

**Central Administrative Tribunal
Madras Bench**

OA/310/01617/2019

Dated the 10th day of January Two Thousand Twenty

P R E S E N T

Hon'ble Mr. P.Madhavan, Member(J)
&
Hon'ble Mr.T.Jacob, Member(A)

1. All India Association of Central Excise
Gazetted Executive Officers Association,
(Salem Unit), rep. by its
General Secretary,
Mr.K.S.Kumar,
General Secretary,
No.1, Foulkes Compound,
Anaimeedu, Salem 636001.

2. Mr.N.Noushad,
S/o late Noor Mohammed,
Superintendent of GST & Central Excise,
Salem Commisionerate,
Salem.

.. Applicants

By Advocate **M/s.Menon, Karthik, Mukundan & Neelakantan**

Vs.

1. Union of India, rep. by the
Secretary,
Department of Revenue,
M/o Finance,
New Delhi 110 001.
2. Chairman,
Central Board of Indirect Taxes & Customs,
North Block, New Delhi 110 001.
3. Principal Chief Commissioner of GST & Central Excise,
Zone Tamil Nadu & Puducherry,
26/1, Mahathma Gandhi Road,
Chennai 600 034.

.. Respondents

By Adovacte **Mr.Rajnish Pathiyil**

ORDER

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

The 1st applicant in this OA is the General Secretary, All India Association of Central Excise Gazetted Executive Officers Association, Salem Unit and one another Mr.N.Noushad, Superintendent of GST and Central Excise, Salem.

2. The case of the applicants is that the respondents are denying the non-functional upgradation to Grade Pay (GP) of Rs.5400/- on completion of 4 years of service in GP Rs.4800/- to the applicants which was granted as per 6th Central Pay Commission (CPC). The respondents had granted the benefit as per Circular dt. 21.11.08. But, subsequently, the respondents restricted the benefit by a clarification only to the persons who are holding the GP Rs.4800/- on regular basis and not to persons holding the GP Rs.4800/- on the basis of grant of ACP.

3. The said order was challenged by one M.Subramaniam by filing OA 167/2010 and the OA was dismissed by the CAT, Chennai Bench. The applicant therein had challenged the order of this Tribunal in W.P.No.13225/2010 before the Hon'ble Madras High Court. The Hon'ble High Court of Madras set aside the order of the Tribunal and allowed the OA holding as follows:-

“We are unable to agree with this clarification given by the Under Secretary to the Government of India, since in an earlier clarification dated 21.11.2004 of the Deputy Secretary to the Government of India, it was clarified as to how the 04 year period is to be counted for the purpose of getting non-functional upgradation to Group 'B' Officer, i.e. whether the 04 year period is to be counted with effect from the date on which the officer is placed in the pay scale of Rs.7500-12000/- (pre-revised) or with

effect from 01.01.2006 i.e. the date on which the recommendations of the 6th CPC came into force. It was clarified that the 04 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).

Thus if an officer has completed 04 years on 01.01.2006, he will be given the non-functional upgradation with effect from 01.01.2006 and if the officer completes 04 year on a date after 01.01.2006, he will be given non-functional upgradation from such date on which he completes 04 year period in the pay scale of Rs.7500-12000 (pre-revised), since the petitioner admittedly completed 04 year period in the pay scale of Rs.7500-12000 as on 01.01.2008, he is entitled to the grade pay of Rs.5400/-. In fact, the Government of India having accepted the recommendations of the 6th Pay Commission, issued a resolution dated 29.08.2008 granting grade pay of Rs.5400/- to Group 'B' officers in Pay Band-2 on non-functional basis after 04 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.

Accordingly, the Writ Petition is allowed setting aside the order of the Tribunal dated 19.04.2010 passed in O.A.No.167 of 2009. The respondents are directed to extend the benefit of grade pay of Rs.5400/- to the petitioner from 01.01.2008 as per the resolution dated 29.08.2010.”

4. According to the applicants, they are also similarly situated persons and the respondents had granted the benefit to the applicant in OA 167/2010 and also to many others who had approached the Tribunal with same prayer. Applicants had also produced a copy of the order passed by the Office of Principal Chief Commissioner, Kolkatta Zone dt. 06.12.2019 extending the benefit to about 189 persons similarly situated along with this OA as per resolution dt. 29.8.08.

5. We had heard the applicants' counsel and counsel for the respondents. According to the the counsel for the respondents, all the above judgments are

judgments in personam and it cannot be automatically applied. The counsel for the applicants submitted that the respondents are unnecessarily driving the employees to the Tribunal eventhough law is finally settled by the Tribunals and various High Courts. The principle applies to all the Superintendents in the Central Excise Department and all eligible employees are entitled to get the benefits.

6. We had perused the pleadings and copies of various judgments passed in this subject matter. The judgment of the Hon'ble Madras High Court in W.P.No.13225/2010 dt. 06.9.10 applies to all the Superintendents in the department who had the GP of Rs.4800/- in Pay Band-2 as considered in the resolution dt. 29.8.08. The above decisions relied by the applicants does not relate to the facts and circumstances of a particular person and hundreds of Superintendents of all Commissionerates are already benefited. In such a circumstance, the respondents' contention that the judgments obtained by various similarly situated persons cannot be considered now as a judgment in personam. In ***State of U.P. & Others v. Arvind Kumar Sri Vasthava & Others [(2015) SCC 347]*** the Hon'ble Supreme Court had held that *“The normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending the benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly”*.

7. This Tribunal had to dispose of about 10 OAs in July 2019 in similarly situated persons giving directions to the respondents to implement the relief granted.

8. There is no dispute here that facts are not similar. The applicants are similarly placed and they are also entitled to the benefits granted by the Tribunals and various High Courts. So, we find merit in this OA.

9. **The respondents are hereby directed to grant Non-Functional Grade in the Grade Pay of Rs.5400 (PB-2) to the applicants on completion of 04 years of service in the GP of Rs.4800/- as per judgment dated 06.9.2010 of Hon'ble High Court of Madras in W.P.No.13225/2010 with all consequential benefits including arrears of pay within a period of three months from the date of receipt of a copy of this order.**

10. OA is disposed off accordingly. No costs.

(T.Jacob)
Member(A)

(P.Madhavan)
Member(J)

10.01.2020

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