

16/05/16

**BY SPEED POST**

F.No.C-18012/6/2013-Ad.IIB  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs

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New Delhi, the 9<sup>th</sup> May, 2016

To,

All the Chief Commissioners/ Director Generals/  
Cadre Controlling Authorities under CBEC.

Subject: Instructions for effective and timely handling of court cases on  
Administrative/Service matters to protect the interest of the Government  
in Central Administrative Tribunals/High Courts.

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Sir/Madam,

The Board is extremely concerned about the increase in the number of CAT/ High Court cases relating to administrative matters in the field formations. The Board is also desirous of ensuring timely and effective measures in defending the cases in the right perspective, upholding the guidelines and policies of the Government. Instructions have been issued by the Board, from time to time, for strict adherence and compliance, vide letters No. A-12034/15/2005- Ad.II (A) dated 10.07.2003, No.A 18013/3/2007-Ad.IVA dated 05.09.2007, D.O. F.NO. A-12034/01/2008-Ad.II (A) dated 30.04.2008, D.O F.No. A.12034/38/2012- Ad.IIIB (Pt) dated 15.10.2012, F.No.C-18012/06/2013-Ad.II B dated 05.04.2013 and No.C-18012/6/2013-Ad.II B dated 26.06.2014.

2. Some instances that have particularly come to the notice of the Board include (i) cases which have been heard in the Tribunal without Counter Affidavit being filed by the Department, (ii) cases which have been decided in favour of the applicants and Contempt Petitions have been filed for non-implementation of Tribunal's order, (iii) replies which have been filed by field formations on certain policy issues adopting different approaches, (iv) cases coming up for hearing in which late action is taken for filing counter/ briefing the counsel, etc. In order to overcome these difficulties, it has been decided to adopt a common strategy for defending the cases and monitoring progress of the cases at the zonal and Board level. In addition to instructions indicated at para one of the letter, all the Cadre Controlling Authorities are requested to follow the steps noted below for timely and effective handling of court cases:-

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(i) On receipt of notice of an OA/WP, as the case may be, it may be examined as to who is the competent authority to take a decision on the issue raised in the petition, keeping in view the designated competent/appointing authority in respect of the petitioner. For example, the competent/appointing authority in the case of Group B, C and erstwhile D categories would be the concerned cadre controlling Chief Commissioner/Principal Commissioner/Commissioner. In such cases, if the higher authority in the Ministry/Board i.e. Cabinet Secretary, Finance Secretary, Revenue Secretary, Chairman (CBEC), Member (CBEC), Joint Secretary (Admin) or Secretaries of other nodal Departments like DOPT, Department of Expenditure, etc. are named as respondents, a suitable application may immediately be filed in consultation with the Government Counsel to exclude their names from the list of respondents as they are not directly involved in the decision making process.

(ii) As soon as the application/petition filed in CAT/High Court is received, the Cadre Controlling Authorities may examine it with reference to existing guidelines of nodal departments like DOPT, Department of Expenditure etc. and supervise preparation of para-wise comments at the earliest.

(iii) In case comments/advice of the Board and/or Department of Expenditure / Department of Personnel & Training / Department of Pensions and Pensioners' Welfare etc., on any policy issue, are required, a reference may be made to the Board indicating the specific paras or policy on which comments are sought within two weeks of receipt of the notice. In no case should a matter be directly referred to a nodal Ministry/Departments (DOPT, D/o Expenditure etc.) in service matters. A tendency to send original applications or Writ Petitions to the Board for para-wise comments should be avoided.

(iv) On receipt of para-wise comments (if any required), a counter reply may be prepared in consultation with the Govt. Counsel/ Branch Secretariat of Ministry of Law, and filed in the Tribunal/High Court before the specified dates. A copy of the final reply filed should invariably be forwarded to the concerned Sections of the Board for perusal and information.

(v) In case of affidavits filed or oral submissions made before the Courts/CAT, a unified stand should be adopted instead of bringing out each Department's/Ministry's point of view in the said reply. Even in cases where the matter is pending before the Board or DoP&T or D/o Expenditure etc. the submissions made should be that the matter is under consideration of the Government and not that of any particular Ministry/Department.

(vi) In case the notice period is too short and any delay in filing the reply is apprehended, immediate action should be taken in consultation with the Government counsel to seek extension of time for filing reply stating the justifiable ground for such action.

(vii) It has also been observed that at times the standing Counsels appointed do not attend the Court hearings. In such an event, the matter should be referred to

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the Board for taking up the case with Department of Legal Affairs, Ministry of Law for suitable action against Counsels who absent themselves from hearing without valid reasons. Further, the concerned Chief Commissioners/Cadre Controlling Authorities should ensure appropriate arrangements for appearance before the Court/Tribunal as and when the matter comes up for hearing and for this purpose proper liaison with the Government Counsel should always be maintained. In addition, the Counsels must necessarily be briefed thoroughly by officers of appropriate seniority before they attend Court Proceedings. The Board must be kept informed of the latest development of cases on each date of hearing.

(viii)-----With regard to the OAs/WPs filed by Group 'A' officers [IRS officers and other Gr. 'A' officers], whose cases are directly dealt within the Board, immediately on receipt of the notice, it should be ensured that sufficient time is available for filing the counter affidavit after vetting by the Board, otherwise extension of time needs to be sought from the concerned Court in consultation with the Govt. Counsel. Thereafter, a copy of the notice along with material available with the field office, comments, if any, should be sent to the Board for further necessary action.

(ix) In decided cases, a copy of the order/judgement on O.A or Writ Petition should be obtained promptly; the order/judgment needs to be critically examined by the Cadre Controlling Authorities. The order/judgments needs to be handled in the following manner:--

(a) If the order is for considering the case /representation of the applicant(s), then a speaking order must be issued, duly incorporating the extant rules/regulations/instructions issued by the CBEC and the nodal departments i.e DOPT, Department of Expenditure etc., on the subject from time to time, with the approval of the competent authority and within the specified time lines. In case more time is required, an application may be made in the respective Court seeking extension of time before expiry of the specific period. It is stressed that while communicating decision(s) on the representation(s) / complaint(s) etc. submitted by the Government Servants or their Associations, etc., the final decision should be in the name of the appropriate authority and in no circumstances, the communication should convey or give an impression that the decision was based on the advice of a particular Ministry/Department which accepted/rejected the demand(s). A copy of such speaking order issued on the direction of the Court may be forwarded to the Board, with a brief background of the case, and copy of the judgment.

(b) In case the O.A/W.P filed by applicants is dismissed, a copy of the order or judgment, the ratio of the judgment and cases referred to by the Tribunal/High Court which form the basis of the judgment may be forwarded to the Board for information, future reference and guidance.

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- (c) In case the order/judgment in the O.A./W.P. is in favour of the applicant and against the existing policy of the Government which has been quashed, and it is felt that an appeal needs to be filed in the higher courts, the issue may be referred to the Board well before the last date for filing of the Review application before the CAT itself/an appeal before the High Court/SLP in the Supreme Court, along with advice of the Standing Govt. Counsel/ Branch Secretariat of Ministry of Law (wherever applicable). The reference should include a self-contained note on the background, case history, suggestion of the Cadre Controlling Authority, copy of the O.A., reply affidavit and order of the Tribunal, copy of the W.P., reply affidavit (if any) and order of the High Court and requisite O.Ms / orders, letters issued by the Board, DOPT, D/o Expenditure etc. which are under challenge. Since examination of the case at Board level involves consultation with nodal departments, it should be ensured that sufficient time is available or as a matter of abundant caution, a suitable application may be filed in the Tribunal/High Court for extension of time. The Board shall communicate to the field office its decision for the further course of action. In case the decision is for filing appeal, W.P needs to be drafted in consultation with the Standing Government Counsel and filed in the High Court well in time. If vetting of the affidavit by the Board is required, the same may be forwarded to the Board physically as well as by e-mail to the concerned Under Secretary of the Board to expedite it.
- (d) If the O.A is allowed favouring the applicants due to procedural delay/defect on the part of the Government or any factual error on the part of the govt. and if the Cadre Controlling Authority decides to implement the decision, they may do so with the prior approval of the Board. They may refer the case details to the Board with justification for implementation.
- (e) Whenever a Contempt Petition is received, the file should be put up to the Contemnor(s) named in the contempt-petition for their information, perusal and direction. If any of the Contemnors(s) belongs to the Board or Ministry, information needs to be brought to the notice of the Board at the earliest. Also, personal liaison with the concerned Section in the Ministry/Board may be maintained to ensure that the matter is not lost sight of.
- (f) In case of judgments/orders in Writ Petitions which are in favour of the government, a copy of the order or judgment, the ratio of the judgment and cases referred to by the High Court which form the basis of the judgment may be forwarded to the Board for information, future reference and guidance.

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(x) It has been noted that many of the O.A are filed challenging common issues like (i) opening up further promotional channels, (ii) any benefit available to their counterparts in CBDT or any other organisation, (iii) claiming parity with other cadres, (iv) Pay Fixation etc. Under such circumstances, the Cadre Controlling Authorities are requested to defend the case on the basis of existing guidelines/instructions issued by the CBEC or nodal Departments (DOP&T, D/o Expenditure etc.), Recruitment Rules, etc.

(xi). Further, it is also advised that, wherever possible, attempt should be made to tag cases of the same subject in consultation with the Govt. Counsel, so that uniform decisions can be taken.

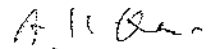
3. An officer not below the level of Joint Commissioner/Additional Commissioner must be appointed as Nodal officer in each Commissionerate for dealing with Court cases (CAT/High Court) on service matters. Intimation of details of such Nodal offices may be sent to the Board within 15 days. All communications with the Board regarding Court matters should preferably be made by such officer, with the approval of Principal Commissioner/Chief Commissioner, along with his full details i.e. Name, Address, Telephone Number and Mobile number.

4. In a nutshell, it is primarily the responsibility of the concerned Chief Commissioners/Cadre Controlling Authorities to ensure that timely action is taken at every stage a Court case goes through and that a unified stand is adopted on behalf of Government of India at every such stage. In no case should the litigation be allowed to prolong to the extent that it results in contempt proceedings. For this purpose, a proper mechanism for monitoring of court cases must be put in place by each concerned Chief Commissioners/Cadre Controlling Authorities under CBEC.

5. It is also advised that all such details of CAT/Court cases relating to administrative/service matters be computerized for ease of reference and monitoring from time to time.

6. This issues with approval of Member (Admin), CBEC.

Yours faithfully,



(A.K. Qasim)

Deputy Secretary to the Govt. of India

Tel: 2309 5530

Copy to: DG System, CBEC for uploading on Departmental website.