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

Date of decision: 23.07.2025

+ W.P.(C) 10081/2025 & CM APPL. 41840/2025
UNION OF INDIA AND ORSPetitioners
Through: Mr.Sushil Kr. Panday, SPC

versus

GHANSHYAM VASHISHTRespondent
Through: Mr.Ankur Chhibber with Mr.
Nikunj Arora, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE RENU BHATNAGAR

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed by the petitioners, challenging the Order dated 28.11.2024 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as 'Tribunal') in O.A. No. 2436/2022, titled ***Ghanshyam Vashisht & Ors. vs. Union of India and Anr.***, whereby the learned Tribunal allowed the said O.A. filed by the respondent herein and set aside the Office Order dated 01.02.2022 issued by the petitioners. The learned Tribunal, by the Impugned Order, has further directed that the respondent shall be entitled to Grade Pay of Rs.5400 in Pay Band-3 from the date of completion of four years of service in the Grade Pay of Rs.4800, along with all consequential benefits.

2. By the said Office Order, the petitioners had denied the benefits



of Non-Functional Upgradation (NFU) in the Grade Pay of Rs.5400 in Pay Band-3 to the respondent from the date of completion of four years in the Grade Pay of Rs.4800.

3. The limited challenge of the petitioners to the Impugned Order is that the learned Tribunal has erred in placing reliance on the Judgment of the Madras High Court in ***M.Subramaniam v. Union of India & Ors.***, (in W.P. 13225/2010) and of this Court in ***Sushil Kumar v. Union of India & Ors.***, 2024:DHC:6969-DB.

4. The learned counsel for the petitioners submits that the learned Tribunal has failed to appreciate that Resolution No.1/1/2008-IC dated 29.08.2008, by which the recommendations of the 6th Central Pay Commission (CPC) were accepted by the Government of India, made a clear distinction between officers belonging to the Delhi and Andaman and Nicobar Island Civil Services, etc., *vis-à-vis* the Section Officers/Private Secretaries working in the Central Secretariat Services (in short, 'CSS'). In support of the said plea, he draws our attention to paragraph X (b) of the said Resolution.

5. He submits that the judgment in ***M.Subramaniam*** (supra) and ***Sushil Kumar*** (Supra), did not consider the cases of Section Officers working in the CSS, but rather those in other offices where such restrictions were not applicable and which were governed by Clause X (e) of the Resolution. He submits that, therefore, the above judgments would have no application to the facts of the present case, and the learned Tribunal has erred in relying upon the same while allowing the O.A. filed by the respondent.

6. He further placed reliance on the Note appended to Rule 17 of



the Central Secretariat Service Rules, 2009, to submit that the said Note clearly states that the Non-Functional Pay Scale of Rs. 15600-Rs. 39100 (PB-3) plus Rs. 5400 (Grade Pay) is admissible only to the Section Officers of the service on completion of four years of approved service in that grade. It does not extend this benefit to other officers who are working in the Grade Pay of Rs. 4800 due to the grant of the Assured Career Progression (ACP) or the Modified Assured Career Progression (MACP) benefits.

7. He further places reliance on the Judgment of the Supreme Court in ***Rohitash Kumar & Ors v. Om Prakash Sharma & Ors.***, (2013) 11 SCC 451, to submit that this Court, while interpreting the provisions of a Statute or, in this case, a Resolution of the Government of India, can neither add nor subtract even a single word, and cannot proceed on the assumption that the legislature, while enacting the Statute, has committed a mistake. He submits that the Proviso performs the function of excluding from the general ambit of the provision, and that merely because some hardship or inconvenience is caused to the parties, it cannot be a ground to deviate from the normal interpretation of the Statute or the Resolution.

8. On the other hand, the learned counsel for the respondent, who appears on advance notice of this petition, submits that the issue raised by the petitioners is squarely covered by the Judgment of the Madras High Court in ***M. Subramaniam*** (supra), against which the Special Leave Petition was dismissed by the Supreme Court, and even the Review Petition filed was dismissed *vide* Order dated 23.08.2018.

9. He submits that this Court, following the Judgment in



M.Subramaniam (supra), extended similar relief in ***Sushil Kumar*** (supra), as well as in ***Dal Singh & Ors. v. Union of India & Ors.*** 2024:DHC-7971-DB.

10. He submits that the Special Leave Petition against the judgment of this Court in ***Sushil Kumar*** (supra), was also dismissed by the Supreme Court *vide* Order dated 17.04.2025, passed in Special Leave Petition (Civil) Diary No(s) 13406/2025.

11. He submits that an artificial distinction has been sought to be created by the petitioners by placing reliance to Clause X (b) *vis-à-vis* Clause X (e) of the Resolution dated 29.08.2008, inasmuch as even Clause X (b) states that the benefit is to be extended to all the persons who are working in the equivalent Grade Pay of Rs.4800 in PB-2. He submits that the CSS Rules cannot override the Resolution.

12. We have considered the submissions made by the learned counsels for the parties.

13. At the outset, we would note that it is not disputed by the petitioners that the Resolution dated 29.08.2008 was interpreted by the Madras High Court in ***M.Subramaniam*** (supra), and it was held that the benefit of the NFU of Rs.5400 Grade Pay is applicable to all officers who have been working in the Grade Pay of Rs.4800 for a period of four years. We quote from the said judgment as follows:

“ 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.”

14. 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. 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.”

15. 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.

16. Be that as it may, this Court, upon considering the above judgment of *M.Subramaniam* (supra), in *Sushil Kumar* (supra), 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.”

17. 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.”

18. This Court, in **Dal Singh** (supra), once again approved the judgments in **M.Subramaniam** (supra) and **Sushil Kumar** (supra), by observing as under:

“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 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.”

19. Now, coming to the submissions of the learned counsel for the petitioners that these judgments and orders are distinguishable, we



first quote Clause X (b) and X (e) of the Resolution dated 29.08.2008 as under:

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

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b) After 4 years of regular service in the Section Officer/Private Secretary/equivalent grade of Rs.4800 grade pay in PB-2, officers of Central Secretariat Service, Central Secretariat Stenographers Service and other similarly placed HQ services will also be granted the non-functional grade of Rs.5400 in PB-3 and not in PB-2.

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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 of non-functional basis after 4 years of regular service in the grade pay of Rs.4800 in PB-2.”

20. A reading the of Clause X (b) would show that after four years of regular service in the post of Section Officers/Private Secretary or in the “equivalent grade of Rs. 4800 of Grade Pay in PB-2”, the officers of the CSS will be granted the Non-Functional Grade Pay of Rs. 5400 in PB-3 and not in PB-2. The benefit is not confined only to the Section Officers or Private Secretaries, but extends to all officers who are in the equivalent Grade of Rs. 4800 in PB-2. The distinction that is sought to be created by the petitioners is, therefore, non-existent.

21. The submission of the learned counsel for the petitioners that Judgments of ***M.Subramaniam*** (supra), ***Sushil Kumar*** (supra), and ***Dal Singh*** (supra) are distinguishable merely because they fall under



Clause X (e) of the Resolution dated 29.08.2008, cannot be a valid ground to not follow or to distinguish the same.

22. As far as the CSS Rules are concerned, the Note appended to Rule 17 thereof reads as under:

“17 . Pay :- The scales of pay attached to the various Grades of the Service shall be as follows, namely: -

(i) Senior Selection Grade: Rs 37400-67000 (PB -4)+Rs 8700 (Grade Pay)

(ii) Selection Grade: Rs 15600-39100 (PB -3) + Rs 7600 (Grade Pay)

(iii) Grade I: Rs 15600-39100 (PB-3) + Rs 6600 (Grade Pay)

(iv) Section Officers' Grade: Rs 9300- 34800 (PB-2) + Rs 4800 (Grade Pay)

Note: The non -functional pay scale of Rs 15600-39100 (PB-3) +Rs5400 (Grade Pay) is admissible to the Section Officers of the Service on completion of 4 years of approved service in that grade. The Section Officers, who are granted this non-functional pay scale will continue to remain in Group 'B' (Gazetted) and their eligibility for promotion to Grade I (Under Secretary) of the Service will be reckoned on the basis of total period, spent in both the scales of Section Officer, counted together.

(v) Assistants' Grade: Rs 9300- 34800 (PB -2) + Rs 4200 (Grade Pay)”

23. A reading of the above Rule would show that it prescribes the scale of pay and the Grade Pay for specific post(s), including that of the Section Officer. It is in that context that the Note appended to Rule 17(iv) states that a Non-Functional Pay Scale of Rs. 15600-39100 (PB-3) + Rs. 5400 Grade Pay) is admissible to a Section Officer on completion of four years of approved service in that grade. This Note,



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in no manner, shall detract from the Resolution dated 29.09.2008 of the Government of India, which extends the benefit of the Non-Functional Upgradation to the officers who have completed four years in the Grade Pay of Rs. 4800.

24. For the above reasons, the Judgment in *Rohitash Kumar* (supra) has no application in the present case.

25. In view of the above, we find no merit in the present petition. The same is accordingly dismissed. The pending application is also disposed of as being infructuous.

NAVIN CHAWLA, J

RENU BHATNAGAR, J

JULY 23, 2025/Arya/DG