

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH**

**OA No. 146 of 2019**

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)  
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

1. Kartik Chandra Ghadei, aged about 65 years, S/o Late Brundaban Ghadei, At-Gopapur, PO-Chhatia, PS-Byree, Dist-Jajpur, retired as Senior Postmaster, Bhubaneswar GPO.
2. Khageswar Mohanta, aged about 64 years, S/o Late Nilambar Mohanta, At-Jagannathpur, PO/PS/Dist-Keonjhar, presently retired as Superintendent of Post Offices, Kalahandi Division.
3. Sukadev Sahu aged about 64 years, S/o Late Babaji Sahu, Vill-Rampur, PO-Chhatia, PS-Tangi, Dist.-Cuttack, presently retired as Asst. Supdt. of Posts (HQ), RMS 'N' Division, Cuttack.
4. Krupasindhu Panda, aged about 64 years, S/o Late Upendra Prasad panda, At-Mulkaida, PO-Anantapur, PS-Soro, Dist.-Balasore, retired as Supdt. PSD, Bhubaneswar.
5. Suresh Chandra Shukla, aged about 63 years, S/o Late Krushna Chandra Shukla, At-Kumari, PO-Jaraka, PS-Dharmasala, Dist.-Jajpur and retired Senior Postmaster, Cuttack GPO.
6. M.M.Mohapatra, aged about 65 years, S/o Late Purna Chandra Mohapatra, At-Bapi Home, Nabakalaber Road, Nuasahi, PO-Puri Station Road, PS-Talabania, Dist-Puri, retired SRM RMS 'N' Division, Cuttack.
7. Bijay Kumar Patra, aged about 62 years, S/o Late Udhab Patra, At-Nuagaon, PO-Balisahi, PS-Narsinghpur, Dist-Cuttack and retired SPOs Cuttack South Division,
8. Sreekanta kar, aged about 62 years, S/o late Suryamani Kar, At/PO-Mulabasant, Via-Kuanpal, PS-mahanga, Dist.-Cuttack, retired Sr.SPOs, Puri Division, Puri.
9. Suresh Kumar Mishra, aged about 61 years, S/o Late Pathani Mishra, At/PO-Jadunathpur, Via-Kandaparagarh, Dist.-Nayagarh, presently retired ASPOs (Outdoor), Bhubaneswar Division.
10. Golak Chandra Mohanty, aged about 63 years, S/o Late Brajakishore Mohanty, At/PO/PS-Fulnakhara, Dist.-Cuttack, retired Deputy Manager, Postal Printing Press, Bhubaneswar.

.....Applicants

VERSUS

1. Union of India represented through the Secretary to Govt. of India, Minsitry of Communications & IT Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-110001.
2. The Chief Postmaster General, Odisha Circle, Bhubaneswar, At/PO-Bhubaneswar, Dist-Khurda, Pin – 751001.

.....Respondents

For the applicant : Mr.S.K.Ojha, counsel

For the respondents: Mr.B.Swain, counsel

Heard & reserved on : 23.1.2020

Order on : 28.2.2020

**O R D E R**

**Per Mr. Gokul Chandra Pati, Member (A)**

Common reliefs sought for by 10 applicants in this OA are as under :-

- “(i) To quash the orders contained under Annexure A/4 Series holding the same is against the decision of the Govt. of India and also opposing the judicial pronouncements made from time to time.
- (ii) To direct the Respondent to grant Grade Pay of Rs.5400/- to the applicants from the date of completion of four years Gr.B regular service in the GP Rs.4800/-.
- (iii) To allow this OA with costs.”

Vide order dated 5.3.2019, this Tribunal permitted the MA filed to allow the applicants to jointly pursue the OA.

2. The applicants are aggrieved by the impugned orders at Annexure-A/4 series of the OA, by which the representation dated 17.12.2018 (Annexure-A/3) claiming higher Grade Pay of Rs. 5400/- on non-functional basis with effect from the date the applicants have completed 4 years of service in the Grade Pay of Rs. 4800/- in PB-2. Main ground advanced in the OA in support of such claim is that as per the provisions of the order dated 29.8.2008 (Annexure-A/1 of the OA) read with the judgments enclosed at Annexure-A/6, A/7, A/8, A/9 and A/10 in which similarly placed employees as the applicants have been allowed the same benefit after interpreting the instructions of Government of India and these orders have attained finality.

3. The respondents have denied the claim by filing Counter, stating that as per the clarification of the Ministry of Finance dated 27.2.2018 (Annexure-A/13 of the Rejoinder) and the instructions of the Directorate of Posts dated 4.11.2008 (Annexure-R/1) and dated 22.4.2019 (Annexure-R/2) in which the clarification has been issued that the provision of non-functional upgradation will not be applicable to the applicants since they did not hold any post in Group-B with the PB-2 and Grade Pay of Rs. 4800/- and they had received the Grade Pay of Rs. 4800/- by virtue of non-functional upgradation under MACP Scheme. In other words, the respondents are of the view that the non-functional placement at Grade Pay of Rs. 5400/- in PB-2 will be available to the employees who hold the substantive post in Group-B with Grade Pay of Rs. 4800/- for four years or more and since the applicants did not hold such posts and they were given the benefit of the Grade Pay of Rs. 4800/- on financial upgradation under MACP, they will not be entitled for such benefit.

4. Rejoinder has been filed by the applicant denying the contentions in the Counter and reiterating the averments in the OA. The applicants have also filed

an Additional Affidavit enclosing the copy of the letter dated 19.8.2019 (Annexure-A/16) of the respondent no.1, in which it was decided to implement the order of Hyderabad Bench of the Tribunal's order dated 14.9.2015 passed in OA No. 296/2014 (Annexure-A/9 of the OA) only in respect of the applicants in that OA. A reply filed by the respondents to the Additional Affidavit stated that the said decision, applicable for the applicants in that OA, will not be a precedent as stated therein.

5. The respondents have filed a reply to the rejoinder as well as additional affidavit filed by the applicants stating that the letter at Annexure A/16 by which the order of the Tribunal in OA No. 296/2014 was implemented clearly mentioned that this decision will be applicable for the applicants in those cases. It was therefore stated that it will not have general application. It was further stated that the applicants have raised this claim after more than 3-4 years and hence the claim is barred by limitation. These claims have been raised by the applicants after the judgment in CA No.8883/3011. Since it is barred by limitation the claims are not legally sustainable.

6. Heard learned counsel for the applicants and the respondents who reiterated the contentions in their respective pleadings. A written note has been filed by applicants' counsel reiterating the same stand as in the pleadings. Only issue to be decided is if the applicants are entitled for the benefit of the judgments cited by the applicants in the light of the clarifications and letters relied upon by the respondents.

7. The applicants' claim is based on the judgment dated 6.9.2010 (A/6) of Hon'ble Madras High Court in W.P. No. 13225 of 2010 in the case of M. Subramaniam vs. Union of India & others and the SLP No. 8883 of 2011 filed by the respondents before Hon'ble Apex Court against the judgment dated 6.9.2010 was dismissed by Hon'ble Apex Court vide order dated 10.10.2017 (Annexure-A/7 of the OA). While considering the same issue in case of another employee of the Ministry of Finance, it was held in the judgment dated 6.9.2010 as under:-

"6. It is not in dispute that the Government of India vide its resolution, dated 29.8.2008 granted grade pay of Officers of the Department of Posts, Revenue, etc. who completed four years of regular service in the grade pay of Rs. 4800/- in Pay Band 2. According to the petitioner, he has already reached the pay scale of Rs. 7500-250-12000 by way of ACP Scheme on 1.1.2004 which is corresponding to the pay scale of Superintendent of Central Excise (Group B Post) and therefore, on completion of four year, he is entitled to the grade pay of Rs. 5400/- with effect from 1.1.2008. In support of his claim, the petitioner also relied upon a clarification issued by the Central Board of Excise and Customs in Letter F.No.A2601/98/2008-AdIIA, dated 21.11.2008 clarifying that the four year period is to be counted from the date on which an officer is placed in the pay scale of Rs. 7500-12000. However, the claim of the petitioner was denied based on the clarification issued by the Central Board of Excise & Customs,

dated 11.2.2009, wherein, it was clarified that the Officers who got the pre-revised pay-scale of 7500-12000 (corresponding to grade pay of Rs. 4800) by virtue of financial up gradation under ACP would not be entitled to the benefit of further non-financial up gradation the pre-revised pay-scale of Rs. 8000-13500 (corresponding to grade pay of Rs. 5400) on completion of 4 years in the Pre-revised pay scale of Rs. 7500-12000.

7. We are unable to agree with this clarification given by the under Secretary to Government on 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 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 year on 1.1.2006 or earlier, he will be given the non-functional up gradation with effect from 1.1.2006 and if the officer completes 4-year on a date after 1.1.2006, he will be given non-functional up gradation from such date on which he completes 4-year in the pay scale of Rs. 7,500-12000 (Pre-revised. Since the petitioner admittedly completed 4-year period in the pay scale of Rs. 7500-12000 as on 1.1.2008, he is entitled to grade pay of Rs. 5400/-.....”

8. In W.P. No. 13225/2010 before Hon'ble Madras High Court, the petitioner had been allowed the grade pay of Rs. 4800/- under the ACP Scheme and after 4 years of service in that grade pay, he had claimed the grade pay of Rs. 5400/- as per the sub para (x) of the first para of the OM dated 29.8.2008 (Annexure-A/1 of the OA) accepting and implementing the recommendations of the sixth Pay Commission for revision of pay scales. In the present OA, the applicants are similarly situated as the petitioner in W.P. No. 13225/2010 except that the applicants were Group-B officers under the Department of Posts whereas the former was a Group-B officer under the Ministry of Finance. The applicants in the present OA have relied on the sub para (x)(e) of first paragraph of the OM dated 29.8.2008 (A/1), which states as under:-

**“e) Group B officers of Department of Posts, Revenue etc. will be granted Grade Pay of Rs. 5400 in PB-2 on non-functional basis after 4 year of regular service in the grade pay of Rs. 4800 in PB-2.”**

As observed in the judgment dated 6.9.2010, a subsequent clarification in letter dated 11.2.2009 that the employees who are allowed the grade pay of Rs. 4800/- on ACP will not be allowed the above non-functional placement in grade pay of Rs. 5400/- was not accepted by Hon'ble Madras High Court.

9. It is seen that in OA No. 296/2014, Hyderabad Bench of the Tribunal in the case of B. Udaya Shankara Rao & others vs. The Government of India, Ministry of Communications and IT, Dept of Posts & others, the same issue as in the present OA was considered by the Tribunal vide order dated 14.9.2015 (Annexure-A/9) in which the judgment of Hon'ble Madras High Court dated 6.9.2010 has been relied and the OA was allowed rejecting similar objections raised by the respondents in that OA. The order dated 14.9.2015 was upheld

by Hon'ble High Court vide order dated 6.11.2018 (Annexure-A/11 of the OA). The contentions in the OA to this effect have not been contradicted by the respondents in their pleadings. It is not the case of the respondents that the judgments at Annexure-A/6 and Annexure-A/9 of the OA are not applicable to the present applicants.

10. The respondents in their Counter have relied on the clarification dated 27.2.2018 of the Ministry of Finance (Annexure-A/13 of the Rejoinder) to deny the claim of the applicants. In this letter dated 27.2.2018, it is seen that it is a note of the under secretary issued with approval of the Secretary, Expenditure, in which it is stated as under:-

“4. It seems that the Court has found the claim of the petitioner valid because of the wordings in the letter of Department of Revenue dated 21.11.2008. This OM says that the 4 years period is to be counted w.e.f. the date on which an officer is placed in the pay scale of Rs.7500-12000. While the literal meaning of this wording means that a mere service in the pay scale of Rs.7500-12000 (corresponding grade pay of Rs.4800) is sufficient, which indicates service in ACP/MACP, the spirit of this wording, which have not been properly expressed is that this 4 years service is to be reckoned in the Grade Pay of Rs.4800 as a part of the post of Superintendent.

5. Since the issue raises a larger policy issue, it would be appropriate if the Department of Revenue seeks legal opinion to seek an appropriate legal remedy from the Supreme Court to set right this policy angle. They may take up the matter with the Ministry of Law based on the points brought out above and may also seek inputs from DoPT which is concerned with the issue of ACP/MACP.”

11. It is clear that the opinion expressed by the officers of the Department of Expenditure vide the letter/note dated 27.2.2018 (A/13) cannot override the provisions of the sub para (x)(e) of the first para of the order dated 29.8.2008 (A/1), which is a Resolution of Government of India implementing the recommendations of the Pay Commission and it was duly published in Gazette of India. As per the provisions in the above sub para as extracted in paragraph 7 of this order, the claims of the applicants are in order since **there is nothing on record to show that the Resolution of Government dated 29.8.2008 (Annexure-A/1) has been amended to exclude the Group B officers who are placed in the grade pay of Rs. 4800/- on account of the financial upgradation under ACP/MACP Scheme from the ambit of the sub para (x) of the first paragraph of the order dated 29.8.2008 (A/1).**

12. The respondents have also cited the letters dated 4.11.2008 (Annexure-R/10 of the Counter) and dated 22.4.2019 (Annexure-R/2 of the Counter) to aver that the claim of the applicants is not admissible. It is seen that the letter at Annexure-R/1 clarifies the date from which the upgradation to grade pay of Rs. 5400/- in PB-2 will take place for the Group B officers who have already completed 4 years of service. This letter does not say anything about applicability of the provision for upgradation to grade pay of Rs. 5400/- for

Group B officers who were allowed grade pay of Rs. 4800/- on account of financial upgradation under the MACP Scheme. Similarly, there is nothing in the letter/clarification at Annexure-R/2 to disallow the benefits claimed by the applicants as per the order/resolution dated 29.8.2008 (A/1). Also, the clarification at Annexure-R/2 cannot have an overriding effect on the Resolution dated 29.8.2008 (A/1). It is further contended that the letter dated 19.8.2019 (A/16) by which the respondents have decided to implement the Tribunal's order in OA No. 296/2014 for the applicants in that OA and it will not be treated as a precedent. But no convincing ground is there in the pleadings of the respondents as to why the ratio of the order dated 14.9.2015 (Annexure-A/9 of the OA) will not be applicable to the present applicants before us. Hence, the contentions of the respondents in their pleadings and in the impugned orders of rejection at Annexure-A/4 series to disallow the claim of the applicants, are not tenable.

13. In view of the above discussions and following the order dated 14.9.2015 (A/9) of Hyderabad Bench of this Tribunal in OA No. 296/2014, which has been implemented by the respondents, we hold that the applicants in the present OA are entitled for the benefit of the Grade Pay of Rs. 5400/- on non-functional basis on completion of four years of their respective service in the Grade Pay of Rs. 4800/- and the impugned rejection orders of the respondents at Annexure-A/4 series of the OA are liable to be set aside. Ordered accordingly.

14. However, we take note of the fact that the applicants have first represented for the benefit on 17.12.2018 (Annexure-A/3) after the delay of more than one year from the date of the judgments relied upon by them at Annexure-A/6, A/7, A/9, A/10 and A/11 of the OA. There is no issue of limitation in this OA since the claim is for fixation of applicants' pay with higher Grade Pay in PB-2 automatically after completion of four years in the Grade Pay of Rs.4800/- in PB-2, which was denied to the applicants and there is no screening or selection involved in the process. Denial of such claim gives rise to continuing cause of action. But the limitation will be applicable for the claim of arrear and salary. Hence, the applicants will be allowed the benefit as per the paragraph 13 of this order on notional basis without any arrear salary, but they will be entitled for the consequential differential pensionary benefits and revised pension on account of the non-functional upgradation to the Grade Pay of Rs. 5400/- as per the provisions of the law.

15. The OA is allowed as above with no order as to costs.

(SWARUP KUMAR MISHRA)  
MEMBER (J)

(GOKUL CHANDRA PATI)  
MEMBER (A)

I.Nath