

MOST IMMEDIATE
BY SPEED POST

F.No.C.30013/6/2010-Ad IVA(Vol. II)
 Government of India
 Ministry of Finance
 Department of Revenue
 Central Board of Excise & Customs

New Delhi, dated the 25th March, 2013

To

All Chief Commissioners of Customs and Central Excise

All Directors General under CBEC

All Heads of Departments under CBEC.

Sub: Notice by the All India Association of Central Excise Gazetted Executive Officers for observing "no office on holidays on 29.03.2013 to 31.03.2013, March to FM's residence on 12.04.2013 and Mass Resignations on 30.04.2013".

Sir/Madam,

I am directed to send herewith a copy of a letter dated 19.03.2013 from the All India Association of Central Excise Gazetted Executive Officers on the subject mentioned above.

2. A copy of a Memorandum of even number dated 25.03.2013 issued to the aforesaid Association is also enclosed.

3. It is accordingly requested that the contents of the rules/instructions mentioned in the enclosed communications may be brought to the notice of all staff members in the formations under your charge, immediately. Action in instances of violation of rules may be taken in accordance with the rules on the subject.

4. It is also requested that comments/observations, if any, on the charter of demands submitted by the Association may be furnished to DG HRD under intimation to the Board.

Yours faithfully,

Encl. As above:


 (Nirbhai Singh)

Under Secretary to the Government of India.

✓ Copy to: Directorate General of Systems and Data Management for uploading the communication on the Board's website.

D. No. 54999
FM/IMP/2012

20/3/13

ALL INDIA ASSOCIATION OF CENTRAL EXCISE GAZETTED EXECUTIVE OFFICERS

President:

Lokanath Mishra

Mob. 09437314941

Address for communication:

240, Razapur, Ghaziabad-201001 (U.P.)

mail id: ravinmalik_sweet@yahoo.com**Secretary General:**

Ravi Malik

Mob. 09868816290

Vice Presidents: Sampat Rai & Vatan Kamble (Central); Anurag Chaudhary & Ravi Joshi (North); A. Ravinder Singh & Rajan G. George (South); A. S. Roy & Shubhrangshu Deb (East); P. D. Nimhan & S. K. Jha (West)

Joint Secretaries: Anand Kishore & Laxmi Lal Singhvi (Central); N. N. Lal & R. K. Solanki (North); G. Srinath & S. Chandrasekar (South); Ashwini Majhi & V. N. Jha (East); G. K. Jhala & M. K. Misra (West)

Office Secretary: C.S.Sharma (Mob. 09313885411)**Treasurer:** N.R.Manda (Mob. 09871483585)

(Recognised by G.O.I., Min. of Fin. vide letter F.No. B. 1201/10/2006-Ad.IV A Dt.21.01.08)

Ref. No. 34/A/12

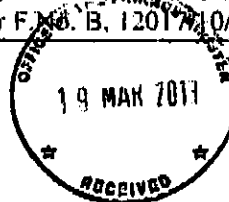
Dt. 19.03.13

To,

Sh. P. Chidambaram,

The Hon'ble Finance Minister,

Govt. of India, New Delhi.



Sub: No office on holidays on 29.03.13 to 31.03.13, March to FM residence on 12.04.13 and Mass Resignations on 30.04.13 - intimation reg.

Sir,

Kindly refer to the Ref. No. 93/A/12 Dt. 31.12.12, 27/H/13 Dt. 04.03.13 and 33/A/12 Dt. 18.03.13 of the Association.

2. It is submitted with due regards and great disappointment that there is no change in the scenario till date. It has, therefore, been unanimously decided in the Associate Committee meeting of the Association on the issue to intensify our Satyagraha/agitational programme, if all the points/grievances are not settled on immediate basis.

3. Accordingly, it is intimated that the following steps will also be observed as part of our Satyagraha-

(i) None of our officers will attend the office on holidays on 29.03.13 to 31.03.13 throughout the country.

(ii) The officers will gather at Jantar Mantar in Delhi from all over India on 12.04.13 at 11 a.m. in their uniform and proceed to gather around the residence of your goodself to submit the Memorandum.

(iii) All of our officers throughout the country will submit their resignations on 30.04.13 under protest.

4. It is regretted that the dates 29.03.13 to 31.03.13 were erroneously mentioned as 29.03.31 to 31.03.31 due to the typographical mistake in the Ref. No. 33/A/12 Dt. 18.03.13.

5. The charter of the demands is enclosed herewith.

Thanking you,

Yours faithfully,

(RAVI MALIK),
Secretary General.

Incl: Charter of demands.

Copy with the request for necessary action to-

1) The MO9, Department of Revenue, Ministry of Finance, North Block, New Delhi.

2) The Secretary, Department of Revenue, North Block, New Delhi.

3) The Chairperson, CBEC, North Block, New Delhi.

(RAVI MALIK).

Charter of demands

1. Immediate implementation of the cadre restructuring without any cut as already approved by the Expenditure. All proposed posts to be approved permanently and be filled-up by promotions only alongwith all posts likely to be lied vacant within 5 years of implementation of cadre restructuring without any direct recruitment in group 'A' during the period.
2. Parity with other counterparts of CSS, CBDT etc. either in the cadre restructuring or independent of it to retire our officers also in PB-4.
3. Immediate fulfilment of the commitments like "creation of separate service for group 'B' executive officers", "promotion of group 'B' gazetted executive officer directly to STS like CSS", "all Inspectors, PO's & Examiners of same year should be brought to same level of promotion", "all the vacancies of cadre restructuring to be filled up by promotions & extend this benefit for more than 1 years". "minimum qualifying service for promotion to gazetted post should be uniform for Inspector, PO & Examiner" etc. etc. made during the presentation on cadre restructuring proposal on 18.01.11 in consonance of the submissions made by the Association vide its Ref. No. 13/11 Dt. 27.01.11.
4. At least four functional promotions in the service career.
5. Immediate implementation of the Supreme Court verdict dt. 03.08.11 by framing "just, fair & equitable" recruitment rules and abiding all the ad hoc promotions with the same duly granting notional promotions to the seniors of Central Excise whose juniors of Customs have already been promoted.
6. Initial grade pay of Rs. 5,400/- in PB3 w.e.f. the date of the grant of this grade pay/equivalent pay scale to the other analogous counterparts of IB, CBI etc.
7. Time-scale in PB3 instead of PB2 to the Superintendents completing 4 years of service and next promotions to all Superintendents directly to the post of Deputy Commissioner (STS post) to maintain parity between the officers of headquarters organisations & field offices. Also counting of regular service in non-discriminatory manner as compared to CSS etc.
8. At least a grade pay of Rs. 6,600/- & 7,600/- on IInd & IIIrd MACP upgradation without offsetting with time scale on the lines of MACPS adopted by the State Governments like Uttar Pradesh etc. or even on better lines on account of the originating source (i.e., 6th CPC) being the same.
9. Finalisation of in-situ promotion scheme under consultation of the Association.
10. Holding of regular minuted meetings under employee grievances redressal mechanism.

F.No.C-30013/6/2012-ADIVA-Vol.-II
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise and Customs

New Delhi dated the 25th March, 2013

Memorandum

The All India Association of Central Excise Gazetted Executive Officers has given notice vide their letter dated 19.03.2013 for observing "no office on holidays on 29.03.2013 to 31.03.2013, March to FM's residence on 12.04.2013 and Mass Resignations on 30.04.2013".

2. Attention of the All India Association of Central Excise Gazetted Executive Officers is invited to Rule 7 of the Central Civil Services (Conduct) Rules, 1964 and the instructions thereunder in the matter of participation by Government servants in demonstrations/strikes. Relevant extracts from the Central Civil Services (Conduct) Rules, 1964 are enclosed for ready reference. A copy of O.M No.41016/1(S)/90-Estt(B) dated 01.05.1991 containing instructions issued by the Deptt. of Personnel & Training regarding treatment of period of strike by Government servants, is also enclosed.

3. It is reiterated that action in instances of violation of discipline and conduct rules would be taken in accordance with the instructions on the subject.

Encl. As above:

N
25.3.13
(Nirbhai Singh)

Under Secretary to the Government of India
Tel: 011 26162673.

The Secretary General
All India Association of Central Excise Gazetted Executive Officers
240, Razapur,
Ghaziabad – 201 001.

Copy alongwith a copy of the letter dated 19.03.2013 from the All India Association of Central Excise Gazetted Executive Officers, to:

1. DG, HRD.
2. DS (AD.IIA&B)

It is requested that status notes on the demands of the Association may be furnished to the Board, immediately.

N
25.3.13
(Nirbhai Singh)

Under Secretary to the Government of India
Tel: 011 26162673.

7. Demonstration and strikes

No Government servant shall -

- (i) engage himself or participate in any demonstration which is prejudicial to the interests of the sovereignty and integrity of India, the security of the state, friendly relations with foreign States, public order, decency or morality, or which involves contempt of court, defamation or incitement to an offence, or
- (ii) resort to or in any way abet any form of strike or coercion or physical duress in connection with any matter pertaining to his service or the service of any other Government servant.

Government of India Decisions

- (1) Restriction on Government servants who are office-bearers of service associations, in dealing in their official capacity with matters connected with those associations.

Reference this Ministry's Office Memorandum No. 24/23/57-Ests.(B), dated the 3rd March, 1959, (not reproduced), on the above subject and to say that a point has been raised whether after the promulgation of the Central Civil Services (Recognition of Service Associations) Rules, 1959, the convention that an officer who may be required to deal in a responsible capacity with representations from a service Association, should not be an office-bearer or a member of the Executive Committee of that Association, would continue to be observed. It has been decided that any Government servant who is an office-bearer or a member of the Executive Committee of a Service association should not himself deal in his official capacity with any representation or other matters connected with that Association.

[MHA OM No. 24/1/60-Est. (B), dated 25.01.1960]

- (2) "Strikes" – Interpretation of what constitutes a strike under the conduct Rules

Rule 7 (ii) of the Central Civil Services (Conduct) Rules, 1964, provides that no Government servant shall resort to or in any way abet any form of strike in connection with any matter pertaining to his service or the service of any other Government servant. Instances have come to the notice of Government where employees resort to various methods of protests for redress of grievances, some of which are tantamount to strike. References have been received seeking clarification whether certain acts, are covered under the definition of 'strike' and if so, whether action can be taken against such employees for violation of the Conduct Rules. It is, therefore, clarified that 'strike' means refusal to work or stoppage or slowing down of work by a group of employees acting in combination, and includes -

- (i) mass absenteeism from work without permission (which is wrongly described as "mass casual leave");
- (ii) refusal to work overtime where such overtime work is necessary in the public interest;
- (iii) resort to practices or conduct which is likely to result in, or results in the cessation or substantial retardation of work in any organization. Such practices would include, what are called 'go-slow', 'sit-down', 'pen-down, stay-in', sympathetic" or any other similar strike; as also absence from work for participation in a Bandh or any similar movements.

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Government servants who resort to action of the above kind violate rule 7 (ii) of the Central Civil Services (Conduct) Rules, 1964 and disciplinary action can be taken against them. It may be noted that the list of activities which are covered under the definition of strike as enumerated above is only illustrative and not exhaustive. It only clarifies the position in respect of practices which are often resorted to at present.

[MHA OM No. 25/23/66-Ests.(A), dated 09.12.1966]

(3) Participation in "GHERAO" by Central Government servants -

Instances have come to the notice of Government in which employees of certain Central Government offices staged which is called "Gherao", involving forcible confinement of public servants within office premises by surrounding their places of duty and have held demonstrations/meetings both within office premises during office hours and also outside the office premises beyond office hours, tending to forcible confinement of public servants within office premises. Such demonstrations/activities are prejudicial to public order and also involve criminal offences like wrongful restraint, wrongful confinement, criminal trespass or incitement to commit offences. They are also subversive of discipline and harmful to the public interest, and participation in them by Government servants and would constitute good and sufficient reason within the meaning of Rule 11 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. It has, therefore, been decided that a serious view should be taken of such acts of lawlessness and insubordination on the part of public servants. The Central Government Departments are advised to take action on the following lines in such cases :-

(i) Disciplinary action should be taken against the prominent participants in the 'Gherao' for contravention of Rules 3 and 7 of the Central Civil Services (Conduct) Rules, 1964. In the charge-sheet to be served in pursuance of such disciplinary action, it should be specified to the extent that the facts justify, that demonstrations prejudicial to public order and involving criminal offences, namely, wrongful restraint, wrongful confinement, criminal trespass and incitement to such offences, have been held; that such conduct was subversive of discipline and harmful to the public interest; and that the conduct was wholly unbecoming of a Government servant.

(ii) Absence from work on account of participation in 'Gherao', should in all cases be treated as unauthorized absence involving break in service. The absence should not be regularized as leave of any kind.

(iii) Whenever there is a case of 'Gherao', wrongful restraint, wrongful confinement or criminal trespass or of any other cognizable offence, a written report should be made to the Officer-in-charge of the Police Station having jurisdiction, requesting him to register the offence and to take action under the law. The names of the offenders should be included in the written report. Copies of the report should be endorsed to the Police Commissioner/Superintendent of Police and the Home Secretary to the State Government concerned for necessary action according to law.

(iv) If, notwithstanding the mandatory provisions of the Criminal Procedure Code, Police takes no action on such a report, action should be taken promptly to file a complaint before the appropriate Magistrate in respect of the substantive offences under the Indian Penal Code or other law. In certain circumstances a petition could be filed before the High Court for issue of the appropriate writ, but this should be done after taking legal advice.

[OM No. 25/S.11/67-Ests.(A), dated the 13th April, 1967]

While taking action to file a complaint before the appropriate Magistrate, the assistance of the Officer of the Central Bureau of Investigation if any, available locally, may also be taken in drafting the complaints and deciding the manner, in which evidence should be collected and produced.

[M.H.A. OM No. 25/S.11/67-Estt. (A), dated the 15th April, 1967]

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(4) Holding of meeting/demonstration by Government Servants within office premises is violative of Rule 7(i)

It has been noticed that demonstrations are some times held by Government servants in contravention of Rule 7(i). The Government of India hereby want to make clear that holding of meeting/demonstration by any government servant(s) without permission within his/their office premises is strictly prohibited and any violation of these instructions will be taken serious note of and those concerned will be dealt with suitably under the disciplinary rules by which they are governed.

[G.I., Ministry of W. &HAV, No. 366, dated the 10th June, 1969]

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No. 41016/1(S)/90-Estt. (B)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training

OFFICE MEMORANDUM

New Delhi, the 1st May, 1991

Subject: Treatment of period of strike by Central Government employees.

Attention of the Ministry of Finance, etc. is invited to the Department of Personnel & Administrative Reform O.M. No. 33011/1/77-Estt.(B) dated the 25th April, 1978 in which the Ministries/Departments were requested to ensure compliance of the following directions of the Cabinet, namely:—

- (i) all Ministries/Departments must observe the principle of 'no work - no pay' and this should not be circumvented in any way including by grant of leave for the period of a strike; and
- (ii) on all important service matters which are likely to have repercussions on other services (e.g. action taken against Government employees participating in strikes), all Ministries/Departments, including the Ministry of Railways should, with a view to ensuring the maximum possible uniformity in the general approach, consult the Department of Personnel & A.R. (now Department of Personnel and Training) before taking/announcing any decision so that embarrassment to the Government in dealing with the generally of civil services is avoided.

Notwithstanding the above directions, the Department of Personnel & Training has been receiving several references from Central Government offices that in the case of employees who had participated in a strike, the period of absence may be treated as duty or leave instead of applying the principle of 'no work - no pay'. It has also come to notice that in some cases, Ministries/Departments had taken decisions on important service matters likely to have repercussions on other services without consulting this Department and in contravention of the said directions.

The principle of 'no work - no pay', is laid down in proviso to Fundamental Rule 17(1) which provides that any officer who is absent without any authority shall not be entitled to any pay and allowances during the period of such absence. The principle is examined in depth by the Supreme Court and upheld in the Civil Appeal No. 2581 of 1986 - Bank of India Vs. T.S. Sivasubramanian & Others (1990 (3) SLJ). Though the issue did not pertain directly to applicability of the principle to Government employees, the Court has analysed the principle in all its facets and its observations are relevant. Some relevant extracts of the Supreme Court judgement delivered on 4th May, 1990 are as under:—

xx xx xx xx xx xx
Where the contract, Standing Orders or the service rules/regulations are silent on the subject, the Management has the power to deduct wages for the absence from duty when the absence is a concerted action on the part of the employees and the absence is not disputed. Whether the deduction from wages will be *pro rata* for the period of absence only or will be for a longer period will depend upon the facts of each case such as whether there was any work to be done in the said period, whether the work was in fact done and whether it was accepted and acquiesced in, etc.

It is not enough that the employees attend the place of work. They must put in the work allotted to them. It is for the work put in that the wages/salaries are paid.
xx xx xx xx xx xx
It is clear that wages are payable only if the contract of employment is fulfilled and not otherwise. Hence, when the workers do not put in the allotted work or refuse to do it, they would not be entitled to the wages proportionately.

xx xx xx xx xx xx
Whether the strike is legal or illegal, the workers are liable to lose wages for the period of strike. The liability to lose wages does not either make the strike illegal as a weapon or deprive the workers of it. When workers resort to it, they do so knowing full well its consequences. During the period of strike, the workers withhold their labour. Consequently, they cannot expect to be paid.

xx xx xx xx xx xx
In light of the above, the Cabinet has now reviewed the general policy in this regard and directed that all Ministries/Departments should observe the instructions contained in Department of Personnel & Administrative Reforms O.M. No. 33011/1/77-Estt.(B) dated the 25th April, 1978 (reproduced in para 1 of this O.M.) scrupulously. The Ministry of Finance etc. are accordingly requested to bring the directions of the Cabinet to the notice of all concerned for compliance in future.

M.S. Baid
(M.S. BAID)

Deputy Secretary to the Government of India

If Ministries/Depts. of the Government of India, Secretary and Auditor General of India, New Delhi, the Court of India, New Delhi, P.S. (New Delhi), V.C. (New Delhi)

- 9. Election Commission, New Delhi.
- 10. All U.T. Administrations.
- 11. All Zonal Councils.
- 12. C.A.P. Secretariat