

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00068/2015

Thursday, this the 15th day of November, 2018

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member

K. Ravi, Superintendent of Central Excise (Retd.),
 4 C-Soorya Enclave, Opp, Kendriya Vidyalaya,
 Kandavanthra, Cochin – 682 020. **Applicant**

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

V e r s u s

1. Union of India, represented by its Secretary,
 Department of Personnel & Training, North Block,
 New Delhi – 110 001.
2. Chairman, Central Board of Excise & Customs,
 North Block, New Delhi – 110 001.
3. Chief Commissioner of Central Excise Customs & Service Tax,
 Vadodara Zone, Central Revenue Buildings, Race Course Circle,
 Vadodara – 390 007, Gujarat State.
4. Commissioner of Central Excise Customs & Service Tax,
 Vadodara-1 Commissionerate, Central Revenue Buildings,
 Race Course Circle, Vadodara – 390007, Gujarat State.
5. Pay and Accounts Officer, Central Excise,
 Central Revenue Buildings, Race Course Circle,
 Vadodara – 390 007, Gujarat State. **Respondents**

(By Advocate : Mr. Thomas Mathew Nellimoottil, Sr. PCGC)

This application having been heard on 05.11.2018 the Tribunal on 15.11.2018 delivered the following:

O R D E R

Hon'ble Mr. Ashish Kalia, Judicial Member –

The relief claimed by the applicant are as under:

“i. To declare that the applicant is entitled to a grade pay of Rs. 6,600/- in PB3 w.e.f. 1.9.2008 as 3rd financial upgradation under MACP scheme.

ii. to direct the 4th respondent to grant Rs. 6600/- as grade pay as 3rd financial upgradation under MACP scheme w.e.f. 1.9.2008.

iii. To direct the 4th and 5th respondent to grant arrears of pay and allowances w.e.f. 1.9.2008.

iv. To direct the 4th and 5th respondent to revise the pension and other retirement benefits of the applicant and pay the arrears of leave encashment amount within a stipulated period.

v. To direct the respondents to pay 12% interest p.a. on the entire arrears.

vi. To grant such other relief or reliefs which this Hon'ble Tribunal may deem fit and necessary in the circumstances of the case.

vii. To grant cost of this OA.”

2. The brief facts of the case are that the applicant joined service as a Stenographer in Ahmadabad Central Excise Commissionerate during 1974. He was promoted as Inspector of Central Excise and then as Superintendent of Central Excise. On implementation of Revised Pay Rules, 2008 the applicant was given a Grade Pay of Rs. 5,400/- in PB-2 as per clause (x)(e) of Government's Resolution dated 29.8.2008 as he had completed more than 8 years of service in the cadre of Superintendent Group-B. The 4th respondent issued an order on 28.9.2012 granting the 3rd financial upgradation under MACP scheme in the Grade Pay of Rs. 5,400/- in PB-3 i.e. 15,600-39,100/- plus GP Rs. 5,400/-. On introduction of MACP scheme w.e.f. 1.9.2008 the applicant is entitled for a Grade Pay of Rs. 6,600/- as he had completed more than 34 years of service during which period he got only two promotions. He has submitted a representation for the grant of 3rd financial upgradation under MACP scheme but no action was taken. The

Madras Bench of the Tribunal in directed the respondents to grant Grade Pay of Rs. 6,600/- to similarly situated officers which was upheld by the High Court of Madras by dismissing the Writ Petition filed by the respondents. The respondents implemented the order passed by the Tribunal. Further the Full Bench of the Tribunal at Bombay in OA No. 518 of 2005 had considered an identical issue. Therefore, the applicant being similarly situated is entitled for the Grade Pay of Rs. 6,600/-.

3. Notices were issued to the respondents. They entered appearance through Shri Thomas Mathew Nellimoottil, Sr. PCGC who contended that applicant has completed more than 30 years of service as on 1.9.2008 and he had got three financial upgradations. The applicant joined the service in the grade of Stenographer (Ordinary grade), of which the present Grade Pay of the post is Rs.2,400/- in PB-1. He was later promoted to the grade of Inspector in the Grade Pay of Rs. 4,600/- in PB-2 and further as Superintendent in 1998 in Grade Pay of Rs. 4,800/- in PB-2. Applicant was granted non functional upgradation from 1.1.2006 in Grade Pay of Rs. 5,400/- in PB-2. Thus the applicant has been granted three financial upgradations as per DoP&T OM dated 19.5.2009. The contention of the applicant that he got only 2 promotions i.e. first as Inspector and then as Superintendent is correct. However, he got three financial upgradations first in the GP of Rs. 4,600/-, second in the GP of Rs. 4,800/- and third in the GP of Rs. 5,400/- (non-functional upgradation in PB-2). The DoP&T as per its note dated 21.7.2010 (Annexure R1) clarified that non-functional upgradation will set off against one MACP. Therefore, the maximum

financial upgradation admissible under MACP scheme has been given to the applicant. In a similar case in OA No. 1 of 2013 filed before the Ahmedabad Bench of the Tribunal the Tribunal dismissed the OA as per order dated 20.9.2013. Further the CBEC as per letter dated 29.9.2009 clarified that Grade Pay of Rs. 5,400/- in PB-2 and PB-3 is to be treated as separate Grade Pay.

4. As regards the decision cited by the applicant of Madras Bench of the Tribunal it is submitted that the same is not applicable to the case of the applicant as there the applicants have joined in the Grade Pay of Rs. 4,600/- as Assistant Enforcement Officers in Directorate of Enforcement whereas the applicant has joined in the grade of Stenographer (Ordinary Grade) in the Grade Pay of Rs. 2,400/- in PB-1 in Central Excise & Customs. Further the OM dated 12.4.2010 relied on by the applicant is specifically applicable to the DR Assistants/DR Grade C Stenographer officers of CSS service only. This fact has not been disclosed by the applicant. Respondents pray for dismissing the OA.

5. Heard Shri C.S.G. Nair learned counsel appearing for the applicant and Mr. Thomas Mathew Nellimoottil, Sr. PCGC learned counsel appearing for the respondents. Perused the records. We have also gone through the argument note filed by the applicant.

6. The Principal Bench of the Tribunal in OA No. 1707 of 2016 had passed the following order on 11th April, 2016:

“The applicants, working as Superintendents in the respondent Central Board of Excise & Customs, filed the instant OA seeking the following reliefs :-

- “(i) To direct the respondents to grant Grade Pay of 5400 (PB-2) to applicants on completion of 04 years of regular service in the grade pay of 4800 as per Judgment dated 06.09.2010 of Hon’ble High Court of Madras & Judgment dated 09.07.2012 of the High Court of Kerala, Ernakulam Bench with all consequential benefits including arrears of pay.
- (ii) To quash and set aside the clarification dated 11.02.2009 and direct the respondents to grant grade pay of Rs.5400 in the pay scale of Rs.9300-34800 (PB-2) to the applicants from the date of completion of 4 years of service in the grade pay of Rs.4800 in PB-2.
- (iii) To allow the OA with cost.
- (iv) Pass any further orders as this Hon’ble Tribunal may deemed fit and proper in the facts and circumstances of the case.”

2. When the matter was taken up for hearing, both the counsels submit that in the identical circumstances, the OA No.060/01044/2014 with OA No.060/00018/2015 dated 04.11.2015 (Annexure-A/16) filed in Munish Kumar & Ors. Vs. Union of India and Ors. was allowed and the Writ Petition filed against the said orders before the Hon’ble High Court of Punjab and Haryana was also dismissed on 11.12.2017 in WP(C) No.3430 and 3932 of 2017, wherein it was categorically mentioned that the decision of the Tribunal was based on the judgment of Hon’ble High Court of Madras in WP(C) No.13225/2010 in M. Subramaniam Vs. Union of India & others, which was upheld by the Hon’ble Apex Court in Civil Appeal No.8883/2011 dated 10.10.2017.

3. In the circumstances and in view of the admitted position with regard to the claim of the applicants, the instant OA is also allowed in terms of the above referred decisions. The respondents shall complete the exercise within three months from the date of receipt of a certified copy of this order.

4. Pending MAs if any be disposed of”

7. The applicants have also relied on a similar judgment passed by the High Court of Delhi on 20.12.2017 in WP(C) No. 9357 of 2016 wherein the Hon’ble High Court has held as under:

“18. In the present case, it is noticed that the petitioners’ counterparts were granted the third financial upgradation, although they, like them were given the GP of ₹5400/-; they perform similar, if not identical functions. FC Jain (supra) is an authority that if such broadly identical functions are involved, both categories ought to be treated alike in regard to interpretation of pay norms, by the organization. Therefore, the principle of

parity would result in acceptance of the petitioner's claim. The second aspect which this court would emphasize is that unlike "stagnation" or performance based increments, or placement in higher scales, the grant of ₹5400/- is automatic, after the happening of a certain event, i.e. completion of four years' service. This is quite different from promotion or placement in the selection grade, which is performance dependent or based on the availability of a few slots or vacancies (usually confined to a portion of the entire cadre: say 20%). The last reason is that both V.K. Sharma (supra) and Suresh Chand Garg (supra), in somewhat similar circumstances, accepted that the grant of a higher grade pay did not preclude the grant of the third financial upgradation.

19. In view of the foregoing analysis, the court is of opinion that the petition has to succeed. As a consequence, the respondents are directed to revise and fix the pay scales by granting the third financial upgradation, to the petitioners. They shall be entitled to consequential arrears and all consequential benefits; the payments shall carry interest @ 9 per cent per annum. The payouts shall be made to the petitioners within 8 weeks. The petition is allowed, in these terms."

We find that the above order passed by the Principal Bench of the Tribunal as well as the judgment passed by the Hon'ble High Court of Delhi squarely applies to the present case as well. Therefore, nothing remains to be decided in the present case.

8. Accordingly, the Original Application is allowed. The applicant is entitled to a Grade Pay of Rs.6,600/- in PB-3 w.e.f. 1.9.2008 notionally as the 3rd financial upgradation. However, the monetary benefits of arrears will be restricted to three years prior to the date of filing of this OA as laid down by the apex court in *Union of India & Ors. v. Tarsem Singh* – (2008) 8 SCC 648. The respondents shall implement the order within three months from the date of receipt of a copy of this order. Parties are directed to bear their own costs.

(ASHISH KALIA)
JUDICIAL MEMBER
"SA"

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

Original Application No. 180/00068/2015**APPLICANTS' ANNEXURES**

Annexure A1 - True copy of OM No. 35034/3/2008 Estt (D) dated 19.5.2009.

Annexure A2 - True copy of the representation dt. 17.7.2012.

Annexure A3 - True copy of the Establishment order dt. 15/2012 dt. 28.9.2012.

Annexure A4 - True copy of the F. No. A 26017/76/2009 Ad II A dt. 29.9.2009.

Annexure A5 - True copy of the OM No. 22/22/2009 CS-I (CR) dt. 12.4.2010.

Annexure A6 - True copy of the OM dt. 9.9.2010.

Annexure A7 - True copy of the OM dt. 13.6.2012.

Annexure A8 - True copy of the judgment dt. 16.10.2014 in WP No. 11535/14.

Annexure A9 - True copy of the representation dt. 18.12.2012.

Annexure A10 - True copy of the Pay Slip for September, 2013.

Annexure A11 - True copy of the LPC dt. 9.12.2013.

Annexure A12 - True copy of the order No. 36/2010 dt. 13.4.2010.

Annexure A13 - True copy of the order in OA No. 518/2005 dt. 29.11.2010.

RESPONDENTS' ANNEXURES

Annexure R1 - True copy of DoPT Note dated 21.7.2010.

Annexure R2 - True copy of revised Pay fixation in respect of the applicant issued as per F. No. II/25-11/2013-CA dated 23.9.2013.

Annexure R3 - True copy of order dated 20.9.2013 of CAT, Ahmedabad Bench in OA 01/2013.

Annexure R4 - True copy of DoPT OM F. No. 22/22/2009-CS.I(CR) dated 12.1.2010.

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