(Open Court)

Central Administrative Tribunal, Allahabad Bench, Allahabad

****

O.A. No. 330/00584/2021

This the 11th Day of August, 2021.

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

1. Mahesh Kumar, aged about 64 years S/o Late Shri Shyam Singh, R/o 159, Saraswati Vihar, Meerut, Retired as Superintendent from the Division-II Central GST Commissionereate Meerut (U.P.).

2. Om Veer Singh, aged about 66 years, S/o Late Shri Malkham Singh, R/o C-65 Lohiya Nagar, Meerut. Retired as Superintendent from erstwhile Central Excise Division-I, Commissioner, Meerut (U.P.).

3. Harbir Singh, aged about 67 years, son of Late Dilawar Singh, R/o 12, Shark Colony, Opp, Sai Plaza, Sardhana Road, Kanker Kheda, Meerut.(U.P.). Retired as Superintendent from erstwhile Central Excise, Commissioner, Meerut (U.P.).

4. Yagya Narayan, aged about 57 years, S/o Shri Raja Ram, R/o B-137, Swarn Jayanti Puram, Ghaziabad. Presently posted as Superintendent in the Central Excise Division-I, Commissioner, Meerut (U.P.).

5. Raj Kumar, aged about 55 years, S/o Late Krishanvir Singh, R/o Village and Post Prangarh, Tehsil Sikandrabad, District Bulandshahr. Presently posted as Inspector in the Central GST Commissioner, Meerut (U.P.).

…….**Applicants**

By Advocate: Shri 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, 1st floor, DGACR Building, I P 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 applicant and, Shri Chakrapani Vatsyayan, learned counsel for the respondents, both are present.

2. Heard ld. Counsel for the parties and perused the record. As it is a covered matter, with the consent of ld. 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/retired on the post of Superintendent 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. 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 upgradatation 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."*

7. 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."*

8. 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.

9. 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. 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 ld. 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. 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.

12. Per contra, learned counsel for the respondents has not disputed that the controversy involved in this case is similar to the earlier judgments passed in several other cases. However, he has submitted that the benefit of earlier judgments can be given to the applicants only is they are found eligible for the same.

13. We have given our thoughtful consideration to the rival submissions advanced by learned counsel 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.

14. 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."*

15. 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'*."

16. 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 and judgment dated 06.12.2018 passed in OA No.13188/2018 – Kaushal Kishore Bhaskar & Ors. Vs. Union of India & Ors, (Annexure A-9 to the OA), 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.

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

18. No order as to costs.

(Tarun Shridhar)
Member (A)

(Justice Vijay Lakshmi)
Member (J)

RKM/