

No. 38/189/2005-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 नायक भवन

नई दिल्ली-110003

Dated: 27.10.2005

OFFICE MEMORANDUM

Subject: Payment of difference of Gratuity by adding DA prevailing at the time of retirement to pre-1996 Central Government Pensioners - representation citing Supreme Court Judgements - clarification regarding.

The undersigned is directed to say that a number of representations have been received asking whether in pursuance of certain Supreme Court Judgements, any orders have been issued in the case of pre-1996 pensioners for payment of difference of Gratuity by adding DA prevailing at the time of retirement.

2. For the purpose of calculating various retirement benefits including gratuity of Central Government employees, the term 'emoluments' prevailing prior to 1.1.1996 was "basic pay" only. Consequent upon acceptance of Fifth Central Pay Commission recommendations, w.e.f. 1.1.1996, DA admissible on the date of retirement/death has also been included in the definition of emoluments besides basic pay, for the purpose of all kinds of gratuity including DCRG. The Government has not agreed to extend the benefits to retirees who retired/died prior to 1.1.1996 as for grant of any benefit, prescription of a cut-off-date is essential keeping in view various constraints including financial constraints. This has already been clarified vide OM No. 38/42/2005-P&PW (F) dated 17.2.2005.

3. It is clarified that there is no Supreme Court Judgement specifying that pre-1996 pensioners may have to be paid additional gratuity by adding DA at the time of the retirement. However, the factual position about Supreme Court Judgements being quoted by the pre-1.1.1996 pensioners in their representations, is as under:

(i) **Supreme Court Judgement dated 22.9.2000 in Appeal (Civil) 5346 of 1997 - UOI and Others Vs Dr. Vijayapurapu Subbayamma:**

Regarding excerpts from the above Judgement of Supreme Court being quoted in the representations, on perusal of the judgement it has been observed that those are not exact reproduction from the judgement. The relevant sentence in the judgement reads as under:

"(c) Where an employee at the time of retirement is entitled to pension under the relevant rules, any subsequent amendment to the relevant rules enhancing pension or conferring additional benefit would be also applicable to him."

The above-mentioned sentence contained in the judgement is the observation made by the Supreme Court while analyzing its judgement in another case of UOI & Others Vs. Lieut. Mrs. E. Lacats (1997) 7 SCC 334. **However, in its final decision the Hon'ble Supreme Court set aside the judgement of the Tribunal and allowed the appeal filed by the Government.**

- (ii) **SLP No. 11043/95 and CA No. 937/95 by the Supreme Court on 13.2.2002 in UOI Vs Pritam Singh and Kulwant Singh**

As regards extension of benefits of the Judgement in Pritam Singh and Kulwant Singh's case, **Ministry of Law has opined that the judgement covers only the parties of the case and as such it has no universal application. Therefore, the benefit of this judgement cannot be extended to others.**

- (iii) **Judgement passed on 9.10.1998 by the Apex Court in Civil Appeal No. 5048 of 1998 in V. Kasturi Vs. Managing Director, State Bank of India and another:**

The Supreme Court Judgement is about enhancement of pension of State Bank of India employees who are not employees of the Central Government and are governed by the Bank's pension rules whereas the Central Government employees are governed by the provisions of CCS (Pension) Rules, 1972. The Judgement is, therefore, not applicable to Central Government employees. Moreover, the Judgement is about enhancement of pension and not about enhancement of DCRG and Commutation of Pension.



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To

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