

Reserved**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**
JABALPUR**1. Original Application No.200/00024/2015****2. Original Application No.200/00025/2015****3. Original Application No.200/00061/2015****4. Original Application No.200/00231/2015****5. Original Application No.200/00511/2015****6. Original Application No.200/00979/2015**Jabalpur, this Thursday, the 13th day of September, 2018**HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER**
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER**1. Original Application No.200/00024/2015**

1. Salman Imteyaz Hussaini, S/o Late Shri Ali Imteyaz Hussaini, aged about 47 years, Superintendent of Central Excise, O/o Commissioner, Central Excise, Dhamtari Road, Tikrapara, Raipur (C.G.), R/o H.No.3, Awadhpur, Near Ram Darbar Mandir, Bhatagaon, Raipur (C.G.) 492001.

2. Sanjeet Kumar Pandey, S/o Kailash Bihari Pandey, aged about 48 years, Superintendent of Central Excise, O/o Commissioner, Central Excise, Dhamtari Road, Tikrapara, Raipur (C.G.), R/o – Q.No.5 B, Street No.3, Sector 9, Bhilai (C.g.) 490006.

3. Sanjay Kumar Tiwari, S/o Sangam Lal Tiwari, aged about 38 years, Superintendent of Central Excise, O/o Commissioner, Central Excise, Dhamtari Road, Tikrapara, Raipur (C.G.), R/o – Plot 327/4, Cross Street, 6 Anand Nanagar, Bhilai (C.G.) 490006.

4. P.S. Vinod, S/o Shri K.V. Shridar, aged about 45 years, Superintendent of Central Excise, O/o Commissioner, Central Excise, Dhamtari Road, Tikrapara, Raipur (C.G.), R/o M.I.G-I, 817, Hudco, Bhilai (C.G.) 490006.

5. D.D. Malviya, Shri S.K. Malviya, aged about 47 years, Superintendent of Central Excise, O/o Commissioner, Central

Excise, Dhamtari Road, Tikrapara, Raipur (C.G.), R/o Flat No.316, Mudurisha Hight, Phase II, Maitriganj, Bhilai (C.G.) 490006.

6. Mayank Koshariya, S/o Shri T.R. Koshariya, aged about 46 years, Superintendent of Central Excise, O/o Commissioner, Central Excise, Dhamtari Road, Tikrapara, Raipur (C.G.), R/o H.No. S-19, Priyadarshani Nagar, Ring Road No.1, Raipur (C.G.) 492001.

7. Ashis Kumar Panda, S/o Bibhuti Bhusan Panda, aged about 46 years, Superintendent of Central Excise, O/o Commissioner, Central Excise, Dhamtari Road, Tikrapara, Raipur (C.G.). R/o 202, Pitrichhaya Apartment, Priyadarshini Nagar, Raipur (C.G.) 492001.

8. Rajesh Kumar Agarwal, S/o Shri Nanak Chandra Agarwal, aged about 47 years, Superintendent of Central Excise, O/o Commissioner, Central Excise, Dhamtari Road, Tikrapara, Raipur (C.G.), R/o A-25, Green Orchid, Avani Vihar, Seoni Road, Malwa, Raipur (C.G.) 492001

-Applicants

V e r s u s

1. Union of India through its Secretary, Ministry of Finance, D/o Revenue, North Block, New Delhi 110001.

2. The Chairman, Central Board of Excise and Customs, North Block, New Delhi 110001

3. Chief Commissioner, Central Excise, Customs and Service Tax, 48, Administrative Area, Arera Hills, Hoshangabad Road, Bhopal (M.P.) 462001.

4. Commissioner, Central Excise, Central Revenue Building, Damtari Road, Tikrapara, Raipur (C.G.) 492001

- Respondents

2. Original Application No.200/00025/2015

1. Pramod Roopchand Verma, S/o Late Shri Roopchand Verma, aged about 48 years, Inspector of Central Excise, O/o Commissioner, Central Excise, Dhamtari Road, Tikrapara, Raipur (C.G.), R/o H.No.73, Sector-II, Avanti Vihar, Raipur (C.G.) 492001.

2. Nemees Chand Patle, S/o Shri Radhe Shyam Patle, aged about 43 years, Superintendent of Central Excise, O/o Commissioner, Central Excise, Dhamtari Road, Tikrapara, Raipur (C.G.), R/o HQ Type A4, Central Excise Colony, Old Dhamtari Road, Tikrapara, Raipur (C.G.) 492001.
3. Binay Kumar Xalxo, S/o Marcel Xalxo, aged about 49 years, Superintendent of Central Excise, O/o Commissioner, Central Excise, Dhamtari Road, Tikrapara, Raipur (C.G.), R/o G-32 Maruti Recidency, Amlidih, Raipur (C.G.) 492001.
4. Mahendra Kumar Nag, S/o Late Mangal Ram Nag, aged about 50 years, Superintendent of Central Excise, O/o Commissioner (Audit), Central Excise, Dhamtari Road, Tikrapara, Raipur (C.G.) 492001.
5. S.K. Tripathi, S/o B.C. Tripathi, aged about 45 years, Superintendent of Central Excise, O/o Commissioner (Audit), Central Excise, Dhamtari Road, Tikrapara, Raipur (C.G.), R/o H.No.45 Shiva Residencies, Mathpuraina, Opp. Water Filter Plant, Ring Road No.1, Raipur (C.G.) 492001.
6. Sanat Kumar Panda, S/o Shri H.L. Panda, aged about 46 years, Superintendent of Central Excise, O/o 311, Central Excise Building, Dhamtari Road, Tikrapara, Raipur (C.G.). R/o A-12, Walfort enclave, Near Ramkrishna Hospital, Pachpedi Naka, Raipur (C.G.) 492001.
7. M. Rajiv, S/o Shri M.L. Rao, aged about 45 years, Superintendent of Central Excise, O/o Commissioner (Audit), Central Excise, Dhamtari Road, Tikrapara, Raipur (C.G.), R/o Senior H.I.G, 313, Shwet Hand Parisar, Pt. Deen Dayal Upadhyay Nagar, Raipur (C.G.) 492001.
8. Rajesh Ranjan, S/o Jai Krishan Prasad, aged about 46 years, Superintendent of Central Excise, O/o Commissioner, Central Excise, Dhamtari Road, Tikrapara, Raipur (C.G.), R/o Plot No.224, Akriti House, Near New Palash Tower, Maitri Kunj, Rishali, Durg (C.G.) 492001.
9. Santosh Kumar Singh, S/o Shri Chandrika Singh, aged about 44 years, Superintendent of Central Excise, O/o Commissioner,

Central Excise, Dhamtari Road, Tikrapara, Raipur (C.G.), R/o 51, Shiva Residency, Mathpurenana, Raipur (C.G) 492001.

10. Mahendra Kumar Tiwari, S/o Shri S.P. Tiwari, aged about 54 years, R/o NH, Rajiv Nagar Extension, Rajiv Nagar, Raipur (C.G.) 492001
-Applicants

V e r s u s

1. Union of India through its Secretary, Ministry of Finance, D/o Revenue, North Block, New Delhi 110001.

2. The Chairman, Central Board of Excise and Customs, North Block, New Delhi 110001

3. Chief Commissioner, Central Excise, Customs and Service Tax, 48, Administrative Area, Arera Hills, Hoshangabad Road, Bhopal (M.P.) 462001.

4. Commissioner, Central Excise, Central Revenue Building, Damtari Road, Tikrapara, Raipur (C.G.) 492001 **- Respondents**

3. Original Application No.200/00061/2015

1. Bharat Bhushan Sahu, S/o Shri G.D. Sahu, aged about 45 years, Superintendent of Central Excise, O/o Commissioner, Central Excise, Dhamtari Road, Tikrapara, Raipur (C.G.). R/o H.No.44, Shiva residency, Math purena, Opp. Water filter plant, Ring Road No.1, Raipur (C.G.) 492001.

2. Thomas Xavier, S/o Late C.T Xavier, aged about 47 years, Superintendent of Central Excise, O/o Commissioner, Central Excise, Dhamtari Road, Tikrapara, Raipur (C.G.), R/o “Elohim” H.No. HR-01, Harsh Residency, Near Harsh Tower, Devpuri, Raipur (C.G.) 492001.

3. Ashish Kumar Pathak, S/o Late L.S. Pathak, aged about 45 years, Superintendent of Central Excise, O/o Commissioner, Central Excise, Dhamtari Road, Tikrapara, Raipur (C.G.). R/o 301, Royal Tower, Shankar Nagar, Raipur (C.G.) 492001.

4. Rajendra Kumar Senapati, S/o Late Rudra Kanth Senapati, aged about 45 years, Superintendent of Central Excise, O/o

Commissioner, Central Excise, Dhamtari Road, Tikrapara, Raipur (C.G.), R/o H.No, KE-14, Koutilya Enclave, Near Harsh Tower Devpuri, Raipur (C.G.) 492001.

5. Shrikant Purohit, S/o Shyam Sunder Purohit, aged about 52 years, Superintendent of Central Excise, O/o DGCEI, Raipur, Central Excise, Dhamtari Road, Tikrapara, Raipur (C.G.), R/o C-12, Romanesque Villa, Labhandi, Near Magnetomall, Raipur (C.G.) 492001.

6. Somendra Pandey, S/o Late S.S. Pandey, aged about 46 years, Superintendent of Central Excise, O/o Commissioner, Central Excise, Dhamtari Road, Tikrapara, Raipur (C.G.). R/o “Shivom” Awadhpuri Colony, Bhatagaon, Raipur (C.G.) 492001.

7. Menu Mehar, S/o Jhasketan Mehar, aged about 46 years, Superintendent of Central Excise, O/o Commissioner (Audit), Central Excise, Dhamtari Road, Tikrapara, Raipur (C.G.). R/o-KE-6, Koutilya Enclave, Near Harsh Tower, Devpuri, Raipur (C.G.) 492001.

8. B.K. Kindo, S/o Mangra Ji Kindo, aged about 51 years, R/o KE-II, Koutilya Enclave, Near Harsh Tower, Devpuri, Raipur (C.G.) 492001.

-Applicants

V e r s u s

1. Union of India through its Secretary, Ministry of Finance, D/o Revenue, North Block, New Delhi 110001.

2. The Chairman, Central Board of Excise and Customs, North Block, New Delhi 110001

3. Chief Commissioner, Central Excise, Customs and Service Tax, 48, Administrative Area, Arera Hills, Hoshangabad Road, Bhopal (M.P.) 462001.

4. Commissioner, Central Excise, Central Revenue Building, Damtari Road, Tikrapara, Raipur (C.G.) 492001 **- Respondents**

4. Original Application No.200/00231/2015

1. Surendra Oraon, S/o Late Shri Sawana Oraon, aged about 50 years, Superintendent of Central Excise, O/o Commissioner, Central Excise Bilaspur, At Dhamtari Road, Tikrapara, Raipur (C.G.), R/o- Plot No.223, Maitrikunj, Risali, Bhilai. Distt. Durg (C.G.) PIN – 490006.
2. Bikram Sahu, S/o Late Shri Jhaskeran Sahu, aged about 47 years, Superintendent of Central Excise, O/o Commissioner Audit, Central Excise, At Dhamtari Road, Tikrapara, Raipur (C.G.). R/o- Dhebar City Road, Awadhpuri, Bhatagaon Raipur (C.G.) 490006.
3. Suresh Singh, S/o Late Shri Patiraj Singh, aged about 56 years, Superintendent of Central Excise, O/o Commissioner, Central Excise, Bilaspur At Dhamtari Road, Tikrapara, Raipur (C.G.). R/o House No.48, Shiva Residency, Mathpurena, Raipur (C.G.) 490006.
4. Anupam Koshta, S/o Dr. R.D. Koshta, aged about 45 years, Superintendent of Central Excise, O/o Commissioner, Central Excise, Bilaspur At Dhamtari Road, Tikrapara, Raipur (C.G.). R/o H.No. 9/1, Priyadarshini Parisar (West), Near Nehur Nagar Chowk, Bhilai (C.G.).
5. Rajesh Kumar, S/o Late Shri Babu Lal Prasad, aged about 45 years, Superintendent of Central Excise, O/o Commissioner, Central Excise, Bilaspur At Dhamtari Road, Tikrapara, Raipur (C.G.). R/o H.No. G-40, Maruti Residency, Amlidih, Raipur (C.G.) 490006.
6. Jai Shankar Bhagat, S/o Rush Nath Bhagat, aged about 43 years, Superintendent of Central Excise, O/o Commissioner Audit, Central Excise, Dhamtari Road, Tikrapara, Raipur (C.G.). R/o H.No. G-24, Maruti Residency, Amlidih, Raipur (C.G.) 490006.
7. Veronica Bage, W/o Shri George David, aged about 47 years, Superintendent of Central Excise, O/o Commissioner, Central Excise, Bilaspur At Dhamtari Road, Tikrapara, Raipur (C.G.). R/o House No.47, Shiva Residency, Mathpurena, Raipur (C.G.) 490006.

8. Lalit Kishore Bara, S/o Shri Zacharia Bara, age about 47 years, Superintendent of Central Excise, O/o Commissioner, Central Excise, Bilaspur At Dhamtari Road, Tikrapara, Raipur (C.G.). R/o Qtr. No. 8D, Avenue B, Sector-2, Bhilai, Distt. Durg (C.G.) 490020.

9. Shailesh Sinha, S/o Shri Hariom Prasad, age about 47 years, Superintendent of Central Excise, O/o Commissioner, Audit-II Central Excise, At Dhamtari Road, Tikrapara, Raipur (C.G.). R/o Flat No. 103, Royal Greens, Junwani, Bhilai Distt. Durg (C.G.). PIN – 490020.

10. I. Chandrashekhar, S/o Shri I.V. Rao, aged about 45 years, Superintendent of Central Excise, O/o Commissioner, Central Excise, Dhamtari Road, Tikrapara, Raipur (C.G.). R/o House No.35, Shiva Residency, Mathpurena, Raipur (C.G.) 490006.

11. Kumar Kanti Ghosh, S/o Lt. Shukumar Ghosh, Age 45 years, Superintendent of Central Excise, O/o Commissioner, Central Excise, At Dhamtari Road, Tikrapara, Raipur (C.G.). R/o – Vinayak Sadan, Opp – Pragati Maidan, Mandi Gate, Raipur 490006.

-Applicants

V e r s u s

1. Union of India through its Secretary, Ministry of Finance, D/o Revenue, North Block, New Delhi 110001.

2. The Chairman, Central Board of Excise and Customs, North Block, New Delhi 110001

3. Chief Commissioner, Central Excise, Customs and Service Tax, 48, Administrative Area, Arera Hills, Hoshangabad Road, Bhopal (M.P.) 462001.

4. Commissioner, Central Excise, Central Revenue Building, Damtari Road, Tikrapara, Raipur (C.G.) 492001 - **Respondents**

5. Original Application No.200/00511/2015

1. Shri Sharad Tripathi, S/o Late Shri V.P Tripathi, D.O.B-30.09.1966, Occupation – Superintendent Central Excise, R/o Bunglow No.2, Nikhil Nestles, Jatkhedi, Bhopal (M.P) 462001.

2. Shri Mukesh Muchrikar, S/o Late Shri Prabhakar Muchrikar, D.O.B-26.02.1968, Occupation – Superintendent Central Excise, R/o 33, Raghunath Nagar, E-8, Extension, Bhopal (M.P) 462001.

3. Shri Vineet Kumar, S/o Shri Gopinathan Nair, D.O.B. – 03.09.1969, Occupation – Superintendent Central Excise, R/o MIG 5, Old Subhash Nagar, Bhopal (M.P) 462001.

4. Shri Yogendra Chouksey, S/o Shri Surendra Singh Chouksey, D.O.B- 13.03.1969, Occupation – Superintendent Central Excise, R/o 4 Priyadarshani, Rishi Valley, E-8 Extension, Bhopal (M.P) 462001.

5. Shri Rajesh Barman, S/o Shri Shiv Prasad Barman, D.O.B- 20.07.1965, Occupation – Superintendent Central Excise, R/o N-3/26, Sector C, Security Line, Govindpura, Bhopal (M.P) 462001

-Applicants

V e r s u s

1. Union of India through its Secretary, Ministry of Finance, D/o Revenue, North Block, New Delhi 110001.

2. The Chairman, Central Board of Excise and Customs, North Block, New Delhi 110001

3. Chief Commissioner, Central Excise, Customs and Service Tax, 48, Administrative Area, Arera Hills, Hoshangabad Road, Bhopal (M.P.) 462001.

- Respondents

6. Original Application No.200/00979/2015

1. Rabindra Nath Sen, S/o Late Haradhan, Date of Birth – 12.05.1956, Post – Superintendent (Central Excise), R/o D/3, Shankaracharya Homes, Bagsevamiya (Near Bus Stand), Bhopal, M.P 462001.

2. Devesh Damodar Bhatt, S/o Shri Damodar N. Bhatt, Date of Birth – 03.11.1966, Post – Superintendent (Central Excise), R/o C/o E-6/39, 11 No. Stop, Arera Colony, Bhopal, M.P. 462001.

3. Ravi Trivedi, S/o Shri Dwarikar Prasad Trivedi, Date of Birth – 26.07.1966, Post – Superintendent (Central Excise), R/o 3/38, Phase – II, Chattrasal Nagar, J.K. Road, Bhopal – 23, M.P 462001.

4. Sudhir Kusne, S/o Late B.S. Kusne, Date of Birth – 23.06.1967, Post – Superintendent (Central Excise), R/o Central Excise Headquarters, Bhopal, M.P 462001.

5. Satish Kumar Raikwar, S/o Shri Gokul Prasad Raikwar, Date of Birth – 02.01.1968, Post – Superintendent (Central Excise), R/o 585-A, Kamla Nehru Nagar, Near Choubey Dairy, Jabalpur, M.P 482001.

6. Mahesh Kumar Koshta, S/o Late Premlal Koshta, Date of Birth – 10.01.1969, Post – Superintendent (Central Excise), R/o 142, Shanti Nagar, Damoh Naka, Jabalpur, M.P. 482001.

7. Mukesh Kumar Barman, S/o Shri Shiv Prasad Barman, Date of Birth – 06.01.1970, Post – Superintendent (Central Excise), R/o 10, Indrapuri Colony, Narmada Road, Jabalpur, M.P 482001

-Applicants

(By Advocate – Shri S.K. Nandy)

V e r s u s

1. Union of India through its Secretary, Ministry of Finance, D/o Revenue, North Block, New Delhi 110001.

2. The Chairman, Central Board of Excise and Customs, North Block, New Delhi 110001

3. Chief Commissioner, Central Excise, Customs and Service Tax, 48, Administrative Area, Arera Hills, Hoshangabad Road, Bhopal (M.P.) 462001.

- Respondents

(By Advocate – Shri Himanshu Shrivastava)

(Date of reserving order : 26.07.2018)

COMMON ORDER

By Ramesh Singh Thakur, JM.

The issue involved in all these Original Applications is common and identical. Hence, all the six OAs are being disposed of by way of this common order. For the purpose of this order, reference is being made to the averments made and the documents annexed in Original Application No.200/00025/2015.

2. The applicants are aggrieved by the fact that their representation for grant of Grade Pay of Rs.5400/- in PB-2 for non-functional Grade, has been rejected on the ground that 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 (ACP) scheme. Hence, this Original Application has been filed.

3. The applicants have sought for the following reliefs:

“8.(i) Summon the entire relevant record from the respondents for its kind perusal;

8.(ii) Set aside the order dated 07.02.2014 (Annexure-A/1) and the clarification order 11.2.2009 and consequently command the respondents to grant the Grade Pay of Rs.5,400/- on non-functional w.e.f. 1.3.2008 i.e. after completion of four years regular service of the applicant in the G.P. of Rs.4,800/- (pre revised Rs.7,500-12,000/-);

8.(iii) Any other order/orders, which this Hon'ble Court deems, fit proper;

8.(iv) Cost of the petition may also kindly be awarded.”

4. The applicant No.1 is presently holding the post of Inspector of Central Excise and the other applicants are posted as Superintendent in the office of respondent No.4. They have joined on the post of Inspector on various dates in between 1992 to 1996. The cadre of Inspector was the pre-revised pay scale of Rs.6,500-10,500/- and the next higher post is Superintendent of Central Excise, which was the pre-revised pay scale of Rs.7,500-12,000/-. Consequent to the acceptance of 6th Pay Commission report, the pay scale of the cadre of Inspector, Central Excise, carries PB-2 with Grade Pay of Rs.4,600/- and the pay scale of the cadre of Superintendent, Central Excise, carries PB-2 with Grade Pay of Rs.4,800/- and as per the Resolution dated 29.8.2008 (Annexure A-5), further Grade Pay of Rs.5,400/- is to be granted to those employees, who have rendered four year regular service in Grade Pay of Rs.4,800/-.

5. It has been submitted that the cadre of the Inspector is having a long stagnation. However, by virtue of the ACP scheme issued by the DoP&T vide OM dated 09.08.1999, the employees holding Group B, C & D posts in the Central services, were made

entitled for two financial upgradation in 12 and 24 years of service. In consequence to this, the applicants were granted the benefit of first financial upgradation under ACP scheme to the pay scale of Superintendent, Central Excise vide order dated 17.03.2004 (Annexure A-4). The applicants by virtue of grant of first financial upgradation under ACP scheme, were granted the pay scale of Rs.7,500-12,000/-, i.e. the pay scale attached to the post of Superintendent w.e.f. 03.02.2004.

6. It has been further submitted by the applicants that after the recommendation of the 6th CPC, the Government of India vide Resolutoin dated 29.08.2008 (Annexure A-5), has accepted the recommendation of the Pay Commission inter alia specifying that the Group B Officers of the Department of Posts, Revenue etc. will be granted Grade Pay of Rs.5,400/- in PB-2 on non-functional basis after rendering four years regular service in the Grade Pay of Rs.4,800/- in PB-2. Apart from this, the Central Civil Services (Revised Pay) Rules, 2008, was also notified by the Government of India w.e.f. 01.01.2006. As per Section 2 of Part C of the 1st Schedule of the Rules, the Income Tax Officers, Superintendent, Appraiser etc. (Customs and Central Excise under the Department of Reveune), who have been granted Grade Pay of Rs.4,800/-, after

rendering four years of regular service, shall be paid the Grade Pay of Rs.5,400/-. In this regard, a clarification has also been issued by the Chairman, Central Board of Customs and Excise vide letter dated 21.11.2008 (Annexure A-6), wherein it has been clarified that four years period is to be counted with effect from the date on which the Officer is placed in the pay scale of Rs.7,500-12,000 (pre-revised). Thus, the applicants, who belong to the cadre of Inspector, are entitled for grant of Grade Pay of Rs.5,400/- on non-functional basis after rendering four years service in the Grade Pay of Rs.4,800/-. However, the respondents have rejected the claim of the applicants on the ground that non-functional upgradation to the Grade Pay of Rs.5,400/- in PB-2, can be given on completion of four years of regular service in the Grade Pay of Rs.4,800/- in PB-2 after regular promotion and not on account of financial upgradation due to ACP scheme.

7. Learned counsel for the applicants contended that the issue involved in all these Original Applications, has already been settled by the Hon'ble High Court of Madras in W.P. No.13225 of 2010 vide order dated 06.09.2010 in the case of **M. Subramaniam vs. Union of India & Ors.** Further, the coordinate Ernakulam Bench of this Tribunal in the matter of **Satyabhama T. vs. Union of**

India & Others (OA No.759/2010, decided on 15.05.2012), has also considered the similar issue.

8. The respondents have filed their reply. It has been submitted that the applicants have made the request for grant of Grade Pay of Rs.5,400/- in PB-2 on non-functional basis after rendering four years regular service in the Grade Pay of Rs.4,800/- on the basis of Resolution dated 29.08.2008, which stipulates that the Grade Pay of Rs.5,400/- in PB-2 on non-functional basis, should be granted to the incumbent after four years regular service of Grade Pay of Rs.4,800/-. It has also been submitted that CBEC, New Delhi, in consultation with Department of Expenditure, in its clarification dated 11.02.2009 (Annexure R-2), has clarified that, “non-functional upgradation to the grade pay of Rs.5,400 in the pay band PB-2 can be given on completion of 4 years of regular service in the grade pay of Rs.4,800 in PB-2 (pre-revised scale of Rs.7,500-12,000) after regular promotion and not on account of financial upgradation due to ACP.”

9. In regard to judgment of the Hon’ble High Court of Madras in **M. Subramaniam** (supra), the respondents have submitted that against the orders of the Hon’ble High Court, the department has preferred an SLP CC No.15627 of 2011 before the Hon’ble

Supreme Court, which has been subsequently converted to Appeal Civil No.8883/2011 and the same is still pending for adjudication.

10. The applicants have also filed rejoinder to the reply filed by the respondents reiterating their earlier submission. It has been again submitted that the applicants are similarly placed employees to that of M. Subramanian and are entitled for the same benefits. It has also been submitted that the circular dated 11.02.2009 (Annexure R-2) has been issued without canceling the earlier circular dated 21.11.2008 and all these aspects have been taken care of by the Hon'ble Madras High Court in **M. Subramaniam** (supra).

11. We have heard the learned counsel for the parties and have gone through the documents and pleadings available on record.

12. The issue involved in this Original Application is no longer res integra, as the same has already been decided by the Hon'ble High Court of Madras in the case of **M. Subramaniam** (supra), wherein the Hon'ble High Court has clarified as to how the 4 year period is to be counted for the purpose of granting non-functional upgradation to Group-B Officer. The relevant paragraph of the order reads as under:

“6. It is not in dispute that the Government of India vide its resolution, dated 29.8.2008 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 1.1.2004 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 1.1.2008. In support of his claim, the petitioner also relies upon a clarification issued by the Central Board of Excise and Customs in Letter F.No.A2501/98/2008-AdIIA, dated 21.11.2008 clarifying that the four years 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 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.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 (sic) 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-

12000 (pre-revised) or with effect from 1.1.2006, i.e. the date on which the recommendation of the 6th CP 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 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-years 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 scale of Rs.7,500-12,000 (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 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.”

12. During the course of the argument, learned counsel for the applicants brought to our notice that the Civil Appeal No(s). 8883 of 2011 filed before the Hon’ble Supreme Court at the hands of the department, has been dismissed vide order dated 10.10.2017.

13. The respondents, in their reply, have taken the stand for not granting grade pay of Rs.5400/- to the applicants in pay Band 2 on

1. Original Application No.200/00024/2015
2. Original Application No.200/00025/2015
3. Original Application No.200/00061/2015
4. Original Application No.200/00231/2015
5. Original Application No.200/00511/2015
6. Original Application No.200/00979/2015

non-functional basis after four years of regular service in the grade pay of Rs.4800/- in pay band 2, which has undoubtedly been considered by the Hon'ble High Court of Madras in **M. Subramaniam** (supra). Furthermore, the Civil Appeal No(s). 8883 of 2011 filed before the Hon'ble Supreme Court by the respondent department, has been dismissed on 10.10.2017 and the said verdict of Hon'ble High Court of Madras has become final. Therefore, we hold that the applicants are also entitled for the similar benefits, as has been extended to **M. Subramaniam** (supra).

14. In the result, all these Original Applications are allowed. The respondents are directed to grant the Grade Pay of Rs.5,400/- on non-functional to the applicants from the relevant date, within a period of 90 days from the date of receipt of a certified copy of this order. No costs.

15. A copy of this order shall also be placed in all other connected OAs.

(Ramesh Singh Thakur)
Judicial Member
 am/-

(Navin Tandon)
Administrative Member