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**BHARAT PENSIONERS'
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Date:16.10.2020

To
Dr. C. Chandramouli,
IAS
Secretary,
Department of Personnel and Training,
North Block,
New Delhi – 110001

Subject: Contempt of Court.

Sir,

Since the year 1922 onwards FR 56 read with Article 14 of Civil Service Regulations provided that the date of retirement had to be the relevant date of birth on completion of the age of retirement on superannuation. In other words the date of (i) attaining the age of superannuation, (ii) retirement and (iii) commencement of pension used to be the same. **This was the Rule governing retirement on superannuation prior to 3rd CPC**

2 a) Subsequently 3rd CPC recommendation was accepted by the Government of India Based on the accepted recommendation, the then Department of Administrative Reforms (now DOPT), issued orders on the 24th November, 1973 laying down that the Government servants shall retire from service with effect from the afternoon of the last day of the month in which their date of retirement fell.

2 b) Clarificatory OM dated 29th June, 1974 was issued without the approval of the concerned State Minister, that all those born on the 1st would retire in the afternoon of the last day of the previous month. Accordingly FR 56(a) created.

3. Consequently, those born on the 1st Jan, 1928/1938/1946/1956, were deprived of the benefits of the 4th/5th/6th/7th CPC respectively. However, those who could knock the door of the court got favourable judgements. Annexure 2 gives the details of court cases with positive outcome.

Latest in the series is the case of **Union Of India vs M.L.Punshi & Anr, IN THE HIGH COURT OF DELHI AT NEW DELHI in W.P.(C) No. 2885/2000 on the 19th July, 2010. In this case the court did not agree with the contention of the Union of India and observed “ In short, we are of the view that in the present cases the effective date of retirement would be 01.04.1995 and not 31.03.1995.”** SLP filed by the Government against order of the High Court was dismissed by the Supreme Court.

4. In the case of Inder Pal Yadav Vs Union of India [1985(2) SCC 648], in SLP-IA No. 77457/2017 dated 01.09.2017, in the Civil Appeal No. 3744 of 2016 UOI Vs Balbir Singh Tur & Anr dated 08.12.2017 and UOI Vs Prithvi Singh dated 24.4.2018 the Hon'ble Supreme Court observed that “ **We find that there are several matters in which the aggrieved employees have been going to the Tribunal, then to the High Court and thereafter those matters are brought before this Court. Once the question, in principle, has been settled, it is only appropriate on the part of the Government of India to issue a circular so that people need not unnecessarily travel either to the Tribunal or the High Court or this Court and it will save the time of the Court and the Administrative Departments apart from avoiding unnecessary and avoidable expenditure.**”

Continued

5. The DOPT, has not so far honoured the supreme court pronouncement referred to above , consequently it has rendered itself liable to be taken-up for contempt of the court, as well as for putting lot of retirees(Sr Citizens) to financial loss. DOPT, contrary to the observation of the Supreme Court is forcing Pensioners who are in the evening of their lives to knock the doors of CAT, High court/Supreme court. Presently quite a number of cases filed by pensioners born on the 1st January,/ 30th of June are pending in the courts.

6. Kindly look into and ensure that the pronouncement of the Supreme court as brought out in foregoing line is implemented in letter & spirit so that that thousands of aggrieved who do not have means to approach the courts are not deprived of their legitimate dues.

7. A detailed background note is **annexed**.

Wity regards

Yours truly,

DA/ 2.Annexures



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Annexure to BPS letter No SG/BPS/notional/2020/5 Date:12.10.2020

Detailed back ground note on the Contempt of Court

Fundamental Rules, besides other rules about conditions of service of Government servants, were made some time in 1922. Prior to these rules, Government of India made various Rules and Regulations in relation to salary, pension etc. These Rules/Regulations were compiled as Civil Service Regulations (C.S.Rs.). After enforcement of Constitution of India, though the President of India promulgated different set of Rules under the proviso to Article 309 of the Constitution of India, Civil Service Regulations continued to be applied/are being applied by various Ministries/Departments in respect of conditions of service.

2. As per Article 14 of the C. S. Regulations, when an officer is required to retire on attaining a specified age, the day on which he attains that age is reckoned as non-working day and the officer must retire with effect from and including that day.

3. Earlier, FR 56 (a) read as follows:

“Except as otherwise provided in these Rules, every Government servant shall retire on the day he attains the age of fifty eight years.”

FR 56 read with Article 14 of Civil Service Regulations meant that the date of retirement had to be the relevant date of birth. In other words according to the law/rules/regulations the date of retirement of those born on the 1st was the 1st of the relevant month and the year, a non-working day, on which he attained the age of superannuation and pension commenced.

4. According to the Audit Instructions below FR 56, when a Government Servant is required to retire, revert, or cease to be on leave, on attaining a specified age, the day on which he attains that age is reckoned as a non-working day and the Government servant must retire, revert or cease to be on leave (as the case may be) with effect from and including that day. This also means that all those born on the 1st should retire on the 1st on attaining the age of retirement.

5. According to another Audit Instruction under FR 17 the effect of afternoon of the preceding date starts from the forenoon of the following date for the purpose of taking over charge of the post. On reverse analogy relinquishing charge in the afternoon of a day would mean relinquishing charge in the forenoon of the following day. This means that the afternoon of a day and the forenoon of the following day means one and the same thing.

6. In the year 1965, when Department of Personnel and Training was a part of the Ministry of Home, some policy instructions were issued laying down that no specific orders were necessary for retirement on due date. In these instructions it was laid down that the retiring government servant should bring the fact to the notice of the Head of office, that he is attaining the age of superannuation or completing the period of service ***after*** which he has to retire. The term “after” is important here.

7. Earlier Rule 5(2) of the Central Civil Service (Pension) Rules, 1972 provided, “The day on which a Government servant retires or is discharged or is allowed to resign from service, as the case may be, shall be treated as a non-working day.”

8. As per Rule 33 emoluments means basic pay etc. which a Government servant was receiving ***immediately*** before his retirement and not on the date of retirement. In other words the date of retirement follows the last working day of the government servant.

9. According to Rule 83 of the said Rules pension shall become payable from the date on which a Government servant ceases to be borne on the establishment. Meaning thereby that the date of retirement and the date of commencement of pension has to be the same. As the date of retirement used to be the date of relevant month and the year, on which one attained the age of superannuation and pension commenced, hence the date of (i) attaining the age of superannuation, (ii) retirement and (iii) commencement of pension used to be the same.

This was the position of Rule governing retirement on superannuation prior to 3rd CPC.

Continued

10. **The 3rd Central Pay Commission was appointed** in April, 1970. Its report was submitted in March, 1973. Obviously, based on the briefing/submissions made to the Commission by the officials of the DOAR, with a view to simplifying the accounting work, it was recommended by the Commission “that the retirement of Government employees should take effect from the afternoon of the last day of month in which employee concerned attains the age of superannuation instead of the afternoon of the actual date his superannuation.” **In the report there was nothing specific with reference to those born on the 1st of any month. the recommendation of 3rd Pay commission was basically for the administrative convenience of Accounts department and definitely was not intended to harm the employees.**

11. The recommendation was accepted by the Government of India in the Ministry of Finance, with the approval of the Cabinet. Based on the accepted recommendation/decision. The then Department of Administrative Reforms (now DOPT), in consultation with the C&AG etc. and with the approval of the Minister of State issued orders on the 24th November, 1973 laying down that the Government servants shall retire from service with effect from the afternoon of the last day of the month in which their date of retirement fell. **In the light of the then existing Rules as detailed above, which provided that 1st born would retire on the 1st, it was very clear from the orders of the 24th November, 1973 that all those born on the 1st of January would also retire in the afternoon of the 31st January of the relevant year. This was the legal position at that time, which bestowed a right on all those born on the 1st of January, to retire on the 31st January.**

12. There was an Assistant, with the date of birth as the 1st December 1915, working in the Dte. General, P&T. According to the Rule as existed prior to orders of the 24th November, 1973, as detailed above, he was to retire on the 1st December, 1973. However, a doubt had arisen in the DG P&T whether he should retire on the preceding date, i.e 30th November, 1973 or the 1st December, 1973. Clearly bringing out in their referring note that he should retire on the 1st December, 1973 in the light of the OM of 24th November, 1973, DG P&T sought clarification from the DOAR. The DOAR, at the level of Under Secretary, clarified in the first week of December, 1973 that “A person born on 1.12.1915 attains the age of 58 year on 30.11.1973. According to FR 56(a) this date is his date of retirement and that this date will, however, be a working day so far as the pay and allowances etc. are concerned. Moreover, the question of retirement on a non-working day does not arise.” **This clarification was given at under Secretary level without examining such an important matter in the light of the then existing rules in force since decades, neither consulting any concerned agency nor with the approval of the Cabinet. The same negated the earlier decision of 24th November, 1973 issued based on the cabinet accepted recommendation. Here it cannot be lost sight of that the OM of 24th November, 1973 was issued in consultation with the C AG based on the cabinet approved recommendation of the CPC.**

13. This clarification was given (i) without consulting CAG etc. and (ii) the cabinet. Contrary/inconsistent with the then statutory and administrative provisions, such as, Article 14 of Civil Services Regulations, audit instructions under FR 56 and FR 17, Rules 5, 13, 33 and 83 of CCS (Pension) Rules, 1972, policy instructions issued by the Ministry of Home in 1965, the order of 24th November, 1973. Above all the legal provision as to when one attains a particular age as laid down in the Indian Majority Act was also in line with those provisions. As such, the clarification given by the Under Secretary in December, 1973 was void-ab-initio.

14. Later, a number of Ministries/Departments, stating that those born on the 1st used to retire on the 1st, raised a question whether those born on the 1st would retire on the last day of the same month. Here it is noteworthy that question was not as to when they would retire but whether they would retire on the last day of the same month in the light of the OM of 24th November, 1973. The stand of the UNDER SECRETARY taken on a reference from the DG P&T was neither in line with decades old and time tested statutory rules nor in line with the decision dated the 24th November, 1973. Had that been legal/logical/rational the same would have been reiterated without delay. But sensing something wrong had been advised a long route of consulting Ministry of Finance, C and AG, Department of Legal Affairs etc. had to be adopted. Not only that the Department even lost the focus from the point of doubt raised by various Ministries/Departments, which was whether they would retire in the afternoon of the last of the month. The fact that old papers relating to merits based on which old regulations/rules were framed were not available and the examination of merits or demerits in respect of those rules/regulations were ignored cannot be lost sight of. As a result despite (i) existing time tested for decades statutory provisions, (ii) adverse observations of C&AG and (iii) blaming the Commission for their misunderstanding to the rule position about time of retirement, clarified on the 29th June, 1974 that all those born on the 1st would retire in the after noon of the last day of the previous month. This was not the doubt raised by various Ministries/Departments with reference to which a clarification was issued, to the OM of the 24th November, 1973, which meant that all those born on the 1st would retire on the 30th/31st. Although, the OM of 29th June, 1974, which was based on the void-

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ab-initio clarification of the Under Secretary, dated the 5th December, 1973 never meant that Ist born would retire on the previous day in view of the Audit Instruction under FR 17. The FR 56 was further modified on this basis. As such that modification also meant that Ist born would retire on the Ist only in the light of the Audit instructions under FR 17.

15. Briefly, On the one side now the contention of the DOPT is that Ist born would retire on the last day of the preceding month whereas retirees' stand is that Ist born are governed by the same rules which provide that they should retire on the last day of the month in which they had born. This has become bone of contention between the Ist born retirees and the DOPT. This has resulted in lot of litigation on the part of the Ist born against the Government of India. In lot of cases the petitioners have won the case starting from the 4th CPC, In fact worst affected are all those born on the Ist January, 1938/1946/1956 as they missed the benefits of the 5th/6th/7th CPC. Because of the illogical/irrational/illegal contention of the DOPT a good number of aggrieved Ist born are in CAT and High/Supreme court. Number of them got favourable judgements on the plea that Ist born attain the age of superannuation only on the Ist of the relevant year and as such they are to be given the benefit which is available to those retiring on the Ist, even if that is a non-working day.

16. The Kerala High Court high lighted that there was lack of clarity in rules (OP 32459/2001). It was ruled that the rule regarding persons who retired on 31.12.1995 and became pensioners with effect from 1.1.1996 is vague. It was also observed that the framers of the Rule did not envisage the case of the persons like the petitioner, who were superannuated on 31.12.1995.

17. In its order dated the 8th December, 2004 (O.A. No. 642/2004) in relation to the case of Rabindra Kumar Gupta vs C&AG and ors. the CAT Calcutta Bench made following observation:

“It is now well settled that benefit of a decision rendered by a Court of Law has to Be extended, to similarly situated persons even if they are not parties to the proceeding or even if they do not approach the court of law.”

18. (i) **In the case of Union Of India vs M.L.Punshi & Anr.** IN THE HIGH COURT OF DELHI AT NEW DELHI in W.P.(C) No. 2885/2000 on the 19th July, 2010 the **following was observed by the Court:**

“5. We are unable to persuade ourselves to agree with the submission of the petitioner for the reason that the respondent no.1 continued to work and is entitled to the benefits for the whole of the last working day i.e. 31.3.1995. It is only at midnight of 31.3.1995 that he completes his tenure of employment and thus superannuates the moment he crosses 12.00 hrs i.e. on 1.4.1995. basis of these distinctions. According to us, “afternoon of 31st of March: or “forenoon of 1st of April” means one and the same thing and on this basis also we see no reason to hold that the said case is not applicable to the present cases. - In short, we are of the view that in the present cases the effective date of retirement would be 01.04.1995 and not 31.03.1995.”

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19. We thus find no merit in the writ petition and the same is accordingly dismissed leaving the parties to bear their own costs.”

20. In the case of Inder Pal Yadav Vs Union of India[1985(2) SCC 648), in SLP-IA No. 77457/2017 dated 01.09.2017, in the Civil Appeal No. 3744 of 2016 UOI Vs Balbir Singh Tur & Anr dated 08.12.2017 and UOI VS Prithvi singh dated 24.4.2018 the Hon'ble Supreme Court observed that “ **We find that there are several matters in which the aggrieved employees have been going to the Tribunal, then to the High Court and thereafter those matters are brought before this Court. Once the question, in principle, has been settled, it is only appropriate on the part of the Government of India to issue a Circular so that people need not unnecessarily travel either to the Tribunal or the High Court or this Court and it will save the time of the Court and the Administrative Departments apart from avoiding unnecessary and avoidable expenditure**”.

21. In a recent judgement in UOI VS Prithvi Sing dated 24.4.2018 the bench of Hon'ble justices Lokur and Gupta said in the order dated 24.04.2018 when it came across a third set of appeals on the same issue with an identical question of law that if the Union government cares a little for the justice delivery system, it should display some concern for litigants, many of whom have to spend a small fortune in litigating in the Supreme Court,” it said and slapped an additional cost of Rs 1 lakh while dismissing the appeals. In the judgment Hon'ble Justice Lokur said, “To make matters worse, in this appeal, the Union government has engaged 10 lawyers, including an additional solicitor general and a senior advocate. In other words, the Union government has created a huge financial liability by engaging so many lawyers for an appeal whose fate can be easily imagined on the basis of existing orders of dismissal in similar cases.

22. The Hon'ble Supreme Court in a judgement date the 22nd March 2018 recommended "We recommend to the Department of Personnel and Training of the Government of India to try and make life after retirement easier for a government servant by having appropriate legislation enacted by Parliament or applicable Pension Rules rather than a khichdi of Instruction, Office Memoranda, Clarifications, Corrigenda and so on and so forth"

23. FROM PARA 18 IT IS CLEAR, AS HELD BY THE DELHI HIGH COURT AND not reversed DESPITE SLP AGAINST THE ORDER OF THE HIGH COURT THAT ALL THOSE BORN ON THE 1ST OF ANY MONTH WOULD RETIRE ONLY ON THE 1ST, THE DATE ON WHICH THEY WOULD ATTAIN THE AGE OF SUPERANNUATION. LIKE WISE FROM PARA 20, 21 AND 22 IT IS ALSO CLEAR THAT SUPREME COURT HAD HELD THAT

"Once the question, in principle, has been settled, it is only appropriate on the part of the Government of India to issue a Circular so that people need not unnecessarily travel either to the Tribunal or the High Court or this Court and it will save the time of the Court and the Administrative Departments apart from avoiding unnecessary and avoidable expenditure". IN OTHER WORDS ONCE ANY MATTER HAS ACHIEVED LEGAL FINALITY THE SAME SHOULD BE APPLIED TO ALL SIMILARLY PLACED PERSONS.



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Annexure 2

Details of court cases regarding NOTIONAL INCREMENT (with positive results).

Court details	Case No. & details	Partys name	Date of judgement	Remarks / time granted for implementation
CAT / Hyderabad	OANo.21/780/2019	Dr K Satyanarayana & others vs Gol (17 members) AMD / DAE	30/08/2019	6 months
CAT / Hyderabad	OA No.177/2018	P Prem Prasad & others 4 members	08/03/2019	To re-fix the pension of the applicants as per the enhanced eligible D.A from the dates they have become pensioners and pay the arrears along with consequential benefits subject to the outcome of the judgment of the Hon'ble High Court in W.P. No.4742/2016 filed against OA No. 213 of 2014.
CAT / Hyderabad	OA No.229/2020	Cvriil Vivian D'Silva & others (14 members) vs S C Rly	13/03/2020	12 weeks
CAT / Hyderabad	OA No.1155/2018	D V Subba Rao & others (NFC/DAE) 42 members.	13/03/2020	12 weeks
CAT / Hyderabad	OA No.1363/2018	K Subramanyam Raju & others vs NFC / DAE 29 members	13/03/2020	12 weeks
CAT / Hyderabad	OA No.52-to-65/2020	14 members vs ESI	23/01/2020	6 months
CAT / Hyderabad	OA No.325/2020			
CAT / Hyderabad	OA No,431/2020	5 members Rly	08/07/2020	3 months
CAT / Hyderabad	OA No,432/2020			
CAT/ HYDERABAD	OA No.487/2020	2 Members Rly	14/08/2020	3 months
HC/DELHI	WP(C)5539/2019	Arun Chhibber (CRPF) MHA	13/01/2020	8 weeks
HC/DELHI	WP(C)10509/2019	Gopal Singh (CISF) MHA	23/01/2020	6 weeks
CAT / Ernakulam	OA No.00051/2019 (14 OAs)	37 members from Excise & Customs, Dept of Revenue	03/12/2019	3 months
CAT/ Ernakulam	OA No.936/2019	K K Kesavan Namboodri vs DoPT	31/12/2019	3 months

Annexure 2

Details of court cases regarding NOTIONAL INCREMENT (with positive results).

		& Central custome and taxes		
CAT / Bangalore	WP No 677/2019	M Siddaraj, Railways	18/12/2019	2 months
HC/CHENNAI & Supreme Court	SLP (C)22008/2018 RP(C) 1731/2019 WP 15732/2017	Ayyam Perumal (CBIC)	23/07/2018 08/08/2019 15/09/2017	Implemented
HC/ Chennai	WP No. 28072/2019	M E Abdul Ghani CISF, MHA	23/09/2019	8 weeks
HC/CHENNAI	WP.No. 23095/2017	V Sampangi Ramaiah, Income Tax, DOR	03/12/2018	12 weeks
HC/CHENNAI	WP No 28076/2019	M C Janardhnan vs CISF.....MHA	23/09/2019	12 weeks
HC/Madhya Pradesh, Jabalpur Bench	WP No.18030/2019	Rajendra Prasad Tiwari vs State of MP	03/12/2019	12 weeks
HC/Madhya Pradesh (Division Bench)	WA No.363/2020	State of MP vs Rajendra Prasad Tiwari	06/03/2020	Writ Appeal Dismissed.
HC/ Madhya Pradesh, Indore	WP No.17847/2019	Gajendra Kumar & others Vs State of MP	17/12/2019	12 weeks
HC/Madhya Pradesh, Indore Bench	WP 17850/2019	Asutosh vs Commercial taxes Dept (GST)	06/01/2020	12 weeks
HC/Bombay Goa Bench	WP No.115/2012	Secretary, MOD vs Arezhi Sreedharan	25/02/2020	Positive
HC/ Allhabad	Writ A No.13015/2019	Dr Rafal Singh Verma	18/09/2019	4 months time to consider his repn based on Higher Court judgements
HC/Allahabad	Writ A No.17608/2019	Ajay Kumar Triivedi and 13 others vs U.P & 3 others	15/11/2019	4 months time given.
HC/Karnataka	WP No.55117-55121 of 2013	C P Mundinamani vs Director, KPTCL	23/01/2020	WP dismissed
HC / Madhya Pradesh (Jabalpur Bench)	Misc Petition No.5991/2018	Edgar Shatendra Marcus vs GM, West Cent Rly	13/03/2020	Misc Petition allowed.
HC / Allahabad (Lucknow Bench)	Bench No.484/2010	Saka Ram Tripathi vs Dept of Telecom (DoT)	03/05/2017	Allowed
Supreme Court India	Diary No.6468/2019	UoI vs Saka Ram Tripathi	29/03/2019	Dismissed & implemented.
CAT Hyderabad	OA/21/540/2020	T. Santhana Babu and others vsUOI	26.08.2020	Decision in favour of petitioners T. Santhana Babu and