orders of this Court. However, no person who has already received an enhanced pension including arrears, will be affected by the directions in (a), (c) and (d).

Re-list in the week commencing 04.11.2024.

14. By this interim order, the Supreme Court provided that in case of third parties, that is to say, non parties to **C.P. Mundinamani** and **M. Siddaraj**, the benefit of the judgment would be available from the date thereof. In other words, the judgment would apply prospectively. It has been clarified that one increment, by virtue of the principle in **C.P. Mundinamani**, would be payable, as directed, but the actual benefit of enhanced pension for the period prior to 31.04.2023 would not be available. The benefit would be available to third parties, like the petitioners here, with effect from 01.05.2023. This petition would be governed by the directions (b), (c) and (d) of the order dated 06.09.2024 passed in the review petition filed by the Union of India in **M. Siddaraj**, since this petition has been instituted by a third party, which has neither been decided before the interim order dated 06.09.2024 was passed, nor is one where the judgment has attained finality or an appeal pending. It is also not a case where any application for intervention has been filed by the petitioners in Civil Appeal No. 3933 of 2023 or in a writ petition, where a beneficial order has been passed in their favour.

15. The effect of the interim order would, therefore, be that the petitioners would be entitled to their notional increment for the respective

years in which they superannuated on the 30th June of that year, but the revised pension in terms of the notional increment would be payable with effect from 01.05.2023. The interim order dated 06.09.2024 was directed to operate until further orders. The matter arising out of Miscellaneous Application Diary No. 2400 of 2024, that is to say, the review filed by the Union of India, besides a host of other matters, which include contempt petitions, all made in **M. Siddaraj** came to be heard and finally decided by their Lordships of the Supreme Court by an order of 20.02.2025. It would, again, be apposite to quote the orders made by their Lordships as aforesaid for every word of it. The order reads :

Miscellaneous Application 35785/2024 and 35786/2024 Diary Nos. 2400/2024, 35783/2024

Delay condoned.

We had passed the following interim order dated 06.09.2024, the operative portion of which reads as under:

"(a) The judgment dated 11.04.2023 will be given effect to in case of third parties from the date of the judgment, that is, the pension by taking into account one increment will be payable on and after 01.05.2023. Enhanced pension for the period prior to 31.04.2023 will not be paid.

(b) For persons who have filed writ petitions and succeeded, the directions given in the said judgment will operate as res judicata, and accordingly, an enhanced pension by taking one increment would have to be paid.

(c) The direction in (b) will not apply, where the judgment has not attained finality, and cases where an appeal has been preferred, or if filed, is entertained by the appellate court.

(d) In case any retired employee has filed any application for intervention/impleadment in Civil Appeal No. 3933/2023 or any other writ petition and a beneficial order has been passed, the enhanced pension by including one increment will be payable from the month in which the application for intervention/impleadment was filed."

We are inclined to dispose of the present miscellaneous applications directing that Clauses (a), (b) and (c) of the order dated 06.09.2024 will be treated as final directions. We are, however, of the opinion that clause (d) of the order dated 06.09.2024 requires modification which shall now read as under:

"(d) In case any retired employee filed an application for intervention/impleadment/writ petition/original application before the Central Administrative Tribunal/High Courts/this Court, the enhanced pension by including one increment will be payable for the period of three years prior to the month in which the application for petition/ original application was filed."

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Further, clause (d) will not apply to the retired government employee who filed a writ petition/original application or an application for intervention before the Central Administrative Tribunal/High Courts/this Court after the judgment in "*Union of India & Anr. v. M. Siddaraj*"⁴, as in such cases, clause (a) will apply.

Recording the aforesaid, the miscellaneous applications are disposed of.

We, further, clarify that in case any excess payment has already been made, including arrears, such amount paid will not be recovered.

It will be open to any person aggrieved by non-compliance with the directions and the clarification of this Court, in the present order, to approach the concerned authorities in the first instance and, if required, the Administrative Tribunal or High Court, as per law.

Pending applications including all intervention/impleadment applications shall stand disposed of in terms of this order.

Contempt Petition (Civil) Diary Nos. 38437/2023, 38438/2023, 11336/2024 and 20636/2024

In view of the order passed today in the connected matters, that is, M.A. Diary No. 2400 OF 2024 and other connected applications, the present contempt petitions will be treated as disposed of with liberty to the petitioners to take recourse to appropriate remedies, if required and necessary, as indicated supra. It goes without saying that the respondents shall examine the cases of the petitioners/applicants in terms of the order passed today and comply with the same expeditiously.

Pending application(s), if any, shall stand disposed of.

16. Apparently, Direction (a) carried in the interim order dated 06.09.2024 passed in the review matter brought by the Union of India has been made absolute by directing that Clauses (a), (b) and (c) of the order dated 06.09.2024 would be treated as final directions. There is some modification made to Clause (d) of the interim order dated 06.09.2024, but that, as already remarked, would not apply to the petitioners' case, which is governed by Clause (a) of the directions dated 06.09.2024, as confirmed on 20.02.2025 by the Supreme Court.

17. The effect would be that the petitioners and each of them would be entitled to receive notional increments for the respective years in which they superannuated on the 30th of June, but they would be paid pension on the basis of their revised emoluments with the notional increments added

⁴ Dated 19.05.2023 in Civil Appeal No. 3933 of 2023, titled "Union of India & Anr. vs. M. Siddaraj" and other connected matters

with effect from 1st May, 2023. Their current pension would be revised accordingly forthwith and all arrears would be paid to them with effect from 01.05.2023 within a period of three months of the date of communication of this order to the Secretary, Ministry of Railways, Government of India, New Delhi, the Director General, RPF, Railway Board, New Delhi, the General Manager, North Eastern Railway, Gorakhpur, the Principal Chief Karmik Adhikari, North Eastern Railway, Gorakhpur and the Principal Finance Advisor/Chief Accounts Officer, North Eastern Railway, Gorakhpur. The period of three months shall be reckoned from the date the order is received by any of the aforesaid officers.

18. In the result, this petition **succeeds** and stands **allowed**. A *mandamus* is issued accordingly. The petitioners would be entitled to costs, which we quantify at ₹50,000, payable by the respondents.

19. Let this order be communicated to the Secretary, Ministry of Railways, Government of India, New Delhi and the Director General, RPF, Railway Board, New Delhi by the learned Registrar General of this Court through the learned Registrar General, Delhi High Court, and the General Manager, North Eastern Railway, Gorakhpur, the Principal Chief Karmik Adhikari, North Eastern Railway, Gorakhpur and the Principal Finance Advisor/Chief Accounts Officer, North Eastern Railway, Gorakhpur, all through the learned Chief Judicial Magistrate, Gorakhpur.

Allahabad

March 10, 2025

I. Batabyal

(J.J. MUNIR)
JUDGE

Whether the order is speaking : Yes

Whether the order is reportable : Yes

Writ - A No. 13305 of 2024