

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 20TH FEBRUARY, 2008.

OFFICE MEMORANDUM

Subject: - Demand of Govt. Servants who opted for lump sum on their absorption in PSUs/CABs for release of balance pension and DR and during pre-restoration period and beyond – clarification regarding.

This Department has received representations on the above noted subject. In this regard, the undersigned is directed to state that the Government has issued instructions on restoration of 1/3rd commuted portion of pension in respect of Government servants who had drawn lump sum payment on absorption in public sector undertaking/autonomous bodies implementing the Andhra Pradesh high Court judgement dated 24.12.03 in Writ Petition No.8532 of 2003 followed by the Supreme Court judgement dated 29.11.08 in Civil appeal No.5269 of 2006 arising out of SLP Nos.21647-648 of 2005 and the Supreme Court judgement dated 24.7.2007 in Review petition No.643 of 07 vide O.M.No.4/79/2006-P&PW(D) dated 6.9.2007 in consultation with Ministry of Law & Justice and Ministry of Finance (Deptt. of Expenditure). It is clarified that this 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.


2. 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 ; WPNo (C) 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."

3. All Ministries/Departments are advised that the representation, if any received on this subject, may be dealt with accordingly.

4. It is further clarified that pension of absorbees in question will have to be restored in accordance with the provision contained in this Department's O.M.No.4/79/2006-P&PW(D) dated 6.9.2007 read with O.M. No.4/59/97-P&PW(D) dated 14.7.98.

5. 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