

Open Court

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

(This the 29<sup>th</sup> Day of July, 2021)

**Hon'ble Mrs. Justice Vijay Lakshmi, Member (Judicial)**  
**Hon'ble Mr. Tarun Shridhar, Member (Administrative)**

**Original Application No.330/00525/2021**  
(U/S 19, Administrative Tribunal Act, 1985)

1. Prabhakar Sharma S/o Shri H.P. Sharma aged about 52 years, R/o 76, Bhawna Estate, Sikandra, Agra Presently holding the post of Superintendent, CGST & Central Excise, Range-V, Division I, Commissionerate, Agra.
2. Desh Raj Singh S/o Late Harcharan Singh, aged about 57 years, R/o Room No.105, Amba Guest house, Madiyakatra, Firozabad Presently holding the post of Assistant Commissioner, CGST & Central Excise, Firozabad.
3. Smt. Meena Shukla Widow of M.C. Shukla, aged about 60 years, R/o C-69, Sector 'O', Aliganj, Lucknow, retired Assistant Commissioner CGST & Central Excise, Ex. Commissionerate, Lucknow.
4. Ajay Kumar Singh S/o Shri J.P. Kushwaha, aged about 48 years, R/o 583, Kamla Nagar, Agra Presently holding the post of Senior Intelligence Officer, Directorate General of GST Intelligence, Regional Unit, Agra.
5. Ajay Pal Singh S/o Shri Charan Singh, aged about 55 years, R/o 83, Tiwaripur, Jajmou, Kanpur Presently holding the post of Superintendent (Tech), CGST & Central Excise, Division, A-8, Kadamb Vihar Mathura.
6. Ajai Sharma S/o Shri Chaitanya Shanker Sharma, aged about 53 years, R/o 33, Vaishali Colony, Sector-15, Karkunj, Agra Presently holding the post of Superintendent, CGST & Central Excise, Division – 1<sup>st</sup>, Commissionerate, Agra.
7. Akhilesh Singh S/o Shri Surendra Singh aged about 54 years, R/o 301, Vinayak Apartment, Ring Road, Vijaya Nagar, Agra Presently holding the post of Superintendent, ICD-Agra, Customs (Prev.) Commissionerate, Lucknow.

8. Amit Kumar S/o Late Chhitermal Agarwal, aged about 51 years, R/o 99, Amita Bihar, Karmyogi Enclave, Kamla Nagar, Agra Presently holding the post of Superintendent, CGST & Central Excise Division – Mathura, Commissionerate, Agra.
9. Anil Kumar S/o Late Onkar Nath Gupta, aged about 61 years, R/o 95-North, Vijay Nagar Colony, Agra retired Superintendent, CGST & Central Excise, Division-1, Commissionerate, Agra.
10. Atul Bhagoliwal S/o Shri Kunwar Bihari Lal Bhagolwal, aged about 51 years, R/o 117/L/263, Naveen Nagar, Kakadeo, Kanpur, Presently holding the post of Superintendent, CGST & Central Excise, Range-Mainpuri, Division – Farukhabad, Commissionerate, Kanpur.
11. Gajendra Singh Jatav S/o Late Gopal Chandra, aged about 60 years, R/o F-275, Kamla Nagar, Agra retired Superintendent, CGST & Central Excise, Range II, Aligarh.
12. Hirendra Kumar S/o Late Ram Lotan, aged about 51 years, R/o 2/5, Vibhav Nagar, Firozabad Presently holding the post of Superintendent, CGST & Central Excise, Division – Firozabad.
13. Indra Kumar Narwani S/o Late R.M. Narwani, aged about 62 years, R/o 52, K.V. Nagar, Near Ajeet Nagar, Agra, retired from the post of Superintendent, CGST & Central Excise, Commissionerate, Agra.
14. Kiran Pal Singh S/o Shri Ram Gopal Singh, aged about 50 years, R/o 301, Janki apartment, Janakpuri, Presently holding the post of Superintendent (Tech), CGST & Central Excise, Division, Aligarh.
15. Mahendra Singh Bhandari S/o Late R.S. Bhandari aged about 62 years, R/o 454, MIG Sector-10, Awas Vikas Colony, Sikandra, Agra retired as Superintendent from CGST & Central Excise Commissionerate, Agra.
16. Manish Bhatnagar S/o Shri C.P. Bhatnagar, aged about 53 years, R/o house no.224, Nehru Nagar, Agra Presently holding the post of Superintendent, DGGI, Agra.
17. Pankaj Kumar Singh S/o Late Ram Pratap Singh, aged about 51 years, R/o F-275, Kamla Nagar, Agra Presently holding the post of Superintendent, CGST & Central Excise, Commissionerate, Agra.
18. Pradeep Kumar Sharma S/o Late Radhey Shyam aged about 59 years, R/o Village & Post – Jaitpur Kalan, Agra Presently holding the post of Assistant Commissioner (in-situ), CGST & Central Excise Division II, Commissionerate, Agra.

19. Shree Prakash Nainwal S/o Shri Narayan Dutt Sharma, aged about 53 years, R/o 23/1, Amrik Vihar, Shivpuri Road, Jhansi, Presently holding the post of Superintendent, Export Promotion Circle, Kanpur (customs (Preventive), Commissionerate, Lucknow.
20. Sanjay Kumar S/o Late I.D. Sagar, aged about 51 years, R/o A-605, Aparna Panchsheel, Sector-16-B, Awas Vikas, Sikandra, Agra Presently holding the post of Superintendent, CGST & Central Excise, CP, Commissionerate, Agra.
21. Suresh Chandra S/o Shri Prakash Narayan Saxena, aged about 52 years, R/o 1/578, New Vishnupuri Ext. Surendra Nagar, Aligarh, presently holding the post of Superintendent, CGST & Central Excise, Aligarh.
22. Sushil Kumar S/o Late Mahendra Pal Singh, aged about 52 years, R/o S-13, Vikram Colony, Aligarh, Presently holding the post of Superintendent, CGST & Central Excise, Range-Hathras, Division-Aligarh.
23. Yashwant Kumar Singhal S/o Shri Deep Chandra Singhani, aged about 58 years, R/o 1699, Wakshikatabela, Hathras, Presently holding the post of Superintendent, CGST & Central Excise Division Jhansi, Commissionerate, Kanpur.
24. Adal Singh S/o Late Motilal, aged about 65 years, R/o 32, Kabir Enclave, Dayal Bagh, Agra retired from the post of Superintendent, CGST & Central Excise Commissionerate, Agra (erstwhile CE Division, Agra).
25. S.P.S. Nirmal S/o Late Angna Ram, aged about 65 years, R/o 32, Kabir Enclave, Dayal Bagh, Agra retired from the post of Superintendent, CGST & Central Excise Commissionerate, Agra.
26. Jitendra Singh S/o Late Raj Pal Singh, aged about 66 years, R/o 58, Ashok Nagar, Agra retired from the post of Superintendent, CGST & Central Excise, Commissionerate, Agra (erstwhile Central Excise Division Agra).
27. Updeo S/o Shri Rajendra Singh, aged about 64 years, R/o H-21, Vikram Colony, Aligarh, retired from the post of Superintendent, CGST & Central Excise Division-Aligarh.
28. Smt. Anju Dhakre widow of Prem Singh Dhakre, (died due to COVID on 11.05.2021) aged about 56 years, R/o HIG D-860, Kalindi Bihar, Agra, Ex. Superintendent, CGST & Central Excise, Agra.

..... Applicants

**By Advocate: Shri Ashok Kumar Pandey**  
**Shri Yashwant Singh**

Versus

1. Union of India through Revenue Secretary, Ministry of Finance, North Block, New Delhi.
2. Chairman, Central Board of Indirect Taxes & Customs, North Block, New Delhi.
3. Principal Chief Commissioner, CGST & Central Excise, & CX, Lucknow Zone, Lucknow.
4. Commissioner, CGST & Central Excise, 113/4, Sanjay Place, Agra.
5. Deputy Commissioner (P&V) CGST & Central Excise, Commissionerate, Agra.
6. Pay & Account Officer, CGST & Central Excise, Commissionerate, Kanpur.

..... Respondents

**By Advocate: Shri Chakrapani Vatsyayan**

**O R D E R**

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

Shri Ashok Kumar Pandey, learned counsel for the applicants is present online and Shri Chakrapani Vatsyayan, learned counsel for the respondents is present in Court.

2. The controversy involved in this O.A. pertains to grant of non-functional-grade (NFG) to the applicants.
3. Heard Id. Counsel for the parties and perused the record.
4. By means of the instant OA, the applicants have prayed for the following reliefs:-

“(i) ***To set aside the impugned order No.161/2020-21 dated 12.03.2021 passed by Commissioner CGST & Central Excise, Agra and restore the establishment order No.52/2019-20 dated 29/30.07.2019 passed by Deputy Commissioner, (P&V), CGST & Central Excise, Commissionate, Agra issued in compliance of order of Principal Chief Commissioner CGST & Central Excise, Lucknow Zone dated 26.02.2019.***

- (ii) *to direct the respondents to grant non functional grade pay of Rs.5400/- in PB-2 with all consequential benefits, arrears of pay with effect from the date the applicants had completed 4 years of service in grade pay of Rs.4800/- (pay scale of the superintendents) and extend of the benefits of the judgments rendered by Hon'ble High Court of Judicature at Madras in M. Subramaniam case and affirmed by the Hon'ble Apex Court.*
- (iii) *to direct the respondents to pay the salary/pension to the applicants alongwith all other consequential benefits, arrears of pay with interest thereon @ 24% Per Annum from the date of amount due till date of actual payment.*
- (iv) *And OR may pass such other and further orders/directions which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."*

5. Learned counsel for applicants submitted that similar controversy has already been decided by this Tribunal on 20.01.2021 in OA No.330/811/2020, Sanjay Kumar Pathak & Ors. Vs. Union of India & Ors and applicants will be satisfied, if this OA may also be disposed off in the same terms.

6. Learned counsel for respondents has opposed the prayer, however he has fairly conceded that the controversy involved in the instant case is similar to the controversy in OA No.811/2020, decided earlier by this Tribunal.

7. As it is a covered matter, no useful purpose will be served in keeping this matter pending by calling counter and rejoinder from the parties and with the consent of Id. counsel for the parties, we are disposing it of finally at admission stage.

8. We have perused the order dated 20<sup>th</sup> January, 2021, passed in OA No.330/811/2020 by this Tribunal. For a ready reference, the views expressed in the same are reproduced in verbatim as under:-

**“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. That under the recommendations of the 6<sup>th</sup> CPC, the erstwhile Annual Career Progression Scheme (ACP) of granting two financial upgradations in the 12<sup>th</sup> and 24<sup>th</sup> years of service were replaced by the Modified Career Progression Scheme (MACP) wherein the employees were entitled to receive three financial upgradations in the 10<sup>th</sup>, 20<sup>th</sup> and 30<sup>th</sup> 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 upgradation 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).

**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'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.*

**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. 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.*

**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 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.*

**4.** *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.*

**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 applicant and mete 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**

*i. 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 be also given to the applicants in this OA as entitled to the same.*

*ii 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."**

9. In the light of observations made in the judgment quoted above and keeping in view that the similar controversy is also involved in the instant OA, the instant O.A. deserves to be allowed and is allowed. The impugned order dated 12.03.2021 is hereby quashed and set aside. The respondents are accordingly directed to ensure that the benefit of the judgment passed by this

Tribunal on 20.01.2021 in OA No. 811/2020 Sanjay Kumar Pathak and others V. Union of India & others (Annexure A-9) 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.

10. 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.

11. No order as to costs.

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

**(Tarun Shridhar)**  
**Member (A)**

**(Justice Vijay Lakshmi)**  
**Member (J)**

**RKM/-**