5/7/21



CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA



O.A. No.350/00853/2021 & Ors.

Date of order : This the 5th Day of July, 2021.

**Hon'ble Mrs.Bidisha Banerjee, Judicial Member**

**Hon'ble Dr (Ms) Nandita Chatterjee, Administrative Member**

1. OA 853/2021 Bikram Soren
2. OA 854/2021 Kundan Lal Thakur
3. OA 855/2021 Santosh Kumar
4. OA 856/2021 Bir Bhadra Banik

-Versus -

1. Union of India, through the Secretary to the Government of India, Department of Revenue, Ministry of Finance, North Block, New Delhi-110001.
2. The Chairman, Central Board of Indirect Taxes and Customs, North Block, New Delhi-110001.
3. The Principal Chief Commissioner, CGST & CX, Kolkata Zone, GST Bhawan 180, Shantipally, Rajdanga Main Road, Kolkata-700107.
4. The Commissioner, Howrah CGST & CX Commissionerate, M.S. Building, 15/1 Strand Road, Kolkata-700001.

.....Respondents.

For the Applicant : Mr. A. Chakraborty with
Ms. P. Mondal, Counsel

For the Respondents : Mr. Sandip Chourasia,
Mr. Sukalpa Seal, Counsel

O R D E R (Oral)

Per Ms. Bidisha Banerjee, JM

Learned counsels for both sides were heard.

2. Due to parity in the nature of grievance, facts pleaded and relief claimed, these cases are being heard out analogously, upon due notice and with consent of all the sides, to be disposed of by this common order.

3. For the sake of brevity, facts of OA. No. 853/2021 are being delineated and discussed hereunder:

4. O.A 853/2021 has been preferred to seek the following relief:

> "8.*(i) Memorandum dated 11.02.2009 (Annexure A-4) cannot be sustained in the eye of law and the same may be quashed.*
> *(ii) An order do issue directing the respondents to pass necessary orders to extend the benefit of fixation at Grade of Rs.5400/- in PB-2 upon completion of 4 years of regular service in the Grade Pay of Rs.4800/- in PB-2 to applicant who had got the Grade Pay of Rs.4800/- on upgradation under ACP Scheme as granted in the case of M. Subramanium in WP No. 13225 of 2010 dated 06.09.2010 affirmed by the Hon'ble Apex Court of India alongwith all consequential and incidental benefits thereto alongwith grant of arrears at an earliest.*
>
> *(iii) Cost and Incidentals*
>
> *(iv) Pass such further or other order or orders and other relief/s as may be deemed fit and proper in the peculiar facts & circumstances of the present case."*

5. The Ministry of Finance Department of Expenditure issued a Gazette Notification dated 29th August, 2008 vide para (x) (e) that the Group –B Officers of Departments of Posts, Revenue etc, will be granted Grade Pay of Rs. 5400/- in PB-2 on non functional basis after 4 years of regular service in the grade pay of Rs. 4800 in PB-2.

On 11th February, 2009 the Under Secretary, Ministry of Finance, Department of Revenue Central Board of Excise & Customs took a completely contrary position when they issued further clarification on the matter communicating to all the Chief Commissioners/Directors General under CBEC that the officers, who got pre-revised pay scale of Rs. 7500-12000 (corresponding to the 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 of Rs. 8000-13500 (corresponding to the grade pay of Rs.

5400), on completion of four years in the pre-revised pay scale of Rs. 7500-12000. Aggrieved, one M. Subramaniam, Inspector, Central Excise filed an O.A No. 167 of 2009 before the CAT Chennai Bench, his plea was rejected. M. Subramaniam filed a writ application before the Hon'ble High Court of Judicature Madras vide WP. No. 13255 of 2010 in which the Hon'ble Court had been pleased to allow vide its order and judgment dated 06.09.2010 setting aside the order passed by the Hon'ble Tribunal in the O.A supra. The Hon'ble High Court held as under:

> *"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 nonfunctional 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. "*
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> *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 Ministry of Finance challenged the order before the Honble Supreme court of India, vide judgment and order dated 10th October 2017, the SLP was dismissed. The Union of India then filed a Review Petition (Civil) no. 2512 of 2018, which was also dismissed by the Hon'ble Supreme Court vide order dated 23rd August 2018. Thus the order passed by the Hon'ble High Court of Judicature at Madras in WP No. 13225 of 2010 attained finality. Various Hon'ble High Courts in plethora of cases thereafter have been pleased to hold that the benefit of GP 5400 after 4 years of continuous service in the GP-4800 should be extended to similarly circumstanced officers working in same post in the same department. The CBIC allowed pay fixation accordingly in respect of applicants therein extending the benefit of GP-5400 after 4 years of continuous service in the GP-

4800. Principal Chief Commissioner's Office, Lucknow CNO II (3)97-CCSC/KKK/LKO/2018/228(S/L) dated 26.02.2019 had extended the benefit of GP-5400 after 4 years of continuous service in the GP -4800 to all the officers irrespective of the fact whether they were litigants or not. Office of the Chief Commissioner, Bhopal Zone under its letter dated 27.06.2019 extended the benefit of GP – 5400 after 4 years of continuous service in the GP 4800 in respect of the non-petitioners as well. Principal Chief Commissioner, Kolkata Zone have already extended the benefit of GP-5400 after 4 years of continuous service in the GP - 4800 to the applicants of the CAT Case Vide O.A No. 358/2019 to 189 applicants of the said O.A in Kolkata Zone.

6. The applicants in this O.A. as well as other OAs are primarily seeking benefit of the decision in M. **Subramaniam** as granted by Hon'ble High Court of judicature at Madras in WP 13225 of 2010 against which SLP was dismissed. As such, it seems that they have preferred representations in the month of January and are aggrieved with non-consideration of their representations. They have preferred these OAs, without giving sufficient time to the respondents to dispose of their claim.

7. It transpires that identical applications have been disposed of by this Tribunal earlier, one such OA is that of **Shiladitya Maitra & Ors** in **OA/350/358/2019.**

8. At hearing, ld. counsel for the applicants would make an innocuous prayer that he would be fairly satisfied if a direction is issued to the concerned respondent authority to consider and dispose of the pending representation in the light of the order passed in **Shiladitya Maitra & Ors** in **OA/350/358/2019,** and to issue an appropriate order.

9. As no final order is under challenge, and as no fruitful purpose would be served in calling a reply, accordingly, with the consent of both the parties and without calling for reply, we dispose of the O.A by directing that the competent respondent authority shall consider and dispose of the pending representation as in Annexure A-6 in the light of **OA/350/358/2019 (Shiladitya Maitra & ors)** supra, as in Annexure A-5, within 4 weeks from the date of receipt of a copy of this order and issue an appropriate order in accordance with law.

10. In the event the applicants are found entitled to the relief as sought for, identical benefits shall be extended to them in terms of the judgment supra, within 3 months thereafter.

11. It is made clear that we have not entered into the merit of the matter and therefore, all the points raised in the representations shall be open for consideration.

The present OA and all other OAs shall stand disposed of accordingly. No costs.

**(DR NANDITA CHATTERJEE)**
**MEMBER (A)**

**(BIDISHA BANERJEE)**
**MEMBER (J)**

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