

COURT MATTER
URGENT



Office of the Pr.Chief Commissioner of Income Tax,
Andhra Pradesh & Telangana, Hyderabad
10th floor, Income Tax Towers
A.C.Guards, Hyderabad-500004
Tel.No.040-23425474, Fax:040-23241427

F.No.Pr.CCAP&TS/Estt./OA No.1095 of 2014/2023-24

Date:09.05.2023

To
All the Heads of Department/Heads of Offices
In Andhra Pradesh & Telangana State.

Sir/Madam,

Sub: Implementation of Hon'ble Central Administrative Tribunal, Pr.Bench, New Delhi Order dated 01.06.2016 in OA No.1095/2014 in the case of K.P.Rajagopal and Ors Vs Union of India Subject to outcome of W.P. No.3527/2019 filed by UOI before Hon'ble High Court of New Delhi – Regarding.

Ref: (i) F.No.HRD/CM/175/9/2010-11/827, dated 02.05.2023.
(ii) This office letter dated 18.01.2023 & 28.02.2023.

Kind reference is invited to the above.

2. Vide letter in F.No. F.No.Pr.CCIT/AP7TS/Estt./OA No.1095 of 2014/2022-23, dated 18.01.2023 this office has forwarded the letter of Directorate of Income Tax(HRD), CBDT, New Delhi in F.No.HRD/CM/175/9/2010-11/7500, dated 27.12.2022 to give effect of the order dated 01.06.2016 in OA No.1095/2014 of the Hon'ble CAT, Pr.Bench, New Delhi to all affected officials who were members of the ITEF and eligible for the benefit subject to the outcome of Hon'ble High Court of New Delhi's order in W.P. No.3527/2019 filed by the Department.

3. The JDIT(CMD-II)(HRD), CBDT, New Delhi vide letter in F.No.HRD/CM/175/9/2010-11/827, dated 02.05.2023 has informed that the Hon'ble CAT has given six weeks time to implement its order dated 01.06.2016 in the instant case and the clarification of the Pr.Chief Controller of Accounts, CBDT dated 25.04.2023 is enclosed for ready reference in implementation of the same.

4. **In this regard, I am directed to request you refer to this office letter dated 18.01.2023 and the clarification of the Pr. Chief Controller of Accounts, CBDT dated 25.04.2023 while implementing the Hon'ble CAT order dated 01.06.2016. The compliance report regarding implementation of Hon'ble CAT order by your office may kindly be sent to this office on or before 17.05.2023. This may kindly be treated as most urgent.**

Yours faithfully,


(THAMBA MAHENDRA)

Deputy Commissioner of Income tax
(H.Qrs.)(Admn.)
O/o Pr. CCIT, AP&TS, Hyderabad

Encl: as above.



सत्यमेव जयते

GOVERNMENT OF INDIA
DIRECTORATE OF INCOME TAX
HUMAN RESOURCE DEVELOPMENT
CENTRAL BOARD OF DIRECT TAXES

2nd Floor, JawaharLal Nehru Stadium, New Delhi - 110003

F.No. HRD/CM/175/9/2010-11/827

Dated: 02.05.2023

To,

All the Pr. Chief Commissioner of Income Tax, (CCA),

Madam/Sir,

Sub: Implementation of Hon'ble CAT, Pr. Bench, New Delhi Order dated 01.06.2016 in OA No. 1095/2014 in the case of Shri K. P. Rajgopal and Ors. Vs Union of India subject to outcome of WP No. 3527/2019 filed by UoI in Hon'ble High Court of Delhi- reg.

Kindly refer to above.

2 In this regard, it is to informed that Hon'ble CAT has give six weeks time to implement its order dated 01.06.2016 in case Shri K. P. Rajgopal and Ors. Vs Union of India. The next date of hearing is 25.05.2023 therefore, you are requested to kindly ensure the implementation within stipulated time. A clarification of Pr. Chief Controller of Accounts, CBDT dated 25.04.2023 is enclosed herewith for your reference.

Encl: As above.

DC (Admin)

Urgent

Court matter,

Compliance need to

be made latest

by 20/05/23

Yours faithfully,


(Diwakar Singh)
JDIT (CMD-II) (HRD)
New Delhi.



B

O/o the Principal Chief Controller of Accounts
Central Board of Direct Taxes,
9th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi-110003

PCCA/CBDT/PCS/ZAO-CORRES/Part-III/2016-17/18

Dated: 25/04/2023

To,

Sh. Divakar Singh, JDIT, CMD-2,
O/o Directorate of Income Tax,
Human Resource Development, CBDT,
2nd Floor, JLN Stadium,
New Delhi 110003

Sub: Implementation of Hon'ble CAT, Pr. Bench, New Delhi order dated 01/06/2016 in OA No. 1095/2014 in the case of Shri K. P. Rajgopal and Ors. Vs Union of India subject to outcome of WP No. 3527/2019 filed by UoI in Hon'ble High Court of India reg

Ref. No. HRD/CM/175/9/2010-11/10778 and dated 22/03/2023

Sir,

With reference to the subject and your letter cited above it is submitted that guidelines stipulated vide para 4 of this office letter no. 412 dated 21/02/2023 are released while keeping the spirit of safeguarding government money and assets in view.

The major concern while implementation of the Hon'ble CAT orders dated 01/06/2016 is that it will be difficult to recover the arrear amount from employees as well as pensioners in case Hon'ble High Court of Delhi denied the said revision of pay scale provided as the outcome of WP No. 3527/2019 which was earlier provided by Hon'ble CAT vide order dated 01/06/2016.

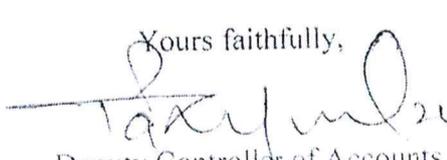
Moreover, the recovery cannot be made after the arrear payment is made to the employees who have retired from government service or will be retired before the outcome of WP No. 3527/2019 pending before Hon'ble High Court of Delhi.

Taking an undertaking from the employees receiving the benefit of Hon'ble CAT order dated 01/06/2016 addresses the concern of safeguarding the public money.

In the light of the above the formality stipulated in this office letter no. 412 dated 21/02/2023 for obtaining an undertaking by the concerned PrCCIT(CCA) from the employees receiving benefit of CAT order dated 01/06/2023 is just to safeguard the government assets and does not impose any bar denying the eligible government employees the benefit of Hon'ble CAT order hence you are requested to direct your offices to follow the guidelines stipulated in this office letter 412 dated 21/02/2023.

This issues with the approval of Competent Authority.

Yours faithfully,


Deputy Controller of Accounts

DAK SECTION
O/o The Principal Chief Controller of Accounts (HRD)
Diary No. 880
Date: 28/04/23
A

JDIT-CMD-2

LTD (H. C. (H. C.))
Pl. send to
PrCCIT(CCA) to
implement the
CAT order.



OFFICE OF THE PRINCIPAL CHIEF CONTROLLER OF ACCOUNTS
CENTRAL BOARD OF DIRECT TAXES
9TH FLOOR, LOK NAYAK BHAWAN, KHAN MARKET
NEW DELHI - 110 003
Email - pccacbdtdn@yahoo.com

C
H.C. Stamp
Keep it in file
A

PCCA/CBDT/PCS/ZAO-CORRES/Part-III/2016-17/ 412

Dated: 21/02/2023

To,

Deputy Controller of Accounts (North/East/West/Central/South Zone)

Sub: Implementation of Hon'ble CAT, New Delhi order dated 01/06/2016 on OA no. 1095/2014 in case of Sh.KP Rajgopal and Ors Vs Union of India subject to outcome of WP No. 3527/2019 filed by 1 in Hon'ble High court of Delhi.

With reference to the subject cited it is stated that clarification was sought from O/o the Human Resource Development, Directorate of Income Tax, CBDT, New Delhi in respect of letter issued vide F.No. HRD/CM175/2010-11/7500 dated 27.12.2022. The clarification has been received from the department are as under :

S.No.	Clarification sought	Clarification received
1	To clarify whether the pay of IAS/PSs/AOs who have promoted between 01/01/2006 to 31/08/2008 will be revised with immediate effect or after the outcome of WP No. 3527/2019 pending before Hon'ble High Court of Delhi on implementation of CAT. Pr. Bench order dated 01/06/2016 vide letter no. HRD/CM/175/9/2010-11/7500 dated 27/12/2022.	In this regard, kind attention is drawn to letter HRD/CM/175/9/2010-11/7500 dated 27/12/2022 issued from O/o DIT, HRD, New Delhi vide paragraph 3(ii) & para no. 5 it is clearly mentioned that effect of order dated 01/06/2016 in O.A. No. 1095/2014 of Hon'ble CAT, PB, New Delhi is to be given immediately to all affected officials who were members of the ITEF and eligible for benefit.
2	If the orders are to be implemented immediately and later Hon'ble High Court of Delhi does not allow the said revision of pay scale, it will be very difficult to recover the arrear amount from employees as well as pensioners. Moreover, the recovery cannot be made after the arrear payment is made to the employees as well as pensioners who have retired from Government service or will be retired before the decision/outcome of WP No. 3527/2019 pending before Hon'ble High Court of Delhi.	As far as the issue of recovery from the employees (Serving/ retired) in any eventuality of contrary decision from later Hon'ble High Court of Delhi concerned, the situation shall be dealt with in accordance with extent DoPT O.M. File No. 18/03/2015/Estt.(Pay-I) dated 2 nd March, 2016 (cc enclosed).

IDIT-CMD-2

DAK SECTION
O/o The Pr. DGIT (HRD)
Diary No. 12994
Date: 24/02/2023
Sign

Contin

In this connection, it is further stated that as per DoPT O.M. dated 16/03/2016 in r/o Court orders against Government of India instructions on service matters, where the policy of DoPT has not been quashed, but the judgment/order of the Tribunal/High Courts/Supreme Court has gone in favor of Respondents/Applicants and the Administrative Ministry is in favor of implementing the judgment, the Administrative Ministry may take a decision in consultation with DoPT and DoLA.

Further the letter dated 27/12/2022 has been issued by letter of O/o DIT, HRD, New Delhi in consultation with DoE and DoLA, as mentioned at para 5 of the said letter it has been decided to implement the order of the Hon'ble CAT, New Delhi judgement dated 01/06/2016 as per the operative portion of the order reproduced at para 4 subject to the outcome of WP No. 3527/2019.

In view of above, you may convey the department of your zone that the order of Hon'ble CAT may be abide by, subject to sole responsibility of the concerned Pr.CCITs in case of any loss of government money occasioned by reversal of Hon'ble CAT, New Delhi judgment order dated 01/06/2016 in the WP (C) No. 3527/2019 for any recovery from serving/pensioner/retired employees.

All the formalities such as undertaking etc should be completed and furnished at the level of department and the copy of the same will be acknowledged before payment.

This issues with the approval of Competent Authority.

Yours faithfully,


Accounts Office

Encl:- As above

Copy to :

1. ✓ The Joint Director Income Tax, CMD-2, O/o the Directorate of Income Tax, Human Resource Development, CBDT, 2nd Floor, JLN Stadium, New Delhi.
2. The Under Secretary, (Ad. IX), M/o Finance, Deptt. of Revenue, CBDT, Room No. 10, 5th Floor, Jeevan Vihar Building, Parliament Street, New Delhi - 110001.
3. All ZAOs/FPUs (Through ZAOs).
4. IT Cell, O/o Pr. CCA, CBDT, New Delhi with the request to upload the OM under "PPC Section" under "Circulars/Oms".


Accounts Office

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.
4. Union Public Service Commission / Lok Sabha Sectt. / Rajya Sabha Sectt. / Cabinet Sectt. / Central Vigilance Commission / President's Sectt. / Vice-President's Sectt. / Prime Minister's Office / Niti Aayog.
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.



Office of the Pr. Chief Commissioner of Income Tax,
Andhra Pradesh & Telangana, Hyderabad
10th floor, Income Tax Towers
A.C.Guards, Hyderabad-500004
Tel.No.040-23425474, Fax:040-23241427

F.No.Pr.CCIT/AP&TS/Estt./OA No.1095of2014/2022-23

Date:18.01.2023

To
All the Heads of Department/Heads of Offices
In Andhra Pradesh & Telangana Region.

Sir/Madam,

Sub: implementation of Hon'ble Central Administrative Tribunal, Pr.Bench,
New Delhi Order dated 01.06.2006 in OA No.1095/2014 in the case of
K.P.Rajagopal and Ors Vs Union of India Subject to outcome of
W.P.No.3527/2019 filed by UOI before Hon'ble High Court of New
Delhi - Regarding.
Ref: DIT(HRD), CBDT, New Delhi's letter in F.No.HRD/CM/175/9/2010-
11/7500, dated 27.12.2022.

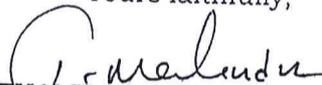
Kind reference is invited to the above.

I am directed to forward herewith the letter referred above received from O/o
DIT(HRD), CBDT, New Delhi for implementation of the direction issued therein.

Further, I am directed to request that an additional remarks in the Pay
Fixation Statement may be made with regard to the communication that the matter
has been contested before Hon'ble High Court of New Delhi as under:

***"The above fixation is subject to the outcome of the decision of Hon'ble
High Court of New Delhi on the Writ Petition filed by the department vide
no.3527/2019 and subsequent petition filed in future, if any and resultant
recovery on account of enhanced pay and allowances drawn by giving effect
to this fixation."***

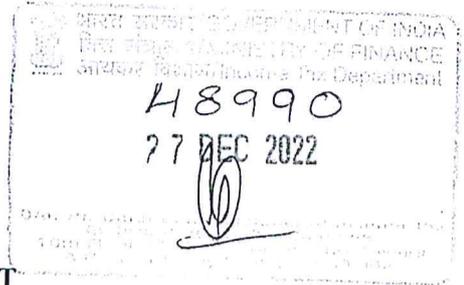
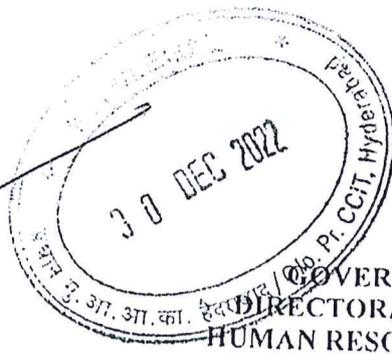
Yours faithfully,


(THAMBA MAHENDRA)

Deputy Commissioner of Income tax
(H.Qrs.)(Admn.)
O/o Pr. CCIT, AP&TS, Hyderabad

Encl: as above.

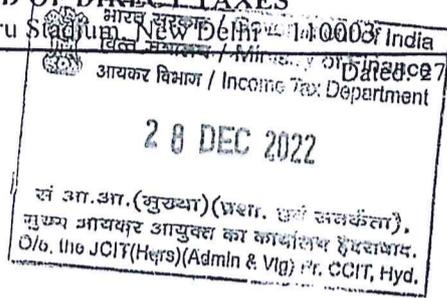
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GOVERNMENT OF INDIA
DIRECTORATE OF INCOME TAX
HUMAN RESOURCE DEVELOPMENT
CENTRAL BOARD OF DIRECT TAXES

2nd Floor, Jawahar Lal Nehru Stadium, New Delhi - 110003 India
F. No. HRD/CM/175/9/2010-11/7500



To,

The Pr. CCsIT (CCA)
All Charges

Madam/ Sir,

Sub: Implementation of Hon'ble CAT Pr. Bench, New Delhi Order dated 01.06.2016 in OA No. 1095/2014 in the case of Shri KP Rajgopal and Ors vs Union of India subject to outcome of WP No. 3527/2019 filed by UoI in Hon'ble High Court of Delhi- reg.-

Kindly refer to the above.

Jc (Admin)

In the Income Tax Department, consequent to the acceptance of recommendation of 6th CPC and implementation of CCS(Revised Pay) Rules 2008, the Income Tax Inspectors(ITIs)/ Private Secretaries (PSs)/ Administrative Officers (AOs) were initially placed in the running Pay Band-2 of Rs. 9300-34800 with Grade Pay of 4200. Further, vide the OM from F.No. 1/1/2008-IC dated 13.11.2009, replacement pay structure of Grade Pay 4200 in Pay Band-2 was granted Grade Pay of Rs. 4600 in the Pay Band-2. The Department of Expenditure (DoE) vide U.O. No. 10/1/2009-IC dated 14.12.2009 prescribed the manner of fixation of pay of Assistant/ PA of CSS and CSSS respectively. Accordingly, the officials promoted to the post of ITIs/ PSs/ AOs in the Department of Income Tax between 01.01.2006 to 31.08.2008 also got their pay fixation in the manner prescribed vide DoE U.O. No. 10/1/2009-IC dated 14.12.2009. However, the Department of Expenditure vide its U.O. No. 123008/E-III(A)/2013 dated 16.07.2013 has clarified that the extension of provision of DoE's U.O.No. 10/1/2009-IC dated 14.12.2009 to the ITIs/ PSs/ AOs of the Income Tax Department who were promoted between 1.1.2006 and 31.8.2008 as allowed to Assistant/ PA of CSS/CSSS has been re-examined and has not been found possible to extend it to the ITIs/PSs/AOs of Income Tax Department.

3. Aggrieved by the clarification made vide U.O. No. 123008/E-III(A)/2013 dated 16.07.2013, Mr. KP Rajgopal, Secretary General of ITEF and SMT. Kusum Lata Panwar, Inspector of Income Tax, New Delhi have approached the Hon'ble CAT, PB, New Delhi vide OA No. 1095/2014 seeking following reliefs:

(i) That the DoE U.O.No. 123008/E-III(A)/2013 dated 16.07.2013 may kindly be set aside.

(ii) That the clarification at (c) in DoE IC U.O. No. 10/1/2009-IC dated 14.12.2009 may kindly be made applicable to ITIs/PSs/AOs in Income Tax Department who had been promoted between 01.01.2006 and 31.08.2008.

(iii) That since the Grade Pay of Rs. 4600 in PB-2 corresponding to pre-revised pay scale of Rs. 7450-11500 has been granted with effect from 1.1.2006, the pay of ITIs/PSs/AOs in Income Tax may be fixed in terms of provisions of Rule 7 of CCS(Revised Pay) Rules 2008 taking minimum pay on pay band as Rs. 13860 (with reference to Rs. 7450) and not Rs. 12090 (with reference to 6500).

(iv) That these remedies are made available to all other cadres of employees in all Departments whose grade pay was upgraded to grade pay of Rs. 4600 in PB-2 in terms of Department of Expenditure OM No. 1/1/1980-IC dated 13.11.1989.

(v) Any other relief which the Tribunal considers appropriate in circumstances of the case.

4. The Hon'ble CAT, PB, New Delhi has allowed the OA filed by the applicants vide its order dated 01.06.2016. The operative portion of the order is as under;

"59. Therefore, we find merit in the OA and the Annexure A-1, as issued declining the revision of pay scales to be opted from the date of first substantive promotion by those who were promoted between 01.01.2006 and 31.08.2008 is held to be illegal and is set aside.

60. In the result, the OA is allowed with the above observations, but there shall be no order as to costs"

5. Considering the above facts, the department has considered the order of Hon'ble CAT dated 01.06.2016 and it has been decided to contest the order before the Hon'ble High Court of Delhi. Accordingly, WP No. 3527/2019 is pending before Hon'ble High Court of Delhi. However, in consultation of DoE and DoLA, it has been decided to implement the order of Hon'ble CAT dated 01.06.2016 as per the operative portion of the order reproduced at para 4 subject to the outcome of WP No. 3527/2019. Accordingly, the effect of the order dated 01.06.2016 in OA No. 1095/2014 of Hon'ble CAT, PB, Delhi is to be given to all affected officials who were members of the ITEF and eligible for the benefit.

This issues with the approval of competent authority.

ITO (Legally)

Yours faithfully,

Di 27.12.2022
(DIWAKAR SINGH)
Joint Director of Income Tax
CMD-2,HRD, New Delhi