

Reserved
On 21.12.2020

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

Allahabad, this the **06th** day of **January**, 2021

Present:

Hon'ble Mrs. Justice Vijay Lakshmi, Member-J

Hon'ble Mr. Devendra Chaudhry, Member-A

Original Application No. 330/00755/2020

(U/S 19, Administrative Tribunal Act, 1985)

Neeraj Kumar, age 53 S/o Late Lal Ji Sahu, R/o 116-A, Ashok Nagar,
Prayagraj-211001 (U.P.)

.....Applicant.

By Advocates – Shri Yogesh Srivastava

Shri Noor Muhammad

VERSUS

1. The Union of India, through the Secretary, Ministry of Finance, Department of Revenue, Government of India, New Delhi.
2. The Central Board of Indirect Taxes and Customs through its Chairman, Government of India, New Delhi.
3. The Principal Chief Commissioner (Cadre Controlling Authority) Central Goods and Services Tax and Central Excise, Lucknow Zone, 7-A Ashok Marg, Lucknow, U.P.
4. The Commissioner, CGST & Central Excise, 38, M.G. Marg, Civil Lines, Allahabad, U.P.
5. The Commissioner (Audit) CGST & Central Excise Audit Commissionerate, Kanpur 117/7, Sarvodaya Nagar, Kanpur-208005, U.P.

6. Assistant Commissioner (Audit) CGST, IVth Floor, Revenue Building near District Court Bus Stand Kalepur, Gorakhpur-273001.

.....Respondents.

By Advocate: Shri Chakrapani Vatsyayan

ORDER

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

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

2. Shri Yogesh Srivastava, learned counsel for the applicant and Shri Chakrapani Vatsyayan, learned counsel for the respondents, both are present in Court.

3. This O.A. pertains to non-grant of non-functional-grade (NFG) to the applicant. *Per* the applicant, he was promoted to the post of Inspector on 19.08.2003 (Notional Promotion on 01.07.2001). That he had been holding the post of Inspector before he was promoted to the post of Superintendent and on 15.09.2019, he took VRS. That the applicant while still working on the post of Inspector was granted benefits of financial up gradations under the ACP and/or the MACP Schemes that had the effect of placing him in the pre-revised pay scale of Rs.7500-12000, or granting the Grade Pay of Rs.4800/-(meant for the cadre of Superintendents), on non-functional basis w.e.f. the due date. Further 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 up gradations 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 up gradations in the 10th, 20th and 30th years of their service. That the Central Board of Excise and Customs, Department of Revenue, Ministry of Finance, Government of India vide a letter dated 21.11.2008 had issued a clarification to the effect that "Department of Expenditure have now clarified 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 (pre-revised). Thus, if an officer had completed 4 years on 01.01.2006 or earlier, he will be given the non-functional up gradation w.e.f. 01.01.2006. If the officer completes 4 years on a date after 01.01.2006, he will be given non- functional up gradation from such date on which he completes 4 years in the pay scale of Rs.7500-12000 (pre-revised).

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 applicant 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. 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 applicant and summarily turned down, on the specious plea that the said judgments were applicable *in personam* and not *in*

rem. As a result, an employee such as the present applicant has been compelled to rush to this Bench to seek relief.

3.3 It is therefore prayed that the pay of the applicant 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 he 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 applicant as a consequence of grant of Grade Pay of Rs.5400/- be paid to him 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 learned 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 applicant 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 be also given to the applicant in this OA as he is entitled to the same though he is retired. 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/