

By Speed Post

F. No. A-23011/93/2018-Ad.IIA
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs

North Block, New Delhi.
Dated the 15th January, 2019.

To,

All Pr. Chief Commissioners/ Principal Director Generals under CBIC.
All Chief Commissioner/ Director Generals under CBIC.

Subject: Defending the CAT/Court cases on the issue of grant of 3rd Financial Upgradation under MACP Scheme to Superintendents who were granted non-functional grade pay in grade pay of Rs. 5400/- in PB-2

Sir,

It has been observed that there are increase in the number of cases filed in the Hon'ble CAT/High Court on the issue of grant of 3rd Financial Upgradation under MACP Scheme to Superintendents, who were granted Non-Functional Grade Pay in Grade Pay of Rs. 5400/- in PB-2.

2. The issue relates to defending the CAT/Court cases on the issue of grant of 3rd financial upgradation to Superintendent/Assistant Commissioner after counting non-functional upgradation as one financial upgradation under MACP Scheme. Earlier, it was clarified vide Board's letter F.No.A-23011/29/2010-Ad.IIA dated 4th June, 2014 that NFSG granted to Superintendents would be counted/offset against the financial upgradation under MACP Scheme. Consequent upon direction of Hon'ble High Court, Madras vide its order dated 08.12.2014 in Writ Petition No. 19024 of 2014 (*Shri R. Chandrasekaran Vs. UOI & Ors*), the matter relating to counting of Non-Functional Grade Pay as one financial upgradation was again examined in the Board, in consultation with DoP&T. It was clarified vide Board's letter F. No. A-23011/25/2015-Ad.IIA dated 20.06.2016 that non-funtional Grade Pay of Rs. 5400/- granted to Superintendents needs to be counted as one financial upgradation for the purpose of MACP Scheme. With regard to recovery of wrongful/excess payment made to individual official, it was clarified vide the Board's letter F.No.A-23017/203/2016-Ad.IIA dated 7th December, 2016 that the action has to be taken in terms of DOPT OM No. 18/03/2015-Estt.(Pay-I) dated 02.03.2016.

3. In some of the Commissionerates, Superintendents were wrongly granted 3rd financial upgradation under MACP Scheme in the Grade pay of Rs. 6600/- with complete disregard to the said clarifications/instructions issued by CBIC and DOPT. This was an administrative lapse committed by Commissionerates concerned and required immediate remedial measure for withdrawal of such orders which were issued

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wrongly. Subsequent to issue of Board's clarification dated 20.06.2016, Commissionerates have issued orders for withdrawing Grade Pay of Rs. 6600/- wrongly granted to Superintendents. Aggrieved by this action, such Superintendents have filed cases in Tribunals. Some cases were decided in favour of Government by the Hon'ble CAT, Ernakulam Bench and Hon'ble CAT, Ahmedabad Bench. These orders have been circulated vide letter F.No.A-23011/96/2016-Ad.IIA dated 25th May, 2018 and letter F.No.A-23011/58/2017-Ad.IIA dated 1st November, 2018 to all CCAs under CBIC for defending the interest of Govt. in similar cases.

4. Brief facts alongwith relevant documents in the matter are enclosed to facilitate preparation of Counter Affidavit to defend the cases in the Hon'ble the CAT/Court on the subject.

5. It is further observed that in most of these cases, higher authorities of the Board/Ministry are named as Respondents. On this issue, Board vide letter F.No.A-18012/6/2013-Ad.IIB dated 9th May, 2016(*copy enclosed*) issued detailed instructions to all CCAs under CBIC for effective and timely handling of court cases on Administrative matters. In terms of Para-2(i) of said letter dated 09.05.2016, appropriate application may be moved in the concerned Benches of the Hon'ble CAT/High Court for deletion of names of higher authorities of the Ministry/Board i.e. Secretary (Revenue), Secretary (DOPT), Secretary (Expenditure), Chairman (CBIC), Member(Admn), CBIC etc. from the list of respondents, as the concerned Cadre Controlling Authorities under CBIC are competent authority for grant of financial upgradation under MACP Scheme.

6. This issues with the approval of Member(Admn), CBIC.

Yours faithfully,



Encl: As above.

(A. K. Qasim)

Director

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Copy to: DG System, CBIC with a request to upload it on the website.