

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Applicaton No.233/2013

Thursday this the 20th day of August 2015

C O R A M :

HON'BLE Mr.JUSTICE N.K.BALAKRISHNAN, JUDICIAL MEMBER
HON'BLE Mrs.P.GOPINATH, ADMINISTRATIVE MEMBER

Prince Raj K.,
Income Tax Officer,
Office of the Commissioner of Income Tax – I,
Central Revenue Buildings,
I.S.Press Road, Cochin – 682 018. ...Applicant

(By Advocate Mr.C.S.G.Nair)

V e r s u s

1. Union of India
represented by its Secretary,
Department of Revenue,
North Block, New Delhi – 110 001.
2. Chairman,
Central Board of Direct Taxes,
North Block, New Delhi – 110 001.
3. Chief Commissioner of Income Tax,
Central Revenue Buildings,
I.S.Press Road, Cochin – 682 018.
4. Commissioner of Income Tax – I,
Central Revenue Buildings,
I.S.Press Road, Cochin – 682 018. ...Respondents

(By Advocate Mr.Sinu.G.Nath,ACGSC)

This application having been heard on 13th August 2015 this Tribunal
on 20th August 2015 delivered the following :



.2.

ORDER

HON'BLE Mrs.P.GOPINATH, ADMINISTRATIVE MEMBER

Applicant entered in service as Inspector of Income Tax at Delhi on 12.11.1997. He was granted the first financial upgradation under the MACP Scheme with effect from 1.9.2008 in Pay Band 2 in Rs.9300-34800 with a Grade Pay of Rs.4800/-. Thereafter he was promoted as Income Tax Officer with effect from 2.3.2012. On promotion, however, no fixation of pay was granted, as on getting MACP he was already drawing the same pay. Applicant submits that the Government have passed a Resolution M.F No.1/1/2008-IC dated 29.8.2008 regarding pay and allowances of Central Government employees on accepting the recommendation of the 6th CPC. Clause (x) (e) of the same states :

“ 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 of Rs.4800/- in PB2.”

2. Applicant states that he is entitled for a Grade Pay of Rs.5400/- with effect from 1.9.2012 on his completing four years of service in PB2 with a Grade Pay of Rs.4800/-. He has filed Annexure A-3 representation on 27.9.2012 to the 3rd respondent to this effect and also invited the attention of the respondents to the decision of the Hon'ble High Court of Madras in WP No.13225/2010. Applicant has also relied on O.A.No.759/2010, O.A.No.1051/2010 & O.A.No.897/2011 of the Tribunal in support of his claim. However, the 4th respondent has rejected the same on three grounds



.3.

vide Annexure A-6 stating that the Grade Pay of Rs.5400/- is granted to the Income Tax Officer after the completion of 4 years service in the Grade Pay of Rs.4800/- in the post of Income Tax Officer and as the applicant has not completed 4 years service as Income Tax Officer, he is not eligible for Grade Pay of Rs.5400/-, that the post of Income Tax Inspector is not a Group 'B' post and thirdly on the ground that even though the posts of Income Tax Inspector and Inspector of Central Excise & Customs are filled by an examination conducted by SSC, the Recruitment Rules of those posts are different. Aggrieved by Annexure A-6 order, the applicant has filed this O.A seeking the following reliefs :

1. To call for the records leading upto the issue of Annexure A-6 and quash the same.
2. To direct the respondents to grant the applicant Grade Pay of Rs.5400/- with effect from 1.9.2012 and grant all consequential benefits including arrears of pay and allowances within a time frame.
3. To grant such other relief or reliefs that may be prayed for or that are found to be just and proper in the nature and circumstances of the case.
4. To grant cost of this O.A.

3. Applicant has filed rejoinder stating that according to the DOPT OM dated 17.4.2009 classifying the post under CCS (CCA) Rules, 1965, Inspector of Income Tax who comes under PB 2 Rs.9300-34800/- with a Grade Pay of Rs.4600/- falls under Group 'B' non-gazetted category. Therefore classification of Inspector of Income Tax as Group 'C' by CBDT is not valid.



.4.

4. Respondents in their reply state that applicant on completion of 10 years of service was given MACP with effect from 1.9.2008 and was placed in the Pay Band Rs.9300-34800/- with Grade Pay of Rs.4800/-. They state that MACP does not constitute promotion or regular service and relied on Annexure R-1, Central Board of Excise & Customs order dated 16.9.2009 which states that the non-functional Grade Pay of Rs.5400/- in PB-2 will not be granted to such of those Group B officers who have got the Grade Pay of Rs.4800/- on upgradation under the Assured Career Progression Scheme. Further the Government of India, Ministry of Finance, Central Board of Direct Taxes, DIT (HRD), New Delhi by order dated 14.9.2009 has clarified that the grant of the higher grade pay of Rs.5400/- in PB-2 on non-functional basis is not linked to vacancy and may be given retrospectively with effect from 1.1.2006 provided the officer concerned has, (i) completed 4 years of regular service as an Income Tax Officer, irrespective of the pay scale attached the post and (ii) is clear from vigilance angle. Respondents submit that the decision of the Hon'ble C.A.T in O.A.No.897/2011 has not been accepted by the Department of Expenditure and also by the Department of Personnel and Training and in view of the directions of the Central Board of Direct Taxes, New Delhi, the Department is filing OP (CAT) before the Hon'ble High Court of Kerala against the aforesaid order dated 4.9.2012 of the C.A.T, Ernakulam Bench in O.A.No.897/2011.

A handwritten signature in black ink, appearing to read 'S' or 'S. S.'.

.5.

5. Heard the learned counsel appearing for both sides and considered the written submissions made. On completion of 10 years of service applicant has been given MACP with effect from 1.9.2008 and placed in the Pay Band Rs.9300-34800 with Grade Pay of Rs.4800/- As per Department of Personnel, Public Grievances & Personnel gazette notification dated 9.4.2009 a central civil post carrying following grade pay is classified as Group 'B' :

Rs.5400/-, Rs.4800/- Rs.4600/- and Rs.4200/- in the scale of pay of Rs.9300-34800 in Pay Band 2.

6. Consequent to the 6th CPC recommendations, the Government of India, Ministry of Finance in Resolution No.1/1/2008 – IC in clause (x) (e) dated 29.8.2008 stated that Group 'B' officers of the Department of Posts, Revenue etc. will be granted Grade Pay of Rs.5400/- in PB 2 on non functional basis after four years of regular service in Grade Pay of Rs.4800/- in PB 2. The Hon'ble High Court of Madras vide judgment dated 6.9.2010 in W.P.No.13225/2010 in the case of *M.Subramanian v. Union of India and others* has held that applicant is entitled to receive Grade Pay of Rs.5400/- from the date on which he completed 4 years of regular service in the Grade Pay of Rs.4800/- as per Ministry of Finance Resolution No.1/1/2008 – IC dated 29.8.2008 of 6th CPC recommendations on pay and allowances of Central Government employees. This benefit of upgradation to Rs.5400/- has been extended by Hyderabad Bench of this Tribunal in



.6.

O.A.No.1051/2010 to the Inspectors of Central Excise & Customs who are in the same Pay Band as Inspectors of Income Tax as per 6th CPC recommendations. Thus the applicant having completed 4 years of service in PB 2 with Grade Pay of Rs.4800/- on 31.8.2012 is entitled for Grade Pay of Rs.5400/-.

7. In view of the above the O.A is allowed and Annexure A-6 order dated 30.1.2013 is quashed. The respondents are directed to grant the Grade Pay of Rs.5400/-, with effect from the date of completion of 4 years of service in PB 2 with Grade Pay of Rs.4800/-, with all consequential benefits to the applicant within a period of two months from the date of receipt of a copy of this order. No order as to costs.

(Dated this the 20th day of August 2015)



P.GOPINATH
ADMINISTRATIVE MEMBER



JUSTICE N.K.BALAKRISHNAN
JUDICIAL MEMBER

asp