

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH, KOLKATA**



O.A./350/01595/ 2019

M.A./350/00945/2019



**Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member  
Hon'ble Dr. N. Chatterjee, Administrative Member**

1. Arabinda Pathak  
Son of Late Haladhar Pathak  
Residing at AC-319, Baroaritala,  
Post Office – Krishnapur,  
Police Station – Baguiati,  
District – North 24-Parganas,  
Kolkata – 700 102,  
Working for gain as Private Secretary  
to the Post Master General,  
Andaman & Nicobar Island and  
Personal Assistant to the Assistant Director  
of Postal Services (Mails)/Parcel/Material  
Management and Postal Operation.
2. Mohan Lal Roy  
Son of Late Ramesh Chandra Roy  
Residing at 101/A/3, G.T. Road,  
Sheoraphuli Baidyabati (M), Sheoraphuli,  
Hooghly, Pin Code – 712 223  
Working for gain as Senior Private Secretary  
to the Chief Post Master General.
3. Snehasish Chakraborty  
Son of Late Subrata Chakraborty  
Residing at 287/10, Upen Banerjee Road,  
Parnasree Pally, S.O. Kolkata – 700 060.  
Working for gains as Personal Assistant  
to the Assistant Director of Postal Services  
(Personal and Staff Relation) & to the  
Assistant Director of Postal Services

Nos. 1, 2 and 3 are all of the office of the  
Chief Post Master General, West Bengal Circle,  
Yogayog Bhawan, Kolkata – 700 012.

..... Applicants.

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## Versus



1. Union of India,  
Service through the Secretary,  
Department of Posts,  
Ministry of Communications  
having office at Dak Bhawan,  
Sansad Marg,  
New Delhi – 110 001.
2. The Secretary,  
Government of India,  
Ministry of Personnel Public Grievances and  
Pensions Department of Personnel and Training,  
North Block,  
New Delhi – 110 001.
3. The Chief Post Master General,  
West Bengal Circle, Department of Posts,  
Ministry of Communication,  
Government of India,  
having office at Yogayog Bhawan,  
Kolkata – 700 012.
4. The Assistant Director of Postal Services  
(Staff, Establishment and Postal Network)  
of the office of the Chief Post Master General,  
West Bengal Circle, Yogayog Bhawan,  
Kolkata – 700 012.
5. The Assistant Director of Postal Service  
(Accounts and Welfare) of the office of the  
Chief Post Master General,  
West Bengal Circle, Yogayog Bhawan,  
Kolkata – 700 012.

..... Respondents.

For the applicant : Ms. S.K. Ghosh, Counsel

For the respondents : Mr. K. Prasad, Counsel

Date of Order : 14.07.2021

**ORDER****Per : Bidisha Banerjee, Judicial Member**

Ld. Counsels were heard.

2. This application has been preferred to seek the following reliefs:

*"8.(i) Quash and/or set aside the impugned Memos No.Est/B/E-5/iv/Loose dated 21.10.2019 issued by the respondent no. 4 of the office of the respondent no.3 refusing to entertain the case of the applicants for grant of Grade Pay of Rs.. 5400 in Pay Band 2.*

*(ii) In addition to prayer (i), direction be made requiring the respondents to grant Grade Pay of Rs. 5400 in Pay Band 2 with effect from the respective dates of the applicants' completion of 4 years' regular service in Grade Pay 4800 in Pay Band 2 and to grant all arrear pay and benefits of pay and service as a consequence of such fixation to the applicants within a reasonable time to be fixed by the Tribunal in the interest of justice in the present case.*

*(iii) Costs*

*(iv) Any other or further order or orders to which the applicants may be found entitled by the Tribunal.*

*The grounds for such relief and the legal provisions in respect and support of the prayers have already been described in detail in paragraphs 4 and 5 hereinabove and as such the same are not repeated hereunder for the sake of brevity. Leave may be granted to file this application under CAT Procedure Rules, 1987."*

3. The grievance of the applicant, in a nutshell is as under:

The applicants are Group-B Officers (Stenographers) in the Office of the Chief Postmaster General, West Bengal Circle, Department of Posts, in the Grade of Pay of Rs. 4,800/- PB-2 (Pre-revised). The applicants had sought for grant of Grade Pay of Rs. 5,400/- in Pay Band-2 (Pre-revised) on completion of 4 (four) years of service in Grade Pay Rs.4,800/- (Pre-revised) as recommended by the 6<sup>th</sup> Central Pay Commission and accepted vide Resolution dated 29<sup>th</sup> August, 2008 of Ministry of Finance (Department of Expenditure) No.1/1/2008-I C, para (x)(e)(R-1) which is as under:

"(e) Group-B Officers of Department 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".



The respondents have refused to accord them such higher grade pay on the ground that only P.S. Group B (Gazetted) Officials Aggrieved the present O.A. has been preferred for such higher grade pay.

4. It is evident that the applicants had prayed to the Respondent No. 3 to be bestowed with the Grade Pay of Rs. 5400/- in PB-2 on completion of 4 years service in Grade Pay Rs. 4800/-, in terms of the decision of the Hon'ble Supreme Court vide Civil Appeal No.(s) No. 8883 of 2011 (**Union of India & others -Versus- M. Subramaniam**) wherein the order of the Hon'ble High Court of Judicature at Madras dated 06.09.2010 in **W.P.No.13225 of 2010**, was affirmed.

The relevant extract of the decision rendered by Hon'ble High Court of Madras in **W.P.No.13225 of 2010 in M. Subramaniam--Vs- UOI & Ors.**, on 6.9.2010, is reproduced herein below:

*"... on a careful consideration of recommendations of the Sixth Pay Commission Report with respect to Group B Officers, on 29.8.2008, Department of Expenditure, Ministry of Finance, Government of India passed resolution No.1/1/2008 to the effect that Group B Officers of the Department of Posts, revenue will be granted grade pay of Rs. 5400 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 and the same was accepted by the Union Government and notified in the Gazettee by incorporating them in the Central Civil Service (Revised Pay) Rules, 2008 with effect from 1.1.2006.*

3. The further case of Petitioner is that he is drawing the pay scale of Rs. 7500-250-12000 being the pay scale of Superintendent of Central Excise, which is Group B Post under the Department of Revenue with effect from 1.1.2004 and he is entitled to the benefits of grade pay of Rs. 5,400/- w.e.f.



1.1.2008 as per the resolution of Ministry of Finance dated 29.8.2008. An Inspector of Central Excise, a Group B Officer under the Department of Revenue placed in the grade B Officer under the Department of Revenue placed in the grade pay of Rs. 4800/- corresponding to the pre-revised scale of Rs. 7500-12000 on the first financial up gradation under the Assured Career Progression Scheme becomes entitled for the grade pay of Rs. 5,400/- after a period of four years of drawing a grade pay of Rs. 4800/-. The Central Board of Excise and Custom has also issued a clarification per letter P.No.A 26017/98/2008 AdIIA dated 21.11.2008 clarifying that the four years period is to be counted with effect from the date on which an officer is placed in the pay scale of Rs. 7500-12000. However, the fourth respondent had issued an order dated 16.9.2008 fixing a lesser grade pay of Rs. 4800/- instead of Rs. 5,400/- to which the petitioner is entitled to with effect from 1.1.2008 and contrary to the petitioner is entitled to with effect from 1.1.2008 and contrary to the ACP Scheme and resolution of Government of India, the Central Board of Excise and Customs has issued another clarification on 11.2.2009 stating that grade pay of Rs. 5400 need not be given to those who are drawing the salary of Superintendents by way of financial up gradation under ACP. Aggrieved by the same, the petitioner filed O.A. No. 167 of 2009 before the Central Administrative Tribunal, Madras Bench, which dismissed O.A. on 19.4.2010 challenging the said order, the present Writ Petition is filed.

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...contrary to the resolution and earlier clarification dated 21.11.2008, the fourth respondent passed order dated 16.9.2008 and the same was confirmed by the Tribunal.

5. The Tribunal, by relying upon the clarification, dated 29.8.2008 of the Government of India, held that the petitioner cannot be equated to the posts, viz., Income Tax Officer/Superintendents, Appraisers, etc, though he was drawing the pay scale attached to the said posts by virtue of grant of financial up gradation in ACP Scheme and therefore, he is not entitled to the grade pay of Rs. 5,400/- on the basis that he had completed four years of regular service in the pay scale of Rs. 7500-12000. According to the Tribunal, unless the petitioner is promoted, he is not entitled for grade pay of Rs. 5,400 and he cannot claim only by virtue of the benefits obtained under ACP Scheme.

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 year, he is entitled to the grade pay of Rs. 5400/0 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 up gradation under ACP would not be entitled to the benefit of further non-financial up gradation 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 up gradation 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 up gradation 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. 7500-1200 as on 1.1.2008, he is entitled to grade pay of Rs. 5400/-. IN fact, the Government of India, having accepted the recommendations of the 6<sup>th</sup> 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."



Affirming the decision on 10.10.2017, the Hon'ble Supreme Court of India in Civil Appeal No.(s)8883 of 2011. (Union of India & Ors. – Versus – M. Subramaniam) held as under:

*"We have heard learned counsel for the parties and perused the record.*

*We do not see any ground to interfere with the impugned order(s). The appeal and also the special leave petitions filed by the Union of India are accordingly dismissed."*

5. On 19.08.2019, the Assistant Director General (PCC/GDS), Department of Posts, issued an order vide No.2-13/2014-PCC dated 19.08.2019 directing implementation of order dated 14.09.2015 passed in OA No.296/2014 filed by Shri B. Udaya Sankara Rao and 14 other Group-B A.S. Posts of Telengana Circle before CAT, Hyderabad Bench (R-4).

6. On 22.02.2021 at hearing, Ld. Counsel for the applicants placed a copy of the order of the Department of Posts, O/o the Chief Postmaster General, Maharashtra Circle, being No.STA/2/A-144/2020 dated 19/01/2021 (R-3), whereby and whereunder the grade pay of 5400/- was extended on Non functional basis to the IPs/ASPs of circle in view of the Madras High Court order supra and the implementation of decisions of several Benches of the CAT with no discrimination to retd. Officers who held the scale pay of 4800/- by virtue of ACP/MACP. The relevant extract of the order is thus:

"iv. Hon'ble CAT Hyderabad Bench vide Judgment dated 14.09.2015 in OA No. 296/2014 filed by B. Uday Shankara Rao & others, on the similar issue allowed the OA

relying upon Judgment dated 06.09.2010 of Hon'ble Madras High Court in Writ Petition NO. 13225 of 2010. The order dated 14.09.2015 was upheld vide Order dated 06.11.2018 of Hon'ble High Court at Hyderabad in Writ Petitioner No. 31576 of 2016.

v. The following similar & identical cases have been implemented in consultation with Ministry of Finance, Department of Expenditure and the benefits of Grade Pay Rs. 5400/- on non-functional basis have been extended to the applicants of these OAs:

(i) Hon'ble CAT, Hyderabad Bench Order dated 14.09.2015 in OA No. 296/2014.

(ii) Order dated 08.11.2016 of Hon'ble CAT, Chennai Bench in OA No. 1273/13.

(iii) Order dated 08.11.2016 of Hon'ble CAT, Madras Bench in OA No. 106/2016.

(iv) Order dated 10.01.2020 of Hon'ble CAT, Bengaluru Bench in OA No. 850/14.

(v) Order dated 22.01.2020 of Hon'ble CAT Hyderabad Bench in OA No. 1017/2020.

vi. The Department of Expenditure, Ministry of Finance vide their ID Note No. 6/3/E-III B/2018 dated 18.12.2020 expressed their no objection to implement the Order dated 11/02/2020 of Hon'ble CAT Mumbai Bench in OA No. 144/2020 in case of applicants only, provided the cases are exactly similar to the case already implemented and are covered in the ratio of the Order dated 10.10.2017 of Hon'ble Supreme Court in SLP No. CC 15627/2011 (converted to CA No. 8883/2011).

vii. That Shri Subramaniam, who claimed the Grade Pay of Rs. 5400/- on Non Functional basis after completion of 4 years regular service in the Grade Pay of Rs. 4800/-, had earned the corresponding scale to GP Rs. 4800/- under ACP Scheme prior to 01.01.2006, and similarly, the applicants of the OA being IP/ASP cadre Group 'B' officers of Department of Posts had earned the Grade Pay Rs. 4800/- by virtue of MACP Scheme. Further, Clause (x)(e) of Ministry of Finance Resolution dated 29.08.2008 stipulates that *Group 'B' officers of Department of Posts, Revenue etc. will be granted Grade Pay of Rs. 5400/- in P.B. - 2<sup>nd</sup> on non-functional basis after 4 years of regular service in the grade pay of Rs. 4800/- in PB-2.* There is no mention about the mode under which they had earned the same, either by substantive entry or by virtue of ACP/MACP Scheme.

As such, the Judgment dated 06.09.2010 of Hon'ble Madras High Court in Writ Petition No. 13225 of 2010, attained its legal finality, is squarely applicable in respect of applicants of the OA."

7. On the strength such orders *Ld. Counsel* for the applicant would submit that the grade pay of 5400/- ought to be allowed to the applicant, in terms of 29.8.2008 resolution (R-3) as they have completed 4 years.

8. As it was forcefully claimed by respondents that all Group 'B' Officers except Superintendents have been disallowed such grade pay of 5400/-, this Tribunal passed the following order on 18.01.21:



*"Heard Counsels. Ld. Counsel for respondents to bring on record the documents by which all Group 'B' Officers of Postal Department except Superintendent has been specifically disallowed Grade Pay of Rs. 5400/- upon completion of 4 years in Grade pay of Rs. 4800/-, which has been granted on 29.08.2008 by other departments. List on 22.02.2021 for final disposal. No further adjournment shall be granted."*

No such orders have been placed on record.



9. The respondents have claimed as under:

That, "the applicants are stenographers, Group 'B' employed in the Office of the Chief P.M.G. Department of Posts in Grade of Pay Rs. 4,800/- PB-2 (Pre-revised). The applicants have sought for grant of Grade Pay of Rs. 5,400/- in P.B.-2 (Pre-revised) on completion of 4 (four) years of service in G.P. 4,800/- (Pre-revised). The applicants raised the instances of cases at CAT, Madras and at Hyderabad High Court, based on the decision passed in High Courts at Madras and Hyderabad. They submitted their representations which were disposed of by the competent authority on the ground that as per the C.P.C. enhancement of G.P. of Rs. 5400 (Pre-revised) on completion of 4 years of service in G.P. Rs. 4,800/- (Pre-revised) is entitled/applicable to the Superintendent of Post Offices, a P.S. Gr. 'B' (Gazetted) Official. Enhancement of G.P. has not extended to any other Gr. 'B' Officials/Employees and as such order of the Postal DTE, New Delhi has not been issued so far. The implementation of the order of CAT, Hyderabad dated 14.9.2015 have not been imposed to any other Circle. Copy of the order for disposal of representation of the applicants on 21.10.2019 vide Memo No. 2-13/2014-PCC dated 19.08.2019 is annexed herewith and marked 'R-1'"

That, "So far the order of Madras High Court is concerned it is the case of employees of Central Excise Department which has different Recruitment Rules. Postal Department has separate Recruitment Rules."



That, The Postal Directorate's letter No. 2-13/2014-PCO dated 19.8.2019, has been issued in compliance of order dated 14.9.2015 in O.A. No. 296/2014 of CAT Hyderabad in favour of the applicant, i.e. Shri B. Udaysankara Rao and in others, Gr. B/ASPOs of Telangana Circle against refusal of grant of Grade pay Rs. 5,400/- after completion of 4 years in the Grade Pay of Rs. 4,800/- granted on their financial up gradation under MACP subject to the condition that it may not be treated as a precedent for other cases."

And therefore "the relief sought in the instant OA is not tenable as the 6<sup>th</sup> C.P.C. recommendation says after completion of 4 years of service in GP of Rs. 4,800/- (Pre-revised) is entitled to the Superintendent of post offices, P.S. GR-'B' (Gazetted) Official. Enhancement of G.P. has not been extended to any other GR-'B' official and accordingly no such order of Postal Directorate, New Delhi has been issued so far."

10. The records were perused.

The following discerned:

(i) A Resolution dated 29.8.2008 reads as under:

(extracted with supplied emphasis for clarity)

" **MINISTRY OF FINANCE**  
(Department of Expenditure)  
**RESOLUTION**  
New Delhi, the 19<sup>th</sup> August, 2008

**No. 1/1/2008-I C.** – The Sixth Central Pay Commission was set up by the Government of India vide Resolution No.5/2/2006-E.III(A) dated 5<sup>th</sup> October, 2006 as amended by Resolution No.5/2/2006-E.III(A) dated 7<sup>th</sup> December, 2006 (to include Members of regulatory bodies (excluding RBI) set up under Acts of Parliament) and Resolution No.5/2/2006-E.III(A) dated 8<sup>th</sup> August, 2007 (to include the officers and employees of the Supreme Court). ON the 24<sup>th</sup> March, 2008, the Commission submitted its Report relating to structure of emoluments, allowances, conditions of service and retirement benefits of Central Government employees including those belonging to Union Territories, members of All India Services, personnel belonging to the Defence Forces, officers and employees of the Indian Audit and Accounts Department (IA&AD) and Chairpersons/Members



of Regulatory Bodies (except Reserve Bank of India). The Government have given careful consideration to the recommendations of the Commission in respect of civilian employees of the Central Government in Groups 'A', 'B', 'C' and 'D' as also those in the All India Services and Chairpersons/ Members of Regulatory Bodies (except Reserve Bank of India) and have decided that the recommendations of the Commission in respect of those categories of Central Government employees, All India Services and Chairpersons/ Members of Regulatory Bodies (except Reserve Bank of India) shall be accepted as a package subject to the modifications mentioned below:

- (i) The following Pay Bands recommended by the Commission will be improved and the modified Pay Bands will be as below:

<b>Recommended by the Commission</b>	<b>Decision of the Government</b>
PB-1 Rs. 4860 – 20200	PB-1 Rs. 5200 – 20200
PB-2 Rs. 8700 – 34800	PB-2 Rs. 9300 – 23800
PB-4 Rs. 39200 – 67000	PB-4 Rs. 37400 – 67000

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- (x) Regarding Group 'B' cadres, the Commission's recommendations will be modified in the following manner: -

- After 4 years of regular service in the entry grade of Rs. 4800 in PB-2, Officers belonging to Delhi and Andaman & Nicobar Islands Civil Service and Delhi and Andaman & Nicobar Islands Police Service will be granted the non-functional grade of Rs. 5400 in PB-3 and not in PB-2;
- After 4 years of regular service in the Section Officer/Private Secretary/equivalent grade of Rs. 4800 grade pay in PB-2, officers of Central Secretariat Service, Central Secretariat Stenographers Service and other similarly placed HQ services will also be granted the non-functional grade of Rs. 5400 in PB-3 and not in PB-2;
- In the IA & AD and all organized accounts cadres, posts of Section Officers and Assistant Audit/ Accounts Officers will be merged and placed in PB-2 with grade pay of Rs. 4800 as recommended by the Commission. In modification of Sixth CPC's recommendations, Audit/ Accounts Officers (OAs) will be placed in PB-2 with grade pay of Rs. 5400 and Senior AOs will be placed in PB-3 with grade pay of Rs. 5400;
- Group B officers of Ministry of Railways in the pre-revised scale of Rs. 8000-13500 will be granted Grade Pay of Rs. 5400 in PB-3 instead of PB-2.
- 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."

It is amply discernible from the above and without any ambiguity or ambivalence that all Group B post holders were made eligible for the higher grade pay irrespective of the post they held. No differentiation on the basis of posts, was made. As such denial of Grade Pay of 5400/- to the present applicants on the

ground—that they are not Superintendents is unjust, discriminatory and in arbitrary exercise of power and hence bad.



- (ii) In O.A. 296 of 2014 preferred by B. Uday Shankara and Ors. before the CAT Hyderabad Bench, the Tribunal observed as under:

"The applicants herein were initially appointed as Postal Assistants i.e. Clerical grade, as Inspector Posts and later on as Asst. Superintendent of Posts, which is Gazetted Group 'B' post carrying a Grade Pay of Rs. 4,600/-. The applicants, in the year 2008 were granted MACP and consequently granted the Grade Pay of Rs. 4,800/-. The Government of India vide RESOLUTION G.I., M.F.No.1/1/2008-IC, Dt. 29.08.2008, published in Gazette of India, accepted the recommendations as a package subject to the modifications. As per the Clause (i) of the Resolution the PB-7 is Rs. 9,300 – Rs. 34,800. As per clause (iv) of the Resolution, the calculation for fixation of revised basic pay has been provided for, which is reproduced below:

"Clause iv – With regard to fixation of pay in the revised pay bands, the basic pay drawn as on 01.01.2006 on the existing Fifth CPC pay scales and be multiplied by a factor of 1.86 and then rounded off to next multiplier of 10. This will be the pay in the revised running Pay Band. Grade Pay, as approved by the Government, corresponding to the pre-revised pay scale, will then be added to the Pay in the revised Pay Band. The total of pay in the pay band and grade pay will be the revised Basic. Pay as on 01.01.2006."

An analysis of the Relevant provisions would made is very clear that a Group "B" officer in PB-2 with a Grade pay of Rs. 4,800/- is entitled for Grade Pay of Rs. 5,400 on non-functional basis after four years of regular service. The enhancement of grade pay is not dependant on the post, but on regular service of four years in Grade Pay of Rs. 4,800/- in PB-2.

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5. When the matter came up for hearing, learned counsel for the applicant submits that the subject matter of this OA is covered by the order passed in OA No. 1051/2010 decided on 30.03.2012 and the same is as under:-

"8. It was contended by the learned counsel for the petitioner before the Hon'ble Madras High Court that in the resolution of Ministry of Finance, Department of Expenditure, dated 29.8.2008, the Government agreed to grant pay of Rs. 5400/- in Pay Band-2 to Group-B Officers of the department of Points, Revenue, after Four years of regular service in grade pay of Rs. 4800/- and clarification was issued by the Central Board of Excise and Customs dated 21.11.2008 that the four years period is to be counted with effect from the date on which an officer is placed in the pay scale of Rs. 7500-12000/-. That, the Madras High Court held that the clarification dated 29.8.2008 of the Government of India, would not equate the petitioner therein to the posts viz., Income Tax Officer / Superintendents, Appraisers, etc. though he may be drawing the pay scale attached to the said posts by virtue of grant of ACP and that he would not be entitled for regular service in the pay scale of Rs. 7500-12000/-, and that the same cannot be granted unless the petitioner is promoted and not merely on the Madras High Court observed as follows:

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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 herein 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 able 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 made 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. 15677/2011, even without the present respondent-department not filing any proceedings in the Hon'ble High Court or Supreme Court."

6. On going through the order in the OA cited above, we also find that the subject matter of this OA has already been dealt with and the order passed therein can be made applicable to the present OA also. Accordingly we allow the OA directing the Respondents to grant the benefits as granted in OA No. 1051/2010 decided on 30.03.2015 as per the reasons stated therein."

(iii) The order of CAT Hyderabad Bench in O.A. 296/14 was implemented as under:

"  
No.2-13/2014-PCC  
Government of India  
Ministry of Communications  
Department of Posts

Dak Bhawan, Sansad Marg,  
New Delhi – 110001  
Date – 19.08.2019

To

The Chief Postmaster General  
Telangana Circle, Hyderabad – 500 001

Sub:- Proposal for implementation of order dated 14.09.2015 passed in OA No. 296/2014 filed by Shri B Udaya Sankara Rao and 14 other Group-B / A S Posts of Telangana Circle in Hon'ble CAT, Hyderabad against refusal of grant of Grade Pay Rs. 5400/- after completion of 4 years in the grade Pay of Rs. 4800/- granted to them on their financial up-gradation under MACPS – reg.

Sir,

I am directed to refer to your DO letter No. LC/TC/W.P/31576/2016 dated 26.07.2019 on the above noted subject and to inform that the matter was examined in consultation with D/o Legal Affairs and referred to Department of Expenditure for taking advice on the issue. The D/o Expenditure in their advice vide ID note No. 6/3/E.III(B)/2018 dated 12.06.2019 (copy enclosed) has agreed to implement the order of the Hon'ble Court subject to the condition that the applicants in the present matter are exactly similar to the petitioners covered in the case of Hon'ble Madras High Court Order dated 06.09.2010 in WP No. 13225 of 2010 against which SLP was dismissed by the Hon'ble Supreme Court vide order dated 10.10.2017.

2. The issue was examined and found no clear directions in the tendered advice by the D/o Expenditure on the issue of similarity of the petitioners, therefore the case was

again referred to Department of Expenditure for their clear advice. The D/o Expenditure considered the issue and advised vide their ID note No. 6/3/E-III B/2018 dated 13.08.2019 (copy enclosed).

3. Keeping in view of above advice of D/o Expenditure, Ministry of Finance, I am directed by the Competent Authority to request you to implement the order of Hon'ble CAT Hyderabad dated 14.09.2015 in OA No. 296/2014 in favour of applicants only subject to condition that, it may not be treated as a precedent for other cases.



Yours faithfully,

Sd/- 19/08/19

(S.B. Vyavahar)

Encls: As above

Assistant Director General (PCC/GDS)"

11. We have thus failed to decipher any material on record that poses a bar to grant higher grade pay of Rs. 5400/- to Group 'B' employees of postal department on non functional basis, who have rendered four years continuous service in the grade pay of Rs. 4800/-.

12. In view of the fact that there cannot be unequal treatment in the matters of public employment and the respondents cannot be allowed to create a class within a class without a rationale which is conspicuously missing, they cannot resort to macro compartmentalisation on the basis of a micro distinction or no distinction at all. We, therefore, direct implementation of the order dated 29.08.08 to the present batch of litigants who admittedly and indubitably are the Group 'B' officers in the Department of Posts serving in the grade pay of Rs. 4800/- for more than 4 years and are, as such, identically circumstanced to the batch of applicants in O.A. 296 of 2014.

Let appropriate orders be issued to them extending them the benefit within 3 months, if nothing else stands in the way. No costs.

(Dr. N. Chatterjee)  
Administrative Member

drh

(Bidisha Banerjee)  
Judicial Member