

18/11

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

(I) OA No. 060/01044/2014
(II) OA No.060/00018/2015

Date of decision: 4.11.2015

Coram: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MR. UDAY KUMAR VARMA, MEMBER
(A)

(I) OA No. 060/01044/2014

1. Munish Kumar son of Sh. K.L. Sharma, age 45 years, Superintendent, Central Excise Division, Mandi Gobindgarh, Punjab.
2. Ramesh Arora son of Sh. Daulat Ram Arora, age 47 years, Superintendent, Audit Commissionerate, Circle Chandigarh-I, Chandigarh.
3. Bikram Singh son of Angrez Singh, age 44 years, Superintendent, Audit Commissionerate, Circle Chandigarh-I, Chandigarh.
4. Rajesh Kaushal son of Late Sh. R.C. Kaushal, age 45 years, Superintendent, Audit Commissionerate, Circle Chandigarh-I, Chandigarh.
5. Mohinder Singh Sandhu son of Sh. Jit Singh, age 48 years, Superintendent, Audit Commissionerate, Circle Chandigarh-I, Chandigarh.
6. Varinder Singh son of Harnam Singh, age 47 years, Superintendent, LCS Rail Caro, Customs Commissionerate, Ludhiana.
7. Kewal Singh son of Tara Singh, age 52 years, Superintendent, LCS Rail Caro, Customs Commissionerate, Ludhiana.
8. Naresh Kumar Soni son of Sh. Manohar Lai, age 46 years, Superintendent, LCS Rail Caro, Customs Commissionerate, Ludhiana.
9. Ramesh Chand Sharma son of Sh. Sada Ram Sharma, age 56 years, Superintendent, LCS Rail Caro, Customs Commissionerate, Ludhiana.

10. Dinesh Kumar Negi son of Sh. P.S. Negi, age 45 years, Superintendent, Anti Smuggling Unit, Customs Commissionerate, Ludhiana.
11. S.K. Kaler son of Sh. Piara Lal, age 49 years, Superintendent, Anti Smuggling Unit, Customs Commissionerate, Ludhiana.
12. Manoj Nayyar son of Sh. Y.P. Nayyar, age 46 years, Superintendent, Audit Commissionerate, Circle Chandigarh-II, Chandigarh.
13. Munish Arya son of Sh. R.L. Sood, age 45 years, Superintendent, Adjudication Branch, Central Excise Commissionerate, Chandigarh-I.
14. Bhagwan Singh son of Sh. Babu Singh, age 47 years, Superintendent, Central Excise Commissionerate, CERA Branch, Chandigarh-I.
15. Jatinder Kumar Saini son of Sh. Bakhtawar Singh Saini, age 46 years, Superintendent, Headquarter Preventive, Central Excise Commissionerate, Chandigarh-I.
16. Sanjeev Kumar Sharma son of Late Sh. Prag Nath Sharma, age 48 years, Superintendent, Audit Commissionerate, Circle Chandigarh-I, Chandigarh.
17. Ajay Singh son of Late Sh. Bikram Singh, age 43 years, Superintendent, Headquarter Preventive, Central Excise Commissionerate, Chandigarh-I.
18. Munish Bhatnagar son of Sh. V.K. Bhatnagar, age 44 years, Superintendent, Chief Commissionerate Unit, Central Excise, Chandigarh Zone, Chandigarh.
19. Anish Dhawan son of Sh. S.K. Dhawan, age 46 years, Superintendent, Chief Commissionerate Unit, Central Excise, Chandigarh Zone, Chandigarh.
20. Prit Inder Singh son of Sh. H.P.S. Bhatia, age 45 years, Superintendent, Tax Recovery Cell, Central Excise Commissionerate, Chandigarh-II.

21. Maninder Singh son of Sh. Tara Singh, age 46 years, Superintendent, Headquarter Preventive, Central Excise Commissionerate, Chandigarh-I.
22. Pardeep Kumar Kaura son of Sh. Y.K. Kaura, age 49 years, Superintendent, System Branch, Central Excise Commissionerate, Chandigarh-II.
23. Kulwant Singh son of Sh. Naranjan Singh, age 45 years, Superintendent, Review Branch, Central Excise Commissionerate, Chandigarh-II.
24. Rajesh Roy son of Sh. Naresh Roy, age 47 years, Superintendent, Review Branch, Central Excise Commissionerate, Chandigarh-II.
25. Karun Kumar Kataria son of Sh. Kewal Krishan, age 46 years, Superintendent, Review Branch, Central Excise Commissionerate, Chandigarh-II.
26. Jasmir Singh Walia son of Sh. S.S. Walia, age 45 years, Superintendent, Adjudication Branch, Central Excise Commissionerate, Chandigarh-II.
27. Ramesh Chander son of Sh. Ram Krishan, age 46 years, Superintendent, Adjudication Branch, Central Excise Commissionerate, Chandigarh-II.
28. Sharuti Kant son of Sh. Vijay Kumar, age 46 years, Superintendent, Adjudication Branch, Central Excise Commissionerate, Chandigarh-II.
29. Mani Ram Jangra son of Late Sh. Zile Singh, age 49 years, Superintendent, Range-II, Central Excise Division, Derabassi.
30. Jasprit Singh Virk son of Sh. Kulwant Singh, age 45 years, Superintendent, Range-III, Central Excise Division, Mandi Gobindgarh.
31. Jasbir Kaur wife of Sh. Teja Singh, age 48 years, Superintendent, Refund Section, Central Excise Commissionerate, Chandigarh-II.

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32. Vinod Kumar son of Sh. Madan Lal, age 46 years, Superintendent, CFS (OWPL), Customs Commissionerate, Ludhiana.
 33. Deepak Gupta son of Sh. Nihal Chand Gupta, age 43 years, Superintendent, CFS (OWPL), Customs Commissionerate, Ludhiana.
 34. Deepak Sharma son of Sh. Madan Lal Sharma, age 43 years, Superintendent, ADC Unit, CFS (GRFL), Customs Commissionerate, Ludhiana.
 35. Jagmohan Singh Rawat son of Sh. Alam Singh Rawat, age 46 years, Superintendent, CFS (OWPL), Customs Commissionerate, Ludhiana.
 36. I.P. Singh son of Sh. Sewa Singh, age 55 years, Superintendent, ADC Unit, CFS (GRFL), Customs Commissionerate, Ludhiana.
 37. Anil Sandhu son of Sh. Ram Lal, age 48 years, Superintendent, ADC Unit, CFS (GRFL), Customs Commissionerate, Ludhiana.
 38. R.K. Saroha son of Sh. Mangat Kumar Saroha, age 49 years, Superintendent, ADC Unit, CFS (GRFL), Customs Commissionerate, Ludhiana.
 39. Rajnish Bhagat son of Late Sh. Nanak Chand Bhagat, age 45 years, Superintendent, CFS (PSWC), Customs Commissionerate, Ludhiana.
 40. Gurdial Singh son of Bakhtawar Singh, age 47 years, Superintendent, ADC Unit, CFS (GRFL), Customs Commissionerate, Ludhiana.
 41. Ranjit Singh Randhawa son of Sh. Sardul Singh, age 58 years, Superintendent, CFS (PSWC), Customs Commissionerate, Ludhiana.
 42. Rajeev Dhawan son of Late Sh. Sahib Ram Dhawan, age 46 years, Superintendent, Director General of Central Excise Intelligence, Ludhiana.
 43. Sanjay Kapoor son of Late Sh. Raj Pal Kapoor, age 48 years, Superintendent, Central Excise Division-II, Ludhiana.

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44. Kuldip Singh son of Sh. Mohinder Singh, age 45 years, Superintendent, Headquarter Office, Central Excise Commissionerate, Ludhiana.
 45. Viney Goyal son of Late Sh. A.P. Goyal, age 45 years, Superintendent, International Airport, Customs Commissionerate, Amritsar.
 46. Harmesh Lal son of Late Sh. Piara Ram, age 49 years, Superintendent, Customs Commissionerate, The Mall, Amritsar.
 47. Sanjeev Kumar Sharma son of Late Sh. D.D. Sharma, age 49 years, Superintendent, Preventive Branch, Central Excise Division, Sangrur.
 48. Malkiat Singh son of Sh. Waryam Singh, age 46 years, Superintendent, Rajpura Range, Central Excise Division, Patiala.
 49. Narinder Mohan son of Sh. Dev Raj, age 47 years, Superintendent, Central Excise Commissionerate, J&K, Jammu.
 50. Ashwani Kumar son of Sh. Harkesh Singh, age 47 years, Superintendent, Central Excise Division-I, Ludhiana.
 51. Jagjit Singh son of Sh. Teja Singh, age 48 years, Superintendent, Vig. Branch, Central Excise Commissionerate, Chandigarh-I.
 52. Ram Parkash son of Sh. Dev Raj, age 51 years, Superintendent, Tech. Branch, Central Excise Division, Chandigarh.
 53. Deepak Jain son of Sh. V.K. Jain, age 46 years, Superintendent, Chief Commissionerate Unit, Central Excise, Chandigarh Zone, Chandigarh.
 54. Prabal Kumar son of Sh. Gian Chand, age 42 years, Superintendent, S&I Branch, Central Excise Commissionerate, Chandigarh-I.
 55. Harbinder Singh son of Late Sh. Balwant Singh, age 46 years, Superintendent, Special Economic Zone, RGCTP, Chandigarh.
 56. P.J.S. Brar son of Sh. Jarnail Singh, age 46 years, Superintendent, Central Excise Range, Malerkotla.

57. Poonam wife of Sh. Rajinder Kumar Bhandari, age 45 years, Superintendent, Audit Commissionerate, Circle Chandigarh-I, Chandigarh.
58. Gurdip Singh son of Sh. Nachhatar Singh, age 46 years, Superintendent, Headquarter Preventive, Central Excise Commissionerate, Chandigarh-I.
59. Shamsheer Singh son of Sh. Mukhtiar Singh, age 48 years, Superintendent, Central Excise Range-II, Jalandhar.

...APPLICANTS

BY ADVOCATE: SH. V.K. SHARMA.

VERSUS

1. Union of India through the Secretary to Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, North Block, New Delhi.
2. Central Board of Excise and Customs, Ministry of Finance, Department of Revenue, New Delhi through its Chairman.
3. Chief Commissioner, Customs, Central Excise and Service Tax, Chandigarh Zone, C.R. Building, Sector 17, Chandigarh.
4. The Commissioner, Central Excise Commissionerate, Chandigarh-I, Central Revenue Building, Sector 17, Chandigarh.

...RESPONDENTS

BY ADVOCATE: SH. SANJAY GOYAL.

(II) OA No.060/00018/2015

1. Sanjeev Dhar son of Sh. K.N. Dhar, aged 47 years, Superintendent, Office of Audit Commissionerate, Chandigarh (Jammu Circle).
2. Parvinder Singh Tuli son of Sh. Pritam Singh Tuli, aged 48 years, Superintendent, Central Excise Range, Poanta Sahib.

3. Kanwar Vinod Kumar son of Sh. Harbans Lal, aged 49 years, Superintendent, Office of Audit Commissionerate, Chandigarh (Jammu Circle).
4. Jagtar Singh Arora son of Sh. Harbans Singh, aged 49 years, Superintendent, Office of Central Excise Commissionerate, J&K, Jammu.
5. Deep Chand son of Sh. Puran Ram, aged 53 years, Superintendent, Customs (P) Division, Jammu.
6. Rana son of Sh. Arjan Ram, aged 50 years, Superintendent, Central Excise Commissionerate, J&K, Jammu.
7. Inder Bhushan son of Late Sh. Shiv Kumar, aged 47 years, Superintendent, Central Excise Commissionerate, J&K, Jammu.
8. Harmesh Lal son of Sh. Ajit Ram, aged 49 years, Superintendent, Central Excise Commissionerate, J&K, Jammu.
9. Ranjeet Singh son of Sh. Bhawani Singh, aged 43 years, Superintendent, Central Excise Commissionerate, J&K, Jammu.
10. Rakesh Kumar son of Sh. Sukhdev Raj, aged 48 years, Superintendent, Central Excise Commissionerate, J&K, Jammu.
11. Kailash Chander Shajgotra son of Late Sh. Jagdish Raj Sharma, aged 48 years, Superintendent, Central Excise Commissionerate, J&K, Jammu.
12. Gurpreet Singh son of Sh. Joginder Singh, aged 45 years, Superintendent, Central Excise Commissionerate, J&K, Jammu.
13. Sandeep Kumar son of Sh. Vishwa Nath Sharma, aged 47 years, Superintendent, Central Excise Commissionerate, J&K, Jammu.
14. Sewa Ram son of Sh. Puran Ram, aged 50 years, Superintendent, Central Excise Commissionerate, J&K, Jammu.
15. Manoj Kumar Sharma son of Sh. Ram Kumar Sharma, aged 45 years, Superintendent, Central Excise Commissionerate, J&K, Jammu.

16. Seema Banga daughter of Sh. Jai Ram Dass, aged 47 years, Superintendent, Central Excise Commissionerate, J&K, Jammu.
17. Vivek Rawal son of Sh. P.V. Rawal, aged 48 years, Superintendent, Central Excise Commissionerate, J&K, Jammu.
18. Sanjeev Prabhakar son of Sh. O.P. Prabhakar, aged 46 years, Superintendent, Audit Commissionerate, Chandigarh (Jammu Circle).
19. Amrit Pal Singh son of Sh. Arjan Singh Malhotra, aged 46 years, Superintendent, Central Excise Commissionerate, Jalandhar.
20. Inderjeet Mehta son of Sh. R.S. Mehta, aged 47 years, Superintendent, Central Excise Commissionerate, J&K, Jammu.
21. Pushpdeep Singh son of Sh. Manmohan Singh, aged 46 years, Superintendent, Customs (P) Commissionerate, Amritsar.
22. Subash Bhasin son of Dev Raj Bhasin, aged 48 years, Superintendent, Audit Commissionerate, Chandigarh (Jammu Circle).
23. Tarsem Lal son of Sh. Dhani Ram, aged 50 years, Superintendent, Customs (P) Division, Jammu.
24. Kulwinder Kumar son of Sh. Ram Rattanb, aged 48 years, Superintendent, Central Excise Division, Patiala.
25. Neeraj Gandhi son of Late Sh. Harbans Gandhi, aged 47 years, Superintendent, Central Excise Division, Patiala.
26. Kishu Gupta daughter of Sh. Bir Bahadur, aged 48 years, Superintendent, Chief Commissioner Unit, Chandigarh.
27. Baljit Singh son of Sh. Darshan Singh, aged 50 years, Superintendent, Central Excise Division, Bhatinda.
28. Jagjit Kumar Joshi son of Sh. Megh Raj Joshi, aged 51 years, Superintendent, Central Excise Division, Bhatinda.
29. Gurpreet Singh son of Sh. Gursewak Singh Sidhu, aged 43 years, Superintendent, Central Excise Division, Bhatinda.

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30. Rajiv Kumar Kaushal son of Sh. Kirishan Dev Kaushal, aged 50 years, Superintendent, Central Excise Division, Mandi Gobindgarh.

...APPLICANTS

BY ADVOCATE: SH. V.K. SHARMA.

VERSUS

1. Union of India through the Secretary to Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, North Block, New Delhi.
2. Central Board of Excise and Customs, Ministry of Finance, Department of Revenue, New Delhi through its Chairman.
3. Chief Commissioner, Customs, Central Excise and Service Tax, Chandigarh Zone, C.R. Building, Sector 17, Chandigarh.
4. The Commissioner, Central Excise Commissionerate, Chandigarh-I, Central Revenue Building, Sector 17, Chandigarh.

...RESPONDENTS

BY ADVOCATE: SH. SANJAY GOYAL.

ORDER**Mr. Sanjeev Kaushik, Member (J):**

Commonness of the facts and law is the reason that the facts of Original Application No.060/01044/2014 are taken note of which would automatically cover the second case as well.

2. Challenge in this Original Application is to clarification dated 11.02.2009, whereby applicants have sought the following reliefs:

- (A) Quash against and clarification dated 11.02.2009 read with latest instructions dated 4th June, 2014 (**Annexure A-1**) issued by Ministry of Finance, Department of Revenue, New Delhi providing that the "officers who got the pre-revised pay-scale of Rs.7,500-12,000 (corresponding to grade pay of Rs.4,800) by virtue of financial upgradation under ACP will not be entitled to the benefit of further non-functional upgradation to the pre-revised pay-scale of Rs.8,000-13,500 (corresponding to grade pay of Rs.5,400), on completion of 4 years in the pre-revised pay scale of Rs.7,500-12000" which are opposed to the resolution dated 29.08.2008 and law declared by Hon'ble High Court of Madras in W.P. No.13225 of 2010-M.Subramaniam Vs. Union of India & Others decided on 06.09.2010.
- (B) For issuance of direction to the respondents to grant the applicants benefit of 4 year time-bound pay scale of Rs.8000-13500 or grade pay of Rs.5,400 in PB Rs.9300-34800 on completion of four years' service in the pay scale of Rs.6500-10500 (Revised to Rs.7500-12000) grade pay of Rs.4800 from

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due dates i.e. arrears of pay and allowances with interest thereon @ 12% from the date of amount became due till date of actual payment and costs of the present petition and not to insist upon 4 years' service as service in promoted pay scale as the same is opposed to basic policy decision dated 29.08.2008 and law declared by Hon'ble High Court of Madras in W.P. No.13225 of 2010-M. Subramaniam Vs. Union of India & Others decided on 06.09.2010.

- (C) Issuance any other writ, order or direction as this Hon'ble Tribunal deem fit in the facts and circumstances of the case.
- (D) Costs of the application be awarded to the applicants.
- (E) The applicants may kindly be allowed to file a joint Original Application.

3. The facts, which led to filing of the present Original Application, are that the applicants herein, particularly applicant no.1 joined respondent-department as Inspector on 14.01.1993 and other applicants on various dates in the pay scale of Rs.1640-40-2900, which was subsequently revised as per the recommendations of 5th Central Pay Commission w.e.f. 1.1.1996. The Post of Inspector, which was earlier classified as a Group 'C' post was made Group 'B' vide notification dated 24.10.2007 and the pay scale of Rs.5500-9000 attached to the post of Inspector, Central Excise was upgraded to Rs.6500-10500 w.e.f. 21.04.2004 and the applicants were accordingly placed in that pay scale. They were granted first financial upgradation under the ACP scheme on completion of 12 years on different dates, as

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shown in Annexure A-4, in the pay scale of Rs.7500-250-12000. The Govt. of India set up 6th Central Pay Commission for revision of the pay scales of Government employees, including the members of the regulating bodies. The 6th Central Pay Commission submitted its report on 24.03.2008, which was accepted by the Govt. of India vide Resolution dated 29.08.2008 with certain modifications, according to which 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 04 years of regular service in the grade pay of Rs.4800 in PB-2. On the basis of the Resolution dated 29.08.2008 the Govt. of India framed Central Civil Services (Revised Pay) Rules, 2008 (2008 Rules, for short) vide notification of even date. As per revision of pay scale w.e.f. 1.1.2006 applicants were placed in the pay band of Rs.9300-34800+Rs.4800 grade pay. The Govt. of India, Ministry of Finance, Department of Revenue, New Delhi issued notification dated 21.11.2008, giving a clarification to the effect that the four year period is to be counted from the date on which the officer is placed in the pay scale of Rs.7500-12000 (pre-revised). It is the case of the applicants that in pursuance of the above clarification issued by Department of Revenue they are entitled for grant of grade pay of Rs.5400/- with effect from the date(s) they completed four years' of service after grant of pay scale of Rs.7500-12000. A clarification was issued by Department of

Revenue on 11.02.2009 where they have clarified that the officers who were getting Rs.7500-12000 (pre-revised) by virtue of financial upgradation under ACP will not be entitled to the benefit of further non-functional upgradation to the pre-revised pay scale of Rs.8000-13500 (corresponding to grade pay of Rs.5400) on completion of four years in the pre-revised pay scale of Rs.7500-12000. They submitted a representation based upon a judicial pronouncement by the Madras High Court in Writ Petition No.13225/2010 - **M. Subramaniam v. Union of India and others**, decided on 06.09.2010 and also an order passed by the Principal Bench in OA-2930/2014 - **Rajneesh Gupta etc. v. Union of India & others**, on 26.08.2014 but their claim was not decided. Hence the Original Applications.

4. Shri V.K. Sharma, learned counsel appearing on behalf of the applicants submitted that the issue involved in these Original Applications has already been put at rest by the Madras High Court in the case of **M. Subramaniam** (supra), where they held that the clarification dated 11.02.2009 issued by Ministry of Finance, Department of Revenue is without basis and, therefore, the benefit, which was made available in terms of notification dated 21.11.2008 cannot be denied to employees who have put in four years' continuous service in the pay scale of Rs.7500-12000 (pre-revised). He submitted that the order of the Hon'ble High Court of Madras is subject matter

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before the Hon'ble Supreme Court at the hands of Union of India in SLP no. CC 15627/2011, in which notices have been issued but their Lordships have declined the stay. Therefore, he submitted that mere pendency of SLP does not wash away the judgment rendered by the Madras High Court in the case of **M. Subramaniam** (supra).

5. The respondents filed their written statement wherein they submitted that in terms of clarification issued by the Govt. of India applicants are not entitled for grant of grade pay of Rs.5400/- from the date(s) they have completed four years service after grant of pay scale of Rs.7500-12000 (pre-revised) as they have been granted the said benefit under the ACP Scheme. Their stand in the preliminary objection no.1 reads as under:

"1. That through the present OA, applicant is seeking quashing of clarification dated 11.02.2009 read with instructions dated 04.06.2014 (Annexure A-1) issued by the competent authority providing that the officer who got the pre-revised pay-scale of Rs.7500-12000 (corresponding to GP of 4800/-) by virtue of financial upgradation under ACP will not be entitled to benefit of further non-functional upgradation to the pre-revised pay-scale of Rs.8000-13500 (corresponding to GP Rs.5400) on completion of four years in the pre-revised pay scale Rs.7500-12000 which is opposed to the resolution dated 29.08.2008. Accordingly, the applicant is seeking issuance of direction to grant the applicant benefit of four years time bound pay-scale of Rs.8000-13500 or G.P. of Rs.5400/- in P.B. Rs.9300-34800 on completion of four years service in the pay scale of Rs. 6500-10500 (revised to Rs.7500-12000) G.P. of Rs.4800/- from due date alongwith interest. In this regard, it is submitted that no relief as is being sought for by the applicant can be granted for the reasons being stated in succeeding paras."

6. Shri Sanjay Goyal, learned counsel appearing for the respondents was not in a position to rebut the argument

advanced by the learned counsel appearing for the applicants that this issue had already been put at rest by the Madras High Court in the case of **M. Subramaniam** (supra) and following the same the Principal Bench directed the respondent-Revenue Department to decide the cases of the applicants before them in the light of the said judgment.

7. We have given our thoughtful consideration to the entire matter and have perused the pleadings available on record with the able assistance of the learned counsel appearing for the parties. We are in agreement with the submission made at the hands of the applicants that the clarification dated 11.02.2009 to the earlier notification dated 21.11.2008 had already been put at rest by Hon'ble High Court in the case of **M. Subramaniam** (supra) where the Hon'ble High Court have considered the import of 2008 Rules issued by the Ministry of Finance, Department of Revenue and have also considered clarification and after considering both they held that the clarification of 2009 is contrary to the notification of 2008. The relevant observation by the Hon'ble High Court reads as under:

"6. It is not in dispute that the Government of India vide its resolution dated 29.08.2008 granted grade pay of Rs.5400/- in Pay Band 2 on non-functional basis to the Group B 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 01.01.2004 which is corresponding to the pay scale of Superintendent of Central Excise (Group B Post) and therefore, on completion of four years, he is entitled to the grade pay of Rs.5400/- with effect from 01.01.2008. In support of his claim,

the petitioner also relied upon a clarification issued by the Central Board of Excise and Customs in Letter P.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 11.02.2009, wherein, it was clarified that the officers who got the pre-revised pay-scale of Rs.7500-12000 (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 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.75-12000.

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 for the purpose of granting non-functional upgradation to Group-B Officer, i.e. whether 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.7,500-12,000 (pre-revised) or with effect from 01.01.2006, i.e. the date on which the recommendation of the 6th CPC core 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.7,500-12,000 (pre-revised).

8. Thus, if an officer has completed 4 years on 01.01.2006 or earlier, he will be given the non-functional upgradation with effect from 01.01.2006 and if the officer completes 4 year on a date after 01.01.2006, he will be given non-functional upgradation from such date on which he completes 4 year in the pay scale of Rs.7,500-12,000 (pre-revised), since the petitioner admittedly completed 4 year period in the pay scale of Rs.7500-12000 as on 01.01.2008, 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 29.08.2008 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."

8. The above order of the Hon'ble Madras High Court is subject matter before the Hon'ble Supreme Court at the hands of the Union of India where while granting leave their Lordships have specifically declined to grant stay.

9. Considering the reasoning given by the Hon'ble Madras High Court, we declare the action of the respondents in not granting the grade pay of Rs.5400/- to the applicants on completion of four years service in grade pay of Rs.4800 as illegal and unjustified. Accordingly both the Original Applications are allowed. The impugned clarification dated 11.02.2009 (Annexure A-1) is quashed and set aside. However, considering that the SLP is pending before the Hon'ble Supreme Court in the case of **M. Subramaniam** (supra) the applicants herein will also be abide by the decision of the Supreme Court in the said SLP. Their benefit will, however, be subject to the outcome of the decision in the above SLP.

10. No costs.


(SANJEEV KAUSHIK)
MEMBER (J)


(UDAY KUMAR VARMA)
MEMBER (A)

Chandigarh

Dated: 4.11.2015

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