

No. 38/29/2001-P&PW (F)

भारत सरकार

Government of India

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

Ministry of Personnel, PG & Pensions

पेंशन और पेंशन भोगी कल्याण विभाग

Department of Pension & Pensioners' Welfare

तीसरा तल, लोक न्यायक भवन

नई दिल्ली-110003

Dated: 05.12.2005

OFFICE MEMORANDUM

Subject: Merger of certain percentage of DA as DP for reckoning emoluments for the purpose of DCRG and raising the ceiling on the maximum amount of DCRG from Rs.1.00 lakh to Rs.2.50 lakhs--DP&PW OM No. No.7/1/1995-P&PW (F) dated 14.7.1995--Hon'ble Supreme Court judgement dated 11.08.2005 in CA No.129 of 2003 (State of Punjab & Ors Vs. Amar Nath Goyal & Ors) and other connected cases--regarding.

The undersigned is directed to say that the 5<sup>th</sup> Central Pay Commission in its Interim Report had recommended that certain percentage of DA as on 1.7.1993, which is based on the average AICPI 1201.66, be treated as DP for reckoning emoluments for the purpose of DCRG under the CCS (Pension) Rules, 1972. It had also recommended that the ceiling on the maximum amount of DCRG be raised from Rs.1.00 lakh to Rs.2.50 lakhs. The Commission further recommended that these benefits be given effect from 1.4.1995. The recommendations were considered and accepted by the Government and aforesaid OM issued by this Department.

2. Shri B.S. Dhuri & others who had retired from the Postal Department between 01.7.1993 to 31.10.1994 filed OA No. 542, 942 & 943 of 1997 before CAT Mumbai Bench claiming benefits contained in the OM dated 14.7.1995 and challenging the cut-off date of 1.4.1995. The issue was referred to the Full Bench and the Hon'ble Tribunal in its Judgement dated 21.09.2001 allowed the OAs and held that there is no nexus or rational consideration in fixing the cut-off-date of 1.4.1995.

3. The Judgement of the Mumbai Full Bench was challenged by filing Writ Petition No. 884/2002 before the High Court of Mumbai. Eventhough the Writ Petition was admitted no stay was granted. The High Court in its interim order dated 29.4.2002 directed the Respondents (Applicants to the OAs) to file an undertaking before the High Court, on the basis of which the Department has to pay difference of DCRG as per the order of CAT, Mumbai Full Bench on conditional basis viz. the respondents have to file an undertaking before the High Court that in the event of the petitioners succeeding the writ petition, any excess amount received by them shall be refunded to the petitioners alongwith interest @ 6% p.a. from the date of the receipt of amount till refund. The Department of Posts has since complied with the interim order of the High Court.

4. During the pendency of the above mentioned WP before the Mumbai High Court, the Hon'ble Supreme Court passed order on 27.07.2004 transferring the WP to the Supreme Court alongwith SLP (C) No. 12071-12072/2004 filed by UOI Vs. Shri K.K. Jaswal and other connected cases filed by Punjab Government in CA No.129 of 2003, for a final decision.

5. In the above mentioned cases, the Hon'ble Supreme Court delivered the judgment on 11.08.2005. Salient features of the judgment are as under:

(a) Set aside the following cases:

(i) Common judgment and order of the High Court of Punjab & Haryana in CWP No. 4995/97 and in connected matters decided thereby.

(ii) Judgement and orders of High Court of Himachal Pradesh in CWP No.462/03 (dated 24.6.2003) and in Civil Review No.32/2003 (dated 11.9.2003).

(iii) Order dated 21.9.2001 of the CAT (Mumbai Bench) in OA No. 542, 942 & 943 of 1997 filed by Shri B.S. Dhuri & others.

(b) Allowed Civil Appeal No.129 of 2003 and other Civil Appeals/Special Leave Petitions as indicated in the Judgement.

(c) Dismissed Civil Appeal Nos.133/03 and T.C. No.41/05

(d) The Hon'ble Supreme Court considered the fact that financial and economic implications are very relevant and germane for any policy decision touching the administration of the Government, at the Central or at the State level.

(e) After perusing various earlier judgments of the Apex Court that has been relied upon by the retired employees in support of their case, the Hon'ble Supreme Court opined that those judgements are of no assistance in resolving the issue before it.


(f) The cut-off date fixed as 01.04.1995 is on a very valid ground, namely, that of financial constraints and rejected the contention that fixing of the cut-off was arbitrary, irrational or had no rational basis or that it offends Article 14 of the Constitution of India.

6. The contents of the judgment is brought to the notice of all concerned for complying with the following:

(I) Wherever difference of gratuity has been paid in compliance of any CAT/High Court order to retired employees on the basis of undertaking furnished by them, in view of the Supreme Court judgement, the amount received by them shall have to be refunded to the concerned Department alongwith interest @ 6% p.a. from the date of the receipt of amount till refund. Appropriate action may, therefore, be taken in this regard.

(II) Passing of the judgement may be brought to the notice of various Benches of CAT and High Courts through the Government Counsel, where cases are contested claiming the benefits contained in this Department's OM No. NO.7/1/1995-P&PW (F) dated 14.7.1995 as the Apex Court has declined to grant the relief while upholding the cut-off date as 01.04.1995 and set aside the order of CAT Mumbai Full Bench order dated 21.09.2001, so that those cases are straightaway disposed off/dismissed.

(III) If any new cases are filed by retirees challenging the cut-off date of 01.04.1995/01.01.1996, the above judgement of the Hon'ble Apex Court in Civil Appeal No.129/2003 that has been reported in S.C. Services Law Judgements 2005 (2) 177 may be brought to the notice of CAT/Court so that the cases are dismissed at the admission stage /preliminary hearing.

  
(M.P. Singh)  
Director (PP)  
Tel. 24624802

To

1. 'persmin.nic.in' - website of the Ministry of Personnel, PG & Pensions
2. All Ministries/Departments of Government of India
3. Office of C&AG
4. Office of Controller General of Accounts
5. Office of Controller of General of Defence Accounts
6. As per standard mailing list.