

No.4/4/2008-P&PW(D)
GOVERNMENT OF INDIA
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES & PENSIONS
DEPARTMENT OF PENSION & PENSIONERS WELFARE

LOK NAYAK BHAVAN, KHAN MARKET,
NEW DELHI, dated the 27TH JANUARY 2010.

OFFICE MEMORANDUM

Subject: -Implementation of the law against excess recovery from pension- non-deduction of the non-deductibles- representations- clarification regarding.

This Deptt. has received a large number of identical representations on the above subject. The representations are from the Government servants who had drawn lump sum payment in respect of pro-rata pension ($1/3^{\text{rd}}$ as well as $2/3^{\text{rd}}$) on absorption in a PSU/Autonomous Body.

2. The Government servants who had drawn lump sum payment in respect of pro-rata pension ($1/3^{\text{rd}}$ as well as $2/3^{\text{rd}}$) on absorption in a PSU/Autonomous Body and have become entitled to restoration of $1/3^{\text{rd}}$ commuted portion of pension as per the provisions of this Department's O.M. No. 34/2/86-P&PW dated 5th March 87 after 15 years from the date of commutation or 1.4.85 whichever is later, were regulated vide this Department O.M. No. 4/59/97-P&PW(D) dated 14th July 1998 as clarified from time to time. Andhra Pradesh High Court in its judgement dated 24.12.03 in Writ Petition No. 8532 of 2003 followed by Supreme Court Judgement dated 29.11.06 in Civil Appeal No. 5269 of 2006 arising out of SLP Nos. 21647-648 of 2005 and Supreme Court Judgment dated 24.7.07 in Review Petition No. 643 of 07 had decided as under:-

*".....the public sector undertaking absorbees are also entitled for dearness relief etc. but not on entire pension commuted as on the date of retirement. Moreover they received lumpsum amount by way of terminal benefits on surrendering on $2/3^{\text{rd}}$ pension. In that way, they have already parted with $2/3^{\text{rd}}$ pension, it cannot be said to revive after 15 years. But, in case of Central government pensioners $2/3^{\text{rd}}$ pension was continued to be received by them. Therefore, what is restored is $1/3^{\text{rd}}$ pension which means full pension. **But the same principle cannot be applied to say that the absorbee will get full pension after 15 years in case those who had commuted $1/3^{\text{rd}}$ pension and received terminal benefits for $2/3^{\text{rd}}$ pension had he not surrendered, he continue to receive $2/3^{\text{rd}}$ pension, the same principle apply as in case of Central Government employee. But having received the cash compensation in respect of the surrender value of $2/3^{\text{rd}}$, he cannot be allowed to say that he is also a pensioner as far as $2/3^{\text{rd}}$ pension is concerned. Such absorbee stand on a different footing and they fall in a***

different class by themselves on this issue. Under those circumstances, the inescapable conclusion is that 1/3rd pension has to be arrived at only on the basis of the basic pension divided by three after completion of 15 years which becomes drawable as on the date of respective dates and not to be arrived by deducting Rs. 403/- from the pension. Therefore, the petitioner will be entitled to as follows:-

<i>Restorable Pension:</i>	
<i>From 28.06.87 to 31.12.1995</i>	
<i>Basic Pension (604/1/3rd)</i>	<i>Rs. 201/-</i>
	<i>Rs. 538/- Dearness Relief</i>
	<i>Rs. 125/- Additional Benefits:</i>
<i>Total</i>	<i>Rs. 864/-</i>
<i>From 01.01.96 onwards (5th Pay Commission)</i>	
<i>1/3rd of Basic Pension(1,350/ 1/3rd)</i>	<i>Rs. 450/-</i>
	<i>Rs. 185/- Interim Relief</i>
	<i>Rs. 1,998/- Dearness Relief</i>
	<i>Rs. 540/- Fitment</i>
<i>Total</i>	<i>Rs. 3,173/-</i>

In this case the employee had commuted minimum permissible pension i.e. 1/3rd. But, even if lesser portion is commuted, the pro-rata commuted portion has to be deducted from the basic pension to arrive at restorable pension, but however, he will get dearness relief, interim relief etc. on full basic pension"

3. The government had thereafter issued instructions implementing above direction of the Hon. Court vide OM dated 6.9.2007. O.M. dated 6.9.2007 has been issued strictly in compliance of the direction of the Hon'ble Supreme Court vide operative part of judgement which has been reproduced in para 2 thereof before explaining modalities of implementation in para 3 of the above said O.M.

4. The decision of the court has resulted in following-

- The restorable pension of the Government servants who had drawn lump sum payment in respect of pro-rata pension (1/3rd as well as 2/3rd) on absorption in a PSU/Autonomous Body has been limited to the commuted portion only i.e. 1/3rd of pension.
- The 2/3rd pension for which terminal benefits were drawn is not to be restored.
- The benefits viz. **DR, DP etc. are taken in full** while calculating restorable 1/3rd pension.

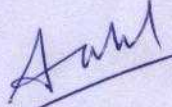
4. Further attention is drawn to following para in Hon'ble Supreme Court's judgement dated 26.4.2000 in Appeal No.4 in W.P.(C) No.11855/85 ; WPN0 (C)

2/3

345/1999 and W.P. No.567/1995 in P.V. Sundara Rajan and Another Vs Union of India and Others:-

"The parity claimed by Lt.Col. Malhotra and other absorbees who had commuted 100% pension, in our view, is entirely misplaced. The contention that what is commuted or given up is an amount and not the right to receive pension or right to receive post-commutation revision and attendant benefits including dearness relief on the gross entitled pension on the dates they were granted to other Government pensioners, is only illusory. The decision in the case of State of Tamil Nadu and Ors. V. V.S. Balakrishnan and Ors. (1994) Suppl. 3 SCC 204) on which reliance was placed by Mr. Gopal Subramaniam, Senior Advocate, has no applicability to the point in issue. Those who commuted 100% pension continue to remain non-pensioners till their pension is restored. In Welfare Association Case (supra), persons who commuted the full pension and who will not be given any monthly pension by deeming monthly pension to have been reduced to nil has been treated as a separate category. Those who commute 100% pension are not entitled to the benefit of dearness relief on full pension or other benefits as claimed herein. We also do not find any discrimination in so far as this class is concerned."

5. All Ministries/Departments are advised that the representation, if any received on this subject, may be dealt with accordingly.
6. Hindi version will follow.



(Amitabh Dwivedi)

Under Secretary to the Govt. of India.

To
All Ministries /Departments as per mailing list.

Copt to : ✓ 1. NIC for putting it up on Web Site.
2. Hindi Section for Hindi version

3/3