

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD**

Allahabad, this the 02nd day of November, 2020

Present:

Hon'ble Mrs. Justice Vijay Lakshmi, Member-J
Hon'ble Mr. Devendra Chaudhry, Member-A

Original Application No. 330/0536/2020
(U/S 19, Administrative Tribunal Act, 1985)

1. Suresh Chandra Sharma, aged about 63 years, son of Late Magha Nand Sharma, R/o SE-42, Shastri Nagar, Ghaziabad. Retired as Superintendent from Central GST, Audit Commissionerate Noida (U.P.).
2. Sanjay Tewari, aged about 52 years, son of Late Deep Chandra Tewari, R/o 806, Tower-10m, Panchsheel Prime Rose, Ghaziabad. Presently posted as Superintendent in the Central G.S.T. Commissionerate, Meerut (U.P.).
3. Ajay Khanna, aged about 49 years, son of Late Mohan Lal Khanna, R/o H.No.52A, Dashmesh Nagar, Baghpat Road, Meerut. Presently posted as Superintendent in the Central G.S.T. Commissionerate, Meerut (U.P.).
4. Aftab Singh, aged about 51 years, son of Shri Mangal Sain, R/o H.No.45-B, Chetnayapuram, Nauchandi Ground Meerut. Presently posted as Superintendent in the Central G.S.T. Commissionerate, Meerut (U.P.).
5. Rajiv Agarwal, aged about 59^{1/2} years, son of late Chandra Prakash Agarwal, R/o 123, Sector-6, ChiranjeevVihar, Ghaziabad. Presently posted as Superintendent in the Central G.S.T. Commissionerate, Ghaziabad (U.P.).
6. Ajay Bhatnagar, aged about 53 years, son of late Vishnu Nandan Swaroop Bhatnagar, R/o G-911, Ashiana Golf Link, Ghaziabad. Presently posted as Superintendent, in the

Central G.S.T. Commissionerate Audit Circle, Ghaziabad (U.P.).

7. Divya Kaushik, aged about 59 years, daughter of Late Ved Prakash Tiwari, R/o SE-66, Shastri Nagar, Ghaziabad. Presently posted as Superintendent in the Central G.S.T. Commissionerate, Ghaziabad (U.P.).
8. Saroj Baghel, aged about 55 years, daughter of Shri Chandrika Singh, R/o PB-303, Gulmohar Tower, ChiranjeevVihar, Ghaziabad. Presently posted as Superintendent in the Central G.S.T. Commissionerate, Ghaziabad (U.P.).
9. Arun Kumar Gaba, aged about 59 years, son of Late Mohan Raj Gaba, R/o 1211 Ashiana Palm Court, Raj Nagar Extension, Ghaziabad. Presently posted as Superintendent in the Central G.S.T. Commissionerate, Ghaziabad (U.P.).
10. Prahlad Singh, aged about 53 years, son of Shri Itwari Lal, R/o E-4 Yamuna Puram, Bulandshahr. Retired (VRS) as Inspector from erstwhile Central Excise, Division-II, Commissionerate, Ghaziabad (U.P.).
11. Awadhesh Kumar Dwivedi, aged about 61 years, son of Late Kedar Nath Dubey, R/o H.No.78 Sector-1, ChiraneevVihar, Ghaziabad. Retired as Superintendent from the Central G.S.T. Commissionerate, Ghaziabad (U.P.).
12. Mohd. Sahid, aged about 52 years, son of Mohd. Sabir, R/o S-7/155 Near Court, Orderly Bazar, Varanasi. Presently posted as Superintendent in the Central G.S.T. Commissionerate, Noida (U.P.).
13. Anoop Chandra Srivastava, aged about 52 years, son of Late Kripa Shanker Srivastava, R/o K-1005, KW Srishti Apartment, Raj Nagar, Extension, Ghaziabad. Presently posted as Superintendent in the Central G.S.T. Audit Commissionerate, Meerut (U.P.).
14. Rajesh Malhotra, aged about 53 years, son of Late Hari Ram Malhotra, R/o C-55 Vasant Vihar, Delhi Road, Saharanpur. Presently posted as Superintendent in the Central G.S.T. Audit Commissionerate, Dehradun.
15. Tapas Chakraborti, aged about 54 years, son of Late ManobilashChakraborti, R/o Flat No. 216, ChiraneevVihar,

Ghaziabad. Presently posted as Superintendent in the Central G.S.T. Appeals Commissionerate, Dehradun.

16. Milan Kumar Tyagi, aged about 49 years, son of Shri Brahamjeet Singh Tyagi, R/o Village and Post Khimavati, District Ghaziabad. Presently posted as Superintendent in the Central G.S.T. Audit Commissionerate, Meerut (U.P.).
17. Lalit Mohan Kandpal, aged about 54 years, son of Shri Nanda BallabhaKandpal, R/o Flat No.51 Type III, Customs & Central Excise Colony, Mangal Pandey Nagar, Meerut. Presently posted as Superintendent in the CCO, Central G.S.T. Zone, Meerut (U.P.).
18. Amit Deoli, aged about 48 years, son of Late Pitamber DuttDeoli, R/o 1-104, Shastri Nagar, Meerut. Presently posted as Superintendent in the Central G.S.T. Range-Rishikesh, Commissionerate, Dehradun.
19. Satyendra Kumar, aged about 50 years, son of Late Ramji Sharma, R/o CCI/02, Avantika, Ghaziabad. Presently posted as Superintendent in the Noida Customs Commissionerate, Tilapta, Gautam Budh Nagar (U.P.).
20. Sudhir Prakash Kala, aged about 52 years, son of Shri Om Prakash Kala, R/o C-H2-301, Classic Residency, Raj Nagar Extension, Ghaziabad. Presently posted as Superintendent at ICD Loni under the Noida Customs Commissionerate Tilapta, Gautam Budh Nagar (U.P.).
21. Umesh Pratap Singh, aged about 52 years, son of Late Deep Singh, R/o 1B/157, BudhiVihar, Moradabad. Presently posted as Superintendent at ICD, Moradabad under the Noida Customs Commissionerate, Tilapta Gautam Budh Nagar (U.P.).
22. Deepak Verma, aged about 48 years, son of Late Raja Ram Verma, R/o 15, Arya Nagar, Opposite Arya Samaj Mandir, Kankarkheda, Meerut. Presently posted as Superintendent in the Central G.S.T. Commissionerate, Dehradun.
23. Pankaj Kumar Awasthi, aged about 52 years, son of Shri Ram Prakash Awasthi, R/o 468 C-Block, Panki, Kanpur. Presently posted as Superintendent in the Central G.S.T. Audit Circle, Allahabad (U.P.).
24. Amresh Chandra Kureel, aged about $59^{1/2}$ years, son of Late Devi Prasad Kureel, R/o 76, Ratan Lal Nagar, Kanpur.

Presently posted as Assistant Commissioner in the Central G.S.T. Audit Commissionerate, Kanpur (U.P.).

.....Applicants.

By Advocate – Shri Jaswant Singh.

V E R S U S

1. The Union of India, through the Secretary, Ministry of Finance, Government of India, North Block, New Delhi.
2. The Secretary, Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, Government of India, New Delhi.
3. The Chairman, Central Board of Indirect Taxes And Customs, North Block, New Delhi.
4. The Principal Chief Commissioner (Cadre Controlling Authority), Central GST and Central Excise, Lucknow Zone, 7-A, Ashok Marg, Lucknow (U.P.).
5. The Chief Commissioner, Central GST & Customs, Meerut Zone, Opposite Chaudhary Charan Singh University, Mangal Pandey Nagar, Meerut (U.P.).
6. The Principal Chief Controller of Accounts, Central Board of Indirect Taxes and Customs, 1st Floor, DGACR Building, I P Estate, New Delhi.

.....Respondents.

By Advocate: Shri L.P. Tiwari.

O R D E R

Delivered By Hon'ble Mr. Devendra Chaudhry, A.M. :

Both Members of this Division Bench have joined online through Virtual Conferencing facility.

2. Shri Jaswant Singh, Id. counsel for the applicants is present in person in the Court and Shri L.P. Tiwari, Id. Respondent's counsel is present on line.

3. This O.A. pertains to grant of non-functional-grade (NFG) to the applicants. The applicants herein are/were working on the post of Superintendent/Assistant Commissioner in the different offices / formations of Central Board of Indirect Taxes & Customs (earlier Central Board of Excise & Customs) (CBIC for short), under Department of Revenue, Ministry of Finance, Government of India. The full particulars of the applicants are given in the array of applicants to this O.A. It is prayed that prior to the implementation of the recommendations made by the Sixth Central Pay Commission, and formulation of the Revised Pay Rules, 2008, in consequence thereof, the cadre of Inspectors in the CBIC, was in the pre-revised pay scale of Rs.6500-10500 and the cadre of Superintendent was in the pre-revised pay scale of Rs.7500-12000. That under the recommendations of the 6th CPC, the erstwhile Annual Career Progression Scheme (ACP) of granting two financial upgradations in the 12th and 24th years of service were replaced by the Modified Career Progression Scheme (MACP) wherein the employees were entitled to receive three financial upgradations in the 10th, 20th and 30th years of their service.

3.1 That, with regards to implementation of this scheme, the CBIC issued a letter circular dated 11.02.2009 which was challenged in the Hon'ble Madras High Court wherein vide order dated 06.09.2010 in the Writ Petition No 13225/2010, M Subramaniam vs Union of India, the Hon High Court Madras directed the respondents to extend the benefit of Grade Pay of Rs

5400/- to the petitioner w.e.f. the date he had completed four years of regular service in the pre-revised scale of 7500-12,000 (corresponding to Grade Pay of Rs 4800), as per Resolution dated 29.08.2008 of the Finance Department. The SLP filed by Union of India was dismissed by the Hon'ble Apex Court vide its order dated 10.10.2017 and a Review Petition thereupon was also dismissed vide order dated 23.08.2018.

3.2 It is further submitted that the claim of the applicants in this OA is also identical and so, it is an already settled matter having been already been decided by orders of the Hon Madras High Court dated 06.09.2010 in the matter above and the Hon'ble Apex Court in the case of M. Subramaniam (*supra*). Further that in light of these orders, different benches of the Central Administrative Tribunal such as the Principal Bench, the Chandigarh Bench, the Mumbai Bench and the Hyderabad Bench have all followed the above verdict of the Hon Madras High Court and the Hon'ble Supreme Court and have allowed the claim of the concerned applicants seeking the same benefit. That even this bench in its earlier orders has directed similarly and granted benefit to the concerned employees who prayed for identical relief in their concerned OAs. Copies of the concerned judgements have been filed. However, in spite of this, the respondents have not considered the representations of the applicants and summarily turned down, on the specious plea that the said judgments were applicable *in personam* and not *in rem*. As a result, employees

such as the present applicants have been compelled to rush to this Bench to seek relief.

3.3 It is therefore prayed that the pay of the applicants in the present OA also needs to be fixed in the Non-Functional Grade (NFG) pay scale of Rs. 9300-34800/- in Pay Band II with grade pay of Rs.5400/- with all consequential benefits w.e.f. the dates they had completed four years of regular service in the grade pay of Rs. 4800/-. It is further prayed that entire arrears of salary and other emoluments payable to the applicants as a consequence of grant of Grade Pay of Rs.5400/- be paid to them from the due date along with interest. Accordingly, it is prayed that the OA be accepted and the prayed relief be granted.

4. *Per contra* the respondents have held that the judgment passed by the Hon'ble Madras High Court is judgment *in personam* and so no *in rem* orders can be issued even if the matter is covered by the Hon'ble High Court of Madras and the subsequent upholding of the judgement by the Hon'ble Apex Court.

5. We have heard the Id counsels for both the parties at length and perused the records made available in PD format.

6. It is quite outrageous that the respondents are ignoring the fact that apart from this Bench, other Benches of this Tribunal have repeatedly directed compliance of the said judgement of M. Subramaniam (*supra*)by holding that the judgements are to be complied *in rem* and not to be treated as *in personam*. Hence, it

would be in fitness of things if the respondents in the present OA also consider the case of the applicants and meet out the same treatment as has been given to their other counter parts all over India through judgements of the various Tribunal benches in light of M. Subramaniam (*supra*). It would be pertinent to note that pay fixation matters, like the one under consideration are governed by uniform policies of the Government and so any judgments on these matters by their very nature are always judgments *in rem* and cannot be interpreted as judgments *in personam* by implementing/complying authority.

6.1 The respondents are accordingly directed to ensure that the benefit of the judgment referred in the judgment passed by this Tribunal on 09.01.2020 in OA No. 1005/2019 Pradeep Kumar and others V. Union of India others (Annexure No. A-14) be also given to all the persons in this OA as they are entitled to the same whether they are retired or in service. This exercise is to be completed within a period of four months from the date of receipt of certified copy of this order.

7. It is made clear that we have not expressed any opinion on merits of individual case.

8. A copy of this order be also served on the Union Finance Secretary by the Registry to consider issuing directions on identical matters such as above for *in rem* consideration and

not *in personam*. This would avoid needless litigation in the future.

9. With the above directions, the O.A. is disposed of.

10. No order as to costs.

(Devendra Chaudhry)
Member (A)

(Justice Vijay Lakshmi)
Member (J)

/M.M/