F.No. C-30013/40/2017-Ad.IVA
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise and Customs

5th Floor, HUDCO Vishala Building,
Bikaji Cama Place, New Delhi
Dated, the 27th October, 2017

To
All Cadre Controlling Authorities under CBEC


Sir/Madam,

I am directed to enclose herewith a copy of an O.M. No.21011/10/2016-Estt.(A-II) dated 13.10.2017 received from Department of Personnel & Training on the subject mentioned above and to request that information, as on 30.09.2017, indicating administrative implications involved in giving retrospective effect of the OM dated 13.04.2010 of DoP&T on disclosure of reckonable below benchmark ACRs prior to 2008-09 may kindly be furnished in the prescribed proforma, by 03.11.2017 positively. Soft copy of the information may also be sent by e-mail at bisht.sohan@nic.in.

Encl. As above

Yours faithfully,

(B. Ginkhan Mang)
Under Secretary to the Govt. of India

Copy for similar action to:
(i) Director(Ad IIA&B)/D.S(Ad.II)/D.S(Ad.IIIA)/D.S(Ad.Ad.IIIB)
(ii) The Webmaster, O/o DG Systems, New Delhi with the request to kindly upload this letter on the Website of CBEC.

(B. Ginkhan Mang)
Under Secretary to the Govt. of India
No. 21011/10/2016-Estt.(A-II)
Government of India
Ministry of Personnel, P. G. and Pensions
Department of Personnel & Training

North Block, New Delhi-110001
Dated the 13 October, 2017

Office Memorandum

Subject: Information/data indicating administrative implications involved in giving retrospective effect of the OM dated 13.04.2010 of DoP&T on disclosure of reckonable below benchmark ACRs prior to 2008-09 regarding.

This Department is receiving references from various Ministries/Departments/Cadre Controlling Authorities of the Government regarding action to be taken on the orders/judgements of various benches of the Hon'ble Central Administrative Tribunal and Hon'ble Courts giving benefit of Dev Dutt Principle in r/o ACRs prior to 2008-09 which have already been considered in DPCs held prior to 13.04.2010. With reference to this Department's OM of even number dated 20.06.2016, 22 Ministries/Departments/Organisations have reported that giving retrospective effect to DoPT O.M. dated 13.04.2010 will lead to a complete chaos wherein a large section of serving as well as retired employee would be engaged in revisiting their seniority position and consequent benefits, administratively as well as through numerous litigations which may have adverse consequences for the smooth functioning of the administration. In view of this, a proposal is under consideration in this Department for seeking advice of Ld. Solicitor General of India.

2. With a view to get an overall picture of the number of court cases and other representations, it is proposed to obtain from Ministry/Department and all Cadre Controlling authorities, the status of court cases filed for giving retrospective effect to DoPT OM dated 13.4.2010, leading to review DPCs, revisiting of seniorities/re fixation of pay/revision of pension cases etc. Ministries/Departments/CCAs may also examine the likely consequences in giving retrospective effect to DoPT O.M. dated 13.04.2010;

3. All Ministries/Departments/Cadre Controlling Authorities are requested to furnish information in the format enclosed, as on 30.09.2017, with the approval of Head of the Organisations concerned, as per proforma enclosed, to this Department by 31.10.2017 positively.

4. This may be treated as "PRIORITY."

(N) Sriram
Director
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*Disclosure of accordance below benchmark acts prior to 2006-09-Audit.*

E.No: 2011/10/2015-EST(I)-(A-II)
OFFICE MEMORANDUM

Subject: Below Benchmark gradings in ACRs prior to the reporting period 2008-09 and objective consideration of representation by the competent authority against remarks in the APAR or for upgradation of the final grading.

The undersigned is directed to say that prior to the reporting period 2008-09, only the adverse remarks in the ACRs had to be communicated to the concerned officer for representation, if any to be considered by the competent authority. The question of treating the grading in the ACR which is below the benchmark for next promotion has been considered in this Department and it has been decided that if an employee is to be considered for promotion in a future DPC and his ACRs prior to the period 2008-09 which would be reckonable for assessment of his fitness in such future DPCs contain final grading which are below the benchmark for his next promotion, before such ACRs are placed before the DPC, the concerned employee will be given a copy of the relevant ACR for his representation, if any, within 15 days of such communication. It may be noted that only below benchmark ACR for the period relevant to promotion need be sent. There is no need to send below benchmark ACRs of other years.

2. As per existing instructions, representations against the remarks or for upgradation of the final grading given in the APAR (previously known as ACR) should be examined by the competent authority in consultation, if necessary, with the Reporting and the Reviewing Officer, if any. While considering the representation, the competent authority decides the matter objectively in a quasi-judicial manner on the basis of material placed before it. This would imply that the competent authority shall take into account the contentions of the officer who has represented against the particular remarks/grading in the APAR and the views of the Reporting and Reviewing officer if they are still in service on the points raised in the representation vis-a-vis the remarks/gradings given by them in the APAR. The UPSC has informed this Department that the Commission has observed that while deciding such representations, the competent authorities sometimes do not take into account the views of Reporting/Reviewing Officers if they are still in service. The Commission has further observed that in a majority of such cases, the competent authority does not give specific reasons for upgrading the below benchmark ACR/APAR gradings at par with the benchmark for next promotion.

3. All Ministries/Departments are therefore requested to inform the competent authorities while forwarding such cases to them to decide on the representations against the remarks or for upgradation of the grading in the APAR that the decision on the representation may be taken objectively after taking into account the views of the concerned Reporting/Reviewing Officers if they are still in service and in case of upgradation of the final grading given in the APAR, specific reasons therefore may also be given in the order of the competent authority.

(C.A. Subramanian)
Director

To
All Ministries/Departments of Government of India
Copy to:-

1. The President's Secretariat, New Delhi.
2. The Prime Minister's Office, New Delhi.
3. The Cabinet Secretariat, New Delhi.
4. The Rajya Sabha Secretariat.
5. The Lok Sabha Secretariat.
7. The Union Public Service Commission, New Delhi.

Copy also to:-

(i) All Attached offices under the Ministry of Personnel, Public Grievances and Pensions.
(ii) Establishment Officer and Secretary, ACC (10 copies).
(iii) All officers and Sections in the Department of Personnel and Training.
(iv) NIC (DoP&T) for placing the Office Memorandum on the web-site of DoP&T.
(v) Hindi Section for Hindi version of the O.M.