

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2010

CORAM

THE HONOURABLE Mr. JUSTICE ELIPE DHARMA RAD
AND

THE HONOURABLE Mr. JUSTICE K.K. SASIDHARAN

W.P.No.13225 of 2010

M.Subramaniam

.. Petitioner

Versus

1. Union of India
rep.by Secretary,
Department of Revenue
Ministry of Finance
New Delhi
2. The Chairman
Central Board of Excise & Customs
North Block, New Delhi
3. The Chief Commissioner of Central Excise
Customs & Service Tax, Tamil Nadu Zone
121, Mahatma Gandhi Road,
Nungambakken, Chennai - 600 034
4. The Commissioner of Central Excise
No.1, Foulkes Compound, Annaledu
Salem - 636 001
5. The Registrar
Central Administrative Tribunal
Madras Bench, City Civil Court
Buildings, Chennai - 600 104. .. Respondents

PRAYER: This Writ petition is filed under Article 226 of the Constitution of India for issuance of a writ of Certiorari and Mandamus as stated therein.

For Petitioner : Mr.V.Parthiban

For Respondents: Mr.A.P.Peter Gunasekaran
for RR.1 to 4
R5 Court

ORDER

(The Order of the Court was made by ELIPE DHARMA RAO, J.)

The Writ petition is filed for issuance of a writ of Certiorari and Mandamus to call for the records of the Central Administrative Tribunal's order dated 19.4.2010 made in O.A.No.167 of 2009 and quash the same and direct the respondents 1 to 4 to grant the grade pay of Rs.5,400/- and consequential benefits with effect from 1.1.2008 as per the orders of the Government of India accepting the recommendations of the Sixth Central Pay Commission.

2. According to the petitioner, he joined service as Inspector of Central Excise on 16.01.1992 and he was yet to be promoted as Superintendent of Central Excise. The cadre of Inspector of Central Excise was in the pre-revised pay scale of Rs.6500-10500 and the cadre of the Superintendent of Central Excise was in the pre-revised pay scale of Rs.7500-12000. On implementation of the Sixth Central Pay Commission report, the Inspectors of Central Excise have been placed in Pay Band 2 with a grade pay of Rs.4200/- and the Superintendents of Central Excise have been placed in Pay Band 2 with a grade pay of Rs.4800/- and a grade pay of Rs.5,400/- after a period of four years in the grade pay of Rs.4800/-. Though the posts of Inspectors of Central Excise, Preventive Officers and Examiners under the Customs carry the same scale and more or less the same level of responsibilities, the person in the post of Inspector of Central Excise, who is a direct recruit, gets his first promotion after long period of sixteen to twenty years of service, whereas the persons in the cadre of Preventive Officers and Examiners under the Customs Department get their promotion within six to ten years of service in their respective cadres. Pursuant to the recommendations of the Fifth Central Pay Commission, the Assured Career Progression Scheme was introduced by the Ministry of Personnel, Public Grievances and Pensions, Government of India as per Office Memorandum No.35034/1/97-Estt(D) dated 9.8.1999 to alleviate the grievances of employees, who are stagnating in service without promotions, whereby the employees are entitled to two financial upgradations in the 12th and 24th year of service respectively. On the basis of the said scheme, the second respondent as per letter C.No.II/3/136/99-Estt dated 9.9.2003 issued order No.116/2003 granting first financial upgradation to the petitioner and was granted the pay scale of the Superintendent of Central Excise with effect from 1.1.2004 in the pay scale of Rs.7500-250-12000 vide order, dated 11.8.2004 of the Assistant Commissioner of Central Excise, Salem. Thereafter, on a careful consideration of recommendations of the Sixth Pay Commission

Report with respect to Group B Officers, on 29.8.2008, Department of Expenditure, Ministry of Finance, Government of India passed resolution No.1/1/2008 to the effect that Group B Officers of the Department of Posts, revenue will be granted grade pay of Rs.5400 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 and the same was accepted by the Union Government and notified in the Gazette by incorporating them in the Central Civil Service (Revised Pay) Rules, 2008 with effect from 1.1.2006.

3. The further case of Petitioner is that he is drawing the Pay scale of Rs.7500-250-12000 being the pay scale of Superintendent of Central Excise, which is Group B Post under the Department of Revenue with effect from 1.1.2004 and he is entitled to the benefits of grade pay of Rs.5,400/- w.e.f. 1.1.2008 as per the resolution of Ministry of Finance dated 29.8.2008. An Inspector of Central Excise, a Group B Officer under the Department of Revenue placed in the grade pay of Rs.4800/- corresponding to the pre-revised scale of Rs.7500-12000 on the first financial upgradation under the Assured Career Progression Scheme becomes entitled for the grade pay of Rs.5400/- after a period of four years of drawing a grade pay of Rs.4800/-. The Central Board of Excise and Customs has also issued a clarification per Letter F.No.A.26017/98/2008-ADIIA dated 21.11.2008 clarifying that the four years period is to be counted with effect from the date on which an officer is placed in the pay scale of Rs.7500-12000. However, the fourth respondent had issued an order dated 16.9.2008 fixing a lesser grade pay of Rs.4800/- instead of Rs.5,400/- to which the petitioner is entitled to with effect from 1.1.2008 and contrary to the ACP Scheme and resolution of Government of India, the Central Board of Excise and Customs has issued another clarification on 11.2.2009 stating that grade pay of Rs.5400 need not be given to those who are drawing the salary of Superintendents by way of financial upgradation under ACP. Aggrieved by the same, the petitioner filed O.A.No.167 of 2009 before the Central Administrative Tribunal, Madras Bench, which dismissed O.A. on 19.4.2010. Challenging the said order, the present Writ Petition is filed.

4. Learned counsel appearing for the petitioner submitted that in the resolution of Ministry of Finance, Department of Expenditure, Government of India dated 29.8.2008, Government agreed to grant grade pay of Rs.5400/- in Pay Band 2 to Group B Officers of the Department of Posts, Revenue after four years of regular service in Grade Pay of Rs.4800/- and clarification was issued by the Central Board of Excise and Customs dated 21.11.2008 that the four years period is to be counted with effect from the date on which an officer is placed in the pay scale of Rs.7500-12000. However, contrary to the resolution and earlier clarification dated 21.11.2008, the fourth

respondent passed order dated 16.9.2008 and the same was confirmed by the Tribunal.

5. The Tribunal, by relying upon the clarification, dated 29.8.2008 of the Government of India, held that the petitioner cannot be equated to the posts, viz., Income Tax Officer/Superintendents, Appraisers, etc. though he was drawing the pay scale attached to the said posts by virtue of grant of financial upgradation in ACP Scheme and therefore, he is not entitled to the grade pay of Rs.5400/- on the basis that he had completed four years of regular service in the pay scale of Rs.7500-12000. According to the Tribunal, unless the petitioner is promoted, he is not entitled for grade pay of Rs.5400/- and he cannot claim only by virtue of the benefits obtained under ACP Scheme.

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 relied upon a clarification issued by the Central Board of Excise and Customs in Letter F.No.A2601/98/2008-AdIIR, 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 11.2.2009, 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 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 CPC 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-year 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.7500-12000 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.

9. Accordingly, the Writ Petition is allowed setting aside the order of the Tribunal, dated 19.4.2010 passed in O.A.No.167 of 2009. The respondents are directed to extend the benefit of grade pay of Rs.5400/- to the petitioner from 1.1.2008 as per the resolution dated 29.8.2010. No costs.

suk

sd/-
Asst. Registrar

//True Copy//

29/10/10
Sub Asst. Registrar

To

1. The Secretary,
Department of Revenue
Ministry of Finance
Union of India
New Delhi



2. **The Chairman**
Central Board of Excise & Customs
North Block, New Delhi
3. **The Chief Commissioner of Central Excise**
Customs & Service Tax, Tamil Nadu Zone
121, Mahatma Gandhi Road,
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5. **The Registrar**
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Madras Bench, City Civil Court
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+ 1 CC to Mr.V. Parthiban, Advocate SR No.66070

NBM(CO)
BR/21.10.2010

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