

Reserved
On 05.01.2021

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

Allahabad, this the **20th** day of **January**, 2021

Present:

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

Original Application No. 330/00811/2020
(U/S 19, Administrative Tribunal Act, 1985)

1. Sanjay Kumar Pathak aged about 51 years, son of Late J P Pathak, R/o 79, Mayur Vihar, Phase-I, Meerut. Presently posted as Superintendent, in the Central GST Commissionerate, Meerut (U.P.).
2. Ravindra Kumar aged about 62 years, S/o of Shri Jaipal Singh R/o 3/37 Shradha Puri, Phase-I, Meerut. Retired as Superintendent from Central GST Division –I, Commissionerate Meerut (U.P.).
3. Ram Gopal Sagar, aged about 53 years, son of Late Ram Swaroop Singh, R/o 97/5, Sector-9, Shastri Nagar, Meerut. Presently posted as Superintendent in the CCO, Central GST Zone, Meerut, (U.P.).
4. Sanjay Anand Massey, aged about 54 years, son of Late Dr. Baker Swarup Massey, R/o 496, Nagla Battu, Civil Lines, Meerut. Presently posted as Superintendent in the CCO, Central GST Zone, Meerut, (U.P.).
5. Ramesh Kumar, aged about 56 years, son of Late Ram Dhani R/o H. no. 304, SF Block-11, Sector-Omicron, Greater Noida, Gautam Budh Nagar. Presently posted as Superintendent in the Central GST Commissionerate, Noida, (U.P.).
6. Amit Kumar Jain, aged about 52 years, son of Shri Rishab Kumar Jain, R/o KM-5 Kavi Nagar, Ghaziabad. Presently posted as Superintendent, in the Central GST Audit Commissionerate, Noida (U.P.).
7. Ganesh Thakur, aged about 52 years, son of Shri Ram Nirikshan Thakur R/o B-411, Gaur Homes, Block-E, Govind Puram, Ghaziabad. Presently posted as Superintendent, in the Noida Customs Commissionerate, Tilapta, Gautam Budh Nagar (U.P.).

8. Gyanendra Singh, aged about 52 years, son of Shri Hawaldar Singh R/o D-199, Sector-Omicron 2, Greater Noida, Gautam Budh Nagar. Presently posted as Superintendent, in the Noida Customs Commissionerate, Tilapta, Gautam Budh Nagar (U.P.).
9. Himanshu Joshi, aged about 41 years, son of Shri Satish Chandra Joshi, R/o E-134 Nehru Colony, Dehradun. Presently posted as Inspector, in the Central GST Audit Commissionerate, Dehradun.
10. Vinay Kumar Choudhary, aged about 41 years, son of Shri Late Ganesh Prasad Choudhary, R/o 5/173, S-2, Vaishali, Ghaziabad, Retired as Superintendent from Central GST Commissionerate, Dehradun.
11. Ranjeet Singh, aged about 58 years, son of Late Shri Shambhu Prasad, R/o 7L/4D/1, Shivpuri, Govindpur, Allahabad (Prayagraj). Presently posted as Superintendent, in the Central GST Commissionerate, Kanpur.
12. Mrs. Sanchika Verma, aged about 52 years, wife of Kamlesh Kumar Verma, R/o S-404, Siddhartha Estate, Kanwali Road Near Balliwala Chowk, Dehradun. Presently posted as Superintendent in the Central GST Audit Commissionerate, Dehradun.

.....Applicants.

By Advocate – Shri Jaswant Singh

VERSUS

1. The Union of India, through the Secretary, Ministry of Finance, Department of Revenue, Government of India, 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 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 Jaswant Singh, learned counsel for the applicants and Shri Chakrapani Vatsyayan, learned counsel for the respondents, both are present in Court.

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. 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. 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 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. 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, the 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 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 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 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

- i. 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 applicants in this OA as entitled to the same.
- ii. 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)
/M.M/

(Justice Vijay Lakshmi)
Member (J)