

No.34/2/86-P&PW
GOVERNMENT OF INDIA
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS
(Department of Pension & Pensioner's Welfare)

New Delhi, the 5th March, 1987.

OFFICE MEMORANDUM

Subject:- Restoration of commuted portion of pension after 15 years - Implementation of the judgement of the Supreme Court.

The undersigned is directed to say that under the Civil Pensions (Commutation) Rules, 1925 later codified as Central Civil Services (Commutation of Pension) Rules, 1981 and corresponding rules applicable to the Armed Forces Personnel (including officers), All India Service Officers and Railway Pensioners etc., the pensioners are allowed the optional facility of converting a portion of their pension into a lump sum amount. At present the pensioner receives only the balance amount (full pension minus the commuted portion) for the rest of his life.

2. It has been held by the Supreme Court of India in its judgement dated 9th December, 1986 in Writ Petition No.3958-61 of 1983 that all Central Government pensioners governed by Central Civil Services (Commutation of Pension) Rules, 1981 and corresponding rules for Armed Forces personnel and officers, All India Service officers and Railway Pensioners and who have commuted the admissible portion of their pension are entitled to have the commuted portion restored on the expiry of 15 years from the date of retirement.

3. The question regarding implementation of the Supreme Court judgement has been under consideration of the Government. After careful examination of the above judgement, the President has now been pleased to decide that only such Central Government pensioners who have commuted a portion of their pension and on 1.4.1985 or thereafter have completed or will complete 15 years from their respective dates of retirement will have their commuted portion of pension restored.

4. Central Government employees who got themselves absorbed under Central Public Sector Undertakings/autonomous bodies and have received/or opted to receive commuted value for 1/3rd of pension as well as terminal benefits equal to the commuted value of the balance amount of pension left after commuting 1/3rd of pension are not entitled to any benefit under these orders as they have ceased to be Central Government pensioners.

5. Each pensioner who is eligible as in paragraph 3 above is required to apply in the enclosed prescribed form, duly completed, to the Pension Disbursing Authority/Bank/Post Office who will restore the commuted portion of pension if the commuted amount has been mentioned in the Pension Payment Order and will also pay the arrears, if any.

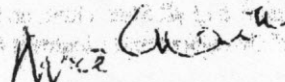
5.1 In cases where the pensioner had completed 15 years from the date of retirement on 1.4.1985 or thereafter and had died subsequently his/her legal heir(s) is/are also entitled to receive arrears with effect from 1.4.1985 (or from the date of completion of 15 years from the date of retirement whichever is later), till the date of the pensioner's death. For this purpose, legal heir(s) may also apply to the Pension Disbursing Authority, etc.

5.2 In cases where the PPO does not contain information regarding commuted portion, Pension Disbursing Offices will obtain information from Accounts Offices which issued the PPO.

5.3 The pension disbursing authorities/Banks/Post Offices etc., will intimate to the Accounts Office which had issued the Pension Payment Order the full particulars of each pension case alongwith the amount of pension restored for verifying the correctness.

6. In their application to pensioners who retired from Indian Audit and Accounts Department, these orders have been issued, after consultation with the Comptroller and Auditor General of India.

Hindi version will follow.

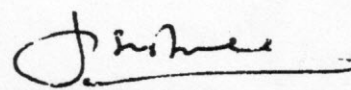

(A.K. Patnaik)

Deputy Secretary to the Government of India.

To
All Ministries/Departments of the Government of India, etc.
(As per standard practice)

Copy with spare copies as indicated against each forwarded to the following with the request that the copies may be circulated to all Integrated Financial Advisors, Controller of Accounts/Pay and Accounts Officers/other pension disbursing offices under them and other agencies concerned with the implementation of these orders including Attached and Subordinate offices. If additional copies are required, these may be obtained from this Department:

	No. of copies
1. Ministry of Defence (Deputy Secretary, Pensions)	10,000
2. Ministry of Railways	10,000
3. Department of Posts	10,000
4. Department of Telecommunications	2,000
5. Ministry of Finance (Department of Revenue)	1,000
6. Comptroller and Auditor General of India	1,000
7. Controller General of Accounts	100
8. Controller General of Defence Accounts	1,000
9. All other Ministries/Departments	100
10. Accountants General of all States	100
11. Director of Audit, Central, Madhu Industrial Estate, P.B. Marg, Bombay	50
12. Director of Audit (Central), Calcutta.	150
13. Director of Audit, Central Revenue, New Delhi	5
14. Director of Audit, Central, Bombay	350
15. Director of Audit, Scientific and Commercial Department, Bombay	5
16. Directorate of Accounts, PAI Section, Panaji, Goa	250
17. Controller of Accounts, Delhi Administration 'B' Block, Vikas Bhavan, Indraprastha Estate, New Delhi	100
18. Allahabad Bank	1600
19. Bank of Baroda	2500
20. Bank of Maharashtra	1200
21. Canara Bank	2000
22. Central Bank of India	4000
23. Indian Bank	1400
24. Indian Overseas Bank	1500
25. Dena Bank	1200
26. Bank of India	3300
27. Punjab National Bank	6000
28. Union Bank of India	2000
29. United Bank of India	2000
30. Syndicate Bank	1800
31. United Commercial Bank	2000
32. State Bank of India	32000
33. State Bank of Patiala	600
34. State Bank of Bikaner & Jaipur	700
35. State Bank of Hyderabad	700
36. State Bank of Indore	600
37. State Bank of Mysore	500
38. State Bank of Saurashtra	500
39. State Bank of Travancore	1200
40. Reserve Bank of India, Bombay	40
41. A.I.S. Division, Deptt. of Personnel & Training	10
42. J.C.A. Section, Deptt. of Personnel & Training (for circulation among members of J.C.M.)	100
43. E-V Section Deptt. of Expenditure, Ministry of Finance	10
44. IV Central Pay Commission	10
45. Parliament Library	10
46. Finance Secretaries of all State Govt. and Union Territories	10
47. Secretariats of Governors and Lieutenant Governors of all States and Union Territories	10


 (Jaswant Singh)
 Desk Officer

PROFORMA

Subject:- Restoration of commuted portion of pension after 15 years – Implementation of the judgement of the Supreme Court.

Sir.

Kindly restore my commuted portion of pension in terms of Ministry of Personnel, Public Grievances and Pension Department of Pension and Pensioners' Welfare O.M.No.34/2/86-P&PW, dated 5th March, 1987.

Requisite particulars are given below:-

1. Name in Block letters
2. Date of Retirement
3. PC/PPO No.
4. Amount of original pension
5. Amount of pension commuted, (if any)
6. Name of the Accounts Officer, Viz., the authority who issued PC/PPO
7. Name of Treasury/Post Office/PPM/Other pension disbursing agency.

* Strike if not applicable.

Date:

Signature of Pensioner

Postal Address:

Particulars verified.

Signature
Rubber Stamp of Pension Disbursing Authority

IN THE SUPREME COURT OF INDIA:
ORIGINAL JURISDICTION
WRIT PETITION NOS. 3958-61 OF 1983

"Common Cause" .. registered
Society and others ... Petitioners

VERSUS

Union of India ... Respondent

J U D G M E N T

RANGNATH MISRA, J ;

By these applications under Article 32
of the Constitution Common Cause, a registered Society and
three retired Government servants have asked for striking

down certain provisions of the Commutation of Pension Rules applicable to civilian and defence pensioners as they permit the Union of India to recover more than what is paid to the pensioners upon commutation and for a direction that an appropriate scheme rationalising the provisions relating to commutation be brought into force. The respondent has filed a counter-affidavit challenging the maintainability of the petition as also the claim of the petitioners and the matter has been heard at considerable length from time to time. Parties have filed written submissions supplementing their oral arguments.

The Central Civil Services (Commutation of Pension) Rules, 1981 are the appropriate rules in force so far as civilian employees under the Government of India are concerned. A set of regulations is in force in regard to Defence personnel.

It is not disputed that in the case of civilians the total amount of pension which can be commuted is upto one-third while in the case of Defence personnel, commutation is admissible upto 43 per cent in the case of officers and upto 45 per cent in respect of other ranks. The argument

advanced on behalf of the petitioners that there has been a substantial improvement in the life expectancy of the people in India has not been refuted on behalf of the respondent. This Court suggested to the respondent in course of the hearing that in the changed situation now prevailing in the country, a new look should be given to the matter. In deference to the suggestion made by this Court, the respondent took time to consider the various aspects raised in the writ petitions and the oral submissions advanced at the hearing as also the written notes submitted in Court. It also took into account the fact that several State Governments have changed the rule applicable to commutation and have restored full pension to the pensioners who commuted a part of their pension after lapse of fifteen years. Union of India has now agreed to restore the commuted portion of the pension in regard to all civilian employees at the age of seventy years or after fifteen years, whichever is later, and has agreed to make this effective from April 1, 1986. This decision of the Respondent was communicated to the learned Attorney General

by a letter dated 20.3.1986 reading thus :

"I am glad to inform you that Government have taken a decision in the matter of recovery from pension towards commuted value of pension. The decision is as follows :

(i) Recovery from pension payable every month towards commuted value of pension will stop on the completion of 15 years from the date of retirement on superannuation or on the pensioner completing the age of 70 years, whichever is later.

(ii) The formulation will apply to all civilian pensioners in whose case the age of retirement on superannuation is 58 years and the personnel of Armed Forces in whose case the retirement age varies in accordance with the colour service prescribed for the rank (attaining the age of 37/38 years or more).

(iii) Government have taken this decision as an act of goodwill to pensioners and to extend to them some measure of relief in the evening of their lives. It is sincerely believed that there will be no further demand on this issue and that the pensioners will accept the decision of the Government without dissent or reservation.

(iv) The decision will take effect prospectively (from April 1, 1986)."

A distinction has been made in the case of Defence employees on the ground that retirement in their case is at an early age and merely with lapse of a period of fifteen years full pension could not be restored. It has also been pointed out that the

Defence personnel receive in consideration of the exigencies of the service a higher rate of pension as compared to civilian employees.

As the position now stands, when a pensioner commutes any part of his pension upto the authorised limit, his pension is reduced for the remaining part of his life by deducting the commuted portion from the monthly pension.

The petitioners have contended that the commuted portion out of the pension is ordinarily recovered within about 12 years and, therefore, there is no justification for fixing the period at 15 years. Commutation brings about certain advantages: The commuting pensioner gets a lump sum amount which ordinarily he would have received in course of a spread over period subject to his continuing to live. Thus, two advantages are certainly forthcoming out of commutation -

(1) availability of a lump sum amount, and (2) the risk factor. Again many of the State Governments have already formulated schemes accepting the 15 year rule. In this background, we do not think we would be justified in disturbing the 15 year formula so far as civilian pensioners are concerned.

The age of superannuation used to be 55 until it was raised to 58. It is not necessary to refer to the age of the computing pensioner when the benefit would be restored. It is sufficient to indicate that on the expiry of fifteen years from the period of retirement such restoration would take place.

The respondent-Government has agreed that this benefit should be extended with effect from 1.4.1986. The writ applications were filed in 1983. The matter was placed on board for hearing in February 1984. The Union Government took some time for responding to the suggestion of the Court and that is how the disposal was initially delayed. Thereafter, the hearing of the matter has again been delayed on account of pressing business in the Court. In these circumstances, we think it just and equitable that the benefit agreed to be extended in respect of the commuted portion of the pension should be effective from 1.4.1985 so far as the civilian employees are concerned.

The decision of the respondent-Government contained in the above communication does not cover all classes of Defence personnel, having been confined to personnel of Armed Forces in whose case the retirement age varies in accordance

the colour service prescribed for the rank (attaining the age of 37/38 years or more). In regard to those who are excluded it has been contended that the retirement is at too early an age and since a higher rate of pension as compared to civilian employees is admissible, the benefit contained in the Government order cannot be extended to that class. Previously the retiring age for the lower ranks such as sepcoys, used to be after 15 years' service but now it has been enhanced to 20 years' service. A sepoy retiring after 20 years' service is entitled to five years of weightage, for his pension entitlement. Similarly a Naik retiring after 22 years of service and a Havildar after 24 years' service are also given credit of five years. While a civilian employ ordinarily retires after a full term of service entitling him to full pension, it does not happen in the case of the lower ranks in the Defence services and with the extra-advantage by the addition of years of credit, the benefit in terms of money works out in the range of about .75% to 6%. It has to be remembered that more than 50% of the Defence personnel belong to the lowest rank and about 81% in all retire early. The weightage factor relied upon by the Respondent to treat the Defence personnel

differently is not a tenable feature. Undoubtedly the Defence personnel are a class by themselves. In their case, retirement takes effect in certain classes as justified by the exigencies of the service rather early. Weightage, if any, is intended to cover this so that an equation for other purposes could be established. There is really no merit in the stand of the Respondent that the early age of retirement is fully compensated by the higher rate of pension.

In dealing with a matter of this nature, it is not appropriate to be guided by the example of Life Insurance; equally unjust it would be to adopt the interest basis. On the other hand, the conclusion should be evolved by relating it to the 'years of purchase' basis. An addition of two years to the period necessary for the recovery on the basis of years of purchase justifies the adoption of the 15 year rule. That is more or less the basis which appears to be equitable. It may be that this would give rise to an additional burden on the exchequer but it would not be heavy and after all it would bring some relief to those who have served the cause of the Nation at great sacrifice. We are, therefore, of the view that no separate period need be fixed for the Armed Forces personnel and they

should also be entitled to restoration of the computed portion of the pension on the expiry of 15 years as is conceded in the case of civil pensioners. And for them too the effective date should be from 1.4.1985.

We direct the respondent-Government to give effect to this order within a period of three months from now. We place on record our appreciation of the consideration shown by the Union of India to ameliorate the hardship of the pensioners. There will be no order as to the costs.

sd/

CJ

New Delhi;
December 9, 1986

sd/

(RANGANATH MISHRA)

J

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