IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2023

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE P. DHANABAL

W.P.No.34610 of 2018

1. E.B.Akhilan
2. T.Sugumar
3. S.Murali
4. K.Srivaramangai
5. B.Venkataramana
6. Vasantha
7. R.Nagarajan
8. R.Vngavai Rajathi
9. S.Ramadevi
10. J.Dhanasekaran
11. R.Bhuvaneswari
12. N.Palani
13. A.Glory
14. R..Avvai Rajathi
15. K.B.Srinivasan
16. Singaravel.G.
17. D.Santhini
18. R.Chitra
19. R.Ganapathy
20. A.V.Arul Mohan
21. S.Raghuraman
22. T.P.Balaji
23. K.Jayaraman

24. D.I.Prasad
25. R.Gnanasambandam
26. K.S.Venkataraman
27. K.Chellammal
28. B.Madhavan
29. D.Clement Suresh Kumar
30. R.Suresh
31. M.Kandasamy
32. P.Venkatesan
33. C.Srinivasan
34. D.Kalyanaraman
35. M.Kakkum Perumal
36. A.Solomen Selvaraj
37. R.Ravi
38. S.Ramasamy
39. B.Nirmala Devi
40. D.Rajesh Kannan
41. R.V.Ananthanarayanan
42. P.Rajkumar
43. C.Saravanan
44. R.Boopathi
45. S.Shanmugakani
46. A.S.Venkatesan
47. S.Karthikeyan
48. S.Sridhar Natarajan
49. J.Marshal
50. T.Kalidass
51. P.Rajmohan
52. V.R.Uma
53. M.Shanthi
54. R.Muthukumaran
55. K.Lakshmanaperumal
56. A.V.Sridhar
57. N.D.Bharathi ... Petitioners

Vs.

1. The Chief Commissioner of Central Excise,
   121, Nungambakam High Road,
   Chennai 600 034.

2. The Additional Commissioner (CCA),
   121, Nungambakkam High Road,
   Chennai 600034.

3. The Deputy Commissioner (CCA),
   121, Nungambakkam High Road,
   Chennai 600 034. ... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorari, calling for the records relating to the order dated 29.08.2018 passed in O.A.No.310/00743 of 2016 on the fil of the Central Administrative Tribunal, Madras Bench and quash the same.

For petitioners : Mr.P.Valliappan, Senior Counsel
for Mr.J.Bharathiraja

For Respondents : Mr.V.Sundareswaran, Senior Panel Counsel

ORDER

(Order of the Court was delivered by D.KRISHNAKUMAR, J.)

Challenging the order dated 29.08.2018 passed by the Central Administrative Tribunal in OA No.310/00743/2016, *in and by which, the claim of the writ petitioners, seeking direction to the department to pay the* *arrears of pay from the date of notional promotion as inspectors with effect from 20.01.2003 was dismissed*, this writ petition has been filed.

2. The petitioners 1 to 55 are working as Superintendents/Inspectors in the Customs and Central Excise Department throughout the State of Tamil Nadu & Puducherry. The petitioner No.56, viz., Mr.Sridhar A.V. has gone on voluntary retirement from service in 2007, however, he is entitled for arrears of pay as that of the petitioners. The petitioner No.57, viz., N.D.Bharathi, expired on 23.05.2013 and hence, her husband is entitled to get the arrears of pay.

3. According to the petitioners, they were not promoted as Inspectors by the Department, as per the recruitment Rules, on their due date, which fall on various dates, but were promoted notionally with effect from 20.01.2003, vide order dated 28.04.2015 issued by the third respondent, approved by the first respondent. In the above said order dated 28.04.2015, it was stated that consequent to the revision in the date of promotion on notional basis, pay fixation of the officers shall be done, in accordance with

the existing instructions. Further, it was stated in the order that, no arrears will be admissible in case of officers notionally promoted or where re-fixation of pay is made. Thereafter, on 07.01.2016 a letter was issued by the Additional Commissioner, Office of the Chief Commissioner of Central Excise, Chennai zone, wherein, it was stated at paragraph No.3(2) as " drawal of arrears of pay w.e.f. date of issue of office order No.23/2015 i.e. 28.04.2015 only ". The contention of the petitioners is that, they are entitled for the arrears of pay, due to them from the date of notional promotion, w.e.f. 20.01.2003, as per Establishment order No.23/2015, dated 28.04.2015, however, it was denied by the Department. Therefore, challenging above said letter dated 07.01.2016; and also the letter dated 28.04.2015, in so far as the order that no arrears will be admissible in case of officers notionally promoted or where re-fixation of pay is made is concerned, the petitioners have approached the Tribunal.

4. In the meanwhile, there existed a dispute against inter-se seniority due to cadre restructuring and the applicants had challenged the rules and the matter went up to the Hon'ble Supreme Court and the Apex Court had

disposed the SLP CC No.5272 to 5284/2008 dated 15.06.2009, upholding the rules. Thereafter only, the Department had conducted the review of promotions and there occurred a delay in granting notional promotion to the applicants.

5. The application filed by the petitioners was dismissed by the Tribunal mainly on the ground of delay stating that the petitioners themselves have caused the delay due to the inter-se dispute, and hence, the department cannot be blamed for such delay. Challenging the impugned order passed by the Tribunal, the present writ petition has been filed by the petitioners.

6. When the matter was taken up for final hearing, the learned counsel for the petitioners has placed a letter dated 16.02.2021 issued by the Additional Commissioner, office of the Principal Chief Commissioner of CGST and Central Excise, Chennai zone before this Court and submitted that, as per Clause 3 of the above said letter, the petitioners are eligible for re fixation of pay from the date of notional promotion and drawal of

differential pay and allowances w.e.f. the date of actual assumption of charges as Inspector. Further, as per Clause 4 of the above said letter, all pending representations on drawal of arrears with effect from the date of notional promotions to be settled with reference to FR 17. Therefore, the authorities concerned may be directed to take a note of the above said letter dated 16.02.2021 and to pay the arrears of pay to the petitioners.

7. The learned counsel appearing for the respondents submitted that, as per the letter dated 16.02.2021, relied upon by the learned counsel for the petitioners, the petitioners are entitled to get the arrears with effect from the date of notional promotions, with reference to FR-17. He further submitted that, the request of the petitioners will be considered by the authorities concerned, as per Clause 4 of the above said letter, if they are eligible.

8. In view of the above said submissions, the first respondent is directed to consider the claim of the petitioners, in the light of the letter dated 16.02.2021 issued by the Additional Commissioner, Office of the Principal Chief Commissioner of CGST and Central Excise, Chennai Zone

and take appropriate decision in accordance with law and to communicate the same to the petitioners, within a period of 12 weeks from the date of receipt of a copy of this order.

9. With the above directions, this writ petition is disposed of. No costs.

(D.K.K.J.) **(P.D.B.J.)**

11.10.2023

Internet: Yes/No
Index : Yes/No
mst

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D.KRISHNAKUMAR, J.
and

P. DHANABAL, J.

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