CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

Hearing by Video Conferencing

O.A. No.060/508/2021
Chandigarh, this the 10th day of June, 2021

CORAM: HON'BLE MR. SURESH KUMAR MONGA, MEMBER (J)
(On Video Conference from Central Administrative Tribunal, Chandigarh Bench, Chandigarh).
HON'BLE MR. TARUN SHRIDHAR, MEMBER (A)
(On Video Conference from his residence at New Delhi)

Jugraj Singh son of Late Sh. Sujjan Singh age 66 years (retired Superintendent) from the office of the Commissioner, Customs Preventive Commissionerate, The Mall, Amritsar-143001) (resident of opposite Barfani Mandir, Dashmesh Colony, Pathankot-145001, Punjab)

....Applicant

Versus

1. Union of India through the Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi-110001.

2. The Chairman, Central Board of Indirect Taxes and Customs, Ministry of Finance, North Block, New Delhi-110001. E-mail: chmn-cbic@gov.in

3. The Principal Chief Commissioner of Central Excise & Goods and Service Tax (GST) (Cadre Controlling Authority), GST Commissionerate Chandigarh, Plot No., 17, Central Revenue Building, ISBT Road, Sector-17, Chandigarh-160017.

4. The Assistant Commissioner, G Division South, SCO 43-46, GK Mall, Southern Canal Road, Jawaddi, Ludhiana-141002.

... .Respondents

O R D E R(Oral)
Per: TARUN SHRIDHAR, MEMBER (A)

1. Mr. Pankaj Mohan Kansal, learned counsel for the applicant and Mr. Sanjay Goyal, Sr. Central Govt. Standing Counsel, learned standing counsel for the respondents are present in Court through the virtual mode.

2. Vide this OA, the applicant seeks grant of non-functional grade of pay (NFG). For the sake of clarity the relevant portion of the OA wherein relief has been sought is reproduced below.

(i) That the record of the case be called for; in the interest of justice.

(ii) That the action of respondents in granting the claim/ benefit involved in the present case That the action of the respondents in granting the claim/ benefit involved in the present case i.e. Non-Functional Grade Pay (NFGP) to the grade pay of RS. 5400/-i.e. on completion of 4 years of service in the grade pay of Rs. 4800/-, only to those employees who are filling the Court cases, as is evident from the Office Order dated 25.09.2018 **(Ann.A-7)** and 13.12.2019 (**Ann. A-8**) be declared arbitrary, illegal, discriminatory and against the rules and law and violative of Article 14 and Article 16 of the Constitution of India and quashed and set-aside, in the interest of justice.

(iii) That the respondents be directed to decide claim of the applicant submitted vide representation 29.10.2019 annexed as **Annexure A-1** , to grant the Non-functional Upgradation in the Grade Pay of Rs. 5,400/- w.e.f.15.02.2009 i.e. on completion of 4 years of service in the grade pay of Rs, 4800/- (Rs. 7500-12000 pre revised), **in a time bound manner,** as has been granted many similarly situated ones **in terms of settled law and directions** passed in various cases like the Common Order dated 04.11.2015 passed by C.A.T., Chandigarh Bench in case O.A No. 60/1044/2014 titled Munish Kumar & ors and O.A No. 060/18/2015 titled **Sanjeev Dhar & ors (Ann.A-5)** by noticing Judgment dated 06.09.2010 passed by the Hon'ble High Court of Madras in case of **M.Subramanian vs**. **Union of India** and others laying down that if an officer has completed 4 year on 1.1.2006 or earlier, he will be given the non-functional upgradation with effect from 1.1.2006 and if the officer completes 4-

> year on a date after 1.1.2006, he will be given non-functional upgradation from such date on which he completes 4-year in the pay scale of Rs. 7500-12000 (pre-revised) **(Ann.A-2)**

3. The applicant herein has retired from the post of Superintendent from the formation of Central Board of Indirect Taxes & Customs (earlier Central Board of Excise & Customs) ('CBIC' for short), under the Department of Revenue, Ministry of Finance, Government of India. The applicant submits 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. Under the recommendations of the 6th CPC, the erstwhile Annual Career Progression Scheme (ACP) of granting two financial up gradations in the 12th and 24th 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 10th, 20th and 30th years of their service respectively.

4. During the course of 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'ble High Court of 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 Rs.7500-12,000 (corresponding to Grade Pay of Rs.4800), as per Resolution dated 29.08.2008 of the Finance Department. The said circular/clarification stated as under:-

> ". .Non functional upgradation to the grade pay of Rs.5,400 in the pay band PB-2 can be given on completion of 4 years of regular service in the grade pay of Rs.4,800 in

PB-2 (pre-revised scale of Rs.7,500-12,000) after regular promotion and not on account of financial upgradation due to ACP."

5. 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. The Hon'ble Madras High Court categorically observed that the said circular cannot be given effect without amending the relevant Rules.

6. The claim of the applicant in this OA is also identical. Therefore, it is an already settled matter having been decided by the Hon'ble Madras High Court and the Hon'ble Apex Court in the case of M. Subramaniam (supra). Further, in the light of these orders, different benches of the Central Administrative Tribunal such as the Principal Bench, the Mumbai Bench, the Hyderabad Bench and the Allahabad Bench have all followed the above verdict of the Hon'ble 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 quoted in the OA and filed as annexures. However, in spite of this, the respondents have not considered the claim of the applicant. It is contended that the benefits of the aforesaid judgments is being extended only to such employees as were a party in the cases before the Tribunal. The judgements are being made applicable *in personam* and not *in rem*. As a result, employees such as the present applicant have been compelled to rush to this Bench to seek a relief which should have been extended by the department in the normal routine.

7. The applicant prays that the pay of the applicant 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/- including retiral dues on that basis. It is further prayed that entire arrears of salary and other emoluments payable to the applicant as a consequence of grant of Grade Pay of Rs.5400/- with revised retiral dues be paid to him from the due date along with interest.

8. We have gone through the contents of the OA diligently and heard the learned counsel for the applicant. The learned standing counsel representing the respondents fairly acknowledges that a judicious decision in the matter needs to be taken in the light of several identical pronouncements in different judicial fora.

9. It appears 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 are directed to consider the case of the present applicant in the light of these observations and meet out the same treatment to him as has been given to his other counterparts all over India through judgements of the various Tribunal benches in the light of M. Subramaniam (supra). It would be pertinent to note that the Allahabad Bench of this Tribunal vide its order dated 12 November, 2020 in OA 1331 of 2019 observed 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 authorities”.

10. The respondents are accordingly directed to ensure that the claim of the applicant for grant of non-functional grade of pay is also considered in the light of the unambiguous pronouncements

made by the benches of this Tribunal drawing strength from the order of the Hon'ble Madras High court, as already referred to above. While deciding the matter, it is expected that the authorities would adhere to the principles of equity and fairness and bear in mind that similar benefit has already been extended to the other employees who chose to adopt legal recourse. The respondents are further directed to take this decision in the instant matter within a period of two months from the date of receipt of a certified copy of this order. The present OA may also be treated as the representation of the applicant in addition to any other representation he may have preferred. The applicant is granted further liberty to submit any supplementary representation or documents in support of his claim. We expect the respondents to take a decision on extending similar benefits, if otherwise eligible, to other identically placed employees also in the light of the Judgments/Orders quoted in this order, without pushing them into litigation.

11. The O.A. is disposed of with the above directions, at this initial admission stage itself. There are no orders as to the costs.

(TARUN SHRIDHAR)
MEMBER (A)

(SURESH KUMAR MONGA)
MEMBER (J)

HC*