22.02.2022
Item no. 13
Ct. No.04
Saswata

W.P.C.T. 85 of 2021

Union of India & Ors.
Vs.
Arabinda Pathak & Ors.

Mr. Bhudeb Chatterjee
... for the petitioners

Ms. Soma Kar Ghosh
Mr. Abhishek Banerjee
... for the respondents

The present respondents have been litigating to ventilate the grievances before the Tribunal as well as this Court seeking the benefit in terms of the resolution dated 29.08.2008 issued by the Ministry of Finance (Department of Expenditure). The respondents are the Group-B officers (Stenographers) in the office of the Chief Post Master General, West Bengal circle, Department of Posts. The respondents claim that they are Group-B officers and have been granted a grade-pay of Rs.4800/- whereas by virtue of a recommendation of the 6th Pay Commission and the resolution taken thereupon on 28.08.2008, the petitioner having rendered four years of regular service at grade-pay of Rs.4800/- in payband-2 on non-functional post is entitled to a grade-pay of Rs.5400/-.

The authority negatived the claim upon placing reliance upon a scheme of MACP introduced on 18.09.2009, wherein the upgradation in the grade-pay can only be provided upon completion of 10/20/30 years of service in a cadre. It is thus indicated that though the 6th Pay Commission recommended the enhancement of the grade-pay at Rs.5400/- upon completion of 4 years of service at Rs.4800/- at the Group-B cadre, the same had never been extended to any other Group-B officers. Since the petitioner took a plea that the similarly circumstance persons had been granted the benefit under the said resolution dated 29.08.2008 by the Hyderabad Bench of the CAT. The authorities taking clue from the observations made therein that the said order shall not be treated as a precedence for other case, observed that it does not create any right in the respondents. The Tribunal application being 1595/2019 was filed challenging the said order of rejection dated 21.10.2019 with an additional prayer of extending the benefit under the aforesaid resolution.

A plea was taken by the Union of India that since the MACP has been introduced in the meantime and there is no decision of granting benefit on the said resolution dated 29.08.2008, the respondents are not entitled to any benefit. In fact, the identical issue was raised before the Madras High Court in the case of **M. Subramaniam –vs- Union of India & Ors**. in **W.P.no. 13225 of 2010 dated 06.09.2010** wherein a plea was taken that once the benefit under the MACP has already been availed, the same cannot be re-extended in terms of the recommnedation of the 6th Pay Commission. The Madras High Court dispelled the aforesaid objection and held:

> *"... 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 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. 5,400/- after a period of four years of drawing a grade pay of Rs. 4800/-. The Central Board of Excise and Custom has also issued a clarification per letter P.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 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.

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...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. 5,400/- 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. 5,400 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 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-AdIIA, 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 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-financial upgradation 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 on 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 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 year 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. 7,500-12000 (pre-revised), since the petitioner admittedly completed 4 year period in the pay scale of Rs. 7500-12000as on 1.1.2008, he is entitled to grade pay of Rs. 5,400/-. In fact, the Government on 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-financial basis after four Group B Officers in pay Band 2 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."

The order of the Madras High Court was challenged before the Supreme Court by the Union of India in Civil Appeal No. 8883 of 2011, but the same was dismissed at the SLP stage and the application for review was further dismissed. There is no dispute that the said resolution dated 29.08.2008 is categorical in the sense that it has its applicability to the Group-B officers of the Department of Posts, which would be evident from paragraph (x)(e) of the resolution.

"(x) Regarding Group 'B' cadres, the Commision's recommendations will be notified in the following manner:-

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e) Group B officers of Departments of Posts, 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 only question which arise in the instant case is whether the respondents are entitled to a higher grade-pay of Rs.5400/- from 01.01.2006 or from the date posterior thereto upon successfully rendering 4 years of continuous service at grade-pay of Rs.4800/-.

The petitioner has not taken any plea that the respondents have not rendered services at the grade-pay of Rs.4800/- rather they admitted the aforesaid facts but the denial as indicated above was founded upon introduction of MACP, providing the increment at the interval of 10/20/30 years.

The certainty of law is the virtue. There cannot be different parameters at different parts of the country under the central legislation and, therefore, the similar benefits should be extended uniformly. The Central Government decided to accept the recommendation of the 6th Pay Commission and the Ministry of Finance issued the resolution dated 29.08.2008, extending it to the Group-B officers of the Department of Posts. The moment the right is fructified and accrued on the date of the decision of the Government extending benefit, such right cannot be destroyed but must be extended to the concerned employee strictly in terms thereof.

We do not find any justification in the stand of the Union of India that the benefit of successfully rendering service for 4 years was done away with upon introduction of the MACP in the year 2009. The moment the respondents have fulfilled the criterion enshrined in paragraph (x)(e) of the resolution dated 29.08.2008, we do not find any justification in the stand of the Union of India in denying the benefit thereunder. The said scheme was extended to the Department of Posts and admittedly the respondents are the Group-B officers in the said Department. The authorities, therefore, acted contrary to the law laid down by the Madras High Court in M. Subramaniam (Supra) in rejecting the representation.

We, thus do not find any infirmity or illegality in the order of the Tribunal in allowing the application filed by the respondents.

The present writ petition being W.P.C.T. 85 of 2021 fails and is accordingly dismissed without any order as to costs.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)