

F.No.2-14/2020-PAP
Ministry of Communications
Department of Posts
[Establishment Division/P.A.P. Section]

Dak Bhawan, Sansad Marg,
New Delhi-110001.

Dated: 01.01.2021

To

All Head of Circles

Sub: Court cases relating to grant of one Notional Increment to employees who have completed one year of service as on their retirement on Superannuation falling on 30th June of various year and further revision in Basic pension and pensionary benefits thereof.

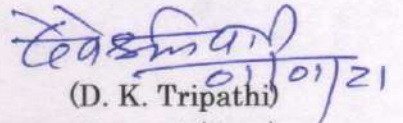
This is regarding various court cases on the above mentioned subject filed by retired employees of this Department before various Tribunals. This section is also in receipt of representations from retired employees of the similar subject matter. Department of Personnel and Training has issued some guidelines and instructions on the subject matter, the same was circulated to all HOCs by pension section letter No 100-10/2018-Pen dated 20.01.2020.

2. In the meantime some circles have forwarded the decisions of various Tribunals for seeking further guidance for implementation of orders etc. The whole issue has been examined in the light of guidelines/ instructions issued by nodal ministry DoPT in such cases.

3. In this regard, I am directed to forward herewith copy of Department of Personnel and Training, OM 1411655/2020-Estt(Pay-I) dated 18.02.2020, requesting to defend/challenge the cases on behalf of Union of India , keeping the observations of DoPT in view.

4. It is hence requested to defend/challenge the cases in consultation with Government Counsel, keeping the observations of DoPT in view. Individual representations/ referred cases in this regard may be addressed as per the guidelines of DoPT. It is also requested to keep this Directorate apprised about further development in these cases periodically.

DA: As above


(D. K. Tripathi)

Assistant Director General (Estt.)

Phone – 011-23096191

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Copy for information and necessary actions:-

1. Sr.PPS to Secretary (Posts) / Sr.PPS to Director General Postal Services
2. PPS/ PS to Addl. DG (Co-ordination)/ Member (Banking)/ Member (O)/ Member (P)/ Member (Planning & HRD)/ Member (PLI)/ Member (Tech)
3. Additional Secretary & Financial Adviser
4. Sr.DeputyDirectorGeneral(Vigilance)&CVO / Sr. Deputy Director General (PAF)
5. Director General P&T (Audit), Civil Lines, New Delhi
6. Secretary, Postal Services Board/ All Deputy Directors General
7. Chief Engineer (Civil), Postal Directorate
8. GM, CEPT for uploading the order on the India Post web site
9. Guard File

स.म.नि. (एस.जी.जी.)
A.D.G. (SPG) 23
डा. सं./Dy. No. 26.02.2020
दिनांक/Date.

Secretary (Posts)
Dy. No. 1381-6
Date 20/2/20

Member (A)
Dy. No. 552
Date 21/2/2020

IMMEDIATE
COURT CASE

No. 1411655/2020-Estt (Pay-I)
Government of India

Ministry of Personnel, Public Grievances & Pensions
(Department of Personnel & Training)

552
25/2/2020

Dy. No. 1480
Date 28/2/2020
OFFICE MEMORANDUM

North Block, New Delhi
Dated the 18 February, 2020

Subject: Order Dated 03.12.2019 in ? A. Nos. 180-1055-2018, 180-51, 61, 69, 71, 109, 134, 150, 158, 163, 168, 169, 213 and 654 of 2019 filled by Smt. Chandrika Varma(OA. No. 169) and others before Hon'ble CAT, Ernakulam Bench, who retired on the preceding day of their date of increment -regarding

The undersigned is directed to forward herewith aforesaid Order received through Additional Central Govt. Standing Counsel.

2. The applicants have sought notional increment and consequential pension benefits on the ratio of the order dated 15.09.2017 passed by the Hon'ble High Court of Madras in the matter of P. Ayyamperumal.

3. In this matter, with reference to Central Government employees, the following is hereby stated:

3.1. In so far as P. Ayyamperumal case is concerned, referred in the instant case also, it is stated that the judgment Hon'ble High Court of Madras in P. Ayyamperumal case is in personam.

3.2 Further, the case of Sh. M Balasubramaniam referred by Hon'ble High Court in it's judgment in P. Ayyamperumal case is related to Fundamental Rules of Tamilnadu Government whereas P. Ayyamperumal case relates to Central Government Rules.

3.3 It is relevant to mention here that in a similar matter, Hon'ble High Court of Andhra Pradesh at Hyderabad in year 2005, in C. Subbarao case (copy attached), has inter-alia observed as under:

"In support of the above observations, the Division Bench also placed reliance on Banerjee case (supra), we are afraid, the Division Bench was not correct in coming to the conclusion that being a reward for unblemished past service, Government servant retiring on the last day of the month would also be entitled for increment even after such increment is due after retirement. We have already made reference to all Rules governing the situation. There is no warrant to come to such conclusion. Increment is given (See Article 43 of CS Regulations) as a periodical rise to a Government employee for the good behavior in the service. Such increment

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14-12-2020
डा. स.नि. (एस.जी.जी.) का कार्यालय
ओ.डी.ओ. (एस.पी.जी.) का कार्यालय
डा. सं./Dy. No. 953
दिनांक/Date: 24/2/2020
Pension

M/A (3)
M/A (PCL)

Pension - Not for Pension
10A/P

is possible only when the appointment is "Progressive Appointment" and it is not a universal rule. Further, as per Rule 14 of the Pension Rules, a person is entitled for pay, increment and other allowances only when he is entitled to receive pay from out of Consolidated Fund of India and continues to be in Government service. A person who retires on the last working day would not be entitled for any increment falling due on the next day and payable next day thereafter (See Article 151 of CS Regulations), because he would not answer the tests in these Rules. Reliance placed on Banerjee case (supra) is also in our considered opinion not correct because as observed by us, Banerjee case (supra) does not deal with increment, but deals with enhancement of DA by the Central Government to pensioners. Therefore, we are not able to accept the view taken by the Division Bench. We accordingly, overrule the judgment in Malakondalah case (supra)."

3.4 In addition, subsequent to the judgment of Hon'ble High Court of Madras in P. Ayyamperumal case, Hon'ble CAT Madras Bench vide its Orders dated 19.03.2019 in O.A.No.310/00309/2019 and O.A. No.310/00312/2019 and Order dated 27.03.2019 in O.A. No.310/00026/2019 (copies attached) has also dismissed the similar requests related with notional increment for pensionary benefits.

3.5 The Hon'ble Supreme Court, vide judgment dated 29.03.2019, while dismissing the SLP (C) Dy. No.6468/2019 filed by D/o- Telecommunications against the judgment dated 03.05.2017 of Hon'ble High Court, Lucknow Bench in WP No.484/2010 in the matter of UOI & Ors. Vs. Sakha Ram Tripathy & Ors., has *inter-alia* observed the following:

"There is delay of 566 days in filing the special leave petition. We do not see any reason to condone the delay. The Special leave petition is dismissed on delay, keeping all the questions of law open."

4. Further, it is also stated that this Department's OM No. 20036/23/1988-Estt.(D) dated 06.01.1989 provides that since each case is to be contested on the basis of the specific facts and circumstances relevant to it, the administrative Ministry/Department (Ministry of Finance (Department of Revenue), Ministry of Defence, CAG, Department of Post in the instant case) will be in a better position to defend the case if required. If, however, any clarification is required on the interpretation or application of the rules or instructions relevant to the case, the concerned department in the Ministry of Personnel, Public Grievances and Pensions may be approached for that purpose. It further provides that the primary responsibility, however, for contesting such cases on behalf of the Government will be that of the administrative Ministry/Department concerned. Further, the Cabinet Secretariat D.O. letter No. 6/1/1/94-Cab dated 25.02.1994 as also the Cabinet Secretary's D.O. letter no. 1/50/3/2016-Cab dated 16.06.2016 and the Department of Expenditure's OM No. 7(8)/2012-E-III(A) dated 16.05.2012

inter-alia provide that (i) a common counter reply should be filed before a Court of Law on behalf of the Union of India by the concerned administrative Department/Ministry where the petitioner is serving or has last served; and (ii) a unified stand should be adopted instead of bringing out each Department's/Ministry's point of view in the said reply. It further provides that it is primarily the responsibility of the Administrative Ministry to ensure that timely action is taken at each stage a Court case goes through and that a unified stand is adopted on behalf of Government of India at every such stage. In no case should the litigation be allowed to prolong to the extent that it results in contempt proceedings.

5. In the light of above observations, Ministry of Finance (Department of Revenue), Ministry of Defence, CAG, Department of Post is requested to challenge the above cited Order on behalf of Union of India including this Department, in consultation with this Department and other nodal Departments, if necessary and keep the interest of this Department in view while doing so.

Enclosure:- as above



(Rajeev Bahree)

Under Secretary to the Government of India

Tel. No.23040489

To

1-Secretary, Department of Revenue, North Block, New Delhi

2- Secretary, Ministry of Defence, South Block, New Delhi

3- Secretary, Department of Post, Dak Bhawan, New Delhi

4- The Comptroller and Auditor General of India, Pocket-9 Deen Dayal Upadhyaya Marg, New Delhi, Delhi 110002