

Not feasible to extend the benefits of MACP during Jan to Aug 2008

Modified Assured Career Progression Scheme (MACPS) for the Central Government Civilian Employees

F.No.A-26017/166/2018-Ad.IIA
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise and Customs
North Block, New Delhi

Dated the 9th January, 2019

To
All Cadre Controlling Authorities under CBIC

Subject: Modified Assured Career Progression Scheme (MACPS) for the Central Government Civilian Employees -regarding

Madam / Sir,
The Modified Assured Career Progression Scheme (MACP) for the Central Government Civilian Employees was introduced on the recommendation of the 6th Central Pay Commission vide Department of Personnel and Training (DoP&T) OM No.35034/3/2008-Estt(D) dated 19.05.2009 w.e.f. 01.09.2008.

2.The Board has been receiving a number of references from individuals/Commissionerates /CBN, CBIC, seeking clarification on the applicability of the judgement dated 08.12.2017 of the Hon'ble Supreme Court in Civil Appeal Diary No. 3744 of 2016, in case of UOI and Ors. Vs. Balbir Singh Turn & Anr. on grant of MACP from 01.01.2006 instead of 01.09.2008.

3.DoP&T is the nodal Department for regulation of MACP Scheme. The matter has been examined in the Board in consultation with DoP&T. DoP&T has, inter alia, observed that: –

The Order dated 08.12.2017 of the Hon'ble Supreme Court in Civil Appeal Diary No. 3744 of 2016, in case of UOI and Ors. Vs. Balbir Singh Turn & Anr is in the context of MACP Scheme issued by Ministry of Defence (MoD) with regard to Personnel below Officer Rank (PBOR) and hence the order of Hon'ble Apex Court is directly not applicable to the MACP Scheme issued by DoP&T for civilian employees. Therefore,

request for grant of MACP benefits w.e.f. 01.01.2006 may not be agreed to on the following grounds: –

(i) The VI Pay Commission recommended separate Schemes for civilian and the Defence Personnel. After the recommendations were considered and approved by the Cabinet, D/o Expenditure issued Resolution dated 29.08.2008 in respect of civilian employees. M/o Defence issued resolution dated 30.08.2008 regarding extension of VI CPC benefits to Armed Forces Personnel. Thus, the Civilian and the PBOR personnel are governed by two different Resolutions.

(ii) The recommendations of the 6th CPC were accepted by the Government only on 29.08.2008 (30.08.2008 in case of PBOR). The recommendations of the 66 CPC were required to be examined and a scheme was to be formulated in consultation with Department of Expenditure and the same took considerable time for its implementation. Before implementation of the Scheme, a cut off date had to be decided/fixed. Accordingly, the Government has taken a conscious decision for implementing the MACPS w.e.f. 01.09.2008. Though the MACPS came into existence only w.e.f. 01.09.2008, the benefits of the existing ACP Scheme of August, 1999, was allowed to the Government servants upto 31.08.2008.

(iii) Changing the effective date of implementation of MACP from 01.09.2008 to 01.01.2006 may be beneficial to certain employees, but this would also place certain other employees at a disadvantage thereby entailing huge recoveries from them. It may be difficult to make recoveries from the employees who have availed higher financial benefit under ACP during 01.01.2006 to 31.08.2008 and retired from service.

(iv) The MACP is a condition of service and, hence, cannot be given retrospective effect. It is upto Government to take a conscious decision to implement it uniformly from a certain date.

(v) It is not feasible to extend the benefits of MACP during 01.01.2006 to 31.08.2008, as more than nine years of time has passed since the implementation of MACP and the issues have been settled as per extant instructions. The change of effective date will lead to surge of litigation particularly from employees who availed the benefits of ACP scheme during 01.01.2006 to 31.08.2008.

(vi) Vide Order dated 14.02.2017, Hon'ble High Court of Judicature at Madras in Writ petition Nos. 33946, 34602 and 27798 of 2014 has held that the benefit of erstwhile ACP Scheme cannot be negated by bringing a new Scheme i.e. MACP Scheme with retrospective effect.

4. Based on the above, you are requested to take appropriate action on the references received on this issue.

5. This issues with the approval of Competent Authority.

Yours faithfully,

(M.K.Gupta)

Under Secretary to the Government of India