

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the **02nd** day of **December** 2020

Original Application No. 330/6692020

Hon'ble Justice Mrs. Vijay Lakshmi, Member (J)

Hon'ble Mr. Navin Tandon, Member (A)

1. Kamlesh Bajpai, Aged about 49 years, S/o Shri P.S. Bajpai Presently posted as Superintendent in NACIS, ZU, CGST Commissionerate Kanpur.
2. Jai Kumar, Aged about 50 years, S/o Shri Raghunandan Presently posted as Superintendent, CGST Division – IV Commissionerate Kanpur.
3. Ranjana Saxena, aged about 58 years, D/o late Shri Sidh Gopal Nigam, presently posted as Superintendent CGST Division I, Commissionerate, Kanpur.
4. Santosh Kumar, Aged about 60 years, S/o late Radhey Shyam, Retired Superintendent, CGST, Commissionerate Kanpur.
5. Rajiv Gupta, Aged about 51 years, S/o late Madan Gopal Prasad Presently posted as Superintendent CGST Commissionerate Kanpur.
6. Rakesh Kumar, aged about 54 years, S/o Shri M.C. Pandey presently posted as Superintendent CGST Commissionerate Kanpur.
7. Lokendra Singh, aged about 48 years, S/o Vishwanath Singh, presently posted as Superintendent CGST Division I, Commissionerate, Kanpur.
8. Ajay Kumar Srivastava, aged about 54 years, S/o late Shri B.S.L. Srivastava, presently posted Superintendent, Technical Branch HQ, CGST Commissionerate Kanpur. ‘
9. Sanjay Kumar Srivastava, aged about 50 years, S/o J.S. Srivastava presently posted as Superintendent, Division I, CGST Commissionerate, Kanpur.
10. Munna Prasad aged about 66 years, S/o Moti Lal, Retired Superintendent from CGST, Commissionerate Kanpur.
11. Ajay Kumar Maid, aged about 52 years, S/o R.K. Maid, presently posted as Inspector, CGST Commissionerate Meerut.
12. Manoj Kumar Nigam, Aged about 54 years, S/o Late Shri Gopi Krishna Nigam, presently posted as Superintendent CGST Audit Commissionerate, Kanpur.

13. Ajay Sonkar Aged about 48 years, S/o late Shri B.L. Sonkar, presently posted as Inspector Audit Commissionerate Kanpur.
14. Ajay Kumar Boudh, Aged about 50 years, S/o Shri Ram Chet Boudh, presently posted as Superintendent, CGST, Audit Commissionerate, Kanpur.
15. Rajiv Tondon, aged about 53 years, S/o late Shri Bishan Narain Tandon, presently posted as Superintendent CGST Audit Commissionerate, Kanpur.
16. Raj Kumar Rajak, aged about 52 years, S/o Pyare Lal, presently posted as Superintendent CGST Audit Commissionerate Kanpur.
17. Nirmal Kumar Tiwari, aged about 52 years, S/o Devi Charan Trivedi, Presently posted as Superintendent CGST Audit Commissionerate Kanpur.
18. Jagdev Prasad, aged about 55 years, S/o late Shri Manfool, Presently posted as Superintendent CGST Audit Commissionerate Kanpur.
19. Manoj Kumar Shukla, aged about 59 years, S/o Vinod Kumar Shukla, Presently posted as Superintendent CGST Audit Commissionerate Kanpur.
20. Pratibha Agarwal, aged about 52 years, W/o Sanjay Kumar Agarwal, Presently posted as Superintendent CGST Audit Commissionerate Kanpur.
21. Naresh Kumar Kholi, aged about 53 years, S/o late Shri Maya Ram Kohli, presently posted as Superintendent DGGI Kanpur, Regional Unit Kanpur, Parent Commissionerate CGST Lucknow.
22. Manish Tiwari, aged about 51 years, S/o Shri Chandra Mauli Tiwari, presently posted as Senior Intelligence Officer, DGBI Kanpr Regional Unit, Kanpur, Parent Commissionerate Lucknow.
23. Anil Kumar Verma, aged about 53 years, S/o I.P. Verma, presently posted as Superintendent DGGI Kanpur, Regional Unit, Parent Commissionerate CGST Lucknow.
24. Praveen Kumar Singh, aged about 54 years, S/o Raghunath Singh, Presently posted as Inspector CGST Audit Commissionerate Kanpur.
25. Pradeep Kumar Jugran aged about 55 years, S/o Late Madan Mohan Jugran, Presently posted as Inspector CGST Audit Commissionerate Noida.
26. Girish Chandra Bhatt, aged about 53 years, S/o Jai Dutt Bhatta, presently posted as Inspector CGST Commissionerate Meerut, CCO Meerut.
27. Rajesh Singh Deval, aged about 53 years, S/o Jagat Swaroop Deval, Presently posted as Superintendent, Customs Commissionerate Lucknow.

28. Vinod Kumar Gupta,, S/o Ram Lal Gupta, Retired Superintendent.
29. Vivek Gupta, S/o Ram Lal Gupta, Superintendent CGST, Kanpur.
30. Krishna Kumar Tripathi, S/o late D.S. Tiwari, Superintendent CGST, Jhansi.
31. Shailendra Kumar Dhusia, S/o late Shri Hari Nandan Prasad Dhusia, Posted as Superintendent CGST Division, Jhansi.
32. Anil Kumar Tiwari, S/o late Shri Mool Chandra Tiwari, posted as Superintendent CGST Division Jhansi.
33. Vivek Mishra, S/o Maithili Saran Mishra, Posted as Inspector Audit Commissionerate Kanpur.
34. Sahab Tiwari, S/o late Prem Shankar Tiwar, posted as Inspector CGST Kanpur.
35. Amar Jeet Singh, S/o late Gur Bachan Singh, Inspector CGST Kanpur.
36. Bipin Kishore Mehrotra, S/o K.K. Mehrotra, retired Superintendent CGST, Kanpur.
37. Piyush Kumar, S/o Om Prakash, posted as Inspector CGST Commissionerate Kanpur.
38. Rameshwar Dayal, S/o Shyam Lal, Posted as Superintendent CGST Divison Jhansi.
39. Saurabh Singh, S/o late Girja Shankar Singh, posted as Superintendent Audit Commissionerate, Kanpur.
40. Vibha Verma, D/o S.B.L. Verma, posted as Inspector CGST Kanpur.
41. Vaibhav Kumar Nigam, S/o P.R. Nigam, posted as Inspector, NACIN, ZC Kanpur.
42. Sanjay Kumar Saxena, S/o late Kunwar Bahadur Saxena, Posted as Inspector CGST, Kanpur.
43. Monica Shukla, W/o Jyoti Bhatta Charya, Posted as Inspector NACIN, ZC Kanpur.
44. Ravindra Kumar, S/o Om Prakash, posted as Superintendent Audit Commissionerate Kanpur.
45. Raj Kumar, S/o Ghasite Lal, posted ass Superintendent CGST Division, Farizabad.
46. Karan Singh, S/o Shkuroo, Retired from the post of Superintendent CGST Commissionerate, Allahabad.
47. Kaushalendra Kumar Asthana, S/o L.N. Asthana, posted as Superintendent CGST Commissionerate Allahabad.

48. Raj Bahadur Singh, S/o Khushali Ram, posted as Superintendent CGST Division Farukkhabad.
49. Krishna Shankar Shukla, S/o Dr. C.P. Shukla, posted as Superintendent, L.C.S. Banbasa.

. . .Applicants

By Adv : Shri Ashutosh Shukla

V E R S U S

1. Union of India through the Secretary, Ministry of Finance, Department of Revenue, Government of India, New Delhi.
2. Central Board of Indirect Taxes and Customs through its Chairman, New Delh.
3. The Principal Chief Commissioner (Cadre Controlling Authority) Central Goods and Service Tax and Central Excise, Lucknow Zone. 7-A Ashok Marg, Lucknow (U.P.).
4. The Secretary, Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, Government of India, New Delhi.
5. The Commissioner, CGST and Central Excise Commissionerate 117/7 Sarvodaya Nagar Kanpur.
6. The Commissioner CGST Audit Commissionerate Kanpur.
7. The Commissioner CGST Commissionerate, Lucknow.
8. The Commissioner of Customs Lucknow.
9. The Commissioner CGST Commissionerate, Noida.
10. The Commissioner CGST Commissionerate, Meerut.

. . .Respondents

By Adv: Shri Chakrapani Vatshayan

ORDER

By Hon'ble Justice Mrs. Vijay Lakshmi, Member (J)

We have joined this Division Bench online through Video Conferencing facility.

2. Shri Ashutosh Shukla, learned counsel for the applicants and Shri M.K. Sharma brief holder of Shri Chakrapani Vatshayan, Advocate, who has received advance notice on behalf of respondents, both are present in

Court. The learned counsel for the parties agreed that the audio and visual quality is proper.

3. This OA pertains to grant of Non Functional Grade to the applicants. The applicants are presently posted as Inspector / Superintends (Group 'B') in Central Excise and CGST in different Commissionerate in Uttar Pradesh under Ministry of Finance, Department of Revenue, Government of India. All of them are getting pre-revised pay scale of Rs. 7500 – 12000 (Grade Pay Rs. 4800/-), on non functional basis since more than 4 years.

4. Learned counsel for the applicants at the very outset submitted that it is a covered matter. Our attention has been drawn to earlier order passed by this Bench on 15.10.2020, in OA No. 574 of 2020, copy whereof has been annexed as Annexure No. 13 to the OA. Learned counsel for the applicants submitted that the applicants are also entitled to the same treatment.

5. After the 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, passed in the Writ Petition No 13225/2010, **M Subramaniam vs Union of India**, the Hon'ble High Court of 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 filed thereupon was also dismissed vide order dated 23.08.2018.

6. 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 decided by orders of the Hon'ble 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, all have followed the above verdict of the Hon'ble Madras High Court and the Hon'ble Supreme Court and have allowed the claim of the concerned applicants seeking the same benefit. Even this bench, in its earlier orders has directed similarly and has granted the same benefit to the concerned employees, who prayed for identical relief in their concerned OAs. Copies of the concerned judgements have been filed.

7. The grievance of the applicants is that despite this, the respondents have not considered the representations of the applicants and summarily turned down their prayer on the specious plea that the said judgments were applicable *in personam* and not *in rem*. As a result, several employees such as the present applicants have been compelled to rush to this Bench to seek relief.

8. 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 allowed and the prayed relief be granted.

9. *Per contra* the respondents have contended 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.

10. We have heard the learned counsel for both the parties at length and perused the records made available in PD format.

11. 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 the complying authority.

12. 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 **O.A. No. 1005/2019 Pradeep Kumar and others V. Union of India others**, 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.

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

14. **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.**

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

16. No order as to costs.

17. Hon'ble Mr. Navin Tandon, Member (Administrative) has consented this order during virtual hearing.

(Navin Tandon)
Member (A)

/pc/

(Justice Vijay Lakshmi)
Member (J)