

F. No. A-23011/125/2016-Ad.IIA
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs

North Block, New Delhi.
Dated 9th October, 2019.

To,

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

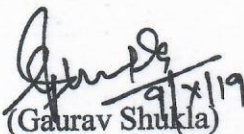
Subject: Defending the CAT/Court cases on the issue of grant of 3rd Financial Upgradation under MACP Scheme to Superintendents who were granted non-functional grade pay in grade pay of Rs. 5400/- in PB-2

Sir,

I am directed to forward a copy of order dated 12.04.2019 of the Hon'ble CAT, Ernakulam Bench in OA No. 912/2016 filed by Dileep Kumar with request that the said order may be cited/referred to while defending the CAT/Court cases pending in your Zones/ Commissionerate/Directorate on the subject 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.

Yours faithfully,

Encl: As above.


(Gaurav Shukla)

Under Secretary to the Government of India
Tele: 011-23095528

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

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application Nos.180/00916/2016

Friday, this the 12th day of April, 2019

CORAM:

Hon'ble Mr. E.K.Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member

Dileepkumar, S/o. K.K. Ramakrishnan, aged 57 years,
 Superintendent of Central Excise, Central Excise Divisional Office,
 V. Publisher's Building, Sreenivasa Iyer Road, Kottayam – 686 001,
 Residing at Parappattil House, Nellickal, Kuzhimattom PO,
 Kottayam District, Pin – 686 533, Mobile Phone-
 9495481173.

..... **Applicant**

(Party in person)

V e r s u s

Union of India, represented by

1. The Secretary, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, (Establishment D), North Block, New Delhi – 110 001.
2. The Secretary, The Department of Expenditure, Ministry of Finance, North Block, New Delhi – 110 001.
3. The Chairman, Central Board of Excise and Customs, North Block, New Delhi – 110 001.
4. The Commissioner of Central Excise, Cochin Commissionerate, Central Revenue Building, I.S. Press Road, Ernakulam, Cochin – 682 011.

..... **Respondents**

(By Advocate – Mr. P.R. Sreejith, ACGSC)

This application having been heard on 10.4.2019, the Tribunal on 12.04.2019 delivered the following:

ORDER

Per: Hon'ble Mr. Ashish Kalia, Judicial Member

The applicant joined the service under the respondents as Inspector of

Central Excise. He was granted 1st and 2nd financial upgradations w.e.f. 9.8.1999 and 22.6.2008. Later he was promoted to the post of Superintendent of Central Excise w.e.f. 24.9.2002 and as the upgradation-benefits were already given under ACP scheme he was not eligible for any benefits at the time of promotion. The applicant was granted the Grade Pay of Rs. 5,400/- in PB-2 of Rs. 9,300-34,800/- w.e.f. 24.9.2006 on completion of four years of service as Superintendent. Since the applicant was not granted any further promotion he is eligible for 3rd financial upgradation under the MACP scheme. Applicant submitted a representation to the respondents in this regard. However, the respondents in reply to the above representation given him a copy of the letter dated 18.2.2015 (Annexure A10) stating that since the Pay and Accounts Officer has raised objection in granting financial upgradation under the MACP scheme in the Grade Pay of Rs. 6,600/- to those Superintendents who had been granted the Grade Pay of Rs. 5,400/- in PB-2 on completion of four years service had sought a clarification from the Ministry and further the Hon'ble High Court of Madras has remitted the matter to the Department of Personal, Public Grievances and Pension for fresh consideration with directions to consider the issue in extenso. Respondent No. 1 examined the matter and issued Annexure A8 clarification. However, the respondents have denied the benefit of 3rd financial upgradation under the MACP scheme to the applicant on the wrong interpretation of paragraph 81 of Annexure A1 OM dated 19.5.2009 (Annexure A3). Being aggrieved the applicant has filed the present OA with the following relief:

"8.1 This Honourable Tribunal may be pleased to declare that the provisions of para 8.1 of Annexure I to the OM No. 35034/3/2008-Estt(D) dated 19.5.2009 is not applicable in the case of the applicant and he is eligible for the 3rd financial upgradation in Grade Pay of Rs. 6,600/- in PB-3 as per the MACP scheme and direct the respondents to grant and disburse to the applicant the financial benefits within a reasonable period as decided by the Hon'ble Tribunal.

8.2 This Honourable Tribunal may be pleased to declare that the Grade pay of Rs. 5,400/- in PB-2 granted under the CCS (RP) Rules to the Superintendents of Central Excise on completion of four year service is not a financial upgradation falling under the purview of the MACP scheme."

2. Notices were issued to the respondents. They entered appearance through Shri P.R. Sreejith, ACGSC who filed a detailed reply statement contending that the applicant joined the Department as Inspector of Central Excise on 22.6.1984. He was granted 1st and 2nd financial upgradation under the ACP scheme w.e.f. 9.8.1999 and 22.6.2008 respectively. He was promoted as Superintendent of Central Excise w.e.f. 24.9.2002 and further was granted Grade Pay of Rs. 5,400/- in PB-II in the scale of Rs. 9,300-34,800/- w.e.f. 24.9.2006 on completion of four years service as Superintendent. Respondent No.1 vide letter dated 21.7.2010 has clarified that the benefit of non-functional upgradation granted to the Superintendent (Group-B) officers on completion of 4 years of service would be treated/viewed as an upgradation in terms of paragraph 8.1 of Annexure to OM dated 19.5.2009 (Annexure A3) and the same would be offset against one financial upgradation under MACP scheme. The applicant was granted Grade Pay of Rs. 5,400/- in PB-II as non-functional upgradation w.e.f. 24.9.2006 and was afforded the benefit of fixation of pay under FR 22. The respondents would submit that the post/grade at S-15 has been placed at PB-II with Grade Pay of Rs. 5,400/- and next higher grade pay in the hierarchy of

the recommended revised pay band and grade pay is PB-III with Grade Pay of Rs. 5,400/-. Paragraph 8.1. of Annexure of MACP scheme provides that consequent upon the implementation of the 6th CPC's recommendations, grade pay of Rs. 5,400/- is now in two pay bands viz., PB-2 and PB-3. The grade pay of Rs. 5,400/- in PB-2 and Rs.5,400/- in PB-3 shall be treated as separate grade pays for the purpose of grant of upgradation under MACP scheme. The non-functional Grade Pay of Rs. 5,400/- granted to the applicant in PB-II after completion of 4 years regular service as Superintendent is to be treated/viewed as an upgradation in terms of respondent No. 1 clarifications. The respondents further contended that the judgments/orders relied on by the applicant is not applicable to the facts and circumstances of the present case. Respondents pray for dismissing the OA.

3. We have heard the applicant who appeared in person and the learned Central Government counsel appearing for the respondents in the matter. We have also perused the argument notes submitted by the applicant. Perused the records.

4. It is also undisputed that the Superintendents of Customs and Central Excise are having two Grade Pays in PB-2 i.e. one with Grade Pay of Rs.4800/- and another with Grade Pay of Rs.5400/-. The officials become entitled to Pay Band 2 with Grade Pay of Rs.5400/- only after they complete 4 years of service as Superintendents in the Grade Pay of Rs.4800/-.

5. MACP Scheme has brought systemic changes to the then existed ACP Scheme. Both the Schemes were to alleviate the drudgery of lack of promotional avenues of the government servants for a long time. Under the ACP Scheme, financial upgradation in the promotional scale were given on completion of 12 years and 24 years respectively without promotion whereas in the MACP scheme three financial upgradations counting from a direct entry grade on completion of 10, 20 and 30 years respectively whenever a person has spent 10 years continuously in the same Grade Pay. The MACP Scheme envisages merely placement in the immediate next higher Grade Pay in the hierarchy of recommended revised Pay Bands under the CCS (Revised Pay) Rules, 2008. It is also to be noted that the Grade Pay at the time of financial upgradation under the MACP Scheme can, in certain cases where regular promotion is not between two successive grades, be different than what is available at the time of regular promotion and in such cases the higher Grade Pay attached to the next promotion post in the hierarchy of the concerned cadre will be given only at the time of regular promotion. It is further to be noted that the Grade Pay of Rs.5400/- is now in two Pay Bands viz; PB2 and PB3. Para 8.1 of the MACP Scheme states:

"8.1 Consequent upon the implementation of sixth CPC's recommendations, grade pay of Rs.5400 is now in two pay bands viz., PB-2 and PB-3. The grade pay of Rs.5400 in PB-2 and Rs.5400 in PB-3 shall be treated as separate grade pays for the purpose of grant of upgradations under MACP Scheme."

6. Grade Pay of Rs.5400/- is given to Superintendents of Central Excise, on completion of their 4 years' service in PB-2 with Grade Pay of Rs.4800/-. Applicant joined the service as Inspector 22.06.1984 and he was granted 1st

ACP benefits in the grade of Superintendent i.e. PB-2 Rs. 9,300-34,800/- plus Grade Pay of Rs. 4,800/-. Later he was promoted as Superintendent of Central Excise w.e.f. 24.9.2002. Since the applicant was already granted 1st financial upgradation under ACP scheme he was not eligible for any benefits at the time of promotion. However, on completion of four years service as Superintendent applicant was granted non-functional upgradation in PB-2 Rs. 9,300-34,800/- plus Grade Pay of Rs. 5,400/- w.e.f. 24.09.2006. The applicant was granted 2nd financial upgradation under the ACP scheme w.e.f. 22.06.2008 on completion of 24 years of service in PB-3 Rs. 15600-39100/- with Grade Pay of Rs. 5,400/-. Therefore, the applicant has been granted three financial upgradations as stated above. The respondents contend that the placement of the applicant in the Grade Pay of Rs.5400/- in Pay Band 2 under NFG (non-functional upgradation) has to be treated as a separate Grade Pay for the purpose of grant of upgradation under the MACP Scheme.

7. Financial upgradations under the schemes of ACP and MACP are policy decisions of the Government of India and they are to be implemented strictly in terms of the schemes. Any interpretation inconsistent with the scheme cannot be acceded to. Paragraph 8.1 of the MACP scheme as quoted above which in unambiguous terms state that Grade Pay of Rs.5400/- in PB-2 and the Grade Pay of Rs.5400 in PB-3 are to be treated as separate Grade Pays for the purpose of grant of financial upgradation under the MACP Scheme. In the 6th CPC revised pay structure after completion of 4 years of service in the PB-2 with Grade Pay of Rs. 4,800/- a higher Grade Pay of Rs.5400/- is granted in Pay Band-2 itself. As per para 8.1 of the MACP

scheme such placement in higher Grade Pay has to be treated as a separate Grade Pay for the purpose of MACP Scheme. Therefore, the applicant had already undergone 3 financial upgradations. Hence now the applicant cannot be considered for the 3rd financial upgradation as it would be contrary to the MACP Scheme. Ignoring the granting of non-functional Grade Pay of Rs.5400/- in PB-2 for the purpose of MACP is not in accordance with the government policy and hence is not correct.

8. In the light of the above discussion, we hold that there is no merit in the above Original Applications. The Original Application is dismissed. Parties shall suffer their own costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

"SA"

Original Application Nos.180/00916/2016**List of Annexures**

- Annexure A-1** - Minutes of the meeting of the screening committee held on 20.9.2016 for considering officers of the Central Excise & Customs Commissionerate, Cochin for grant of financial upgradation under MACPs.
- Annexure A-2** - Copy of letter F. No. 23011/25/2015-Ad.IIA dated 20.6.2016 of the Deputy Secretary, CBEC.
- Annexure A-3** - Copy of the office memorandum No. 35034/3/2008-Estt(D) dated 19.5.2009 of Ministry of Personnel, Public Grievances and Pensions.
- Annexure A-4** - Frequently asked questions (FAQs) on MACP.
- Annexure A-5** - Copy of the order of the Hon'ble High Court of Delhi in the case of Union of India & Ors. v. Brahma Deo (WP(C) 1255/2012 CM & P No. 2727/2012 dated 5.3.2012).
- Annexure A-6** - Copy of relevant extract of CCS (Revised Pay) Rules, 2008.
- Annexure A-7** - History of service of the applicant.
- Annexure A-8** - Copy of Dy. No. 1078183.CR.15.(F.No.A-23011/25/2015-Ad.II of D/o Revenue) dated 6.5.2015 of the DoP&T.
- Annexure A-9** - Copy of the letter C. No. II/39/7/2014-Estt. Dated 1.6.2015 of the Asst. Commissioner (P&V), Office of the Commissioner of Central Excise, Cochin forwarding letter F. No. A-23011/25/2015-Ad IIA dated 26.5.2015 of the CBEC.
- Annexure A-10** - Copy of the letter C. No. II/3/1/2014-Conf. Dated 18.2.2015 of the Asst. Commissioner (P&V), Cochin Commissionerate.
- Annexure A-11** - Copy of letter F. No. 23011/29/2010-Ad.IIA dated 20.5.2011 of the Under Secretary, CBEC.
- Annexure A-12** - Copy of Dy. No. 1107004/2015/CR.(F.No.A-23011/25/2015-Ad.II of D/o Revenue) dated 16.9.2015 of the DoP&T.
- Annexure A-13** - Copy of MOF (Dept. of Expr.) ID No. 78097/2016/E.III(A), dated 8.3.2016.
- Annexure A-14** - Order dated 27.11.2012 of the Hon'ble Supreme Court of India in the case Union of India & Ors. v. N.R. Parmar & Ors. (Civil Appeal Nos. 7514-7515 of 2005)

- Annexure A-15** - M.No. AB.14017/64/2008-Estt.(RR) dated 24.4.2009 of the Department of Personal and Training.
- Annexure A-16** - CBEC's office order 45/2017 dated 17.3.2017 and office order No. 49/2017 dated 27.3.2017 granting non-functional upgradation.
- Annexure A-17** - CBEC's letter F. No. A.26017/219/2016-Ad.II.A dated 10.4.2017.

Respondents' Annexures

- Annexure R1** - True copy of the DoP&T letter dated 26.7.2010.
- Annexure R2** - True copy of the Central Board of Excise & Customs letter F.No. A23011/25/2015-Ad II A dated 20.6.2016.
- Annexure R3** - True copy of the Dy. No. 1078183 CR.15 dated 5.5.2015 of the DoP&T.
- Annexure R4** - True copy of the CBEC letter F. No. A23011/25/2015-Ad.IIA dated 26.5.2015.
- Annexure R5** - True copy of the Department of Expenditure decision as per I.D. Note No. 1135911/2016/CR dated 2.5.2016.
- Annexure R6** - True copy of the DoP&T I.D. Note No. 1173060/2016/CR dated 2.6.2016.

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