

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00461/2020

Jabalpur, this Friday, the 06th day of November, 2020

HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER
HON'BLE MS. NAINI JAYASEELAN, ADMINISTRATIVE MEMBER



1. Uday Singh Kushwaha, S/o Late Shri Govind Singh Kushwaha, D.O.B. 14.02.1962, Working as Superintendent, CGST, Indore, R/o A-234, Greater Brajeshwari, Pipliyana, Indore-452016
2. Rajesh Mishra, S/o Late R.P.Mishra, D.O.B. 06.02.1961, Working as Superintendent, CGST, Indore, R/o B.J.Vihar, Behind S.B.I. Prakash Nagar, Near Shiv Moti Nagar, Indore-452016
3. Ravi Shanker, S/o Late Shri B.P.Sinha, D.O.B. 19.09.1960, Working as Superintendent, CGST, Indore, R/o H.No. 69, Sector-A, Shriyantra Nagar, Khandwa Road, Indore-452001
4. Rajesh Kumar Soni, S/o Late Shri S.R.Soni, D.O.B. 01.01.1962, Working as Superintendent, CGST, Indore, R/o 659, Sector-A, Mahalaxmi Nagar, Balaji Heights Road, Indore-452001
5. Satyanshu Mishra, S/o Late Ramesh Kumar Mishra D.O.B. 08.06.1961, Working as Superintendent, CGST Indore, R/o 197 Pushpratan Avenue, Near Vidyasagar School, Bicholi Mardana Road, Badiya Keema, Indore-452016
6. Farrukh Jaffar, S/o Late M. Zafar, D.O.B. 12.05.1963, Working as Superintendent, Commissioner-Appeal Bhopal, R/o H.No. 16, Behind Old Civil Court, Opp. Sultan Masjid, Shehjehanabad, Bhopal-462001



7. Shrikant Borker, S/o Shri A.L.Borker, D.O.B. 17.02.1964, Working as Superintendent, CGST, Indore R/o 6A, B.L.Vihar, Near SBI Prakash Nagar, Near Shiv Moti Nagar, Indore-452001
8. Shrikant Patankar, S/o V.M. Patankar, D.O.B. 18.03.1962, Working as Superintendent, CGST, Indore, R/o 47, Lokmanya Nagar, Extension, Kesar Bagh Road, Indore 452009
9. Dinesh Chepe, S/o Late Sumantrao Chepe, D.O.B. 28.11.1960, Working as Superintendent, CGST, Indore, R/o M-320, Vijaynagar, Annapurna Road, Behind New Alpine Academy, Indore 452009
10. Ravindra Ghanshani, S/o Shri Hari Krishan Ghanshani, D.O.B. 02.04.1962, Working as Superintendent, CGST, Indore, R/o 442, Saikripa Colony, Near Bombay Hospital, Indore-452010
11. P.N. Acharya, S/o Late M.C.Acharya, D.O.B. 12.07.1963, Working as Superintendent, CGST, Indore, R/o Flat No. 307, Shankehwar Apartment, Block B, Siliconcity, Rau, Indore-452001
12. Suhas Pujari, S/o Late Shivram Pujari, D.O.B. 05.04.1965, Working as Superintendent, CGST, Indore R/o 141, Alok Nagar, Kanadia Road, Indore 452016
13. N.K. Mittal, S/o J.P. Mittal, D.O.B. 08.07.1961, Working as Superintendent, CGST, Indore, R/o BH, 100 Scheme No. 74C, Vijay Nagar, Indore-452016

-Applicants

(By Advocate –Shri Amardeep Gupta)

V e r s u s

1. The Chairman, Central Board of Indirect Taxes and Customs (Previously known as Central Board of Excise and Customs,), North Block, New Delhi
2. The Chief Commissioner, CGST, Central Excise & Customs (Previously known as Central Excise, Customs and Service Tax), 35-G, Administrative Area, Arera Hills, New GST Bhawan, Mother Teresa Road, Bhopal (M.P.)
3. The Principal Commissioner, CGST and Central Excise, (Previously known as Central Excise, Customs and Service Tax), Manikbagh Palace, Indore (MP)
4. The Principal Commissioner (Audit) CGST Audit, Manikbagh Palace, Indore (MP) - **Respondents**

(By Advocate **-Shri Himanshu Shrivastava**)

O R D E R

By Ramesh Singh Thakur, JM:-

Heard.

2. This Original Application has been filed by the applicants challenging the inaction on the part of the respondents in not granting them the benefits of Modified Assured Career Progression Scheme (MACP), as applicable to them on completion of 10/20/30 years of service effectively.



3. The applicants have prayed for the following relief in this Original Application:

“8. Relief sought:



- (i) *Summon the entire relevant record from the respondents for its kind perusal.*
- (ii) *Command the respondents to forthwith implement granting the benefit of 2nd MACP in the grade pay of 6600/- from the date of completion of 30 years and with consequential benefits.*
- (iii) *Any other order/orders, which this Honorable Court deems fit proper*
- (iv) *Cost of the petition may also kindly be awarded.”*

4. From the pleadings the case of the applicants is that the applicants are superintendent under the Indore Zone of Central Excise and presently posted in different Commissionerate. The applicants were initially appointed as Inspector in the pay scale equivalent to present Grade Pay of Rs. 4600 in Pay Band-2. The applicants were promoted to the post of Superintendent in the pre-revised pay scale of Rs. 6500-10500/- which was revised to Rs. 7500-12000/- w.e.f. 21.04.2004. The Sixth CPC



revised the pay scale of Superintendent from Rs. 7500-12000 to pay scale of Rs. 7500-12000 with addition of Grade pay of Rs. 4800/- in PB-2 and after four years of service, to the pay band of Rs. 8000-13500 with grade pay of Rs. 5400 in PB2. In other words as per Section II of the VIth CPC report Superintendent pay scale after completion of 4 years is entitled to Rs. 5400 in PB-2 by default.

5. The above recommendation was also notified in the Central Civil Services (Revised Pay) Rules, 2008 by the Govt. of India with effect from 01.01.2006 and as per Section 2 of Part C of the 1st Schedule of the Rules, the Income Tax Officers, Superintendent, Appraiser etc. (Customs and Central Excise under the Dept. of Revenue) who have been granted grade pay of Rs. 4800/- after rendering four years of regular service, they will get grade of Rs. 5400/- in PB-2.

6. The applicants were granted their first promotion to the post of Superintendent before completion of 20 years



of service and as per MACP scheme they are eligible for the next financial up-gradation after completing 20 years of service, if not granted 2nd promotion. As per the revised pay scale granted under the VIth Pay Commission, on completion of 4 years of service as Superintendent, the applicants pay was fixed in Grade Pay of Rs. 5400/- in PB-2. However, on completion of 20 years' service in the department, the department took a stand that the revised Grade Pay of Rs. 5400/- granted as a part of VIth pay commission recommendation in the pay scales applicable to Superintendents, should be treated as 2nd financial up-gradation under MACP, and no benefits was granted to the applicants.

7. The main grounds for challenging the inaction of the respondents are that there is a hostile discrimination which is a violation of Article 14 and 16 of the Constitution. The Hon'ble Apex Court judgment in the matters of **Indrapal Yadav's** case reported in 1985 (2) SCC pg. 648 disapproved such an action of the Govt.

This view is consistently followed by various Benches including Full Bench of this Hon'ble Tribunal reported in 1987 (3) ATC 328.



8. The respondents have filed their reply to this Original Application. In their preliminary submissions, the respondents have submitted that an inherent part of pay structure allowed by Sixth Pay Commission is applicable on completion of four years of service in a time scale upgradation and it has got nothing to do with the MACP upgradation to be granted on completion of 10/20/30 years of service in an employee's career and cannot be set off against MACP.

9. It has been submitted by the replying respondents that the applicants have also challenged the validity of clarification dated 20.06.2016 issued by CBIC by which it has been clarified that grant of non functional grade pay of Rs. 5400/- in PB-2 needs to be counted as on financial upgradation for the purpose of MACP Scheme. It has been further submitted by the respondents that

recruitment rules and conditions of service of persons serving the Union are regulated by DoPT in terms of Article 309 of the Constitution of India and so are Schemes which cannot be challenged unless they are ultra vires to the Constitution of India. Here some of the provisions of MACP, 2009 is under challenge. So the scheme cannot be challenged unless they are ultra vires or arbitrary.



10. It has been further submitted by the replying respondents that the applicants have prayed for an identical order passed by Hon'ble Tribunal in its common order dated 20.09.2018 by which aforesaid clarification of Board has been quashed and that the O.A. has been allowed. In this regard, the department had filed Review Petitions before the Hon'ble Tribunal which was also dismissed. The department challenged the order passed by the Hon'ble Tribunal before the Hon'ble High Court in various MP and the Hon'ble High Court vide order dated 30.04.2020 dismissed all the MP.



11. It has specifically been submitted by the replying respondents that the department is under process of filing of Review Petition before the Hon'ble M.P. High Court for review of its order dated 30.04.2020 in view of the judgment dated 05.03.2020 passed by the Hon'ble Supreme Court of India in SLP (C) No. 8271/2014 Union of India vs. M.V. Mohanan Nair in favour of the Union of India.

12. We have heard the counsel for both the sides and have also gone through the documents attached with the Original Application.

13. From the reply of the respondents it is very clear that the judgment passed by the Tribunal was challenged before the Hon'ble High Court of M.P. and the Hon'ble High Court of M.P. has dismissed the MP filed by the respondents and upheld the judgment passed by the Tribunal. As per Annexure A-1, this Tribunal in Original Applications Nos. 200/00849, 872, 961,1007/2016 & 200/00111/2017 has allowed the

Original Application and impugned order dated 20.06.2016 (Annexure A-1), 04.07.2016 (Annexure A-2) and 11.07.2016 (Annexure A-3) are quashed and set aside with all consequential benefits. The Hon'ble High Court of M.P. has upheld the judgment passed by this Tribunal (Annexure A-1). This averment is also very clear in the reply of the respondent department whereby the respondent department has clearly submitted that the order passed by the Central Administrative Tribunal has been upheld by the Hon'ble High court of M.P.

14. From the reply it is also clear that the SLP was also pending but at the time of order passed by Hon'ble High Court of M.P. there was no pending SLP before the Hon'ble Apex Court. So this issue has attained the finality. The instant O.A. is also on the same issues and the applicants are claiming the same benefits as has been given by this Tribunal in the Original Applications filed at Annexure A-1.



15. We are of the view that instant Original Application is fully covered by the judgment passed by this Tribunal in various Original Applications Nos. 200/00849, 872, 961,1007/2016 & 200/00111/2017 (filed at Annexure A-1) especially the order passed by this Tribunal is upheld by the Hon'ble High Court of M.P. and has attained finality on this question of law.



16. Resultantly, this Original Application is allowed. The respondents are directed to implement granting the benefit of 2nd MACP in the grade pay of 6600/- from the date of completion of 30 years and with all consequential benefits. Such exercise shall be completed within a period of six weeks from today. No order as to costs.

(Naini Jayaseelan)
Administrative Member

(Ramesh Singh Thakur)
Judicial Member

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