CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00941/2019

DATED THIS THE 31ST DAY OF JANUARY 2020

HON'BLE DR. K.B. SURESH, MEMBER (J)

HON'BLE SHRI CV. SANKAR, MEMBER (A)

KN.Nanda Kishore
S/o K.Narayana Murthy,
Aged about 51 years
Working as Superintendent of
Central Tax,
Bangalore West Commissionerate,
1st Floor, BMTC Bus Stand Complex
Banashankari
Bangalore 560 070. ….Applicant

(By Shri BS.Venkatesh Kumar..... Advocate)

Vs.

1.Union of India represented by
Secretary to Government,
Ministry of Finance
Department of Revenue,
North Block,
New Delhi-110001.

2.Central Board of Excise &
Customs (CBEC) &GST
by its Chairman,
North Block, New Delhi 110 001.

3.The Principal Chief Commissioner of
Central Tax, Bangalore PB.No.5400,
Central Revenue Building,
Queens Road,
Bangalore – 560 001. ...Respondents.

(By Shri S.Sugumaran , ACGSC)

ORDER (ORAL)

HON'BLE DR. K.B. SURESH, MEMBER(J)

1. We heard the matter. This is covered by our earlier order in OA.746/2019 dated 30.1.2020 which we quote:-

O R D E R (ORAL)

(HON'BLE DR. K.B. SURESH, MEMBER (J)

We heard the matter today. OA No. 170/00746/2019, by common consent, will be the leading case. The matter is covered in all parameters by our order in OA No. 850, 859 & 893/2014 dated 13.11.2019, which we quote:

"O R D E R (ORAL)
HON'BLE DR K.B. SURESH, MEMBER(J)

Heard. The matter is covered by our earlier order in OA.No.850/2014, which we quote:

> *"The matter seems to be covered by the order of the Hyderabad Bench in OA.296/2014 dated 14.09.2015 which apparently went to the High Court and thereafter to the Supreme Court and attained finality now. Other Benches have also followed this.*
>
> *Thereafter, this OA is allowed in terms of the order already passed by the Hyderabad Bench. Applicant is entitled to the same benefit as in the other cases. This may be implemented within the next two (2) months."*

2. The earlier order was made on the specific reasoning that this is covered entirely by the orders of Hyderabad Bench in OA.No.296/2014 dated 14.09.2015, which we quote:

"CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

Original Application No.296 of 2014

Date of Order : 14-09-2015

Between :

B.Udaya Shankara Rao S/o Late Seethaiah,

Aged about 59 years, Occ : Superintendent of Posts,
O/o Postal Stores Depot, Padma Rao Nagar,

Sec'bad. & 14 ors. ....Applicants

AND

The Government of India, Ministry of Communications and IT, Dept of Posts, New Delhi
Represented by its Secretary & 2 ors. …Respondents

CORAM :

THE HON'BLE MR.B.VENKATESWARA RAO : MEMBER (J)

THE HON'BLE MRS.RANJANA CHOWDHARY : MEMBER (A)

(Oral order per Hon'ble Mr.B.Venkateswara Rao, Member (J))

This OA is filed seeking the following relief :-

> *"It is therefore prayed that this Hon'ble Court be pleased to declare the proceedings dated 24.10.2013 issued by the Respondent No.3 rejecting the claim of the applicants for grant of Grade Pay of Rs.5,400/- w e f the date of completion of 4 yrs in the grade Pay of Rs.4,800/- as contrary to the Government of India Resolution and CCS(Revised Pay) Rules 2008, illegal, arbitrary and without jurisdiction and set aside the same and consequently direct the respondents to grant Higher Grade Pay of Rs.5,400/- with effect from date of completion of regular service of 4 years in the Grade Pay of Rs.4,800/- (pre-revised 7500-12000) and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.*

2. The brief facts of the case are that the applicants herein were initially appointed as Postal Assistants i e Clerical grade , as Inspector Posts and later on as Asst. Superintendent of Posts, which is a Gazetted Group 'B' post carrying a Grade Pay of Rs.4,600/-. The applicants, in the year 2008 were granted MACP and consequently granted the Grade Pay of Rs.4,800/. The Government of India vide RESOLUTION G.I., M.F.No.1/1/2008-1C, Dt. 29.08.2008, published in Gazette of India, accepted the recommendations as a package subject to the modifications. As per the Clause (i) of the Resolution, the PB-2 is Rs.9,300-Rs.34,800. As per clause (iv) of the Resolution, the calculation for fixation of revised basic pay has been provided for, which is reproduced below :-

> *"Clause iv – With regard to fixation of pay in the revised pay bands, the basic pay drawn as on 01.01.2006 on the existing Fifth CPC pay scales will be multiplied by a factor of 1.86 and then rounded off to next multiplier of 10. This will be the pay in the revised running Pay Band. Grade Pay, as approved by the Government, corresponding to the pre-revised pay scale, will then be added to the Pay in the*

revised Pay Band. The total of pay in the pay band and grade pay will be the revised Basic Pay as on 01.01.2006."

An analysis of the Relevant provisions would make it very clear that a Group "B" officer in PB-2 with a Grade pay of Rs.4,800/- is entitled for Grade Pay of Rs.5,400 on non-functional basis after four years of regular service. The enhancement of grade pay is not dependent on the post, but on regular service of four years in Grade Pay of Rs.4,800/- in PB-2. In view of this position, the applicants have submitted representations to the 2nd Respondent for enhanced grade pay of Rs.5400/- with effect from the dates on which they completed four years of service and the same was rejected on the ground that as they have not completed four years of regular service in PS group Cadre. Hence this application.

3. Respondents have filed reply statement agreeing to the material as stated by the applicants. The Respondents state that the applicants are seeking for Rs.5,400/- GP since they have drawn GP of Rs.4,800/- after getting 3rd MACP. Actually, the applicants were placed in Grade Pay of Rs.4600/- which is admissible for Assistant Superintendent of Post Offices Cadre but GP of Rs.4800/- is not attached to Assistant Superintendent of Post Offices Cadre. The Pay Commission recommendations are very clear that the officers whose GP attached to the post is Rs.4800/- is PS Group-B and worked for four years are eligible to GP Rs.5400/-. There is no provision in the recommendations to draw GP of Rs.5400/- to the officers who were given financial upgradation under MACP scheme and consequently have drawn GP Rs.4800/-. Directorate vide its letter in File No.1-4/2013-PCC dt. 02.07.2015 has communicated that "the Department of Expenditure has now clarified the issue of grant of grade pay of Rs.5400/- to the Group B officers (ASPs) of the Department of Posts after completion of 4 years of regular service in Grade Pay of Rs.4800/- earned under the MACP vide their UO No.87654/EIII-A/2015 dated 22.06.2015 as under :

"The proposal of Department of Posts seeking concurrence to allow GP of Rs.5400/- in PB-2 on rendering 04 years of regular service in the grade pay of Rs.4800/- without linkage to the post in the GP of Rs.4800/- has been examined in this Department and not agreed to."

In view of the forgoing submissions, Respondents pray to dismiss the OA as devoid of merits.

4. Heard Mr.N.Vijay, learned counsel for the applicant and Ms.Megha Rani Agarwal, learned Standing Counsel for Respondents. We have carefully gone through the pleadings and material on record.

5. When the matter came up for hearing, learned counsel for the applicant submits that the subject matter of this OA is covered by the order passed in OA No.1051/2010 decided on 30.03.2012 and the same is as under :-

"8. It was contended by the learned counsel for the petitioner before the Hon'ble Madras High Court that in the resolution of Ministry of Finance, Department of Expenditure, dated 29.8.2008, the Government agreed to grant pay of Rs.5400/- in Pay Band-2 to Group-B Officers of the Department of Posts, Revenue, after four years of regular service in grade pay of Rs.4800/- and clarification was issued by the Central Board of Excise and Customs dated 21.11.2008 that the four years period is to be counted with effect from the date on which an officer is placed in the pay scale of Rs.7500-12000/-. That, the Madras High Court held that the clarification dated 29.8.2008 of the Government of India, would not equate the petitioner therein to the posts viz., Income Tax Officer / Superintendents, Appraisers, etc though he may be drawing the pay scale attached to the said posts by virtue of grant of ACP and that he would not be entitled for regular service in the pay scale of Rs.7500-12000/-, and that the same cannot be granted unless the petitioner is promoted and not merely on the Madras High Court observed as follows :

"7. We are unable to agree with this clarification given by the Under Secretary to Government of India, since in an earlier clarification, dated 21.11.2004 of the Deputy Secretary to Government of India, it was clarified as to how the 4 year period is to be counted for the purpose of granting non-functional upgradation to Group-B Officer, i e whether the 4 year period is to be counted with effect from the date on which an officer is placed in the pay scale of Rs.7500-12000 (pre-revised) or with effect from 1.1.2006, i e the date on which the recommendation of the 6th CPC came into force. It was clarified that the 4 year period is to be counted with effect from the date on which an officer is placed in the pay scale of Rs.7500-12000 (pre-revised).

8. Thus, if an officer has completed 4 years on 1.1.2006 or earlier, he will be given the non-functional upgradation with effect from 1.1.2006 and if the officer completes 4 years on a date after 1.1.2006, he will be given non-functional upgradation from such date on which he completes 4 years in the pay scale of Rs.7,500-12,000 (pre-revised), since the petitioner admittedly completed 4 years period in the pay scale of Rs.7500-12000 as on 1.1.2008, he is entitled to grade pay of Rs.5400/-. In fact, the Government of India, having accepted the recommendations of the 6th Pay Commission, issued a resolution dated 29.8.2008 granting grade pay of Rs.5400/- to the Group-B Officers in Pay Band-2 on non-functional basis after four years of regular service in the grade pay of Rs.4800/- in Pay Band-2. Therefore, denial of the same benefit to the

petitioner based on the clarification issued by the Under Secretary to the Government was contrary to the above said clarification and without amending the rules of the revised pay scale, such decision cannot be taken. Therefore, we are inclined to interfere with the order of the Tribunal."

Ultimately, the Madras High Court held that the petitioner therein is entitled for grade pay of Rs.5400/- with effect from 1.1.2008 i e as per the resolution dated 29.8.2010.

9. The above decision of the Madras High Court is applicable to the facts of the present case with all force, as here also, the applicants herein have been placed in grade pay of Rs.4800/- and have completed four years in that scale, may be, on account of granting only ACP and not on account of promotion. As such, the OA is liable to be allowed and the applicants shall be granted higher pay scale of Rs.5400/- with effect from their respective dates of completion of regular service of four years in the grade pay of Rs.4800/- (pre-revised scale of Rs.7500-12000/-). As the matter is pending before the Hon'ble Supreme Court, we made it clear that the relief the applicants are getting in this OA shall be automatically subject to the decision of the Hon'ble Supreme Court in SLP (C) No.15627/2011, even without the present respondent-department not filing any proceedings in the Hon'ble High Court or Supreme Court."

6. On going through the order in the OA cited above, we also find that the subject matter of this OA has already been dealt with and the order passed therein can be made applicable to the present OA also. Accordingly we allow the OA directing the Respondents to grant the benefits as granted in OA No.1051/2010 decided on 30.03.2015 as per the reasons stated therein.

7. No order as to costs.

-Sd/-

-Sd/-

(RANJANA CHOWDHARY) (B.VENKATESWARA RAO)
MEMBER (A) MEMBER (J)"

3. Apparently, Government of India issued a letter No.2-13/2014-PCC dated 19.08.2019, which we quote:

"No. 2-13/2014-PCC
Government of India
Ministry of Communications

Department of Posts

Dak Bhavan, Sansad Marg,
New Delhi 110 001
Date: 19.08.2019

To,
The Chief Postmaster General
Telangana Circle, Hyderabad 500 001

Sub:- Proposal for implementation of order dated 14.09.2015 passed in OA No. 296/2014 filed by Shri B. Udaya Sankara Rao and 14 other Group-B/A.S. Posts of Telengana Circle in Hon'ble CAT, Hyderabad against refusal of grant of Grade Pay Rs. 5400/- after completion of 4 years in the Grade Pay of Rs. 4800/- granted to them on their financial up-gradation under MACPS- reg.

Sir,

I am directed to refer to your DO letter No. LC/TC/W.P/31576/2016 dated 26.07.2019 on the above noted subject and to inform that the matter was examined in consultation with D/o Legal Affairs and referred to Department of Expenditure for taking advice on the issue. The D/o Expenditure in their advice vide ID note No. 6/3/E.III(B)/2018 dated 12.06.2019 (copy enclosed) has agreed to implement the order of the Hon'ble Court subject to the condition that the applicants in the present matter are exactly similar to the petitioners covered in the case of Hon'ble Madras High Court Order dated 06.09.2010 in WP No. 13225 of 2010 against which SLP was dismissed by the Hon'ble Supreme Court vide order dated 10.10.2017.

2. The issue was again examined and found no clear directions in the tendered advice by the D/o Expenditure on the issue of similarity of the petitioners, therefore the case was again referred to Department of Expenditure for their clear advice. The D/o Expenditure considered the issue and advised vide their ID note No. 6/3/E.IIIB/2018 dated 13.08.2019 (copy enclosed).

3. Keeping in view of above advice of D/o Expenditure, Ministry of Finance, I am directed by the Competent Authority to request you to implement the order of Hon'ble CAT Hyderabad dated 14.09.2015 in OA No. 296/2014 in favour of applicants only subject to condition that, it may not be treated as a precedent for other cases.

Yours faithfully,

Sd/-
(S.B. Vyavahare)
Assistant Director General (PCC/GDS)"

4. It indicates that the matter is covered by the decision of the Hon'ble Madras High Court order in WP.No.13225/2010 dated 06.09.2010, against which an SLP was filed and SLP was dismissed by the Hon'ble Supreme Court vide order dated 10.10.2017 and thereafter it appears that it was implemented in Andhra Pradesh and Tamilnadu as well. It appears that when the matter was considered in WP.No.26440/2019 and other connected cases, the High Court of Madras vide order dated 09.09.2019 disposed off the same, which we quote:

"IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 09.09.2019
CORAM
THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE N.SESHASAYEE
WP.No.26440/2019 & WMP.No.25799/2019

1.The Union of India
represented by Secretary
Ministry of Telecommunication and IT
Department of Post, Dak Bhavan
Sansad Marg, New Delhi 110 001.

2.The Chief Postmaster General
Tamil Nadu Circle, Chennai-2. .. Petitioner

Versus

1.D.Raghupathi
2.The Registrar
Central Administrative Tribunal
High court Complex, Chennai 104. .. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records in OA.No.310/00106/2016 dated 08.11.2016 on the file of the 2nd respondent insofar as it is against the petitioners and quash the same.

For Petitioner : Mr.V.Balasubramanian
Sr.Panel Counsel for
Government of India

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.,]

(1)The official respondents in OA.No.106/2016 are the writ petitioners herein and aggrieved by the impugned order dated 08.11.2016 in disposing of the said Original Application in

favour of the 1st respondent herein/Original applicant, have filed the present writ petition.
(2)Heard the submissions of Mr.V.Balasubramanian, learned Senior Panel Counsel for the Government of India and also perused the materials placed before it.
(3)The facts leading to the filing of the present writ petition have been narrated in detail and in extenso in the impugned order passed in the Original Application, which is the subject matter of challenge in this writ petition and therefore, it is unnecessary to restate the facts once again.
(4)The Tribunal has placed reliance upon the communication dated 04.11.2008, bearing No.1-14/2008-PCC issued by the Ministry of Telecommunication and Information Technology, Department of Post, Government of India and it is relevant to extract the same:-

> *"Subject:- Recommendations of Sixth Central Pay Commission – Fixation of Pay of PS Group "B" Officers.*
>
> *Sir/Madam,*
> *I am directed to refer to this office letter No.4-4/2008- PCC, dated 04.09.2008 regarding Sixth CPC- Revision of Pay Scales in respect of Group "A", "B", "C" and "D" Employees 2008.*
> *2.Sixth CPC has recommended the revised pay scale of Rs.9300-34800 with grade pay of Rs.4800/- at the initial stage and Rs.9300-34800 with grade pay of Rs.5400 after completion of 4 years service to Postal Service Group "B" Officers. A doubt has arisen about fixation of pay of the P.S. Group "B" Officers who have already completed 4 years service and date from which the upgraded pay scale has to be fixed. The issue has been examined in consultation with the Ministry of Finance and it is clarified as under:-*
> *"Since the upgradations have been granted on non-functional basis which are not lined to vacancy, these upgradations may be given w.e.f. 01.01.2006. However, due screening in regard to vigilance clearance etc may be done by the competent authority before upgradation."*
> *3.Accordingly, the pay scale of P.S.Group "B" Officers is to be fixed as under:-*

Pre- Revised Pay Scale	*Corresponding Pay Band and Grade Pay approved by the Government*		*Eligibility*	
	Pay Band	*Grade Pay*		
Rs. 7500-12000	*Rs 9300-34800[PB 2]*	*Rs.4,800.00*	*Initial Entry*	*01/01/06*

Rs. 8000-13500	*Rs. 9300-34800[PB 2]*	*Rs.5,400.00*	*P. S Group "B" officers who have completed 4 years of service as on 01.01.2006 in the pre-revised scale of Rs. 7500-12000*	*01.01.2006 after due screening from vigilance angle.*

4.Necessary action may be taken by the Circles to place the eligible P.S. Group "B" Officers in the Grade Pay of Rs.5400 in [PB 2] after obtaining necessary vigilance clearance from the competent authority."

(5)Admittedly, the 1st respondent/Original Applicant was initially appointed as an Assistant [Clerical Grade] with effect from 04.04.1978 and was given promotion to the post of Inspector of Posts through a limited Departmental Competitive Examination which took place in the year 1989. He was promoted as Assistant Superintendent of Posts with effect from 13.02.2002, which is a Gazetted Group "B" Post, carrying a Grade Pay of Rs.4600/- and in the year 2008, he was granted MACP and consequently, granted Grade Pay of Rs.4800/- with effect from 01.09.2008 vide proceedings dated 06.10.2010. The Original Applicant/1st respondent got further promotion to the cadre of P.S. Group "B" cadre with effect from 29.12.2012 and he retired from service on 31.08.2013. The Tribunal found that the Original Applicant/1st respondent herein had four years of regular service in the Grade Pay of Rs.4800/- and that he should be given the Grade Pay of Rs.5400/- and also placed reliance upon the above cited communication dated 04.11.2008.

(6)The primordial submission made by the learned Senior Panel Counsel appearing for the writ petitioners is that since the Original Applicant/1 st respondent herein was posted in Group "B" post in the year 2012, admittedly, he had not completed 4 years of service and that he retired from service on 31.08.2013 and as such, he is not entitled to get Grade Pay of Rs.5400/- and therefore, prays for setting aside the impugned order.

(7)This Court has considered the said submission and also perused the materials placed before it as well as the impugned order.

(8)A perusal of the above cited communication dated 04.11.2008 would disclose that the tabular column in paragraph No.3 is relatable to P.S. Group "B" Officers and it refers to the pre-revised Pay Scale of Rs.7500- 12000/- and corresponding Pay Band and Grade Pay approve by the Government relatable to Pay Band of Rs.9300-34800 [PB 2]

and they were given the Grade Pay of Rs.4800/- on the initial entry with effect from 01.01.2006.

(9)It is also to be noted at this juncture that it is not relatable to the post and admittedly, the proceedings dated 04.11.2008 applies to P.S. Group "B" Officer. The petitioner was promoted as Assistant Superintendent of Posts with effect from 13.02.2002 and in the year 2008, he was granted Grade Pay of Rs.4800/- with effect from 01.09.2008 vide proceedings dated 06.10.2010 by the 2nd petitioner herein / 2nd respondent in OA.No.106/2016 with retrospective effect and subsequently, got promotion to the cadre of P.S. Group "B" Cadre with effect from 29.12.2012 and retired on 31.08.2013. Admittedly, between 01.09.2008 and 31.08.2013, he was given the Grade Pay of Rs.4800/- and therefore, the Tribunal found that in the light of the above cited communication dated 04.11.2008, the Original Applicant/1st respondent herein is entitled to Grade Pay of Rs.4800/-.

(10)In the light of the said fact, this Court is of the considered view that the approach of the Central Administrative Tribunal to the said communication is in order and that apart, the 1st respondent herein/Original Applicant has also retired from service on 31.08.2013 and assuming for the sake of argument, he has been erroneously given such a benefit, he has not contributed to the said fact and on that account also, the alleged excess payment made, cannot be recovered.

(11)This Court, on an independent application of appraisal of the entire materials, is of the considered view that there is no error apparent or infirmity in the reasons assigned by the Tribunal in the impugned order and finds no merit in the writ petition.

(12)In the result, the writ petition stands dismissed in the admission stage itself. No costs. Consequently, the connected miscellaneous petition is also closed.

(13)The learned Senior Panel Counsel appearing for the petitioners would submit that he received pre-contempt notice and therefore, the petitioners/official respondents are under the pain of contempt and therefore, prays for some accommodation to comply with the orders passed by the Tribunal.

(14)Accordingly, the petitioners/official respondents are granted six weeks time from the date of receipt of a copy of this order to comply with the impugned order passed by the Tribunal.

[MSNJ] [NSSJ]
09.09.2019

5. The matter was also considered by Hon'ble High Court of Karnataka in WP.No.32501/2016 dated 02.09.2016, which we quote:

"THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE/QUASH THE ORDER OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, BANGALORE BENCH,

PASSED IN O.A.No.308/2013 DATED:27.10.2015 PRODUCED IN ANNEXURE-A TO THE PETITION.

THIS WRIT PETITION COMING ON FOR ORDERS THIS DAY, JAYANT PATEL J., PASSED THE FOLLOWING:

ORDER

The present petition is directed against the order dated 27.10.2015 passed by the Central Administrative Tribunal, whereby the Tribunal for the reasons recorded in the order, has allowed the application.

2. Learned counsel appearing for petitioners, at the outset, submitted that the present matter is covered by the decision of this Court dated 12.07.2016 in W.P. No.32524/2016 and connected matter in the case of Union of India and another vs. Shri P. Mallachari.

3. We may at the outset record that this Court in the above referred order dated 12.07.2016, had observed thus:

> *"As in both the petitions common questions arise for consideration, they are being considered simultaneously.*
> *2. The petitions are directed against the order dated 27.10.2015 passed by the Tribunal whereby the Tribunal for the reasons recorded in the order has held that the applicant would be entitled to Grade Pay of Rs.5,400/- as on the relevant date in 2011 onwards and a direction is also issued to make the payment.*
>
> *3. We have heard Sri. Y. Hariprasad, learned CGSC appearing for the petitioners.*
>
> *4. The contention raised on behalf of the petitioners was that as per the Rule 17 of the CCS (Revised Pay) Rules, 2008, there is power with the Central Government to take decision for interpretation of any provisions of the Rules and he submitted that in exercise of the power under Rule 17, the office memorandum at Annexure-R10 was issued. As per learned counsel for the petitioners, office memorandum dated 13.12.2012 (Annexure-R10) is for amendment of the earlier office memorandum dated 24/26.12.2009 and hence he submitted that the Tribunal ought to have given appropriate weight to the said office memorandum and ought to have dismissed the application. He submitted that benefits were granted of the higher pay scale to the applicant before the Tribunal by way of stagnancy benefit but he was not actually promoted to the higher post. In his submission, unless one completes four years on the post after promotion, he would not be entitled to Grade Pay of Rs.5,400/- but would only be entitled to Grade Pay of Rs.4,800/-. He submitted that*

the Tribunal in the impugned order has relied upon the decision of the Ernakulam bench of the Tribunal which was also carried before the High Court of Kerala, but not interfered with. However, subsequently the Central Administrative Tribunal, Ernakulam bench has accepted the validity of the office memorandum dated 13.12.2012 as in exercise of the statutory power under Rule 17 of the Revised Pay Rules, 2008 and has found that benefits would be available only as per office memorandum dated 13.12.2012 and not earlier office memorandum dated 24/26.12.2009. The said decision of the Ernakulam bench was on 23.02.2016, but it was non-existent at the time when the Tribunal decided the matter. In his submission, since subsequently the view is taken, this Court may consider in the present petitions under Article 227 of the Constitution of India for interference of the impugned order passed by the Tribunal and the order passed by the Tribunal may be set aside by this Court.

5. Be it recorded, in the Revised Pay Rules, 2008, such restriction of completion of four years was not provided. Further, in 24/26.12.2009, the Central Government by issuance of the office memorandum also provided that the completion of four years in regular service after appointment/promotion thereto has no relevance. But subsequently, by office memorandum dated 13.12.2012, the earlier office memorandum is amended and for entitlement of the Grade Pay of Rs.5,400/-, the requirement of completion of four years in the Grade Pay of Rs.4,800/- was included.

6. Even if the contention raised by the learned counsel that the issuance of office memorandum was in exercise of the statutory rule under Rule 17 of the Revised Pay Rules, 2008, then also earlier there was already an exercise of the power by virtue of interpretation vide office memorandum dated 24/26.12.2009. The very interpretation already made could not be modified by subsequent office memorandum dated 13.12.2012, more particularly when in the initial Revised Pay Rules and in the schedule appended to the Rules, there was no requirement of completion of four years in the Grade Pay of Rs.4,800/-.

7. Further, when the pay scale is revised, the equivalent pay scale with corresponding Grade Pay is to be considered and further incorporation thereof of any condition for entitlement would result into amendment in the statutory rules already framed of Revised Pay Rules, 2008, which is not permissible by office memorandum. It is hardly required to be stated that by executive power, the statutory rule cannot be amended. In the earlier

office memorandum dated 24/26.12.2009, it was only by view of clarification. But the subsequent office memorandum dated 13.12.2012, the entitlement under the Revised Pay Rules is sought to be curtailed. Even if Rule 17 is considered, it does not leave any power for amendment of the Rules. If the scope and ambit is considered of Rule 17 for interpretation, nothing can be added for curtailment of the benefit. If Rule 17 is pressed in service, one can say that the office memorandum dated 13.12.2012 is beyond scope of the Rule. Under these circumstances, the Tribunal has rightly found that when equivalent Revised Pay Scale is provided for Grade Pay of Rs.5,400/- by office memorandum, such benefit cannot be curtailed that too with the retrospective effect.

8. In view of the above, the subsequent view taken by the Tribunal in Ernakulam bench would be of no help to the learned counsel appearing for the petitioners. We are refraining from making any further observation since there is no challenge to the said decision before us nor such challenge can be brought before this Court on account of territorial jurisdiction of this Court.
9. In view of the above, we find that no case is made out for interference. Hence, the petitions are dismissed. ”

4. As stated by learned counsel for petitioners since the issues involved in the present petition are similar to the issues in the aforesaid W.P. No.32524/2016 and in view of the reasons recorded hereinabove, the present petition also deserves to be dismissed. Hence, dismissed.

Sd/- JUDGE
Sd/- JUDGE”

6. This order was also challenged in the Supreme Court in SLP. No.34238/2016 which was disposed of vide order dated 23..12.2017, which we quote:

COURT NO.9
SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s).34238/2016
(Arising out of impugned final judgment and order dated 02.09.2016 in WP.No.32501/2016 passed by the High Court of Karnataka at Bangalore)

Union of India and anr. ..Petitioner(s)

Versus

A.Shivakumar & ors. ..Respondents

(With Appln. (s) for permission to file lengthy list of dates and interim relief and office report)

With SLP (C) No.27687/2016
(With Interim Relief and Office Report)
Date: 23.02.2017 These petitions were called on for hearing today.
CORAM: HON'BLE MR. JUSTICE S.A. BOBDE
HON'BLE MR JUSTICE L. NAGESWARA RAO.

For Petitioner (s) Ms. Jyotika Karla, Adv.
Ms. Asha Gopalan Nair, Adv.
For Mr. Gurmeet Singh Makker, Adv.

For Respondent (s)
Upon hearing the counsel the Court made the following

O R D E R

The Special leave petitions are dismissed.
As a sequel to the above, pending interlocutory applications, if any, stand disposed of."

7. In connected matters, the Hon'ble Apex Court considered this matter once again in CA.No.8883/2011 in the case of Union of India and ors. Vs. M. Subramaniam and have dismissed the contentions raised by Union of India, which we quote:

"IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
Civil Appeal No (s). 8883 of 2011

Union of India and ors. …Appellant (s)
Versus
M. Subramaniam

With

SLP(C) No.23513 of 2015
AND
SLP(C)No. 3189 of 2015
AND
SLP(C)No. 17576 of 2017

O R D E R

We have heard learned counsel for the parties and perused the record.

We do not see any ground to interfere with the impugned order (s). The appeal and also the special leave petitions filed by the Union of India are accordingly dismissed.

(ADARSH KUMAR GOEL)…..J

(UDAY UMESH LALIT)…….J

New Delhi,
October 10, 2017."

8. Thereafter, in the same case, a Review Petition No.2512/2011 was also filed and vide order dated 23,08.2018 the Review Petition was also dismissed.

9. Therefore, after going through the records of the matter and hearing the representatives of the learned counsels, we are of the view that the respondents have misled the High Court of Karnataka into passing the order, where they seem to have misled the High Court to believe that this matter relates to Revenue Department, whereas from the Gazette Notification, Resolution No.1/1/2008-I C dated 29.08.2008, it is clearly mentioned that it is Department of Revenue, Posts etc.

10. Therefore, a serious miscarriage of justice has arisen because of respondents attempt in trying to mislead the Court. Therefore, we allow these OAs and hold that the applicants also are eligible to the same benefits, which has been extended to others following Apex Court Judgment under Article 14 of Constitution of India.

11. At this point of time, the learned Senior Panel counsel submits that this has been considered by the department and recommended to the Ministry to implement the earlier order. They have written to Finance Ministry to grant permission as this matter has financial implications. But we find that a needless litigation has been caused by the respondents. We also find, what they told the High Court of Karnataka is totally incorrect. Therefore, OAs are allowed. All benefits to be extended to them within one month next.

Sd/- *Sd/-*
(C.V. SANKAR) *(DR. K.B. SURESH)*
MEMBER(A) *MEMBER(J)"*

2. It is also submitted at the bar that the basis of this case is an Hon'ble Apex Court order which followed the order of the Hon'ble High Court of Madras in Writ Petition No. 13225/2010 dated 06.09.2010.

3. It is submitted that by File No. A-23011/37/2019-Ad.IIA dated 24.06.2019 this order has been implemented following its acceptance by the Jabalpur Bench of the Tribunal, which we quote:

"F. No. A-23011/37/2019-Ad.IIA
Government of India
Ministry of Finance
Department of Revenue

Central Board of Indirect Taxes and Customs

North Block, New Delhi,
Dated the 24th June, 2019.

To,
The Chief Commissioner of CGST,
Bhopal Zone,
48, Administrative Area, Area Hills,
Hoshangabad Road, Bhopal (M.P.) – 462011

Subject: The Hon'ble CAT, Jabalpur Bench vide common order dated 13th September, 2018 in OAs No. 24/2015, 25/2015, 61/2015, 231/2015, 511/2015 and OA No. 979/2015.

Sir,

I am directed to refer to your letter C.No. II (39)29/CCO/BZ/2015/1448 dated 12.04.2019 on the subject mentioned above.

2. The Order dated 13th September, 2018 passed by Hon'ble CAT, Jabalpur Bench in OAs No. 24/2015, 25/2015, 61/2015, 231/2015, 511/2015 and OA No. 979/2015 has been examined in the Board in consultation with D/o Expenditure. D/o Expenditure vide ID note M/o Finance, D/o Expenditure UO No. 15 (23)/E.III(B)/2010 dated 17.06.2019 has agreed to implement the above Court order provided this case is similar to the cases covered in the order of Hon'ble Madras High Court dated 06.09.2010 in WP No. 13225 of 2010 against which SLP was dismissed.

3. You are, therefore, requested to implement the aforesaid Order dated 13th September, 2018 passed by Hon'ble CAT, Jabalpur Bench, provided this case is similar to the cases covered in the order of Hon'ble Madras High Court dated 06.09.2010 in WP No. 13225 of 2010 against which SLP was dismissed. The action taken report may be furnished to the Board.

4. This issues with the approval of Competent Authority.

Yours faithfully,
Sd/-
(Gaurav Shukla)
Under Secretary to the Government of India"

4. It appears that, vide Office Order No. 286/2019 dated 06.12.2019 by the Principal Chief Commissioner at Kolkata, this order had been implemented and the benefit granted. Therefore, under the rules of equity and equality also, the applicants are also entitled to the same benefits.

5. At this point of time Shri V.N. Holla, learned counsel for the respondents in the connected matters, submits that they have already recommended this matter. But then that is no more required as it is already implemented all over India and the people of Karnataka need not suffer because of any laxity on the part of the governance system.

6. The OA is allowed. Benefits to be made available within two months next. No order as to costs."

2. Therefore, the same benefit to be extended to the applicant herein also with the same time frame. OA allowed. No order as to costs.

(CV. SANKAR)
MEMBER(A)

(DR. K.B. SURESH)
MEMBER (J)

bk.

Annexures referred to by the Applicant in OA.No.941/2019

Annexure A-1: Copy of circular dated 21.11.2008

Annexure A-2: Copy of circular dated 11.2.2009

Annexure A-3: Copy of representation dated 30.4.2019

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bk.