ALL INDIA PENSIONERS ASSOCIATION OF CBIC

(Representing pensioners of Central Board of Indirect Tax & Customs)

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REF No. 29/P/24 Dated 23.08.24

COURT MATTER

To,

(1) The Secretary,
Department of Expenditure, Ministry of Finance,
North Block, New Delhi.

(2) The Secretary,
Department of Revenue, Ministry of Finance,
North Block, New Delhi.

(3) The Chairman,
Central Board of Excise and Customs (now Central Board of Indirect Tax and Customs),
North Block, New Delhi.

Subject: Implementation of the order of the Hon'ble High Court of Telangana at Hyderabad in Writ Petition No. 10490/2024 regarding retrospective implementation of the pay scale revision.

Sir,

It is submitted with due regards that the pay scale of the Superintendents of Central Excise (now CGST), Superintendents of Customs, Appraisers of Customs and Income Tax Officers was revised to Rs. 7500-12000/- from Rs. 6500-10500/- and also of Inspectors of Central Excise, Preventive Officers of Customs, Examiners of Customs and Income Tax Inspectors to Rs. 6500-10500/- from Rs. 5500-9000/- prospectively w.e.f. 21.04.04, i.e., from the date of the issuance of the order vide OM No. 6/37/98-IC Dt. 21.04.04 of the Department of Expenditure. Needless to say that all officers affected by the OM F. No. 6/37/98-IC Dt. 21.04.04 are equally positioned.

2. It is worth to mention that the said order should have been implemented w.e.f. the date of the implementation of the Central Civil Service, Revised Pay Rules, 1997, i.e., w.e.f. 01.01.96, since when the recommendations of the 5th Central Pay Commission were implemented and disparity in comparison to other counterparts occurred.

3. Income Tax Gazetted Officers Association filed OA No. 86/2008 in the Hon'ble Central Administrative Tribunal of Bombay challenging the OM F. No. 6/37/98-IC Dt. 21.04.04. The Administrative Tribunal found the above referred OM Dt. 21.04.04 **"arbitrary and illegal"** and gave order in favour of the employees. Based on it, total 13 applicants also approached the Hon'ble Central Administrative Tribunal of Kolkata and got the order in their favour. The govt. filed an appeal in the Hon'ble High Court of Kolkata vide WPCT No. 21 of 2015 against the order of the Hon'ble Central Administrative Tribunal of Kolkata. Hon'ble High Court of Kolkata vide order Dt. 03.05.23 directed to form a special anomaly committee to decide the issue. Based on the report/decision of the said committee, the benefit of the OM F. No. 6/37/98-IC Dt. 21.04.04 has been granted retrospectively from 01.01.96 to 13 Income Tax Officers.

4. Your kind attention is also invited to the common order given in OA No. 323/2012 and 345/2021 by the Hon'ble Central Administrative Tribunal of Bombay filed by the Central Excise Inspectors Association and Central Tax Superintendents Association. The Hon'ble Tribunal ordered to refer the matter for grant of benefit on actual basis to the already constituted special anomaly committee and decide the same based on judicial pronouncements and law and also the judgements given by the Hon'ble Tribunal and other courts wherein the actual benefits have already been extended w.e.f. 01.01.96 to the employees.

5. The govt. also filed WP No. 9649 against the order of the Hon'ble Central Administrative Tribunal of Bombay in OA No. 86/2008 which was dismissed by the High Court of Bombay vide order Dt. 08.12.23.

6. The Hon'ble High Court of Ernakulum vide common order delivered in OP (CAT) NO. 1 OF 2023, OP (CAT) NO. 139 OF 2023, OP (CAT) NO. 132 OF 2023, OP (CAT) NO. 133 OF 2023, OP (CAT) NO. 167 OF 2023, OP (CAT) NO. 173 OF 2023 & OP (CAT) NO. 175 OF 2023 also gave the retrospective benefit of pay scale to the employees.

7. Your kind attention is also invited to the order given by the Hon'ble High Court of Telangana at Hyderabad in Writ Petition No. 10490/2024 (scanned copy of the certified order enclosed). The Hon'ble High Court has also ordered in favour of the Central Excise (now CGST) Inspectors and Superintendents to give the retrospective benefit of pay scale.

8. There exist so many orders of so many courts including the Hon'ble Supreme Court that the benefit of such matters is to be given to all similarly positioned persons. Same has been intended in the National Litigation Policy to minimise the litigations and not to force all equally placed/positioned persons to approach the legal courts on the same matter. The Hon'ble Supreme Court has also ordered the govt. on various occasions to issue the circular to this effect to minimize the litigations to save the precious time of the Hon'ble courts and not to force the similarly situated persons to approach the courts.

9. Your kind attention is also invited to the order on the issue given by the Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No. 2544/2015. In this order, the Hon'ble CAT has specifically ordered that the benefit of upgraded pay scales is to be given to all eligible employees with effect from 01.01.96 irrespective of the fact whether they have approached an appropriate judicial forum for the same or not as under-

"Before parting we would also express a hope that the competent authority shall on its own extend the benefit of upgraded pay scales to all eligible employees with effect from 01.01.1996 irrespective of the fact whether they have approached an appropriate judicial forum for the same or not so that unnecessary litigation is avoided."

10. The issue of extension of benefits granted by the courts including Apex Court in service matters to similarly situated persons has been settled in various cases including the following-

(i) In the case of State of Karnataka v. C. Lalita (2006) 2 SCC 747, it was held that service jurisprudence evolved by the courts from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court would not mean that persons similarly situated should be treated differently.

(ii) In the judgment given by the full Bench of Central Administrative Tribunal, Bangalore in the case of C. S. Elias Ahmed and others v. UOI & others (O.A. Nos. 451 and 541 of 1991), it was held that the entire class of employees who are similarly situated are required to be given the benefit of the decision whether or not they were parties to the original writ. This principle has been upheld by the Hon'ble Supreme Court in this case as well as in numerous other orders like G. C. Ghosh v. UOI, [(1992) 19 ATC 94 (SC)] dt. 20.07.98; K. I. Shepherd v. UOI [(JT 1987 (3) SC 600)]; Abid Hussain v. UOI [(JT 1987 (1) SC 147], Order dt. 17.10.14 in the Civil Appeal No. 9849 of 2014 in the matter of State of Uttar Pradesh & Ors v. Arvind Kumar Srivastava & Ors, SLP No. 77457/2017 filed against the order dt. 23.03.17 given by the Hon'ble High Court of Delhi in WP No. 2634/2017, Order dt. 08.12.21 in Civil Appeal No(s). 5966, 5967, 5968 and 5969 of 2021 etc.

11. In view of the above, it is very much requested to kindly implement the OM F. No. 6/37/98-IC Dt. 21.04.04 w.e.f. 01.01.96 at an early date with all consequential benefits to all the affected persons.

Thanking you,

Yours sincerely,

Encl: As above.

(RAVI MALIK),
Secretary General.

Copy to the Cabinet Secretary, Govt. of India: With the request for necessary action.