CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. O.A. 350/01449/2020 Date of order : 11.1.2021

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

1) Akhilesh Kumar,
Son of Suresh Prasad Singh,
Aged about 44 years,
Working as Superintendent of Customs (Preventive),
Residing at Flat B/4,
Malancha Apartment,
18/2 Kalikapur Road,
24/1 Borakhola,
Kolkata – 700 099.

... Applicant

- V E R S U S –

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

2) The Chairman,
Central Board of Direct Taxes,
North Block,
New Delhi – 110 001.

3) The Chief Commissioner of Customs,
Kolkata Customs Zone,
Customs House,
Kolkata.

... Respondents

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

For the Respondents : Mr. K.K. Maity, Counsel
Mr. T. Bhanja, Counsel

O R D E R (Oral)

Per Dr. Nandita Chatterjee, Administrative Member:

Aggrieved with the non-fixation of Grade Pay of Rs. 5400/- on completion of 4 years of service in the Grade Pay of Rs. 4800/-, the applicant has approached this Tribunal under Section 19 of the Administrative Tribunal's Act, 1985 praying for the following relief:-

> "(i) An order do issue directing the respondents to pass necessary orders to extend the benefit of fixation in favour of the applicant at Grade Pay of Rs. 5400/- in PB-2 with effect from 07.10.2019 upon completion of 4 years of service in the Grade Pay of Rs. 4800 in PB-2 as granted in the case of M. Subramaniyam in W.P. No. 13225 of 2010 dated 6.9.2013 affirmed by the Hon'ble Apex Court along with all consequential and identical benefits thereto along with grant arrears at an earliest.
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> (ii) Costs and incidentals.
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> (iii) 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."

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

3. Ld. Counsel for the applicant would submit that the applicant is working as a Superintendent with the respondent authorities drawing a Grade Pay of Rs. 4800/- since 7.10.2015.

On 29.8.2008, a notification was issued for grant of Grade Pay of Rs. 5400/- on non-functional basis after completion of four years of regular service, and, a further clarificatory circular was issued on 21.11.2008 stating that, after completion of four years of regular service in the Grade Pay of Rs. 4800/-, the Inspectors will be entitled to a Grade Pay of Rs. 5400/- in terms of such clarification (Annexure A-2 to the O.A.).

That, thereafter, on 11.2.2009 (Annexure A-3 to the O.A.), the respondent authorities issued another circular, wherein the following was notified:-

> "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. 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."

Challenging the same, one Mr. M. Subramaniam had approached the Hon'ble High Court at Judicature at Madras in W.P. No. 13225 of 2010 whereupon the Hon'ble High Court at Madras directed the respondents to extend the benefit of the Grade Pay of Rs. 5400/- with the following observations:-

> "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 1.1.2008, he is entitled to grade pay of Rs. 5400/-. In fact, the Government of India, having accepted the recommendation 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."

The said order of the Hon'ble High Court at Madras was upheld by the Hon'ble Apex Court. The Hon'ble Court also rejected the Review Petition filed by the Union of India.

That, this Tribunal, in ***O.A. No. 350/00358/2019 (Shiladitya Maitra vs. Union of India & ors.)*** had considered a similar application, and, in compliance to directions thereon, the respondent authorities had issued an Office Order on 6.12.2019 (Annexure A-7 to the O.A.) extending the benefits of upgradation to the applicant No. 1 in such O.A.. The present applicant had, thereafter, approached the authorities on 16.12.2019 (Annexure A-8 to the O.A.) praying for similar benefits as accorded to the applicant No. 1 in O.A. No. 358 of 2019 and had followed up such prayer vide representations dated 1.1.2020, 21.1.2020 and 24.7.2020 respectively (Annexure A-8 colly. to this O.A.).

4. Both Ld. Counsel would agree that this O.A. may be disposed of by issuing similar orders as issued by this Tribunal in ***O.A. No. 350/00358/2019 (Shiladitya Maitra vs. Union of India & ors.).***

5. Accordingly, without entering into the merits of the matter, and, with the consent of the parties, we hereby direct the competent respondent authority to examine the contents of Annexure A-8 colly. to the O.A., if received at his end,

within a period of 16 weeks from the date of receipt of a copy of this order. The said authority shall decide in accordance with law, and, particularly, in the light of the orders of the Hon'ble High Court of Judicature at Madras in W.P. No. 13225 of 2010 as well as the decision of the respondent authorities issued in compliance to this Tribunal's orders in ***O.A. No. 350/00358/2019 (Shiladitya Maitra vs. Union of India & ors.)*** and convey his decision in the form of reasoned and speaking order to the applicant.

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

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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