

Reserved  
(On 16 October 2020)

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

Allahabad, this the 02<sup>nd</sup> day of November, 2020

Present:

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

Hon'ble Mr. Devendra Chaudhry, Member-A

**Original Application No. 331/00395/2020**

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

1. Ajay Mohan Bhatnagar aged about 54 years S/o Late Sri M. L. Bhatnagar, R/o C/o Sri D.S. Bora, Amba Vihar, Talli Bamori, Haldwani. Presently working as Superintendent in the Office of CGST Division Haldwani.
2. Suresh Chandra Pandey aged about 52 years S/o Sri Hira Ballabh Pandey R/o Sriniwas, Malla Gorakhpur, Haldwani Presently Working as Superintendent in the Office of CGST Division, Haldwani.
3. Dhiresch Chandra Joshi aged about 53 years S/o Late Sri B.C. Joshi R/o House No. B-16, J.K. Pram Choti Mukhani Haldwani. Presently working as Superintendent in the Office of CGST, Range III, Kashipur.
4. Ashok Kumar Aged about 51 years S/o Shri Ram Swaroop Singh, House No.1/220 Phoolbagh Pantnagar, Distt. Udham Singh Nagar. Presently working as Superintendent in the office of CGST Audit Commissionerate, Dehradun.
5. Diinesh Chandra Kandpal Aged about 52 years S/o Late Sri R.C. Kandpal, R/o R.K. Puram, Lal Danth Road, Haldwani working as Superintendent in the Office of Audit Commissinerate, Dehradun.
6. Ved Bhatnagar Aged about 56 years S/o Sri S.K. Bhatnagar R/o E-1 Rishi Avenue, Agrasen Nagar, Kale Ki Dhaal, Rishikesh. Working as Superintendent in the Office of CGST, Haridwar.

7. Lovely Kumar Dubey Aged about 52 Years S/o Sri S.S. Dubey R/o D-15, Sri Chandrapuram Appartments, Pahari Bazaar, Kankhal Haridwar. Working as Superintendent in the Office of CGST Commissionerate, Dehradun.
8. Vikas Goel Aged about 49 years S/o Late Sri Sheetal Prakash Goel R/o House No. 30, Mayor Vihar Colony, Near Arya Nagar Chowk, Jwalapur Haridwar Presently working as Superintendent in the Office of CGST Audit Commissionerate, Dehradun.

.....Applicants.

By Advocate – Shri Chetan Joshi.

### **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 Chief Commissssioner, Central GST and Customs, Meerut Zone, Opposite Chaudhary Charan Singh University, Mangal Pandey Nagar, Meerut.
4. The Commissioner, Central Tax Commissionerate Central Goods and Services Tax and Central Excise, Dehradun, Uttarakhand.
5. The Secretary, Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, Government of India, New Dehli.

.....Respondents.

By Advocate: Shri T.C. Agarwal.

### **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 Chetan Joshi, learned counsel for the applicants and Shri T.C. Agarwal, learned counsel for the respondents, both are present online.

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. It is prayed 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 6<sup>th</sup> CPC, the erstwhile Annual Career Progression Scheme (ACP) of granting two financial up gradations in the 12<sup>th</sup> and 24<sup>th</sup> 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 10<sup>th</sup>, 20<sup>th</sup> and 30<sup>th</sup> years of their service.

**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 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 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.

**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. That 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, 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 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. Accordingly, it is prayed that the OA be accepted and the prayed relief be granted.

**4.** *Per contra* the respondents have contended 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 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 applicants 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 (Annexure No. A-17) be also given to all the persons in this OA as they are entitled to the same whether they are retired or in service. 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/