

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 494 of 2019

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

1. All India Association of Central Excise Gazetted Executive Officers, Odisha Unit, Bhubaneswar, retd. Through its President Sri Duryodhan Samantaray, aged about 52 years, (Gr. B, Gaz.) son of Shri Harekrushna Samantaray, presently working as Superintendent, GST & Central Excise, Bhubaneswar, Commissionerate, C.R. Building, Rajaswa Vihar, Bhubaneswar-7.
2. Shri Subhendra Pattanaik, aged about 52 years, (Gr. B, Gaz.) son of Shri Kamdev Pattanaik, working as Superintendent in GST & Central Excise, Cuttack-V range of Cuttack-I Division, Cuttack-2.
3. Shri Sandeep Kumar Jena, aged about 50 years, (Gr. B, Gaz.) son of late Rasananda Jena, serving as Superintendent in Audit Commissionerate of GST & Central Excise, permanent of Grand Road, Badasankha, Puri-2.

.....Applicants

VERSUS

1. Union of India represented through the Secretary to Government of India, Ministry of Finance, Department of Revenue, North Block, New Delhi- 110001.
2. The Chairperson, Central Board of Indirect Taxes & Customs, Govt. of India, Ministry of Finance, Department of Revenue, North Block, New Delhi.
3. The Chief Commissioner, GST & Central Excise and Customs, C.R. Building, Rajaswa Vihar, Bhubaneswar-751007.
4. The Commissioner, GST & Central Excise, Bhubaneswar Commissionerate, Central Revenue Building, Rajaswa Vihar, Bhubaneswar, Dist. Khurda, PIN-751007.
5. The Commissioner, GST & Central Excise, Rourkela Commissionerate, KK-42, Civil Township, Rourkela, PIN-769012.
6. The Commissioner, Customs (Preventive), Commissionerate, Central Revenue Building, Rajaswa Vihar, Bhubaneswar, Dist. Khurda, PIN-751007.
7. The Commissioner, Audit Commissionerate, GST & Central Excise, Central Revenue Building, Rajaswa Vihar, Bhubaneswar, Dist. Khurda, PIN-751007.
8. The Commissioner, Appeals Commissionerate, GST, Central Excise & Customs, Central Revenue Building, Rajaswa Vihar, Bhubaneswar, Dist. Khurda, PIN-751007.

.....Respondents

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

For the respondents: Mr. S. B. Mohanty, counsel

Heard & reserved on : 16.3.2020

Order on :13.05.2020

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicants have filed this Original Application (in short OA) under section 19 of the Administrative Tribunals Act, 1985 with following prayers (vide para 8 of the OA):-

- “(i) To direct the Respondents to extend the benefit of NFU of Rs. 5400/- to the officers with effect from the date when they had completed four years in GP Rs. 4800/- and re-fix their pay accordingly and grant them the arrears with interest @ 12% per annum;**
- (ii) To pass appropriate order/orders directing the Respondents to extend all consequential benefits to the members of the applicant no. 1;**
- (iii) To pass any other order/orders as deemed fit and proper.”**

2. Learned counsel for the applicant filed an Additional Affidavit on 24.2.2020, enclosing the Resolution dated 5.4.2019 of the All India Association of Central Excise Gazetted Executive Officers, Odisha Unit, Bhubaneswar, authorizing the President Mr. Duryodhan Samantaray to take shelter of the court of law for the dispute in the light of the order dated 6.9.2010 (Annexure-A/4) of Hon'ble Madras High Court in the case of M. Subraminam vs. Union of India & others in W.P. No. 13225 of 2010 , which has been upheld by Hon'ble Apex Court in Civil Appeal No. 8883/2011 vide order dated 10.10.2017 (AnnexureA/5 of the OA). The applicants have also filed the MA No. 557/2019 to permit them to jointly pursue the OA as the cause of action and relief sought for the applicants are similar. The said MA was allowed by this Tribunal vide order dated 11.9.2019 and the respondents were allowed time to file short reply as per the order dated 1.8.2019. Vide order dated 21.11.2019, last opportunity was allowed to the respondents to file counter/short reply. But still no counter or short reply was filed by the respondents.

3. The matter was heard on 20.1.2020. Applicants' counsel filed a copy of the office order dated 6.12.2019 of the Principal Commissioner, Kolkata allowing the benefit as claimed in this OA to the staffs of Kolkata jurisdiction. A copy of the order dated 6.12.2019 was also handed over to the respondents' counsel who was directed to obtain instructions in the matter. On 3.3.2020, the applicants' counsel that in another similar matter in OA No. 146/19, this Tribunal has already allowed the benefit as claimed in this OA to similarly placed employees of Department of Posts, vide order dated 28.2.2020 of the Tribunal, copy of which was also given to the respondents' counsel for obtaining instructions if the order dated 28.2.2020 is applicable to the applicants in this OA or not.

3. The matter was finally heard on 16.3.2020 without any counter or short reply of the respondents who failed to file the same in spite of a number of opportunities already allowed for the same. Heard learned counsel for the applicants and respondents and perused the material on record. The

applicants' case is that they are entitled for the Grade Pay (in short GP) of Rs. 5400/- after completing a period of 4 years of service in the GP of Rs. 4800/- in terms of the law settled by the judgment dated 6.9.2010 (Annexure-A/4) of Hon'ble Madras High Court in which the Union of India through Secretary, Department Revenue and the Central Board of Excise & Customs (to be referred hereinafter as 'Board') were respondents and dispute involved the same issue.

4. The genesis of the dispute is the clarification issued by the Board vide latter dated 11.2.2009 (Annexure-A/3), issuing the following clarifications as under:-

"3. The matter has been examined in consultation with the Department of Expenditure, who have clarified the matter as follows:-

"....Non-functional upgradation to the grade pay of Rs. 5,400 in the pay band PB-2 can be given on completion of 4 years of regular service in the grade pay of Rs. 4,800 in PB-2 (pre-revised scale Rs. 7,500-12,000) after regular promotion and not on account of financial upgradation due to ACP."

4. Thus, it is clear that the officers who got the pre-revised pay scale of Rs. 7,500-12,000 (corresponding to grade pay of Rs. 4,800) by virtue of financial upgradation under ACP will not be entitled to the benefit of further non-functional upgradation to the pre-revised pay scale of Rs. 8,000-13,500 (corresponding to grade pay of Rs. 5,400), on completion of 4 years in the pre-revised pay scale of Rs. 7,500-12,2000."

5. Similar dispute was considered by Madras Bench of the Tribunal and the OA filed by the applicant M. Subramaniam was dismissed. Order of the Tribunal was challenged before Hon'ble Madras High Court in W.P. No. 13525 of 2010 and vide order dated 6.9.2010 (Annexure-A/4), Hon'ble High Court allowed the writ petition after considering the implication of the letter dated 11.2.2009 (Annexure-A/3) with following observations:-

"6. It is not in dispute that the Government of India vide its resolution, dated 29.8.2008 granted grade pay of Rs 5400/- in Pay Band 2 on non-functional basis to the Group B 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 years, 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 Rs.7500-12000 (corresponding to grade pay of Rs.4800) by virtue of financial upgradation under ACP would not be entitled to the benefit of further non-functional upgradation to the pre-revised pay-scale of Rs.8,000-13,500 (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 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.7, 500-12000. (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. 7,500-12000 (pre-revised).

8. Thus, if the 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-year

on a date after such 1.1.2006, he will be given non-functional upgradation from such date on which he completes 4-year in the pay scale of Rs.7,500-12,000 (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/-. 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.

9. Accordingly, the Writ Petition is allowed setting aside the order of the Tribunal, dated 19.4.2010 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 1.1.2008 as per the resolution dated 29. 8. 2010. No costs.”

6. The respondents challenged the order dated 6.9.2010 of Hon’ble Apex Court in Civil Appeal No. 8883/2011 which was dismissed vide order dated 10.10.2017(Annexure-A/5) of Hon’ble Apex Court and a Review Petition filed was also dismissed vide order dated 23.8.2018 (Annexure-A/6).

7. It was also submitted by the applicants’ counsel that the Principal Chief Commissioner, Central GST & Central Excise, Kolkata has extended the same benefit to the staffs under his jurisdiction, who are similarly placed as the applicants vide his order dated 6.12.2019. It is seen that in this case also a representation dated 29.5.2019 & 18.6.2019 (Annexure-A/10 series) of the applicant no. 1 i.e. All India Association of Central Excise Gazetted Executive Officers, Odisha Unit, Bhubaneswar, is pending with the respondent no. 3.

8. In the circumstances, we dispose of this OA with direction to the Respondent No. 3 to examine the representations dated 29.5.2019 and 18.6.2019 (Annexure-A/10 series) of the applicants with reference to the order dated 6.9.2010 of Hon’ble Madras High Court in W.P. No. 13225/2010 (Annexure-A/4 of the OA), which has been upheld by Hon’ble Apex Court and if the applicants are similarly placed as the petitioner before Hon’ble Madras High Court in the above writ petition, then allow similar benefits as allowed in the above order of Hon’ble Madras High Court, taking into consideration the fact that similar benefit has been allowed by Principal Chief Commissioner, Central GST & Central Excise, Kolakata vide his order dated 6.12.2019. If it is felt that the above orders will not be applicable to the applicants, then a speaking and reasoned order is to be passed copy of which is to be communicated to the applicants. The above direction is to be complied by the respondent no. 3 within 3 (three) months of receipt of a copy of this order.

9. The OA stands disposed of as above. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)