



भारत सरकार, वित्त मंत्रालय, राजस्व विभाग

Govt. of India, Ministry of Finance, Dept. of Revenue

मुख्य आयुक्त का कार्यालय, केन्द्रीय उत्पाद शुल्क, सीमा शुल्क एवं सेवा कर

Office of the Chief Commissioner, Central Excise, Customs & Service Tax

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No. I(10)9/ET/CCO/SH/2016

Dated:

Ref: - OA No. 040/00130/2016 filed by Shri. Mahendra Dutta & Ors. V/s UOI & Ors.

Facts of the Case

The above OA was filed by 26 Asst. Commissioners & 13 Supdts including 4 retired ACs & Supdts. By this above OA, the applicants make a prayer for direction that the present applicants are legally entitled to benefit of 3% NFG in the Grade Pay of Rs.5400/- as non-functional grade in PB-2 w.e.f. respective dates on completion of 4 years of service in the Grade Pay Of Rs.4800/- in the cadre of Superintendent, Group B and with a further direction that all the present applicants are entitled to be placed in the grade pay of Rs.6600/- on account of 3rd MACP w.e.f. different dates of attaining eligibility on completion of 30 years of regular service by the present applicants without any adjustment and recovery of any amount in the light of judgement and order of the Hon'ble Madras High Court in V.P.No.19024/2014 and M.P.No.1/2014 in the case of Union of India & Ors. Vs R. Chandrasekaran and order of the Hon'ble CAT in OA.040/00416/2014 with all consequential benefits including arrear monetary benefits.

Since the applicants are claiming that they are similarly situated with the applicant in OA No. 040/00416/2014 decided on 26.06.2015 by the Hon'ble CAT, Guwahati and, if the present applicants are found similarly situated, they shall be granted similar benefits within four months from the date of receipt of this order. Till such time, respondents are directed not to effect any recovery from the applicants. OA is disposed off at the admission stage itself. There shall be no order as to costs.

Discussion & Findings

As per instruction, the erstwhile ACP scheme was in force till 31.08.2008 which means a DR Inspector joining on 31.08.1984 is eligible to get 2nd ACP benefit in the hierarchy of pay scale of erstwhile Asst. Commissioner on completion of 24 years of service with one promotion. The scale of erstwhile AC was Rs.8000-13500/- which is equivalent to PB-3 with GP of Rs.5400/-. Such Superintendent who have got 2nd ACP in the hierarchy of Asstt. Commissioner and placed in PB-3 with GP of Rs.5400/-; are not eligible to get 4 years benefit with 3% increment in PB-II with GP of Rs.5400 which is treated to be as one financial upgradation as per Ministry's clarification dated 20.06.2016. However, they are eligible to get 3rd MACP benefit in PB-3 with GP of Rs.6600/- which was granted accordingly.

Contd on p/2

Since the grievances of the applicants are similar with the applicant of OA No. 040/00416/2014 which is also with reference to the judgment & order of the Hon'ble Madras High Court in WP No. 19024/2014 & MP No. 1/2014 in the case of Union of India & Ors. v/s R. Chandrasekaran, the matter was referred to the Board/ Ministry for necessary clarifications. The Ministry vide F. No. A-23011/25/2015-Ad. II(A) dated 20.06.2016 issued clarification which is mentioned below: -

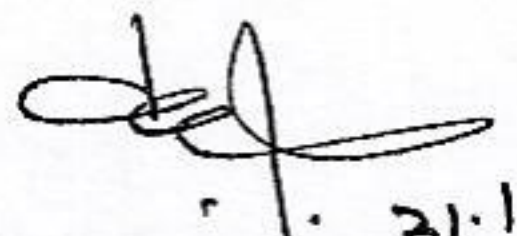
"The matter regarding counting of non-functional Grade pay of Rs. 5400/- in Pay Band-2 to the Superintendents as one financial upgradation for the purpose of MACP Scheme has subsequently been re-examined in consultation with Department of Personnel & Training (DoP&T). DoP&T has now advised in consultation with Department of Expenditure that the grant of non-functional grade pay of Rs.5400/- in PB-2 to the Superintendents needs to be counted as one financial upgradation for the purpose of MACP Scheme. DoP&T has drawn attention to the specific provision in Para 8.1 of Annexure-1 of OM No. 35034/3/2008-Estt.(D) dated 19th May, 2009 read with FAQ No. 16 which indicate that the Non-functional scale in Grade Pay of Rs.5400 in PB-2 is to be treated as a financial upgradation under MACP Scheme. DoP&T has also advised that the court cases including the case of R. Chandrasekaran may be agitated/ defended as per the MACP Scheme vide DoP&T O.M. dated 19.05.2009.

In the light of advice now tendered by DoP&T, the Board's letter of even number dated 26.05.2015 addressed to the Chief Commissioner, Central Excise, Customs & Service Tax, Chennai Zone in the case of Shri R. Chandrasekaran has been treated to be withdrawn."

ORDER

In the light of the Ministry's clarification as above it is hereby ordered that all the applicants of this OA and all other similarly placed officers are not entitled to the benefits of NFG on completion of 4 years' service in PB-2 with GP of Rs.5400/- as they have already been placed in PB-3 with GP of Rs.5400/- as 2nd financial upgradation under the ACP Scheme and also granted 3rd MACP benefit in PB-3 with GP of Rs.6600/-. It is further ordered that re-fixation and/ or recovery wherever applicable may be made on priority basis under intimation to this office.

Accordingly, the grievances of the applicants stand disposed off.


31.10.16
Brojen Thamar
(Chief Commissioner)

Contd on p/3

No. I(10)9/ET/CCO/SH/2016/7533-7622

Dated: 13 NOV 2016

copy forwarded for information and necessary action to: -

1. The Commissioner, Central Excise & Service Tax, Shillong/ Dibrugarh/ Guwahati.
2. The Commissioner, Customs(Prev.), N.E.R, Shillong.
3. The Commissioner (Appeals/ Audit), Central Excise, Customs & Service Tax, Guwahati.
4. The Additional/ Joint Commissioner, Central Excise & Service Tax, Shillong/ Dibrugarh/ Guwahati.
5. The Additional Commissioner (P&V), Customs(Prev.), N.E.R, Shillong.
6. The Joint Commissioner (P&V), Central Excise & Service Tax, Shillong/ Guwahati.
7. The Joint Commissioner (Law), Central Excise & Service Tax, Guwahati. He is directed to appraise the Hon'ble CAT accordingly.
8. The Assistant Commissioner (P&V), Central Excise & Service Tax, Dibrugarh.
9. The Deputy/ Assistant Commissioner, _____, Central Excise & Service Tax/ Customs (Prev.) Division (All).
10. The CAO, Central Excise & Service Tax/ Customs (Prev.), Shillong/ Dibrugarh/ Guwahati.
11. The PAO, Customs, Central Excise & Service Tax, Shillong/ Dibrugarh.
12. The ACAO, Central Excise & Service Tax, Shillong/ Dibrugarh/ Guwahati.
13. The ACAO, Customs(Prev.), N.E.R, Shillong.
14. All individual applicants As per enclosed Annexure-I
15. The Superintendent (CIU-VIG), Central Excise, Customs & Service Tax, Shillong.
16. The Systems Officer, CCO, Shillong for uploading in the Departmental website.
17. Guard File.


C. SONGATE
(Additional Commissioner)

Contd. on P/4

Annexure-I

List of Officers in O.A. No. 040/00130/2016

Sl. No.	Name of the Officers S/Shri/Smti.
1.	Mahendra Dutta, AC
2.	Santanu Kr. Chaliha, AC
3.	Rabindra Kr. Borah, AC
4.	Dharani Bora, AC
5.	Paresh Debnath, AC
6.	Dibakar Choudhury, AC
7.	Tarun Kr. Singh, AC
8.	Abdul Mutalib, AC
9.	Raj Kumar Kalita, AC
10.	Jaydeep Dutta, AC
11.	Tridip Ch. Roy, AC
12.	Naziruddin, AC
13.	Tushar Kanti Sen, AC
14.	Shyamal Kr. Dutta, AC
15.	Dilip Kr. Chettri, AC
16.	Ashish Adhikary, AC
17.	Ajit Mohan Paul, AC
18.	Hari Pada Roy, AC
19.	Nalini Mohan Baishya, AC
20.	Gangadhar Das, AC
21.	Deepak Ranjan Saha, AC
22.	Md. Abdul Muneem, AC
23.	Sudip Kumar Dutta, AC
24.	Bishendu Dey, AC
25.	Beda Prasad Jaishi, AC (Retd.)
26.	Smt. Nilmani Phukan, AC (Retd.)
27.	Biren Saikia, AC (Retd.)
28.	Kailash Barman, Supdt.
29.	Ganesh Sarmah, Supdt.
30.	Ratnagshu Chakraborty, Supdt.
31.	Jayanta Bhattacharjee, Supdt.
32.	Babul Mazumdar, Supdt.
33.	Tafaruddin Ahmed, Supdt.
34.	Pankaj Kr. Bhattacharjee, Supdt.
35.	Tapan Ch. Gayan, Supdt.
36.	Binay Krishna Sarma, Supdt.
37.	Bikash Chakraborty, Supdt.
38.	Sanat Kr. Saha, Supdt.
39.	Bishnu Ram Boro, Supdt. (Retd.)