
(2022) 05 CAT CK 0017

In the Central Administrative Tribunal

Case No : Original Application No. 330, 00426 Of 2022

Bibhuti Kumar Jain

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 11-05-2022

Acts Referred:

Citation : (2022) 05 CAT CK 0017

Hon'ble Judges : Tarun Shridhar, Member (A); Pratima K Gupta, Member (J)

Bench : Division Bench

Advocate : Jaswant Singh, Chakrapani Vatsyayan

Final Decision : Disposed Of

Judgement

Tarun Shridhar, Member (A)

1. Shri Jaswant Singh, learned counsel for the applicant and Shri Manoj Kumar Sharma, holding brief of Shri Chakrapani Vatsyayan, learned counsel for the respondents are present.

2. Heard learned counsels for the parties and perused the record. As it is a covered matter, with the consent of learned counsel for both the parties, we are deciding it finally at the admission stage.

3. The controversy involved in this O.A. pertains to grant of non-functional-grade (NFG) to the applicant.

4. The relevant facts in brief are that the applicant herein is working on the post of Assistant Commissioner (AR) in the office OF CESTAT formations of Central Board of Indirect Taxes & Customs (CBIC for short), under Department of Revenue, Ministry of Finance, Government of India.

5. Under the recommendations of the 6th CPC, the erstwhile Annual Career Progression Scheme (ACP) of granting two financial upgradations in the 12th and 24th years of service were replaced by the Modified Career Progression Scheme

(MACP) wherein the employees became entitled to receive three financial upgradations in the 10th, 20th and 30th years of their service.

6. With regard to implementation of this scheme, the CBIC issued a clarification letter dated 11.02.2009, whereby it was clarified as under:-

" 3.The matter has been examined in consultation with Department of Expenditure, who have clarified the matter as follows:-

".... Non-functional upgradation to the grade pay of Rs. 5400 in the pay band PB-2 can be given on completion of 4 years of regular service in the grade pay of Rs. 4800 in PB-2 (pre-revised scale of Rs.7500-12000) after regular promotion and not on account of financial upgradation due to ACP."

4. Thus, it is clear 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 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 4 years in the pre-revised pay scale of Rs. 7500-12000.

5. This is for your kind information and necessary action."

7. The aforesaid letter was challenged before Hon'ble Madras High Court by means of Writ Petition No 13225/2010, M Subramaniam vs Union of India, wherein vide order dated 06.09.2010, the Hon'ble High Court Madras directed the respondents to extend the benefit of Grade Pay of Rs 5,400/- to the petitioner w.e.f. the date he had completed four years of regular service in the pre-revised scale of 7500-12,000 (corresponding to Grade Pay of Rs. 4,800/-), as per Resolution dated 29.08.2008 of the Finance Department, by observing as under:-

" 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 or 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."

8. The SLP filed by Union of India against the aforesaid order of Hon'ble Madras High Court, was dismissed by the Hon'ble Apex Court vide its order dated 10.10.2017 and a Review Petition thereupon was also dismissed vide order dated 23.08.2018.

9. Learned counsel for the applicant has submitted that the claim of the applicant in this OA is also identical. As it is an already settled matter having been decided by orders of the Hon'ble Madras High Court and affirmed by the Hon'ble Apex

Court, the applicant is entitled to the same relief. It is further submitted that different Benches of the Central Administrative Tribunal such as the Principal Bench, the Chandigarh Bench, the Mumbai Bench and the Hyderabad Bench, all have followed the above verdict of the Hon'ble Madras High Court and Hon'ble Supreme Court and have allowed the claim of the concerned applicant seeking the same benefit. Even this bench in its earlier orders has issued similar directions and has granted benefit to the concerned employees who prayed for identical relief in their concerned OAs. In support, copies of several judgments on the same issue have been filed by the learned counsel for the applicant.

10. The grievance of the applicant is that, in spite of this, the respondents have not considered the representation of the applicant and have summarily turned all those down, on the ground that the said judgments are applicable 'in personam' and not 'in rem'. As a result, the present applicants has been compelled to rush to this Bench to seek relief.

11. On the aforesaid grounds, it has been prayed that the pay of the applicant also needs to be fixed in the Non-Functional Grade (NFG) pay scale of Rs. 9,300-34,800/- in Pay Band II with grade pay of Rs.5,400/-with all consequential benefits w.e.f. the dates they had completed four years of regular service in the grade pay of Rs. 4,800/-. It is further prayed that entire arrears of salary and other emoluments payable to the applicant as a consequence of grant of Grade Pay of Rs. 5,400/- be paid to them from the due date along with interest. Accordingly, it is prayed that the O.A. be allowed and the prayed relief be granted.

12. Per contra, learned counsel for the respondents has not disputed that the controversy involved in this case is similar to the earlier judgments passed in several other cases. However, he has submitted that the benefit of earlier judgments can be given to the applicant only if he is found eligible for the same.

13. We have given our thoughtful consideration to the rival submissions advanced by learned counsel for both the parties. It is quite outrageous that the respondents are ignoring the fact that apart from this Bench, several other Benches of this Tribunal have repeatedly directed the respondents to comply the said judgment of Hon'ble Madras High Court rendered in M. Subramaniam's case (supra) by holding that the judgments are to be complied in rem and not to be treated as in personam. Hence, it would be in fitness of things if the respondents in the present O.A. also consider the case of the applicant and meet out the same treatment as has been given to their other counterparts all over India through judgments of the various benches of this Tribunal.

14. In the case of State of Karnataka & Others vs. C. Lalitha, (2006) 2 SCC 747, the Hon'ble Apex Court has held as under:-

" 29. Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court that would not mean that persons similarly

situated should be treated differently.”

15. In the wake of the law laid down in above cited judgments/orders, it cannot be said that the judgment passed by Hon’ble Madras High Court in the matter of M. Subramaniam (supra), is a judgment ‘in personam’ and not a judgment ‘in rem’. Moreover, all the matters relating to pay fixation, like present one under consideration, are governed by uniform policy of the Government and therefore, any judgment in these matters are always judgment ‘in rem’ and cannot be interpreted as judgment ‘in personam’.”

16. On the basis of the above discussion, we are of the firm view that the O.A. deserves to be allowed and is allowed. The respondents are accordingly directed to ensure that the benefit of the judgment passed by this Tribunal on 09.01.2020 in OA No. 1005/2019 Pradeep Kumar and others V. Union of India others and judgment dated 06.12.2018 passed in OA No.13188/2018 – Kaushal Kishore Bhaskar & Ors. Vs. Union of India & Ors, (Annexure A-9 to the OA), be also given to the applicant in this O.A., if he is found otherwise entitled for the same as per merit of his case. This exercise is to be completed within a period of four months from the date of receipt of certified copy of this order.

17. A copy of this order be also served on the Union Finance Secretary by the Registry to consider issuing directions on identical matters such as above for in rem consideration and not in personam. This would avoid needless litigation in the future. With the above directions, the instant Original Application bearing No. 426 of 2022 is disposed of.

18. There shall be no order as to costs.

19. All associated M.As are disposed of accordingly.