

F.No.A-23011/ 12 /2012-Ad.IIA
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
Ad.IIA Section

New Delhi the 27th February, 2013

ORDER

Whereas, All India Association of Central Excise Gazetted Executive Officers had filed two applications, OA No.140/2012 and 144/2012 before the CAT, Madras Bench seeking direction of the Court for disposal of their representations dated 14.9.2011, 3.10.2011 and 20.10.2010.

2. Whereas, the Hon'ble CAT, Madras Bench passed order dated 14.3.2012 in OA No.140/2012 and order dated 25.4.2012 in OA No.144/2012 directing thereby the respondents to consider representations of the applicant and pass a reasoned order in accordance with Rules and instructions. The following Speaking Order is being issued in compliance with the said orders of Hon'ble CAT, Madras Bench.

Order dated 14.3.2012 in OA No.140/2012 of CAT, Madras Bench:

3. The Hon'ble CAT, Madras Bench in OA No.140/2012 has passed the following order:-

“we direct the first respondent (Secretary, Department of Personnel & Training) to consider the representation of the applicant dated 14.9.2011 and also reminder dated 3.10.2011 and pass a reasoned order in accordance with rules..”

4. Whereas, the Applicant Association in its representation dated 14.9.2011 and reminder dated 3.10.2011 has made demands related to Modified Assured Career Progression Scheme (MACPS) which are reproduced & examined in following paras:-

4.1 Whereas, the Association has requested a complete re-look of the MACP Scheme and requested for implementation of the same with the following modifications:-



- a) Offsetting of MACP up-gradation with the time scale.
- b) The para 8.1 of MACPS may be withdrawn.
- c) Grant of higher grade pay in the hierarchy of actual financial benefit.
- d) The officers performing same nature of duties after serving with same length of service may be granted same grade pay.
- e) The financial up-gradation may be granted in the higher grades as notified in the Notification dated 28.8.2008.
- f) The MACP Scheme may be implemented w.e.f. 1.1.2006

4.2 Whereas, in the same representations, the Association has referred to clarificatory O.M. dated 9.9.2010 of the DOPT and requested for implementation of the MACPS in respect of Inspectors and Superintendents of Central Excise in the following manner:-

- a) Grade pay of Rs.4800/- on 1st up-gradation after 10 years of service to an officer recruited as the DR Inspector of Central Excise, if not got 1st functional promotion.
- b) A grade pay of Rs.6600 on 2nd up-gradation after 20 years of service to an officer recruited as the direct Inspector of Central Excise, if not got 2nd functional promotion;
- c) A grade pay of Rs.7600 on 3rd up-gradation after 30 years of service to an officer recruited as the direct Inspector of Central Excise, if not got 3rd functional promotion.
- d) Accordingly, the Scheme may also be relooked for promotee officers like by granting a grade pay of Rs.6600 on 3rd up-gradation after 30 years of service to an officer recruited as the direct UDC/Stenographer/Lady Searcher of Central Excise, if not got 3rd functional promotions.

5. Whereas, in accordance with the direction of the Hon'ble CAT, Madras Bench the demands of the Association indicated above in para 4.1 and 4.2 have been examined, in accordance with existing rules and instructions, in para 6 & 7 below.

6. Whereas, the recommendations of the 6th CPC were accepted by the Government vide Gazette notification dated 29.08.2008. In terms of (VIII) 4 of Part A of Gazette Notification dated 29.8.2008, the MACPS (Modified Assured Career Progression Scheme) was formulated by the Department of Personnel & Training and issued vide OM dated 19.5.2009 in accordance with the accepted terms of the Gazette Notification. A copy each of the Gazette notification dated 29.8.2008 and DOPT OM dated 19.5.2009 is enclosed. Further, the demands indicated at para 4.1 (a) to 4.1(f) have been examined in accordance with the existing rules on the MACP Scheme, as notified by the DOPT vide their O.M. dated 19.5.2009 and clarification issued thereafter. The status of the demand is as follows:-



- a. As far as demand relating to offsetting of MACP up-gradation with the time scale, is concerned, it may be noted that as per clarification provided by the Department of Personnel and Training, the benefit of Non-Functional Grade, given to the Superintendent and other Group 'B' officers after completion of 4 years of regular service, would be treated/viewed as financial up-gradation in terms of para 8.1 of the MACPS. Hence, this demand is not covered under the existing provisions of the MACPS and is not accepted.
- b. The para 8.1 of MACPS reflects recommendations of the 6th CPC as accepted by the Government to treat the Grade Pay of Rs.5400 in PB-2 and Rs.5400 in PB-3 as separate grades and as such demand for withdrawal of this para will amount to modification in the recommendations of the 6th CPC and is not accepted.
- c. In respect of grant of grade pay in the actual hierarchy of the post, it may be noted that MACP Scheme, as recommended by the 6th CPC, has been implemented for grant of three financial up-gradation in the hierarchy of grade pay and not in promotional hierarchy of the post. The demand for grant of MACP in actual hierarchy of the post amounts to modification of the recommendations of the 6th CPC and is not accepted.
- d. In respect of the demand that the officers performing same nature of duties after serving with same length of service may be granted same grade pay, it may be noted that the MACPS does not refer to the nature of duties performed by an officer but it envisage grant of financial up-gradation with respect to the grade pay attached to the post held by an officer. As such the demand is not in the spirit of the MACP Scheme and is not accepted.
- e. The demand that financial up-gradation may be granted in accordance with notification dated 28.8.2008 (29.8.2008) is an integral part of the MACP Scheme, as notified by the DOPT vide O.M. dated 19.5.2009. The Resolution referred to by the applicant under Part A, Para 4.1(iii) of the Annexure-I, in respect of the ACP Scheme has indicated acceptance of the recommendations of the 6th CPC that where regular promotion is not between two successive grade, the higher grade pay attached to the next promotion post in the hierarchy of the concerned cadre/organization will be given only at the time of regular promotion. As such the demand is already an integral part of the MACP Scheme.
- f. MACPS is the modified version of the earlier ACP Scheme of August, 1999, on the basis of the recommendations of the 6th Central Pay Commission. The recommendations of the 6th CPC were accepted by the Government only on 29.8.2008. The recommendations of the 6th CPC were required to be examined and a Scheme was to be formulated in consultation with Department of Expenditure and the same took considerable time for its implementation. Before implementation of the Scheme, a cut off date had to be decided/fixed. Accordingly, the Government has taken a conscious decision for implementing the MACPS w.e.f. 1.9.2008. Though the MACPS came into existence only w.e.f. 1.9.2008, the benefits of the existing ACP Scheme of August, 1999, was allowed to the Government employees



upto 31.8.2008. The MACP Scheme has been made applicable w.e.f. 1.9.2008 to all Central Government Civilian employees and the same cannot be made applicable in respect of the applicants w.e.f. 01.01.2006 arbitrarily.

7. Whereas, in respect of the demands indicated at para 4.2 above, it has been noted that the MACP Scheme has been notified in respect of the complete spectrum of Central Government Employees, including the employees of CBEC, etc. The demand of the Association for implementation of this Scheme in respect of Inspectors & Superintendent of Central Excise in the manner demanded by the Association will amount to creating a special class within the class of the Government employees, as such demand is not accepted.

Order dated 25.4.2012 in OA No.144/2012 of CAT, Madras Bench:

8. Whereas, the Hon'ble CAT, Madras Bench in OA No.144/2012 has passed the following order:-

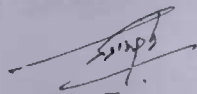
“we direct the second respondent (Chairman, CBEC) to take decision on the representation in accordance with rules and instructions...”

9. Whereas the main demands made by the Applicant in their representation dated 20.10.2010 have been enumerated by the Hon'ble CAT in para 5 of its order dated 25.4.2012 and are reproduced as follows:-

- A) Non-Functional Grade Pay on completion of 4 years as Superintendent (vigilance is not required and promotion on adhoc basis will be taken into account) of Rs.5400/-
- B) 2nd financial up-gradation in case of direct recruit Inspector under MACP on completion of 20 years of service as Superintendent and Inspector in Grade Pay of Rs.6600/-
- C) 3rd financial up-gradation in case of direct recruit UDC/Stenographer/ Lady Searcher under MACP, on completion of 30 years of service in Grade Pay of Rs.6600/-
- D) 3rd financial up-gradation in case of direct recruit Inspector under MACP on completion of 30 years of service as Superintendent and Inspector or Assistant Commissioner, Superintendent and Inspector in Grade Pay of Rs.7600/-

10. Whereas, the demands made by the applicant Association in their representation dated 20.10.2010, have been examined as follows:-

- (A) In respect of the demand of the Association regarding grant of Non-Functional Grade Pay on completion of 4 years as Superintendent (vigilance is not required and promotion on adhoc basis may be taken into account) of Rs.5400/-, the issue of grant of NFG without vigilance

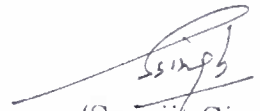


clearance was taken up with the Department of Personnel & Training and the Department of Personnel & Training has insisted on obtaining vigilance clearance while granting NFG. This decision of the DOPT is brought to the notice of the Applicants. Regarding grant of NFG on completion of 4 years as Superintendent including ad-hoc promotion, it may be noted that the rules provide for grant of NFG on completion of 4 years of "regular service" and not 4 years "service" in the Grade Pay of Rs.4800 and as such demand could is not accepted.

(B) to (D): The demands raised in para 9 (B) to (D) amount to modification of existing Rules & Instructions on the MACP Scheme, and as such is not accepted.

11. With the above, the order of Hon'ble CAT Madras Bench dated 14.3.2012 and 25.4.2012 in OA No.140/2012 and 144/2012 stands complied with.

12. This issues with the approval of Chairperson, Central Board of Excise & Customs and in consultation with the Department of Personnel & Training vide their I.D. No.13208/13/CR dated 15.2.2013.



(Sarvjit Singh)

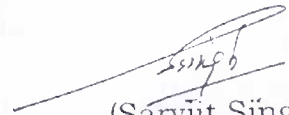
Under Secretary to the Government of India

Tele: 011-23095528

Copy to:-

- (1) The All India Association of Central Excise Gazetted Executive Officers, Chennai Unit, Represented by its General Secretary, Shri R. Chandramouli & another, III Floor, Periyar Malligai, 690, Anna Salai, Nandanam, Chennai-600035 in compliance with orders dated 14.3.2012 and 25.4.2012 in OA No.140/2012 and 144/2012 passed by the Hon'ble CAT, Madras Bench.
- (2) Shri K. Sudarsan, S/o Shri K. Gopalakrishna, Supdt. of Central Excise, III Floor, Annexe Building, O/o Commissioner of Central Excise, Chennai-I, 121, Nungambakkam High Road, Nungambakkam, Chennai-600 034, in compliance with orders dated 14.3.2012 and 25.4.2012 in OA No.140/2012 and 144/2012 passed by the Hon'ble CAT, Madras Bench.
- (3) Shri Ravi Malik, Secretary General, All India Association of Central Excise Gazetted Executive Officers, 240, Razapur, Ghaziabad-201011 (U.P.) in compliance with orders dated 14.3.2012 and 25.4.2012 in OA No.140/2012 and 144/2012 passed by the Hon'ble CAT, Madras Bench.

- (4) The Chief Commissioner of Central Excise, Chennai Zone, 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600 034 with the request to place a copy of the order before Hon'ble CAT, Madras Bench in compliance with their order dated 14.3.2012 and 25.4.2012 passed in OA No.140/2012 and 144/2012.
- (5) All Cadre Controlling Authorities under CBEC for information and record.
- (6) Director (E-1)/DS(JCA), Department of Personnel & Training (Estt.D) w.r.t. their I.D. No.13208/13/CR dated 15.2.2013 for information and record.
- (7) Registrar, CAT, Madras Bench, with the request to bring this order to the notice of Hon'ble CAT w.r.t. their order dated 14.3.2012 in OA No.140/2012 and order dated 25.4.2012 in OA No.144/2012, as compliance.



(Sarvjit Singh)

Under Secretary to the Government of India