



2024:DHC:7971-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 886/2020 & CM APPL. 9714/2022**

DAL SINGH AND ORS.

....Petitioners

Through: Mr. Sagar Saxena, Mr. Parmeet Singh, Mr. Sarthak Pandey and Mr. Mukesh Kr. Mishra, Advs.

versus

UNION OF INDIA AND ORS.

.....Respondents

Through: Ms. Manisha Agarwal Narain, CGSC with Mr. Chandar Deep Singh, Mr. Sandeep Singh Somaria, Mr. Akhil Gupta, Advs. for R-1 to 3

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT (ORAL)

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14.10.2024

C.HARI SHANKAR, J.

1. The dispute in this writ petition is covered by judgment dated 9 September 2024 passed by a Division Bench of this Court in *Sushil Kumar v UOI*¹ in WP (C) 690/2022.

2. The petitioners were working as Inspectors of Central Excise. They were holding substantive pay-scales of ₹ 6500-10500/- w.e.f. 1 January 1996. Consequent to grant of the benefits of the Assured

¹ 2024 SCC OnLine Del 6482



Career Progression (ACP) Scheme, their salary was fixed in the grade of ₹ 7500-12000/-, in the case of Petitioner 1 from 12 April 2005, in the case of Petitioner 2 from 25 September 2001 and in the case of Petitioner 3 from 2 November 2001.

3. The petitioners' contention is that on completion of four years in the scale of ₹ 7500-12000/-, with grade pay of ₹ 4800/-, they became eligible to be granted the next grade pay of ₹ 5400/- as per Resolution dated 29 August 2008. The relevant portion of the said Resolution may be reproduced thus:

“The Government have given careful consideration to the recommendations of the Commission in respect of civilian employees of the Central Government in Groups ‘A’, ‘B’, ‘C’ and ‘D’ as also those in the All India Services and Chairpersons/ Members of Regulatory Bodies (except Reserve Bank of India) and have decided that the recommendations of the Commission in respect of these categories of Central Government employees, All India Services and Chairpersons/Members of Regulatory Bodies (except Reserve Bank of India) shall be accepted as a package subject to the modifications mentioned below:-

(i) The following Pay Bands recommended by the Commission will be improved and the modified Pay Bands will be as below:

Recommended by the Commission	Decision of the Government
PB-1 ₹ 4860-20200	PB-1 ₹ 5200-20200
PB-2 ₹ 8700-34800	PB-2 ₹ 9300-34800
PB-4 ₹39200-67000	PB-4 ₹37400-67000

(ii) A new pay scale of Rs. 75500-(annual increment @ 3%)-80000 designated as HAG+ will be carved out of PB-4;

(iii) The following Grade Pays recommended by the Commission will be improved and the modified Grade Pays will be as below:-



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Recommended by the Commission	Decision of the Government
Grade Pay of Rs. 6100 in PB-3 for the pre-revised pay scales of Rs. 10000-15200 and Rs. 10325-10975	Grade Pay-Rs. 6600 in PB-3
Grade Pay of Rs. 6500 in PB-3 for the pre-revised pay scales of Rs. 10650-15850	Grade Pay-Rs. 6600 in PB-3
Grade Pay of Rs. 6600 in PB-3 for the pre-revised pay scales of Rs. 12000-16500	Grade Pay-Rs. 7600 in PB-3
Grade Pay of Rs. 7500 in PB-3 for the pre-revised pay scales of Rs. 12750-16500	Grade Pay-Rs. 7600 in PB-3
Grade Pay of Rs. 7600 in PB-3 for the pre-revised pay scales of Rs. 12000-18000	Grade Pay-Rs. 7600 in PB-3
Grade Pay of Rs. 7600 in PB-3 for the pre-revised pay scales of Rs. 14300-18300	Grade Pay-Rs. 8700 in PB-4
Grade Pay of Rs. 8300 in PB-3 for the pre-revised pay scales of Rs. 15100-18300	Grade Pay-Rs. 8700 in PB-4
Grade Pay of Rs. 8400 in PB-3 for the pre-revised pay scales of Rs. 16400-20000 and Rs. 16400-20900	Grade Pay-Rs. 8900 in PB-4
Grade Pay of Rs. 9000 in PB-4 for the pre-revised pay scales of Rs. 14300-22400 and Rs. 18400-22400	Grade Pay-Rs. 10000 in PB-4
Grade Pay of Rs. 11000 in PB-4 for the pre-revised pay scales of Rs. 22400-24500	Grade Pay-Rs. 12000 in PB-4
Grade Pay of Rs. 13000	A separate pay scale of



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in PB-4 for the pre-revised pay scales of Rs. 22400-26000 and Rs. 24050-26000	Rs. 75500-(annual increment @ 3%)-80000 designated as HAG+
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Note 1: The edge presently accorded to the Indian Administrative Service and India Foreign Service at three grades viz., Senior Time Scale, Junior Administrative Grade and Selection Grade will continue in the form of two additional increments @ 3% each which will be adjusted in the pay band.

Note 2: Grade Pay will determine seniority of posts only within a cadre's hierarchy and not between various cadres;

(iv) With regard to fixation of pay in the revised Pay Bands, the basic pay drawn as on 1.1.2006 on the existing Fifth CPC pay scales will be multiplied by a factor of 1.86 and then rounded off to next multiple of 10. This will be the pay in the revised running Pay Band. Grade Pay, as approved by the Government,

(x) Regarding Group B cadres, the Commission's recommendations will be modified in the following manner:

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.*

4. The petitioners, accordingly, moved the learned Central Administrative Tribunal² seeking that they be granted grade pay of ₹ 5400/- on completion of four years in the grade pay of ₹ 4800/-. Before the learned Tribunal as well as before this Court, the petitioners relied on the judgment of the High Court of Madras in *M.*

² "the learned Tribunal", hereinafter



***Subramaniam v UOI*³.**

5. The learned Tribunal has, however, rejected the petitioners' claim. Paras 5 and 6 of the judgment under challenge read thus:

“5. The applicants sought to draw support from the order dated 06.09.2010 of the Hon'ble High Court of Madras in M. Subramaniam vs. Union of India & Ors. in WP(C) No. 13225/2010. A perusal of that order discloses that the cadre of Inspector in the Central Excise, which was in the pre-revised scale of Rs.6500-10500, was put in Pay Band-2 with Grade Pay of Rs.4200/-; and the cadre of Superintendent in the Central Excise, which was in the pre-revised scale of Rs.7500-12000, was put in Pay Band-2 with Grade Pay of Rs.4800/-. The benefit of upgradation to the Grade Pay of Rs.5400/- was only in favour of the Superintendents, who completed 4 years of service in the Grade Pay of Rs.4800/-.

6. Admittedly, the applicants did not complete the service of 4 years in the post of Superintendent. They completed 4 years of service in the Grade Pay of Rs.4800/-, which was the result of ACP extended to them, on account of their not getting promotion for a period of 12 years. That cannot be treated on par with the cadre of Superintendent for the purpose of upgradation.”

6. We have heard Mr. Sagar Saxena, learned Counsel for the petitioners and Ms. Manisha Agarwal Narain, learned Counsel for the respondents.

7. Mr. Saxena submits that the learned Tribunal was clearly in error regarding the benefit of the upgradation to the grade pay of ₹ 5400/- to be conditional upon four years being spent in the grade pay of ₹ 4800/- in the grade of Superintendent. He submits that the resolution dated 29 August 2008 makes no reference to the post of

³ W.P. (C) 13225/2010 in order dated 6 September 2010



Superintendent and merely requires the incumbent to had four years services in the grade pay of ₹ 4800/-, which his client satisfies.

8. This position, he submits, was recognised by the High Court of Madras in *M. Subramaniam*, which was subsequently followed by the Division Bench of this Court in *Sushil Kumar*.

9. As against this, Ms. Manisha Agarwal Narain, learned CGSC for the respondents, submits that Clause X (e) in the resolution dated 29 August 2008 has to be read holistically in the right of the entire resolution and is meant to provide for amelioration of stagnation in the grade of Superintendent.

10. Once the petitioners had never served in the post of Superintendent and, as such, she submits that they would not be entitled to the benefit of that dispensation.

11. She relies on clarificatory circulars dated 11 February 2009 and 16 September 2009, issued by the erstwhile Central Board of Excise and Customs⁴, which may be reproduced thus:

Circular dated 11 February 2009

“F.No.A.26017/98/2008-Ad.II.A
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

New Delhi, the 11th February, 2009

⁴ “the CBEC”, hereinafter



To

All the Chief Commissioners/ Directors General under CBEC.
All the Commissioners in-charge of Directorates under CBEC.

Subject: Clarification regarding grant of non-functional upgradation to Group-B Officers.

Sir/Madam,

I am directed to mention that in Part-C, Section-II of the CCS (Revised Pay) Rules, 2008, under the Heading 'Ministry of Finance, Department of Revenue, at S. No. 9, it is indicated that Superintendents, Appraisers etc. (Customs & Central Excise) [who are in the pre-revised scale of Rs.7,500-12,000] shall be granted Grade Pay of Rs. 5,400 in PB-2 [corresponding to pre-revised scale of Rs. 8,000-13,500], after 4 years of Service. Further, in Clause (x)(e) of the RESOLUTION also, it is indicated that "Group-B Officers of the Department of Posts, Revenue, etc will be granted Grade Pay of Rs.5,400 in PB-2 on non-functional basis after 4 years of regular service in the Grade Pay of Rs.4,800 in PB-2."

2. The pre-revised pay-scale of Rs. 7,500-12,000 could be granted to an officer EITHER on functional promotion to the post of Superintendent, Appraiser, etc. OR by way of financial upgradation under ACP. Thus, officers of the rank of Inspectors could also have this pay-scale due to financial upgradation under ACP. A question was raised as to whether the officers who had got the pre-revised pay-scale of Rs.7,500-12,000 by virtue of financial upgradation under ACP will, also be entitled to the benefit of further non-functional upgradation on completion of 4 years in the pre-revised pay scale of Rs.7,500-12,000, in terms of recommendations of 6th CPC accepted by the Government, as mentioned in Para-1 above.

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.5,400 in the pay band PB-2 can be given on completion of 4 years of regular service in the grade pay of Rs.4,800 in PB-2 (pre-revised scale of Rs.7,500-12,000) after regular promotion and not on account of financial upgradation due to ACP."



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4. Thus, it is clear that the officers who got the pre-revised pay-scale of Rs.7,500-12,000 (corresponding to grade pay of Rs.4,800) 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.8,000-13,500 (corresponding to grade pay of Rs.5,400), on completion of 4 years in the pre-revised pay scale of Rs.7,500- 12,000.

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

Yours faithfully,

(Alok Agarwal)

Under Secretary to the Govt. of India
Tel: 011-2309-3476”

Circular dated 16 September 2009

“F.No. A-26017/98/2008-Ad. II A
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

New Delhi, the 16th September, 2009

All Chief Commissioners/Commissioners of Central Excise/
Customs.

All Directors General of Directorates in CBEC.

Subject: Clarification on grant of Grade Pay of Rs. 5400 on
functional basis to Group 'B' officers in Central Board of Excise &
Customs

Sir,

Reference is invited to this Department's letter F.No. A-
26017/98/2008-Ad.II A dated 21/11/2008 on the above subject.

2. In pursuance of Government of India, Department of
Expenditure Resolution No. 1/1/2008-JC dated 29th August, 2008
notifying acceptance of recommendations of 6th Central Pay
Commission, it was decided to grant grade Pay of Rs. 5400 in PB-2
on non-functional basis to Group B officers of Central Board of
Excise & Customs (i.e. Customs Appraiser / Superintendent of



Central Excise / Superintendent of Customs (P)) after 4 years of regular service in the grade pay of Rs. 4800 in PB-2.

3. It is now clarified that the grant of the higher grade pay of Rs. 5400 in PB-2 on non functional basis is not linked to vacancy and may be given retrospectively w.e.f. 1/1/2006 provided the officer concerned has,

(i) completed minimum 4 years of regular service as on 1/1/2006 as Customs Appraiser / Superintendent of Central Excise / Superintendent of Customs (P) irrespective of the pay scale attached to the post, and

(ii) is clear from vigilance angle.

and provided further that,

Officers who have not completed 4 years of regular service as Customs Appraiser/Superintendent of Central Excise/Superintendent of Customs (P) shall be given this pay scale immediately on completion of 4 years of regular service in the respective post provided they are clear from vigilance angle.

4. It is further clarified that the non functional Grade Pay of Rs. 5400 in PB-2 will not be granted to such of those Group B officers who have got the Grade Pay of Rs. 4800 on upgradation under the Assured Career Progression Scheme.

5. This issues with the approval of Department of Expenditure, Implementation Cell vide their IC U.O. NO. 10/1/2009-IC dated 15.09.2009

Yours faithfully,

(L.R. Aggarwal)

Deputy Secretary to the Government of India
Tele: 23093102"

12. We find it difficult to understand how, by executive directions in the form of the afore-noted circulars, the Department of the Expenditure or the CBEC, could whittle down the scope of the beneficial Clause X (e) of the gazetted Resolution dated 29 August 2008. Besides, Mr. Saxena correctly submits that these circulars have



also been addressed by the High Court of Madras in *M. Subramaniam*, in paras 6 to 8, which read thus:

“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 the 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-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 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 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 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. 7,500-12000 (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. 5,400/-. 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-financial 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.”

13. Ms. Narain submits that the High Court of Madras has erred in observing, in para 8 of its decision in *M. Subramaniam*, that the clarification contained in the circulars dated 11 February 2009 and 16 September 2009 of the CBEC would not suffice and that an amendment to the policy was required. She submits that there was no need for an amendment as the circulars only clarified the intent of the policy contained in Clause X (e) of the resolution dated 29 August 2008.

14. We are unable to agree. We find ourselves in agreement with the observation of the High Court of Madras that the Circulars in effect amended the policy which was not permissible. We agree with the High Court that the expansive sweep of the policy could not have been reduced by clarificatory circulars issued by the Directorate of Expenditure or the CBEC.

15. In view thereof, we are also unable to agree with the view expressed by the learned Tribunal in the impugned judgment that the



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petitioners would not be entitled to the benefit of the grade pay of ₹ 5400/- as they had been provided the grade pay of ₹ 4800/- by way of financial upgradation under the ACP Scheme. Clause X (e) of the circular dated 29 August 2008 does not carve out any such distinction.

16. The issue is squarely covered by the judgment of the Division Bench of this Court in ***Sushil Kumar***. Accordingly, we set aside the impugned judgment dated 4 October 2019 passed by the learned Tribunal and hold the petitioners to be entitled to the grade pay of ₹ 5400/- on completion of four years in the grade pay of ₹ 4800/-.

17. The OA filed by the petitioners before the learned Tribunal as well as the present writ petition stand allowed to the aforesaid extent.

C.HARI SHANKAR, J.

DR. SUDHIR KUMAR JAIN, J.

OCTOBER 14, 2024

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Click here to check corrigendum, if any