

(Open Court)

Central Administrative Tribunal, Allahabad Bench,  
Allahabad

O.A. No. 330/00528/2021

This the 28th day of July, 2021.

Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)  
Hon'ble Mr. Tarun Shridhar, Member (A)

1. Krishan Kumar Agarwal, aged about 65 years son of late Shri Chetan Prakash Agarwal, r/o House No. 1, Harmukhpuri Gate No. 2, Modi Nagar, District- Ghaziabad (U.P.), retired as Superintendent in the Central GST, Div. Hapur, Commissionerate, Noida (U.P.).
2. Ajay Kumar Sharma aged about 61 years son of late Shri Kashmiri Lal Sharma r/o 121, Bhatwara Meerut, Retired as Superintendent from Central Goods and Service Tax Division II Muzaffar Nagar in the Central GST Commissionerate, Meerut (U.P.).
3. Naushad Husain aged about 64 years son of Shri Shamshad Hussain r/o Plot No. 54, River Heights Raj Nagar Extn. Ghaziabad, U.P. retired as Superintendent from Division V in the Central GST, Commissionerate, Ghaziabad (U.P.).

.....**APPLICANTS**

By Advocate: Sri 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, 1<sup>st</sup> Floor, DGACR Building, IP Estate, New Delhi.

**RESPONDENTS**

By Advocate: Sri Chakrapani Vatsyayan

**ORDER**

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

Shri Jaswant Singh, learned counsel for the applicants 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 were working on the post of Superintendents in the different offices/formations of Central Board of Indirect Taxes & Customs (CBIC in short) (earlier Central Board of Excise & Customs) (CBEC in short), under Department of Revenue, Ministry of Finance, Government of India. The full particulars of the applicants are given in the array of parties of this O.A.

5. With regard to implementation of this scheme, the CBIC issued a clarification letter dated 11.02.2009, whereby It was clarified as under:-

.....

*"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."*

6. 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 6<sup>th</sup> 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. 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 filed thereupon was also dismissed vide order dated 23.08.2018.

8. Learned 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.

9. 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.

10. 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.

11. 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 allowed and the prayed relief be granted.

12. *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'ble Apex Court.

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

14. 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 the complying authority.

15. 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 **O.A. No. 1005/2019 Pradeep Kumar and others V. Union of India others**, 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.

16. It is made clear that we have not expressed any opinion on merits of individual case.

17. 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.

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

19. No order as to costs.

(Tarun Shridhar)  
Member (A)

(Justice Vijay Lakshmi)  
Member (J)

HLS/-