

**Central Administrative Tribunal
Ernakulam Bench**

OA/180/00862/2018

Tuesday, this the 26th day of February, 2019.

CORAM

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

Hon'ble Mr.Ashish Kalia, Judicial Member

1. All India Association of Central Excise Gazetted Executive Officers Kerala unit, Central Revenue Building, I.S.Press Road, Cochin-682 018, represented by its General Secretary Sri Arun Zachariah.P., aged 49 years, S/o Late P.K.Zachariah, Superintendent of Central Excise, O/o The Assistant Commissioner of Central Tax & Central Excise, V. Publishers Building, Sreenivasa Iyer Road, Kottayam-686 019.
2. G. Balagopal, aged 51 years
S/o Gopalakrishnan Nair,
Superintendent of Central Excise,
O/o the Superintendent of Central Excise,
Kottarakkara Range, Kottarakkara-691 506,
residing at "Sreevihar", Thazhathuvadakku P.O.,
Enath Via, Kollam-691 526.
3. E.Sreedhar, aged 52 years
S/o M.K.Unnikrishna Panicker,
Superintendent of Central Excise & Customs,
Thiruvananthapuram Zone,
Central Revenue Building, I.S.Press Road,
Cochin-682 018,
residing at B-14A, Summer Sands,
Classic Apartments, Thrikkakkara,
Cochin-682 021.

Applicants

[Advocate: Mr.Shafik M.A.]

versus

1. Union of India represented by
Secretary, Department of Revenue
Ministry of Finance, New Delhi-110 001.
2. The Chairman
Central Board of Indirect Taxes & Customs
North Block, New Delhi-110 001.

3. The Chief Commissioner of Central Tax
Central Excise & Customs
Thiruvananthapuram Zone,
Central Revenue Building
I.S.Press Road, Cochin-682 018.

4. The Commissioner of Central Tax & Central Excise
Central Revenue Building
I.S.Press Road, Cochin-682 018.

Respondents

[Advocate: Mr.V.A.Shaji, ACGSC]

This OA having been heard on 13th February, 2019, this Tribunal delivered the following order on 26.02.2019:

ORDER

By Ashish Kalia, Judicial Member

This OA is filed by All India Association of Central Excise Gazetted Executive officers, Kerala Unit and 2 of its members – Sri G.Galagopal and Sri E.Sreedhar.

2. The applicants are aggrieved by the refusal of the respondents to grant the scale of pay of non-functional grade in the cadre of Superintendents of Central Excise, to the Inspectors of Central Excise on upgradation of pay, as per Govt of India instructions and CCS (RP) Rules. They seek the following relief:

Declare that the applicants are entitled for the benefits of Grade Pay of Rs.5400/- in PB-2 in non-functional basis after 4 years of service in the Grade Pay of Rs.4800/- in PB-2, either by way of ACP or MACP, with all consequential benefits.

3. The brief facts of the case are that 1st applicant is the Kerala Unit of the Association representing the cadre of Superintendents of Central Excise. The Association is represented through its General Secretary and he is authorized to file this OA as per the resolution dated 28.6.2018. It is submitted that 2/3rd of the posts of Inspectors of Central Excise is filled up through direct recruitment on

the basis of examinations and personality test conducted by Staff Selection Commission followed by a physical test conducted by the Department. The post of Preventive Officer of Customs and Examiner of Customs in the Customs Houses of the Department are also filled by the same examination. The posts of Superintendents of Central Excise are filled by promotion from the post of Inspector of Central Excise. The post of Inspector of Central Excise is a highly stagnating cadre and a direct recruit Inspector gets his 1st and, in most cases, the last promotion after a period of 16 to 22 years. This has caused large scale resentment and frustration among the cadres. This is compounded by the fact that the equally placed cadres of Preventive Officer and Examiner of the Customs Department get their promotion within 6 to 10 years. In the subsequent promotion to the post of Assistant Commissioner also, the Examiners and Preventive Officers are way ahead.

4. As per the recommendations of 5th CPC, Assured Career Progression Scheme provides for 2 promotions in a span of 12 and 24 years of service. Inspector of Central Excise was in the pre-revised pay scale of Rs.6500-10500 and the Superintendent of Central Excise was in the per-revised scale of Rs.7500-12000. As per 6th CPC recommendations, the ACP Scheme was replaced by the Modified Assured Progression Scheme (MACP) providing for 3 financial upgradations in a span of 10, 20 and 30 years. Ministry of Finance accepted the 6th CPC recommendations with the modification, inter- alia, that Group-B officers of the Department of Post, 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 Central Civil Service (Revised Pay) Rules, 2008 was also notified by the Government with effect from 1.1.2006 and

as per Section II of Part C of the First Schedule of the Rules, the Income Tax Officer, Superintendent, Appraiser etc (Customs & Central Excise) under the Department of Revenue have been granted Grade Pay of Rs.4800 and a Grade Pay of Rs.5400 after 4 years. The 2nd respondent, as per letter dated 21.11.2008, conveyed the clarification of the Department of Expenditure 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.7500-12000 (pre-revised).

5. Subsequently , the 2nd respondent altered the above stand in consultation with the Department of Expenditure and as per letter dated 11.2.2009 (Annexure A2) it is stated that *“non-functional upgradation to the GP of Rs.5400 in PB-2 can be given on completion of 4 years in regular service in the GP of Rs.4800 in PB-II (pre-revised scale of Rs.7500-12000) after regular promotion and not account of financial upgradation due to ACP”*. One of the members of the 1st applicant Association, Sri Ashoka Narayan who was placed in the GP of Rs.5400/- based on the above clarification and subsequently underwent a reduction in his salary, challenged Annexure A2 before this Tribunal by filing OA 151/2009. This Tribunal dismissed the OA as per order dated 26.9.2010. This was challenged before the Hon'ble High Court of Kerala in OP(CAT) No.276/2010. The Kerala High Court, as per judgment dated 8.12.2016 (Annexure A3) allowed the original petition, agreeing with the judgment dated 6.9.2010 in WP(C) No.13225/2010 of the Hon'ble High Court of Judicature Madras in the case of *M.Subramaniam vs. Union of India* and set aside Annexure A2 letter. The respondents, instead of complying with Annexure A3 judgment, approached the Hon'ble Supreme Court in SLP (Civil) No.17576/2017 against Annexure A3 and CA No.8883/2017 against the judgment of the Hon'ble High

Court of Madras. The Hon'ble Supreme Court dismissed all the department appeals. Consequently, all the members of the 1st applicant Association who became entitled to get the non-functional upgradation had given representations to implement the Supreme Court judgment. A review petition filed before the Hon'ble Supreme Court was also dismissed. Feeling aggrieved by the refusal of the respondents to grant non-functional grade pay, the applicants have approached this Tribunal with the present OA.

6. On notices being served, the respondents have filed a reply statement through Sri V.A.Shaji, learned ACGSC. It is submitted therein that as per clarification received from the Department of Revenue, non-functional upgradation to the Grade Pay of Rs.5400 in PB-2 can be given on completion of 4 years of regular service in the GP of Rs.4800/- in PB-2 after regular promotion and not on account of financial upgradation due to ACP or MACP. Thus it is clear that the officers who got a pre-revised pay scale of Rs.7500-12000 (corresponding to GP of 4800) by virtue of financial upgradation under ACP or MACP would not be entitled to the benefit of further non-functional upgradation to the GP of Rs.5400 on completion of 4 years of service. The respondents have prayed for dismissal of the OA saying that the prayer made by the applicants is not worthy of consideration.

7. Heard Sri Shafik M.A., learned counsel for the applicants and Sri V.A.Shaji, learned ACGSC on behalf of the respondents, at length.

8. In view of the judgment passed by Principal Bench in OA No.1707 of 2016, dated 11th April, 2018, allowing the OA, relying upon the judgment rendered by Hon'ble High Court of Madras in *M.Subramaniam vs. Union of India and others*, we find that present case is identical to the above mentioned

case case and is also covered by the judgment of the Hon'ble High Court of Kerala in *S.Ashoka Narayanan vs. Union of India and others* where the Hon. High Court of Kerala has held thus:

"We find that the view expressed by the Madras High Court is similar to the view expressed by us in the preceding paragraphs. There is no case for the respondents that they have challenged Exhibit P6 verdict passed by the High Court of Madras in W.P.(C) No.13225/2010 by way of appropriate proceedings before the Apex Court and hence, it has to be reasonably presumed that the said verdict has become final. We find that the course pursued by the Department in having reduced the Grade Pay of the petitioner (fixed as per Annexure A7 based on Annexure A5 as Rs.5400/-) to Rs.4800/- by placing reliance on Annexure A2, at the same time without making a reference to the earlier clarification issued by the very same Ministry as per Annexe A6, is not correct or sustainable."

9. We are of the considered view that the aforesaid decision is applicable to the present case. Accordingly the OA is allowed. Respondents are directed to grant Grade Pay of Rs.5400/- to the applicants after 4 years of service in the Grade Pay of Rs.4800/-, with all consequential benefits. This order shall be implemented within a period of two months from the receipt of the order. No order as to costs.

[Ashish Kalia]
Judicial Member

[E.K.Bharat Bhushan]
Administrative Member

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Annexures filed by the applicants:

- Annexure A1: Copy of the letter F.No.A.26017/98/2008-Ad.II.A dated 21.11.2008 issued by the 2nd respondent.
- Annexure A2: Copy of the letter F.No.A.26017/98/2008-Ad.II.A dated 11.2.2009 issued by the 2nd respondent.
- Annexure A3: Copy of the judgment dated 8.12.2016 of the Hon High Court of Kerala in OP(CAT) No.276/2010.
- Annexure A4: Copy of the judgment dated 10.10.2017 of the Hon Supreme Court in SLP(Civil) No.17576/2017.
- Annexure A5: Copy of the representation dated 7.3.2018 submitted before the 3rd respondent.
- Annexure A6: Copy of the order dated 11.4.2018 of the Principal Bench in OA No.1707/2016.
- Annexure A7: Copy of the judgment dated 23.8.2018 of the Hon Supreme Court in RP(C) No.2512/2018.
- Annexure A8: Copy of the representation dated 30.8.2018 submitted before the 3rd respondent.
- Annexure A9: Copy of the representation dated 19.3.2018 submitted before the 3rd respondent.
- Annexure A10: Copy of the representation dated 2.7.2018 submitted before the 3rd respondent.
- Annexure A11: Copy of the judgment dated 1.9.2017 of the Hon Supreme Court in SLP No.77457/2017.
- Annexure A12: Copy of the letter F.No.A-23011/07/2015 Ad.IIA dated 25.9.2018 issued by the 2nd respondent.