



2025:DHC:6525-DB



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

Date of decision: 06.08.2025

+ W.P.(C) 9843/2025 & CM APPL. 41134/2025
UNION OF INDIA AND ORSPetitioners
Through: Mr.Varun Vats, SPC

versus

DR VIJAI S KARWARSAR AND ORSRespondents
Through: Mr.Sourabh Ahuja and
Mr.Pradeep Kumar and
Ms.Anjali Bansal, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE MADHU JAIN

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed by the petitioners, challenging the Order dated 09.01.2025 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the, 'Tribunal') in O.A. No.2000/2023, titled ***Dr.Vijai S. Karwasara & Ors. v. Union of India through its Secretary, Ministry of Health and Family Welfare & Ors.***, allowing the O.A. filed by the respondents herein with the following direction:

"7.1. In view of the above, the OA is allowed, the impugned orders dated 9.6.2023 and 15.6.2023 are liable to be quashed and set aside. Accordingly, in our considered opinion the applicants, who have completed four years of service in Grade pay of Rs.4,800, are entitled to get benefit of Non Functional Up



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gradation Scale of Rs.5,400/-. Consequently, respondents shall pass necessary orders to this effect within eight weeks from date of receipt of certified copy of this order.”

2. To give a brief background of the facts in which the present petition arises, the respondents were working as Drugs Inspectors, which is a Group ‘B’ post in the Grade Pay of Rs.4800/- ,with the Central Drugs Standard Control Organisation (in short, ‘CDSCO’). They claimed grant of Non-Functional Upgradation (in short, ‘NFU’) from the Grade Pay of Rs.4,800/- to the Grade Pay of Rs.5,400/-, relying upon the Resolution No. 1/1/2008-I C dated 29.08.2008 issued by the Department of Expenditure, Ministry of Finance.
3. The learned Tribunal, by way of its Impugned Order, has held that the respondents were entitled to the same having completed four years of regular service in Level-8 at the Grade Pay Rs.4,800/-.
4. The learned counsel for the petitioners, however, placing reliance on a Clarification dated 06.06.2023 issued by the Department of Expenditure, Ministry of Finance, submits that it had been clarified that the NFU is not payable to Officers at the post of Drug Inspectors/Technical Officers in the CDSCO, as it is applicable only to Group ‘B’ Officers of Department of Posts, Revenue, etc.
5. We are unable to find any merit in the above contention of the learned counsel for the petitioners.
6. The learned Tribunal, in passing the Impugned Order, has placed reliance, *inter alia*, on the Judgment of the Madras High Court in W.P. (C) No. 13225/2010 dated 06.09.2010 titled ***M. Subramaniam v. Union of India & Ors.***, wherein it has been held as



under:

“ 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 year, he is entitled to the grade pay of Rs. 5400/0 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 prerevised pay-scale of 7500-12000 (corresponding to grade pay of Rs. 4800) by virtue of financial up gradation under ACP would not be entitled to the benefit of further non-financial up gradation the prerevised 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.

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8. Thus if an officer has completed 4 year on 1.1.2006 or earlier, he will be given the non-functional up gradation 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 up gradation from such date on which he completes 4- year in the pay scale of Rs. 7,500-12000 (prerevised), since the



petitioner admittedly completed 4 year period 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. 5700-12000 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 29.08.2008 granting grade pay of Rs. 5400/- to the Group B Officers in pay Band 2 on nonfunctional 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.”

7. It is also not disputed that the petitioners’ challenge to the said Judgment was rejected by the Supreme Court while dismissing Civil Appeal No.8883/2011 *vide* Order dated 10.10.2017.

8. Even the Review Petition, being Review Petition (C) No. 2512/2018 in the said Civil Appeal, was dismissed *vide* Order dated 23.08.2018. We quote from the said Order as under:

“The challenge to the clarification issued by the Ministry of Finance clarifying that non-functional Grade Pay of Rs.5,400/- would not be granted to such of those officers who had got the Grade pay of Rs.4,800/- on upgradation under ACP Scheme, was accepted by the High Court and the writ petition preferred by the respondent was allowed. While dismissing the special leave petitions filed at the instance of the present review petitioners this court did not find any ground to interfere.



We have gone through the review petitions and do not find any error apparent on the face of record.”

9. A reading of the above would show that the Supreme Court upheld the Judgment of the Madras High Court on merits, and it was not a simpliciter dismissal of the Special Leave Petition.

10. Be that as it may, this Court, upon considering the above Judgment of ***M. Subramaniam*** (supra), in ***Sushil Kumar v. Union of India & Ors.***, 2024:DHC:6969-DB while approving the same, again held as under:

“12. Even otherwise, having perused the resolution dated 29.08.2008 issued by the Ministry of Finance, we find that the provision for NFU in the grade pay of Rs. 5,400/- in PB-3 for Group-B officers with four years of service in grade pay of Rs. 4,800/- does not prescribe that those drawing the said grade pay by way of ACP or MACP schemes would not be eligible for the said benefit. In our considered view, when the resolution dated 29.08.2008 does not place any embargo on the entitlement of those Group-B officers, who are drawing the grade pay of Rs. 4,800/- by way of ACP/MACP schemes, the respondents could not have placed a condition that the grant of NFU would be restricted to those drawing grade pay of Rs.4,800/- by way of promotion.

13. We, therefore, find no justification on the part of the respondents in denying the benefit of NFU in the grade pay of Rs. 5,400/- to the petitioner, who was admittedly drawing the grade pay of Rs. 4,800/- w.e.f. 06.07.2015 only on the ground that he was drawing the said grade pay by way of MACP scheme. The impugned order passed by the respondents rejecting the petitioner’s claim for grant of NFU in grade pay of Rs. 5,400/- in PB-3 w.e.f. 06.07.2019, the date when he completed four



years of service in the grade pay of Rs. 4,800/- is, therefore, wholly unsustainable.”

11. A Special Leave Petition, being SLP(C) Diary No.13406/2025, challenging the said Judgment, was also dismissed by the Supreme Court *vide* its Order dated 17.04.2025, observing as under:

*“2. After hearing learned counsel for the parties and considering the fact that the order impugned has been passed relying upon the order passed in the case of **M. Subramaniam vs. Union of India & Ors.** (Writ Petition No.1325/2010) decided on 06.09.2010 by the Madras High Court) against which Civil Appeal No.8883 of 2011 has been dismissed by this Court, we are not inclined to entertain this special leave Petition.*

3. Accordingly the Special Leave Petition is dismissed.”

12. This Court in ***Dal Singh & Ors. v. Union of India & Ors.***, 2024:DHC:7971-DB and in ***Union of India And Ors. v. Ghanshyam Vashisht***, 2025:DHC:5935-DB, has time and again approved the Judgments in ***M. Subramaniam*** (supra), and ***Sushil Kumar*** (supra).

13. With regards to the Clarification dated 06.06.2023 issued by the Department of Expenditure, Ministry of Finance, the same reads as under:

“Ministry of Health Family Welfare may please refer to their above mentioned notes in connection with a proposal for grant of non-functional scale of Level-9 (GP of Rs.5400) to the post of Drugs Inspector/Technical Officer in Central Drugs Standard Control Organisation (CDSCO) after completion of 4 years of regular service in Level-8 (GP of Rs. 4800).

2. The matter has been examined. The proposal has not been agreed to due to the



following:

- i) As per Notification dated 29th August, 2008 of Department of Expenditure, grade pay of Rs. 5400 in PB-2 on non functional basis to Group 'B' Officers of Department of Posts, Revenue etc. was provided. This was not applicable to the post of Drugs Inspectors/Technical Officers of CDSCO.
- ii) As per Sl.No.II(2) of Section II of Part B of CCS(RP) Rules, 2008, in respect of Office staff working in organizations outside the Secretariat, only Administrative Officer Gr.II/Sr. Private Secretariat /equivalent, whose entry grade was Rs. 7500-12000/- were only provided NFSG on completion of four years service. There was no specific recommendation in this regard in respect of Drugs Inspectors/ Technical Officers of CDSCO.
- iii) No such recommendation as to the grant of GP of Rs. 5400 on completion of four years service in the grade of Rs. 4800 was made by Sixth CPC and Seventh CPC either in the category of common staff or Ministry/Department-wise recommendation of their report."

14. A reading of the above would show that by executive directions an attempt has been made to diminish the scope of the Resolution dated 29.08.2008. The Circular, therefore, has amended the policy of the Government of India, which is not permissible. To this effect we concur with the opinion of the Madras High Court in **M. Subramaniam** (supra) and this Court in **Dal Singh** (supra) that the expansive scope of policy could not have been diminished by a mere clarificatory circular issued by the Directorate of Expenditure.

15. Accordingly, we do not find any merit in the present petition. The same along with the pending application is dismissed.



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16. We, however, extend the time for the petitioners to comply with the Order of the learned Tribunal by a further period of eight weeks.

NAVIN CHAWLA, J

MADHU JAIN, J

AUGUST 6, 2025/sg/ik