

(Reserved on 28.01.2021)

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

Allahabad this the 16th day of February, 2021

Present:

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

Original Application No. 330/00106/2021
(U/S 19, Administrative Tribunal Act, 1985)

1. Rajesh Kumar Rai, aged about 43 years, son of Shri Ramakant Rai, R/o 1204/2 While Orchid, Gaur City-2, Greater Noida. Presently posted as Inspector, in the Central GST, Audit Commissionerate Noida (U.P.).
2. Mukesh Kumar, aged about 42 years, son of Shri Bhagwan Das, R/o Flat No. SI, 703 EldecoAamantranAppartment, Sector-119, Noida. Presently posted as Inspector, in the Central GST, Audit Commissionerate Noida (U.P.).
3. Prashant Kumar, aged about 44 years, son of Late Prem Narain, R/o C/o Shri Ayan Gaushala Road, Near Avas Vikas, Chandausi. Presently posted as Inspector, in the Range-Chandausi, Division-Badaun, Central GST, Commissionerate Gautam Budh Nagar (U.P.).
4. Anand Singh, aged about 42 years, son of Late Mahendra Pratap Singh, R/o ALMS II, HarnarayanVihar Colony, Sarnath, Varanasi. Presently posted as Inspector, in the Central GST, Division Haridwar.
5. Bikam Singh Bisht, aged about 52 years, son of Shri V.S. Bisht, R/o 125/1, Dobhal Wala Dehradun. Presently posted as Superintendent, in the Central GST, Commissionerate Haridwar Division, Dehradun.
6. Munna Lal, aged about 56 years, son of Late Shri Asharfi Lal, R/o AD-57, Avantika, Ghaziabad. Presently posted as Superintendent, in the Central GST, Commissionerate Noida (U.P.).
7. Ashok Kumar Gupta, aged about 52 years, son of Shri Ramanand Sah, R/o H.No.240, Sector-1, ChiranjeevVihar, Ghaziabad. Presently posted as Superintendent, in the Central GST, Commissionerate Ghaziabad (U.P.).

8. Jai Kumar, aged about 47 years, son of Shri Dwarika Prasad, R/o B-14/199, HimgiriAppartment, Sector-34, Noida. Presently posted as Inspector, in the Central GST, Commissionerate Noida(U.P.).
9. Anil Kumar Singh, aged about 52 years, son of Late Chandra Shekhar Singh, R/o E-346, Gaur Grandeur, Sector-119, Noida. Presently posted as Superintendent, in the Central GST, Commissionerate Gautam BudhNagar(U.P.).
10. Aupama Khamankar, aged about 53 years, wife of Sri Prashant Khamankar, R/o H.No.14, Sector-2, ChiranjeevVihar, Ghaziabad. Presently posted as Superintendent, in the Central GST, Commissionerate Noida(U.P.).
11. Surendra Kumar, aged about 50 years, son of Late Shri Amar Singh, R/o BE-262, Avantika, Ghaziabad. Presently posted as Inspector, in the Central GST, Audit Commissionerate Noida(U.P.).
12. Hareesh Kumar Bajpai, aged about 54 years, son of Late Shri Vishnu Narain Bajpai, R/o 1518 Crema MahaganModerne Sector-78, Noida, Gautam Budh Nagar. Presently posted as Assistant Commissioner, in the Central GST, Commissionerate Gautam BudhNagar(U.P.).
13. Madan Pal Singh, aged about 54 years, son of Late Santu Ram, R/o 114, 14 Lane, Shiv Vihar, Delhi Road, Saharanpur (U.P.). Presently posted as Superintendent, in the Central GST, Audit Commissionerate Dehradun.
14. Pushpendera Singh Chauhan, aged about 52 years, son of Late Shri Sushil Chauhan, R/o H.No.64, Lane No.3A, DondaDharampur, Dehradun. Presently posted as Superintendent, in the Central GST, Audit Commissionerate Dehradun.
15. Sanjay Juyal, aged about 53 years, son of Late Shri S.N. Juyal, R/o House No.298, New Awas Vikas Colony Gangapur Road, Rampur U.P. Presently posted as Superintendent, in the Central GST, Audit Commissionerate Dehradun.
16. Rajeev Kumar Gaur, aged about 51 years, son of Shri Ram Padarth Gaur, R/o Flat No.906, Towar-3, PanchsheelPremroseHapur Road, Ghaziabad. 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, 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 M.P. Mishra.

ORDER

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

Shri Jaswant Singh, learned counsel for the applicants and Shri M.P. Mishra, learned counsel for the respondents, both are present.

2. 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).

2.1 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.

2.2 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.

2.3 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.

3. *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.

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

5. 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. 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 A-14) be also given to the applicants in this OA as entitled, based on identical nature of facts. It is made clear that we have not expressed any opinion on merits of individual case. This exercise is to be completed within a period of four months from the date of receipt of certified copy of this order.

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

9. No order as to costs.

(Devendra Chaudhry)
Member (A)

(Justice Vijay Lakshmi)
Member (J)

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