

(Open Court)

Central Administrative Tribunal, Allahabad Bench, Allahabad

O.A. No. 330/00461/2021

This the 12th day of July, 2021.

Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)

Hon'ble Mr. Tarun Shridhar, Member (A)

1. Kirtesh Pandit a/a 49 years son of late Y.K.Sharma, resident of 12/411-A, Gwaltoli, Kanpur, Presently posted as Superintendent (SIO), DGGI, Kanpur (on deputation) parent Commissionerate,CGST-Meerut.
2. Mohd. Tahir, son of late D.N. Saxena, resident of E-37, Krishna Vihar Awas Vikas Kalyanpur, Kanpur, retired Inspector C.Ex.Div.II, Kanpur (Now CGST Div. II, Kanpur.
3. Avinash Chandra son of late Shri Guru Prasad resident of 115, Gopal Nagar (Near Aara Machine) Kanpur. Retired Inspector, Central Excise Div-I, Kanpur.
4. Raj Bahadur Singh son of late Bhagwan Deen Singh, resident of House No. 33, Bhawant Nagar, Opposite Koyala Nagar, Retired Superintendent from Service Tax Division, Kanpur.
5. Ram Autar Singh son of Sri Sahdeo Singh, resident of 37, Adarsh Vihar New PAC, Line Kanpur. Retired Superintendent.
6. Subhash Gautam son of late B.D. Gautam, resident of Type V/2, Custom & Central Excise Colony, Gujaini, Kanpur, presently posted as Superintendent (Hqrs.) CGST and Central Excise Commissionerate, Kanpur.
7. Aman Shah son of Sri Bhushan Lal Shah, resident of 117/K-13, Sarvodaya Nagar, Kanpur. Presently posted as Superintendent of CGST and Central Excise Commissionerate, Kanpur.
8. Sudhir Kumar son of Shri Chandhradhar Ramdas, resident of c/o Santosh Singh Vishnu Nagar, Sarsauli, Varanasi-221002, presently posted as Superintendent CGST and Central Excise Commissionerate, Varanasi.
9. Pradeep Kumar Singh son of Sri Jai Kumar Singh, resident of SH-15/74-C, New Ashok Vihar Colony, Shivpur, Varanasi-221003, presently posted as Inspector CGST and Central Excise Commissionerate, Varanasi.
10. Rajesh Kumar Shastri a/a 48 years son of Shri Faujdar Ram Shastri, resident of 110, Income Tax & CGST Colony, Mawaiya, Varanasi, presently posted as Inspector CGST and Central Excise Commissionerate, Varanasi.

.....**APPLICANTS**

By Advocate: Sri Virendra Nath Upadhyay

Versus

1. The Union of India, through its Secretary, Ministry of Finance, Department of Revenue, Government of India, New Delhi.
2. Central Board of Indirect Taxes and Customs through its Chairman, New Delhi.
3. The Principal Chief Commissioner (Cadre Controlling Authority), Central Goods and Service Tax and Central Excise, Lucknow Zone, 7-A, Ashok Marg, Lucknow U.P.

4. The Secretary, Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, Government of India, New Delhi.
5. The Commissioner, CGST and Central Excise Commissionerate, 117/7, Sarvodaya Nagar, Kanpur.
6. The Commissioner CGST Audit Commissionerate, Kanpur.
7. The Commissioner, CGST Commissionerate, Meerut.
8. The Commissioner, CGST and Central Excise Commissionerate, Varanasi.

RESPONDENTS

By Advocate: Sri Chakrapani Vatsyayan

ORDER

By Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)

Shri Virendra Nath Upadhyay, learned counsel for the applicant and, Shri Chakrapani Vatsyayan, learned counsel for the respondents, both are present.

2. Heard Id. Counsel for the parties and perused the record. As it is a covered matter, with the consent of Id. Counsel for both the parties, we are deciding it finally at the admission stage.

3. The controversy involved in this O.A. pertains to grant of non-functional-grade (NFG) to the applicants.

4. The relevant facts in brief are that the applicants herein are/were working on the post of Inspector/Superintendents in the different offices / formations of Central Board of Indirect Taxes & Customs (CBIC in short) (earlier Central Board of Excise & Customs) (CBEC for short), under Department of Revenue, Ministry of Finance, Government of India. The full particulars of the applicants are given in the array of parties in this O.A.

5. 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 became entitled to receive three financial upgradations in the 10th, 20th and 30th years of their service.

6. The Central Board of Excise and Customs, Department of Revenue, Ministry of Finance, Government of India vide a letter dated 21.11.2008 issued the following clarification:-

“Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

New Delhi, 21st November, 2008

To

All the Chief Commissioners/ Director General under CBEC
All the Commissioners in-charge of Directorates under
CBEC

Subject: Clarification regarding date of grant of non-functional upgradation to Group B Officers.

Sir/Madam,

I am directed to mention that in part C Section II of the CCS (Revised Pay) Rules, 2008, under the Heading ‘Ministry of Finance, Department of Revenue, at Sl. No. 9, it is indicated that Superintendents, Appraisers etc. (Customs & Central Excise) [who are in the pre-revised scale of Rs. 7500-12000] shall be granted Grade pay of Rs. 5400 in PB-2 (corresponding to pre-revised scale of Rs. 8000-135000] after 4 years of service. Further, in Clause (x)(e) of the RESOLUTION also, it is indicated that ‘Group B officers of the Department of Posts, Revenue etc. will be granted Grade Pay of Rs. 5400 in PB-2 on non-functional basis after 4 years of regular service in the Grade Pay of Rs. 4800 in PB-2.”

2. Some filed formations had sought a clarification on how the 4 year period is to be counted for the purpose of granting non-functional upgradation to Group B officers i.e whether the 4 year 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) or w.e.f. 1.1.2006 i.e. the date on which the recommendations of the 6th CPC came into force. The matter was referred to the Department of Expenditure.

3. The Department of Expenditure have now clarified that the 4 year 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 has completed 4 years on 1.1.2006 or earlier, he will be given the non-functional upgradation w.e.f. 1.1.2006. If the officer completes 4 years on a date after 1.1.2006, he will be given non-functional upgradation from such date on which he completes 4 years in the pay scale of Rs. 7500-12000 (pre-revised).

4. This is for your kind information and necessary action.

Yours faithfully,

(L.R. Aggarwal)
Deputy Secretary to the Govt of India
Tel :011-23093102”

7.1 With regard to implementation of this scheme, the CBIC issued a letter circular dated 11.02.2009, whereby It was directed as under:-

“Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

New Delhi, 21st November, 2008

To

All the Chief Commissioners/ Director General under CBEC
All the Commissioners in-charge of Directorates under
CBEC

Subject: Clarification regarding grant of non-functional upgradation
to Group B Officers.

Sir/Madam,

I am directed to mention that in part C Section II of the CCS (Revised Pay) Rules, 2008, under the Heading ‘Ministry of Finance, Department of Revenue, at Sl. No. 9, it is indicated that Superintendents, Appraisers etc. (Customs & Central Excise) [who are in the pre-revised scale of Rs. 7500-12000] shall be granted Grade pay of Rs. 5400 in PB-2 (corresponding to pre-revised scale of Rs. 8000-135000] after 4 years of service. Further, in Clause (x)(e) of the RESOLUTION also, it is indicated that ‘Group B officers of the Department of Posts, Revenue etc. will be granted Grade Pay of Rs. 5400 in PB-2 on non-functional basis after 4 years of regular service in the Grade Pay of Rs. 4800 in PB-2.”

2. The pre-revised pay scale of Rs 7500-12000 could be granted to an officer EITHER on functional promotion to the post of Superintendent, Appraiser etc. or by way of financial upgradation under ACP. Thus, officers of the rank of Inspectors could have also this pay scale due to financial upgradation under ACP. A question was raised as to whether the officers who had got the pre-revised pay scale of Rs. 7500-12000 by virtue of financial upgradation under ACP will also be entitled to the benefit of further non-functional upgradation on completion of 4 years in the pre-revised pay scale of Rs. 7500-12000, in terms of recommendations of 6th CPC accepted by the Government , as mentioned in para 1 above.

3. The matter has been examined in consultation with Department of Expenditure, who have clarified the matter as follows:-

“.... Non-functional upgradation to the grade pay of Rs. 5400 in the pay band PB-2 can be given on completion of 4 years of regular service in the grade pay of Rs. 4800 in PB-2 (pre-revised scale of Rs.7500-12000) after regular promotion and not on account of financial upgradation due to ACP.”

4. Thus, it is clear that the officers who got the pre-revised pay scale of Rs. 7500-12000 (corresponding to grade pay of Rs. 4800) by virtue of financial upgradation under ACP will not be entitled to the benefit of

further non-functional upgradation to the pre-revised pay scale of Rs. 8000-13500 (corresponding to grade pay of Rs. 5400), on completion of 4 years in the pre-revised pay scale of Rs. 7500-12000.

5. This is for your kind information and necessary action.

Yours faithfully,

(Alok Agarwal)
Under Secretary to the Govt of India
Tel :011-23093476”

7.2 The aforesaid letter was challenged before Hon'ble Madras High Court by means of **Writ Petition No 13225/2010, M Subramaniam vs Union of India**, wherein vide order dated 06.09.2010 in the Hon'ble 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, by observing as under:-

“in fact, the Government of India, having accepted the recommendations of the 6th Pay Commission, issued a resolution dated 29.8.2008 granting grade pay of Rs. 5400/- to the Group B officers in pay band 2 on non-functional basis after four years of regular service in the grade pay of Rs. 4800/- in pay band 2. Therefore, denial or the same benefit to the petitioner based on the clarification issued by the under Secretary to the Government was contrary to the above said clarification and without amending the rules of the revised pay scale, such decision cannot be taken.”

7.3 The SLP filed by Union of India against the aforesaid order of Hon'ble Madras High Court, 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.

7.4 Ld. Counsel for the applicants has submitted that the claim of the applicants in this OA is also identical. As it is an already settled matter having been decided by orders of the Hon'ble Madras High Court and affirmed by the Hon'ble Apex Court, the applicants are also entitled to the same relief. It is further submitted that different benches of the Central Administrative Tribunal such as the Principal Bench, the Chandigarh Bench, the Mumbai Bench and the Hyderabad Bench, all have followed the above verdict of the Hon'ble Madras High Court and 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 issued similar directions and has granted benefit to the concerned employees who prayed for identical relief in their concerned OAs. In support, copies of several judgments on the same issue have been filed by Id. Counsel for the applicants.

7.5 The grievance of the applicants is that, in spite of this, the respondents have not considered the representations of the applicants and have summarily turned all those down, on the ground that the said judgments are applicable '*in personam*' and not '*in rem*'. As a result, the present applicants have been compelled to rush to this Bench to seek relief.

7.6 On the aforesaid grounds, it has been prayed that the pay of the applicants 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 allowed and the prayed relief be granted.

8. Per contra, Ld. Counsel for the respondents has opposed the O.A. on the sole ground that the judgment passed by the Hon'ble Madras High Court is a judgment '*in personam*' and not '*in rem*'. Hence, even if the matter is covered by the Hon'ble High Court of Madras and subsequently upheld by the Hon'ble Apex Court, the applicants will not be entitled to the relief claimed.

9. We have given our thoughtful consideration to the rival submissions advanced by learned counsels for both the parties. It is quite outrageous that the respondents are ignoring the fact that apart from this Bench, several other Benches of this Tribunal have repeatedly directed the respondents to comply the said judgment of Hon'ble Madras High Court rendered in M. Subramaniam's case (supra) by holding that the judgments 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 judgments of the various benches of this Tribunal.

10. In the case of **State of Karnataka & Others vs. C. Lalitha, (2006) 2 SCC 747**, the Hon'ble Apex Court has held as under:-

“29. Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court that would not mean

that persons similarly situated should be treated differently.”

11. In the wake of the law laid down in above cited judgments/orders, it cannot be said that the judgment passed by Hon’ble Madras High Court in the matter of M. Subramaniam (supra), is a judgment *‘in personam’* and not a judgment *‘in rem’*. Moreover, all the matters relating to pay fixation, like present one under consideration, are governed by uniform policy of the Government and therefore, any judgment in these matters are always judgment *‘in rem’* and cannot be interpreted as judgment *‘in personam’*.”

12. On the basis of the above discussion, we are of the firm view that the O.A. deserves to be allowed and is allowed. The respondents are accordingly directed to ensure that the benefit of 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, if they are found otherwise entitled for the same as per merits of their 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.

13. 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.

14. No order as to costs.

15. Hon'ble Mr.Tarun Shridhar, Member (Administrative) has consented this order during virtual hearing.

(Tarun Shridhar)
Member (A)

(Justice Vijay Lakshmi)
Member (J)

HLS/-