

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/021/276/2021

HYDERABAD, this the 31st day of March, 2021

**Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member**



P. Yogender Reddy,
S/o. Late P. Seetharam Reddy, (Group-B),
Aged about 64 years,
Occ: Supdt. Central Excise Retd.,
R/o. H.No.4-4-23, Near Ayyapa Temple,
Hayathnagar – 501 505.

...Applicant

(By Advocate : Sri N. Vijay)

Vs.

1. The Union of India, Ministry of Finance,
Department of Revenue, North Block,
New Delhi rep. by its Secretary.
2. Central Board of Customs and
Central Excise / Central Board of Indirect Taxes and Customs,
North Block, New Delhi rep. by its Chairman.
3. The Chief Commissioner, Customs, Central Tax,
Central Excise & Service Tax, Hyderabad.
4. The Principal Commissioner,
Customs, Central Tax,
Central Excise & Service Tax,
Hyderabad GST Commissionerate (Cadre Controlling Authority),
GST Bhavan, Hyderabad.

... Respondents

(By Advocate: Smt B. Gayatri Varma, Sr. PC for CG.)

ORAL ORDER
(As per Hon'ble Mr. B.V. Sudhakar, Admn. Member)

2. The OA is filed for non grant of grade pay of Rs.5400 after rendering regular service of 4 years in the grade pay of Rs.4800 as per the orders of the superior judicial fora.



3. Brief facts are that the applicant joined the service as Inspector on 06.04.1992 and he was granted ACP benefit with GP of Rs.4800/- on 06.04.2004 and subsequently, promoted as Superintendent of Central Excise on 02.06.2008 in the same Grade pay. He retired as Superintendent on 31.08.2016. He submits that he has worked in the grade pay of Rs.4800 for more than 4 years. He was granted Grade Pay of Rs.5400/- on 06.04.2012 as II financial upgradation under MACP reckoning 4 years period from the date of promotion in 2008, instead of granting the same w.e.f. 06.04.2008 reckoning the 4 years period from 06.04.2004 i.e. when he was granted grade pay of Rs.4800/- under ACP Scheme. He submits that he is entitled for the said benefit as per CCS (Revised Pay) Rules 2008 and that there are judicial orders in his favour. Yet, the respondents rejected the representations of the applicant. Hence, the OA.

4. The contentions of the applicant is that the issue has been fully dealt by the Hon'ble High Court of Madras in WP No.13225/2010 and a favourable order for grant of higher grade pay was delivered on 6.9.2010 and the challenge to the same in the Hon'ble Apex Court in CA No.8883/2011 was dismissed on 10.10.2017. This Tribunal has granted similar relief for similarly placed officials in many OAs.

5. Heard both the counsel and perused the pleadings on record.

6. I. The dispute is about grant of grade pay of Rs.5400 after working for 4 years in the grade pay of Rs.4800 even on ACP/MACP. The contention of the applicant is that he is eligible for the higher grade pay sought as per CCS (Revised Pay) Rules 2008. When the respondents took a decision not to grant the higher grade pay of Rs.5400 vide their letter dated 16.9.2009, the same was challenged before the Hon'ble High Court of Madras in WP No.13225/2010 by similarly placed employees, wherein vide order dt. 6.9.2010, it was held that the letter cited was contrary to the Govt. of India Resolution on the subject and the CCS (RP) Rules 2008. The relevant portion of the judgment is extracted here under:

“6. It is not in dispute that the Government of India vide its resolution, dated 29.8.2008 granted grade pay of Officers of the Department of Posts, Revenue, etc. who completed four years of regular service in the grade pay of Rs. 4800/- in Pay Band 2. According to the petitioner, he has already reached the pay scale of Rs. 7500-250-12000 by way of ACP Scheme on 1.1.2004 which is corresponding to the pay scale of Superintendent of Central Excise (Group B Post) and therefore, on completion of four years, he is entitled to the grade pay of Rs. 5400/- with effect from 1.1.2008. In support of his claim, the petitioner also relied upon a clarification issued by the Central Board of Excise and Customs in Letter F.No.A2601/98/2008-AdIIA, dated 21.11.2008 clarifying that the four year period is to be counted from the date on which an officer is placed in the pay scale of Rs.7500-12000. However, the claim of the petitioner was denied based on the clarification issued by the Central Board of Excise & Customs, dated 11.2.2009, wherein, it was clarified that the Officers who got the pre-revised pay-scale of 7500-12000 (corresponding to grade pay of Rs. 4800) by virtue of financial upgradation under ACP would not be entitled to the benefit of further non-financial upgradation the pre-revised pay-scale of Rs. 8,000-13,500 (corresponding to grade pay of Rs. 5400) on completion of 4 years in the Pre-revised pay scale of Rs. 7500-12000.

7. We are unable to agree with this clarification given by the Under Secretary to Government of India, since in an earlier clarification, dated 21.11.2004 of the Deputy Secretary to Government of India, it was clarified as to how the 4 year period is to be counted with effect from the date on which an officer is placed in the pay scale of Rs.7,500-12000 (Pre-revised) or with effect from 1.1.2006, i.e. the date on which the recommendation of the 6th CPC came into force. It was clarified that the 4 year period is to be counted with effect from the date on which an officer is placed in the pay scale of Rs. 7,500-12000 (Pre-revised).

8. Thus, 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.7,500-12000 (pre-revised), since the petitioner admittedly completed 4 year period in the pay scale of Rs.7500-12000 as on 1.1.2008, he is entitled to grade pay of Rs. 5,400/- . 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-financial basis after four years in pay band 2 with GP of Rs.4800. Therefore, denial of 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. Therefore, we are inclined to interfere with the order of the Tribunal.

9. Accordingly, the writ petition is allowed setting aside the order of the Tribunal, dated 19.4.2010 passed in O.A.No. 167 of 2009. The respondents are directed to extend the benefit of grade pay of Rs.5400/- to the petitioner from 1.1.2008 as per the resolution dated 29.8.2010. No costs.”

II. The above judgment, when challenged by the Union of India, Hon'ble Supreme Court dismissed the same vide order in CA No. 8883/2011 dt. 10.10.2017. Hence, the issue has attained finality.

III. Following the order of the Hon'ble Madras High Court, this Tribunal has allowed many OAs and the directions contained therein are reported to have been implemented by the respondents, as per the submission of the Ld. Counsel for the applicant. The relevant portion of one such order in OA 1051/2010 dt.30.03.2012 is extracted herein under:

“8. XXXX

Ultimately, the Madras High Court held that the petitioner therein is entitled for grade pay of Rs.5400/- with effect from 1.1.2008 i.e., as per the resolution dated 29.8.2010.

9. The above decision of the Madras High Court is applicable to the facts of the present case with all force, as here also, the applicants therein have been placed in grade pay of Rs.4800/- and have completed four years in that scale, may be, on account of granting only ACP and not on account of promotion. As such, the OA is liable to be allowed and the applicants shall be granted higher pay scale of Rs.5400/- with effect from their respective dates of completion of regular service of four years in the grade pay of Rs.4800/- (pre-revised scale of Rs.7500-12000/-). As the matter is pending before the Hon'ble Supreme Court, we make it clear that the relief the applicants are getting in this OA shall be automatically subject to the decision of the Hon'ble Supreme Court in SLP (C) No. 15627/2011, even without the present respondent-department not filing any proceedings in the Hon'ble High Court or Supreme Court.

10. The OA is accordingly allowed. No costs”

Learned applicant's counsel submitted that the above order in OA 1051/2010 was challenged before the Hon'ble High Court in WP 39218 of 2012 and the same was dismissed on 16.04.2018. Subsequently, this Tribunal also allowed OA No. 1126/2018 on 16.11.2018 as under:



"6. XXXX XXXX The Review Petition (Civil) No. 2512 of 2018 in Civil Appeal No. 8883 of 2011 filed by the respondents was also dismissed by the Hon'ble Supreme Court. The Tribunal also allowed OA 1051/2010 filed by the employees of Central Excise Department questioning the very same proceedings issued by the 2nd respondent dated 16.09.2009.

7. The issue has therefore been finally adjudicated and no longer res integra. As the Review Petition No. 2512 of 2018 was dismissed by the Hon'ble Supreme Court, the applicants are entitled for the relief prayed for in the present OA.

8. Consequently, the proceedings issued by the respondents vide F. No. A-26017/98/2008-Ad.IIA dated 16.09.2009 are set aside. The respondents are directed to grant Grade Pay of Rs.5400/- to the applicants with effect from the date of completion of regular service of 4 years in the Grade Pay of Rs.4800/-.

9. The OA is allowed accordingly. There shall be no order as to costs."

IV. Applicant is similarly placed and the issue in dispute is fully covered by the judgments of the superior judicial fora as well as of this Tribunal. Therefore, in the light of the judgments cited supra, respondents are directed to consider grant of relief sought with consequential benefits as per applicant's eligibility, within a period of 3 months from the date of receipt of this order.

V. With the above direction, the OA is disposed of, at the admission stage, with no order as to costs.

**(B.V. SUDHAKAR)
ADMINISTRATIVE MEMBER**

**(ASHISH KALIA)
JUDICIAL MEMBER**

/evr/