CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. O.A. 350/00799/2021 Date of order: 7.9.2021

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Pinaki Ranjan Biswas,
Son of Late Haribar Biswas,
Aged about – 57 years,
Residing at 'Darothoi Apartment',
334/9, Dr. M. N. Saha Road,
P.O. Motijheel,
Kolkata – 700074,
and working as Superintendent of
CGST & C. Ex., CCO, Kolkata Zone.

..... Applicant

- VERSUS -

1. Union of India,
Service through the Secretary to the
Government of India,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi – 110 001.

2. The Chairman,
Central Board of Excise & Customs
(Presently Central Board of Indirect Taxes &
Customs),
North Block,
New Delhi – 110 001.

3. The Principal,
Chief Commissioner of CGST & CX,
Kolkata 180, Shanti Pally,
Kolkata – 700 107.

4. Commissioner of CGST & CX,
Howrah Commissionerate,
M.S. Building, Custom House,
15/1, Strand Road,
Kolkata – 700 001.

..... Respondents

For the Applicant : Mr. A.K. Manna, Counsel

For the Respondents : Mr. S. Seal, Counsel

O R D E R (Oral)

Per Dr. Nandita Chatterjee, Administrative Member:

The applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

"(a) An order issuing direction upon the respondents to grant Grade Pay of Rs. 5400/- (PB-2) to the Applicant herein on completion of 4 years in the pay scale of Rs. 7500-12000/- (Pre-revised) as per Judgment dated 06.09.2010 of Hon'ble High Court of Madras, as upheld by Hon'ble Supreme Court vide its orders dated 10.10.2017 and that dated 23.08.2018 and as decided by Board vide it's letter dated 22.10.2019 and 27.7.2020 and Estt. Order No. 286/19, dated 06.12.2019 and subsequent similar Establishment Order issued in implementation thereof for extension of benefit covered under the judgment dated 06.09.2010 with all consequential benefits including arrears of pay;

(b) An order quashing and setting aside the clarification dated 11.2.2009 and directing the respondents to grant Grade Pay of Rs. 5,400/- (PB-2) in the pay scale of Rs. 7,500-12,000/- (Pre-revised) to the Applicant on completion of 4 years of service in the Grade Pay of Rs. 4,800/- in PB-2, i.e. w.e.f. from the date as mentioned in para 4(f) hereinabove.

(c) An order directing the respondent authorities to provide production of relevant documents.

(d) Any other order or further order/orders as this Hon'ble Tribunal deem fit and proper."

2. Heard both ld. Counsel, examined documents on record. This matter is taken up at the admission stage for disposal.

3. The submissions of the applicant, as made through his Ld. Counsel, is that the applicant is a Superintendent of CGST & C. Ex, CCO, Kolkata Zone.

That, the Government of India, Ministry of Finance, Department of Expenditure, by notification dated 29.8.2008, had notified that Gr. 'B' Officers of the Department of Posts/Revenue etc. will be granted the Grade Pay of Rs. 5400/- in PB-2 on Non-Functional basis after four years of regular service in Grade Pay Rs. 4800/- in PB-2 and, that, thereafter, a similar notification was issued on 21.11.2008 by the Department of Revenue reiterating the contents of the notification dated 29.8.2008 of the Department of Expenditure.

According to the applicant, as he had completed four years of regular service in Grade pay of PB-2, he is entitled to the Grade Pay of Rs. 5400/- in PB-2 on non-functional basis in terms of the above mentioned circulars.

On 11.2.2009, however, another circular was issued by the Department of Revenue stating that officers who got pre-revised pay scale corresponding to Grade pay of Rs. 4800/- by virtue of financial upgradation under ACP, would not be entitled to the benefit of further non-functional upgradation to the pre-revised pay scale corresponding to Grade Pay of Rs. 5400/-.

While adjudicating on a challenge to the same, in WPCT No. 13225 of 2010, the Hon'ble High Court of Judicature of Madras, however, held as follows:-

> "8. Thus, if an officer has completed 4 years 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), since the petitioner admittedly completed 4-year period in the pay scale of Rs. 7500/- 12000/- as on 1.1.008, he is entitled to grade pay of Rs. 5400/-. 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 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."

The issue was also taken up at various other judicial fora including the Hon'ble Apex Court, which affirmed the orders passed by the Hon'ble High Court of Judicature of Madras in WPCT No. 13225 of 2010. According to the applicant, as his eligibility has been affirmed by decisions in different judicial fora, he had represented before the respondent authorities, but to no effect. Ld. Counsel for the applicant would therefore submit that a direction be issued to the competent respondent authority to dispose of the pending representation in a time bound manner.

4. Ld. Counsel for the respondents would not object to the disposal of such representation in accordance with law.

5. Accordingly, without entering into the merits of the matter and with the consent of the parties, we hereby direct the respondent No.3, who is the Principal Chief Commissioner of CGST & CX, Kolkata Zone, GST Bhawan, Kolkata or any other competent respondent authority, to examine the contents of representation filed by the applicant on 3.3.2021 (at Annexure A-8 to the O.A.), if received at his end, and, to dispose of the same in accordance with law within a period of 16 weeks from the date of receipt of a copy of this order. The said authority shall convey his

decision in the form of a reasoned and speaking order to the applicant forthwith thereafter.

6. With these directions, the O.A. is disposed of. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

SP