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By Post

F. No. A-26017/203/2016-Ad.IIA
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise and Customs

North Block,
New Delhi, the 7th December, 2016.

To,

All the Cadre controlling Authorities under CBEC

Subject: Clarification on MACP- Grant of 3rd MACP to the Superintendents in CBEC who were granted non-functional grade pay of Rs. 5400/- in Pay Band-2 -- Reg.

Sir/Madam,

I am directed to refer to the Board's letter F. No. A-23011/25/2015-Ad.IIA dated 20th June, 2016 (*copy enclosed*) on the subject mentioned above whereby it was clarified that the grant of non-functional grade pay of Rs. 5400/- in PB-2 to the Superintendents is to be counted as one financial upgradation for the purpose of MACP Scheme.

2. It has come to the notice of the Board that divergent practices are being followed by Cadre Controlling Authorities under CBEC while dealing with cases of grant of financial upgradations under MACP Scheme.
3. The MACP Scheme is devised by the DoP&T which is applicable uniformly to all Central Government Employees. The Board follows the instructions/clarifications issued by DoP&T on MACP Scheme. The Board's said clarification dated 20.06.2016 was issued after consultation with DoP&T. All Cadre Controlling Authorities are requested to follow guidelines of DoP&T/CBEC on MACP Scheme in letter and spirit.
4. With regard to recovery of wrongful/excess payment made to individual official, it is clarified that action may be taken in terms of DoP&T O.M. No. 18/03/2015-Estt.(Pay-I) dated 02.03.2016.
5. This issues with the approval of Member (Administration), CBEC.

Encl: As above

Yours faithfully,


07/12/2016
(M. K. Gupta)

Under Secretary to the Government of India
Tele. No. 011-23095528

Copy to:

DG Systems, CBEC for uploading it on CBEC's website.

By Speed post

F. No. A-23011/25/2015-Ad.IIA
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise and Customs

North Block,
New Delhi, the 20th June, 2016.

To,

All the Cadre controlling Authorities under CBEC

Subject: Clarification on MACP- Grant of 3rd MACP to the Superintendents in CBEC who were granted non-functional grade pay of Rs. 5400/- in Pay Band-2 -- Reg.

Sir/Madam,

I am directed to say that the Board is in receipt of various references/representations from field offices/officers seeking clarifications on the issue of grant of 3rd financial upgradation under MACP Scheme to Superintendents who were granted non-functional grade pay of Rs. 5400/- in Pay Band-2.

2. 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 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 (copy enclosed) 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 court cases including the case of R. Chandrasekarar, may be agitated/defended as per the MACP Scheme vide DP&T O.M. dated 19.5.2009.

3. The Board's letter of even number dated 26.05.2015 addressed to Chief Commissioner of Central Excise, Chennai Zone in the case of Shri R. Chandrasekaran has been treated as withdrawn.

4. All Cadre Controlling Authorities are requested to take appropriate action to settle MACP cases accordingly. Also, appropriate action may be taken to defend the cases, emerging out of the case of Shri R. Chandrasekaran, on behalf of Union of India.

5. This issues with the approval of Chairman, CBEC.

Yours faithfully,

A. K. Qasim

(A. K. Qasim)

Deputy Secretary to the Government of India

Tel.No. 23095530

P.T.O.

15/6/16
21/6/16

Copy to:

- i. Pr. Chief Controller of Accounts, Central Board of Excise & Customs, A.G.C.R. Building, (1st floor), New Delhi - 110 002 for information and necessary action.
- ii. DG Systems, CBEC for uploading it on CBEC's website.

A. K. Qasim

(A. K. Qasim)
Deputy Secretary to the Government of India
Tel.No. 23095530

**FREQUENTLY ASKED QUESTIONS (FAQs) ON MODIFIED ASSURED CAREER
PROGRESSION SCHEME**

	Point of doubt	Clarification
1.	What is Modified Assured Career Progression Scheme (MACPS) ?	The MACP Scheme for Central Civilian Government Employees is in supersession of earlier ACP Scheme . Under the MACP Scheme three financial Up-gradations are allowed on completion of 10, 20, 30 years of regular service, counted from the direct entry grade. The MACPS envisages merely placement in the immediate next higher grade pay as given in Section 1, Part –A of the first schedule of the CCS (Revised Pay) Rules 2008, in case no promotion has been earned by the employee during this period.
2.	From which date the MACPS is effective?	The MACPS is effective w.e.f. 01.09.2008 or on completion of 10, 20 & 30 years of continuous regular service, whichever is later. Financial upgradation will also be admissible whenever a person has spent 10 years continuously in the same grade pay. (Para 9 of OM dated 19/5/2009)
3.	Who are entitled for financial upgradation under the MACPS?	The MACPS is applicable to all Central Government Civilian Employees.

4	What norms are required to be fulfilled while granting the benefits under MACPS	<p>The financial upgradation would be on non-functional basis subject to fitness in the hierarchy of pay band and grade pay within PB-1. Thereafter, only the benchmark of 'Good' would be applicable till the grade pay of Rs.6600 in PB-3. The benchmark will be 'Very Good' for financial upgradation to the grade pay of Rs.7600 and above. However, where the financial upgradation under the MACPS also happen to be in the promotional grade and benchmark for promotion is lower than the benchmark for granting the benefits under MACPS as mentioned in para 17 of the Scheme, the benchmark for promotion shall apply to MACP also.</p> <p>OM.No.35034/3/2008-Estt(D) dated 01/11/2010</p>
5.	Whether Pay Band would be changed at the time of grant of financial upgradation under MACPS	<p>Yes.</p> <p>OM.No.35034/3/2008-Estt.(D) dated 09/09/2010</p>
6.	Whether the promotions in same grade would be counted for the purpose of MACPS?	<p>The financial up-gradation under the MACPS is in the immediate next higher grade pay in the hierarchy of recommended revised pay bands and grade pay as given in CCS (Revised Pay) Rules, 2008. However if the promotional hierarchy as per recruitment rules is such that promotions are earned in the same grade pay , then the same shall be counted for the purpose of MACPS.</p>
7.	How will the benefits of ACP be granted if due between 01.01.2006 and 31.08.2008	<p>The revised pay structure has been changed w.e.f. 01.01.2006 and the benefits of ACPs have been allowed till 31.08.2008. Hence, the benefits of revised pay structure would be allowed for the purpose of ACPs. (OM No.35034/3/2008-Estt. dated 9.9.2010).</p>

8.	Whether adhoc appointment would be counted towards qualifying service for MACPS	No. Only continuous regular service is counted towards qualifying service for the purpose of MACPS. The regular service shall commence from the date of joining of a post in direct entry grade on a regular basis. (Para 9 of the MACPS)
9.	Whether State Government service shall be reckoned for the purpose of MACPS	No. Only regular service rendered in the Central Government's Department/Office is to be counted for the purpose of MACPS, as the Scheme is applicable to the Central Government Civilian Employees only. (MACPS , Para 10)
10	What are the periods included in the regular service?	All period spent on deputation/foreign service, study leave and all other kind of leave, duly sanctioned by the competent authority shall be included in the regular service. (Para 11, MACPS)
11	How is the MACPS to be extended to the employees of Autonomous and Statutory Bodies.	Procedure prescribed in OM No.35034/3/2010-Est(D), Dated 03/08/2010 would be followed by the administrative Ministries/Departments concerned for extension of the MACPS to the employees of Autonomous and Statutory Bodies under their control.
12	Whether the cases of grant of financial upgradation allowed under the ACPS between 01.09.2008 and 19.05.2009, the date of issue of the Scheme are be reviewed?	Yes. Since the benefits of ACPS have been discontinued w.e.f. 01.09.2008, the cases settled between 01.09.2008 and 19.05.2009, in terms of previous ACP Scheme shall be reviewed.
13	Whether the past continuous regular service in another Govt. Deptt. in a post carrying same grade pay prior to regular appointment in a new Deptt. without a break shall be counted towards qualifying regular service for the purpose of MACPS.	Yes. (Para 9, MACPS)

1.	Upto what grade pay the benefits under the MACPS is allowed?	The benefits of MACPS are being up-to HAG scale of Rs.67000-79000/ (DOPT's O.M.No.35034/3/2008-Estt.(D) dated 24.12.2010)
11.	How the cases of pre-revised pay scales (Rs.5000-8000 & Rs.5500-9000 and Rs.6500-10500 & Rs.7450-11500) merged w.e.f. 01.01.2006 are to be decided under MACPS?	The cases would be regulated in accordance with para 5 of Annexure-I of MACPS. The Ministries/ Departments are expected to re-organise cadres and frame common RRs for the post in merged scales.
16.	Whether 'Non-functional Scale' of Rs.8000-13500 (revised to grade pay of Rs.5400 in PB-3) would be viewed as one financial upgradation for the purpose of MACPS.	Yes, in terms of para 8.1 of Annexure-I of MACPS dated 19.05.2009.
17.	Whether 'time bound promotion' scheme including 'in-situ promotion' scheme can run concurrently with MACPS.	No. (Para 13 of MACPS)
18.	Whether Staff Car Driver Scheme can run concurrently with MACPS	DOPT vide O.M. No.35011/03/2008-Estt.(D),30/07/2010 has extended the benefits of MACPS to Staff Car Drivers as a fall back option.
19.	Whether the placement of erstwhile Gr. D employees as Staff Car Driver, ordinary grade, would count as a promotion?	No. The model RRs for Staff Car Drivers provide deputation/ absorption as a method of appointment for erstwhile Gr. D employees . The placement as staff Car Driver is not in the hierarchy hence the same would not be counted as promotion under MACPS. The regular service for the MACPS would be from the date of appointment as Staff Car Driver.

20.	Whether designation, classification or higher status would change on account of financial upgradation under MACPS	There shall be no change in the designation, classification or higher status on grant of financial upgradation under MACPS, as the upgradation under the Scheme is purely personal and merely placement in the next higher grade pay. (Para 16 of Annexure-I of MACPS refers)
21	If a financial upgradation under the MACPS is deferred due to the reason of the employees being 'unfit' or due to departmental proceedings, etc, whether this would have consequential effect on the subsequent financial upgradation.	Yes, this would have consequential effect on the subsequent financial upgradation, which would also get deferred to the extent of delay in grant of financial upgradation. (MACPS, Para 15)
22.	Whether the stepping up of pay would be admissible if a junior is getting more pay than the senior on account of grant of financial upgradation under MACPS.	No stepping up of pay in the band or grade pay would be admissible with regard to junior getting more pay than the senior on account of pay fixation under MACPS. (Para 10 of OM dated 19/5/2009)
23.	Whether the regular service rendered by an employee if declared surplus in his/her organisation and appointed in the same grade pay or lower grade pay shall be counted towards the regular service in a new organization for the purpose of MACPS.	Yes. (refer para 23 of Annexure-I of MACPS).
24.	In case of transfer including unilateral transfer own request, whether regular service rendered in previous organisation/office shall be counted alongwith the regular service in the new organization for the purpose of MACPS.	Yes. OM No.35034/3/2008-Estt(D) dated 01/11/2010

<p>25.</p>	<p>If a regular promotion has been offered but was refused by the Government employee before becoming entitled to a financial upgradation, no financial upgradation shall be allowed and as such an employee has not been stagnated due to lack of opportunities. If, however, financial upgradation has been allowed due to stagnation and the employees subsequently refuse the promotion, it shall not be a ground to withdraw the financial upgradation. He shall, however, not be eligible to be considered for further financial upgradation till he agrees to be considered for promotion again and the next financial upgradation shall also be deferred to the extent of period of debarment due to the refusal. (Para 25 of MACPS)</p>
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Department of Personnel & Training
Establishment D Section

Frequently Asked Questions (FAQs) on Modified Assured Career Progression Scheme (MACPS)

Sl.No.	Doubts	Clarification
26	<p>Whether the benefits of ACPS would be allowed in respect of isolated cases due between 01.01.2006 and 31.08.2008 where the pre-revised pay scales of Rs.5000-8000 & Rs.5500-9000 and Rs.6500-10500 & Rs.7450-11500 have been merged into single grade pay of Rs.4200 and Rs.4600 respectively w.e.f. 01.01.2006?</p>	<p>Yes. Since the pre-revised Rs.5000-8000 & Rs.5500-9000 and Rs.6500-10500 & Rs.7450-11500 (isolated cases) have been merged into single grade pay of Rs.4200 and Rs.4600 respectively w.e.f. 01.01.2006, the benefits of 1st and 2nd financial upgradations under the ACPS should be considered/allowed in the grade pays of Rs.4600 and Rs.4800 in PB-2, as the case may be, due between 01.01.2006 and 31.08.2008 in respect of isolated cases in terms of para 5 of Annexure-I of MACPS dated 19.05.2009.</p>
27	<p>In a hypothetical situation cadre hierarchy was as follows:</p> <p style="margin-left: 20px;">Rs.5000-8000 (revised GP 4200) Rs.5500-9000 (revised GP 4200) Rs.6500-10500 (revised GP 4600) Rs.7450-11500 (revised GP 4600) Rs.10000-15200 (revised GP 6600)</p> <p>(i) What would be the 1st financial upgradation under the ACPS for a Government employee recruited in pre-revised pay scale of Rs.5000-8000, who has completed his 12 years of regular service on 12.04.2007 (between 1.1.2006 and 31.8.2008);</p>	<p>In terms of clarification given on point of doubt no.3 issued vide DOPT's O.M. No.35034/3/2008-Estt.(D) dated 9.9.2010, the benefits of ACPS would be applicable in the new pay structure adopted w.e.f. 1.1.2006 in the promotional hierarchy.</p> <p>(i): Since the pre-revised pay scales Rs.5000-8000 & Rs.5500-9000 have been merged and placed in PB-2 with grade pay of Rs.4200, 1st financial upgradation would be allowed in the grade pays of Rs.4600, subject to fulfillment of promotional norms as stipulated in condition no.6 of Annexure-I ACPS dated 9.8.1999, in terms of clarification given on point of doubt no.1 of ACPS dated 10.02.2000.</p>

(ii)	What would be 2 nd financial upgradation for employee recruited in 5000-8000, who has completed 24 years of regular service on 12.04.2007 (between 1.1.2006 and 31.8.2008)	Since the pre-revised pay scales Rs.6500-10500 & Rs.7450-11500 have been merged and placed in PB-2 with grade pay of Rs.4600, 2 nd financial upgradation would be allowed in the grade pay of Rs.6600, subject to fulfillment of promotional norms (after framing of RRs post merger) as stipulated in condition no.6 of Annexure-I ACPS dated 9.8.1999, in terms of clarification given on point of doubt no.1 of ACPS dated 10.02.2000.
(iii)	If a Government servant recruited in the pre-revised pay scale of Rs.5000-8000 has been promoted in the promotional hierarchy in the pre-revised pay scale of Rs.5500-9000 prior to 1.1.2006 (and he has put in 14 years of regular service) then would there be any claim for financial upgradation under ACPS	(iii): The pre-revised pay scales Rs.5000-8000 & Rs.5500-9000 have been merged and placed in PB-2 with grade pays of Rs.4200 w.e.f. 1.1.2006. Hence, the promotion would be ignored as he has completed his 12 years of regular service and the benefit of 1 st ACP would accordingly be allowed in the promotional hierarchy i.e. in the grade pay of Rs.4600 w.e.f. 01.01.2006.
(iv)	If the above Government servant had put in 22 years as on 31.08.2008, then what would be the entitlement in MACP	(iv): As given above, the 1 st ACP would be in PB-2 grade pay of Rs.4600 after ignoring the previous promotion. Thereafter, since employee has completed more than 20 years of regular service on 01.09.2008, he would be entitled for 2 nd financial upgradation under the MACPS in the immediate next higher grade pay of Rs.4800 in PB-2 subject to fulfillment of condition as stipulated in para 17 of Annexure-I of MACPS dated 19.05.2009.

F.No.18/03/2015-Estt. (Pay-I)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training

New Delhi, the 2nd March, 2016

OFFICE MEMORANDUM

Sub: Recovery of wrongful / excess payments made to Government servants.

The undersigned is directed to refer to this Department's OM No.18/26/2011-Estt (Pay-I) dated 6th February, 2014 wherein certain instructions have been issued to deal with the issue of recovery of wrongful / excess payments made to Government servants in view of the law declared by Courts, particularly, in the case of *Chandi Prasad Uniyal And Ors. vs. State of Uttarakhand And Ors., 2012 AIR SCW 4742, (2012) 8 SCC 417*. Para 3(iv) of the OM *inter-alia* provides that recovery should be made in all cases of overpayment barring few exceptions of extreme hardships.

2. The issue has subsequently come up for consideration before the Hon'ble Supreme Court in the case of *State of Punjab & Ors vs Rafiq Masih (White Washer) etc in CA No.11527 of 2014 (Arising out of SLP(C) No.11684 of 2012)* wherein Hon'ble Court on 18.12.2014 decided a bunch of cases in which monetary benefits were given to employees in excess of their entitlement due to unintentional mistakes committed by the concerned competent authorities, in determining the emoluments payable to them, and the employees were not guilty of furnishing any incorrect information / misrepresentation / fraud, which had led the concerned competent authorities to commit the mistake of making the higher payment to the employees. The employees were as innocent as their employers in the wrongful determination of their inflated emoluments. The Hon'ble Supreme Court in its judgment dated 18th December, 2014 *ibid* has, *inter-alia*, observed as under:

"7. Having examined a number of judgments rendered by this Court, we are of the view, that orders passed by the employer seeking recovery of monetary benefits wrongly extended to employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer's right to recover. In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made. In order to ascertain the parameters of the above consideration, and the test to be applied, reference needs to be made to situations when this Court exempted employees from such recovery, even in exercise of its jurisdiction under Article 142 of the Constitution of India. Repeated exercise of such power, "for doing complete justice in any cause" would establish that the recovery being effected was iniquitous, and therefore, arbitrary. And accordingly, the interference at the hands of this Court."

"10. In view of the afore-stated constitutional mandate, equity and good conscience, in the matter of livelihood of the people of this country, has to be the

Contd. on pg.2

basis of all governmental actions. An action of the State, ordering a recovery from an employee, would be in order, so long as it is not rendered iniquitous to the extent, that the action of recovery would be more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer, to recover the amount. Or in other words, till such time as the recovery would have a harsh and arbitrary effect on the employee, it would be permissible in law. Orders passed in given situations repeatedly, even in exercise of the power vested in this Court under Article 142 of the Constitution of India, will disclose the parameters of the realm of an action of recovery (of an excess amount paid to an employee) which would breach the obligations of the State, to citizens of this country, and render the action arbitrary, and therefore, violative of the mandate contained in Article 14 of the Constitution of India."

3. The issue that was required to be adjudicated by the Hon'ble Supreme Court was whether all the private respondents, against whom an order of recovery (of the excess amount) has been made, should be exempted in law, from the reimbursement of the same to the employer. For the applicability of the instant order, and the conclusions recorded by them thereafter, the ingredients depicted in paras 2&3 of the judgment are essentially indispensable.

4. The Hon'ble Supreme Court while observing that it is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement has summarized the following few situations, wherein recoveries by the employers would be impermissible in law:-


- (i) *Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*
- (ii) *Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*
- (iii) *Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*
- (iv) *Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*
- (v) *In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.*

5. The matter has, consequently, been examined in consultation with the Department of Expenditure and the Department of Legal Affairs. The Ministries / Departments are advised to deal with the issue of wrongful / excess payments made to Government servants in accordance with above decision of the Hon'ble Supreme Court in *CA No.11527 of 2014 (arising out of SLP (C) No.11684 of 2012) in State of Punjab and others etc vs Rafiq Masih (White Washer) etc.* However, wherever the waiver of recovery in the above-mentioned situations is considered, the same may be allowed with the

express approval of Department of Expenditure in terms of this Department's OM No.18/26/2011-Estt (Pay-I) dated 6th February, 2014.

6. In so far as persons serving in the Indian Audit and Accounts Department are concerned, these orders are issued with the concurrence of the Comptroller and Auditor General of India.

7. Hindi version will follow.



(A.K. Jain)

Deputy Secretary to the Government of India

1. All Ministries / Departments of Government of India
- ✓ 2. NIC, DOP&T – with a request to upload this OM on the Department's website under OMs & Orders (Establishment → Pay Rules) and also under "What is New".

Copy also forwarded to:

1. The Comptroller & Auditor General of India.
2. Secretary General, Supreme Court of India.
3. Controller General of Accounts / Controller of Accounts, Ministry of Finance.
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5. Governments of all States and Union Territories.
6. Department of Personnel and Training (AIS Division) / JCA / Admn. Section.
7. Secretary, National Council of JCM (Staff Side), 13-C, Feroz Shah Road, New Delhi.
8. All Members of Staff Side of the National Council of JCM / Departmental Council.
9. All Officers / Sections of Department of Personnel and Training / Department of Administrative Reforms & Public Grievances / Department of Pensions & Pensioners' Welfare / PESB.
10. Joint Secretary (Pers), Department of Expenditure, Ministry of Finance.
11. Additional Secretary (Union Territories), Ministry of Home Affairs.

