

(Reserved on 09.11.2020)

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

Allahabad, this 12th day of November, 2020

Present:

Hon'ble Mrs. Justice Vijay Lakshmi, Member-J
Hon'ble Mr. Tarun Shridhar, Member-A

Original Application No. 1331/2019
(U/S 19, Administrative Tribunal Act, 1985)

1. Pradeep Kumar Dubey, aged about 54 years, son of Late Shri K.D.P. Dubey, r/o 406A/338D, Colonelganj, Allahabad, presently posted as Superintendent, in the Office of the Commissioner Customs (P), Lucknow and having parent Commissionerate at CGST & Central Excise, Allahabad-U.P..
2. S.R.L. Verma, aged about 59 years, son of Late Shiv Ratan Lal Verma, presently posted as Assistant Commissioner Division-I Gorakhpur of CGST & Central Excise Commissionerate Varanasi.
3. Bhupendra Vijay, aged about 53 years, son of Shri B.M. Vijay, presently posted as Superintendent, at Headquarters of CGST & Central Excise Commissionerate Varanasi.
4. Gauri Shankar Pandey, aged about 62 years, son of Late Shri Jagannath Pandey, retired as Inspector on 31-01-2018 r/o Vill. & Post-Reaoti, South Tola, Distt-Ballia.
5. Ashok Kumar, aged about 52 years son of Late Shri Jagdish Prasad, presently posted as Superintendent Gorakhpur Division-II of CGST & Central Excise Commissionerate Varanasi.
6. Ujjwal Srivastava, aged about 52 years son of Late Shri Ramesh Kant, presently posted as Superintendent CGST & Central Excise Commissionerate Varanasi.

7. Sanjay Tiwari, aged 45 years S/o of Shri Subhash Chandra Tiwari, presently posted as Superintendent CGST & Central Excise Commissionerate Varanasi.
8. Anand Mohan Bali, aged about 54 years S/o of Late Shri Gangeshwar Prasad Bali, presently posted as Superintendent CGST & Central Excise Commissionerate Varanasi.
9. Vinay Kumar Mishra, aged about 51 years, s/o of Shri Bankey Bihari Mishra, presently posted as Superintendent CGST & Central Excise Commissionerate Varanasi.
10. S.K. Vishwakarma aged about 63 years, son of Shri Manbodh Vishwakarma, retired Superintendent, r/o 36A/27C Sulem Sarai, Allahabad.
11. Ravi Prakash Pandey, aged about 51 years, s/o, Shri Jagdish Pandey presently posted as Superintendent Division Gorakhpur CGST & Central Excise Commissionerate Varanasi.
12. Arvind Kumar, aged about 53 years, s/o Shri Ram Lakhan Srivastava, posted as Superintendent Division Gorakhpur, CGST & Central Excise Commissionerate Varanasi.
13. Sujit Kumar Srivastava, aged about 51 years, s/o of Shri Awadhesh Kumar Srivastava presently posted as Inspector Headquarters of CGST & Central Excise Commissionerate Allahabad.
14. Ashok Kumar, aged about 54 years, s/o of Shri Bachhu Lal presently posted as Inspector Division Allahabad-II CGST & Central Excise Commissionerate Allahabad.

.....Applicants.

By Advocate – Ms. Vanashri Dubey.

V E R S U S

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 Chief Commisssioner, (Cadre Controlling Authority) C.G.S.T. & Central Excise Lucknow Zone, 7 A Ashok Marg Lucknow-U.P.
4. The Commissioner, C.G.S.T. & Central Excise, 38 M.G. Marg, Civil Lines, Allahabad-U.P.
5. The Commissioner, C.G.S.T. & Central Excise, 9 Maqbool Alam Road, Varanasi U.P.
6. The Commissioner, Customs (Preventive) Commissionerate, U.P. & Uttarakhand, 5th & 11th Floor, Kendriya Bhawan, Sector-H, Aliganj, Lucknow-U.P.

.....Respondents.

By Advocate: Shri Chakrapani Vatsyayan.

ORDER

Delivered By Hon'ble Mr. Tarun Shridhar, A.M. :

Ms. Vanashri Dubey, learned counsel for the applicants and Shri M.K. Sharma holding brief of Shri Chakrapani Vatsyayan, learned counsel for the respondents, both are present in Court.

3. Vide this O.A., the applicants seek grant of non-functional-grade (NFG). The applicants herein are/were working on the post of Superintendent/Assistant Commissioner/Inspector 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 applicants pray 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. 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 was 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 respectively.

3.1 During the course of implementation of this scheme, the CBIC issued a letter/circular dated 11.02.2009 which was challenged in the Hon 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 said circular/clarification stated as under:-

“. 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 of Rs.7,500-12,000) after regular promotion and not on account of financial upgradation due to ACP.”

The SLP filed by the Union of India was dismissed by 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. The Hon'ble Madras High Court categorically observed that the said circular cannot be given effect to without amending the relevant Rules.

3.2 The claim of the applicants in this OA is also identical and so, it is an already settled matter having been decided by the Hon'ble Madras High Court on 06.09.2010 in the matter above and the Hon'ble Apex Court in the case of M. Subramaniam (*supra*). Further, in the 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 it 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 a relief which

should have been extended by the department in the normal routine.

3.3 The applicants pray 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.

4. *Per contra* the respondents have contended that the judgment passed by the Hon'ble Madras High Court is judgment *in personam*, 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 Apex Court.

5. We have heard the learned counsels for both the parties at length and perused the records made available to us.

6. It is both surprising and disappointing 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 mete out the same treatment as has been given to their other counterparts 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 authorities.

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 is extended to all the persons in this OA as they are entitled to the same irrespective of the fact whether they are retired or in service. This exercise is to be completed within a period of two months from the date of receipt of certified copy of this order. We expect the respondents to extend similar benefit to other eligible employees also in the light of the Judgments/Orders quoted earlier, without pushing them into seeking legal redressal.

7. A copy of this order be also served on the Union Finance Secretary by the Registry to consider issuing clear directions on

identical matters such as above for *in rem* consideration and not *in personam*. This would avoid needless litigation in the future.

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

9. No order as to costs.

(Tarun Shridhar)
Member (A)

(Justice Vijay Lakshmi)
Member (J)

/M.M/