

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA



Date of order: 11.3.2021

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

1. O.A. No. 350/01458/2020 Smita Sanyal,
Daughter of late Sailesh Chandra
Sanyal,
Aged about 56 years,
Residing at
115/E, Rash Behari Avenue,
Kolkata - 700 029,
And working as
Superintendent of CGST & CX,
Kolkata South Commissionerate.
2. O.A. No. 350/01459/2020 Malay Kumar Patra,
Son of Manoranjan Patra,
Aged about 63 years,
Residing at Village and Post Office -
Dhulya, Howrah,
Pin - 711 302,
And by Profession -
Ex-Superintendent,
Rishra Division,
Erstwhile Kolkata - IV,
Commissionerate,
Presently Howrah Commissionerate.
3. O.A. No. 350/00033/2021 Sukanto Chakraborty,
Son of Late B.K. Chakraborty,
Aged about 56 years,
Residing at 115/E,
Rash Behari Avenue,
Kolkata - 700 029,
And working as Superintendent,
CGST & CX, Kolkata,
North Commissionerate.
4. O.A. No. 350/00034/2021 Bhabatosh Das,
Son of Late Mathur Chandra Das,
Aged about 61 years,
Residing at 14, Regent Place,
P.O. - Regent Park,
Kolkata - 700 040,



And by Profession - Ex-
Superintendent,
CGST & CX, Audit - I,
Commissionerate.

5. O.A. No. 350/00035/2021 Pijush Kanti Deb,
Son of Late Kshitish Chandra Deb,
Aged about 62 years,
Residing at 17/2, Bhattacharjee
Para Lane,
Garfa,
Kolkata - 700 075,
And by
Profession - Ex- Superintendent,
CGST & CX,
Kolkata North Commissionerate.

..... Applicants.

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 and
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,
Customs House,
15/1, Strand Road,
Kolkata - 700 001.

..... Respondents.

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For the Applicant : Mr. A.K. Manna, Counsel
For the Respondents : Mr. K.K. Maity, Counsel
Ms. A. Rajyashree, Counsel

ORDER (Oral)

Per Dr. Nandita Chatterjee, Administrative Member:

The applicants, serving as well as superannuated Superintendents of Excise, have approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, in the instant O.A.s praying for the following relief:-

(a) An order issuing direction upon the respondents to grant Grade Pay of Rs. 5,400/- (PB-2) to the applicant herein on completion of 4 years in the pay-scale of Rs. 7,500-12,000/- (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 order dated 10.10.2017 and that dated 23.8.2018 and as decided by Board vide its letter dated 22.10.2019 and 27.07.2020 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. 5400/- (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. 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 may deem fit and proper."

As identical relief has been prayed for in each of these O.A.s, and as factual submissions as well as the points of law involved are same, these O.A.s are taken up for disposal with a common order.

2. Heard both Id. Counsel, examined documents on record. These matters are taken up for disposal at the admission stage.





3. Ld. Counsel for the applicants would submit that the applicants are working as Superintendents as well as Ex-Superintendents of Central Excise, after being promoted from the grade of Inspector.

That, the Department of Expenditure, Ministry of Finance, Government of India, vide 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 applicants, as they had completed four years of regular service in Grade pay of PB-2, they are 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 had been awarded 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, had 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

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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."

Similar 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 applicants, as their eligibility has been affirmed by decisions in different judicial fora, they had represented before the respondent authorities, but to no effect. Ld. Counsel for the applicant would therefore submit that directions be issued to the competent respondent authority to dispose of pending representations in a time bound manner.

4. Ld. Counsel for the respondents does not object to the disposal of such representations 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 addressee/competent respondent authority to examine the contents of representations filed by the applicants at Annexure A-8 to the O.A.s, 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.


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6 O.A. 350.01458.2020, O.A. 350.01459.2020, O.A. 350.00033.2021, O.A. 350.00034.2021, O.A.
350.00035.2021

The said authority shall convey his decision in the form of reasoned and speaking orders to the applicants forthwith thereafter.

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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