

**Demands of Pre-2006 Pensioners for Parity with Post-2006 Pensioners – BPS**

*Revision of pension/family pension of pre-2006 pensioners in the wake of apex court verdict dt.11.7.2019 in Manipur Pensioners Association vs State of Manipur case No. CA 10857/2016.*

**BHARAT PENSIONERS' SAMAJ**  
(All India Federation of Pensioner's Association)  
New Delhi-110014  
NO BPS /SG/029  
Dated: 29.10.2019

To

The Secretary.

GOI M/O Personnel PG & Pensions- DOP &PW

**Sub: Revision of pension/family pension of pre-2006 pensioners in the wake of apex court verdict dated 11.7.2019 in Manipur Pensioners Association vs State of Manipur case No. CA 10857/2016.**

*Ref: DOP&PW OM No.F.No.38/37/08-P&PW(A) at. 1.9.2008.*

Sir,

The DOP&PW notified the rules governing revision of pension / family pension of pre-2006 pensioners / family pensioners vide OM under reference for implementing the recommendations of VI CPC.

Two different formulae – one for pre-2006 pensioners / family pensioners and another for post-2006 pensioners / family pensioners – led to discrimination in the quantum of pension payable to the pre and post-2006 pensioners / family pensioners.

Representations made against this injustice were rejected on the sole criteria that the pension of pre-2006 pensioners / family pensioners was fixed on the basis of the concordance table provided by the VI CPC based on a formula that is different from the one followed for the pensioners retired after 31.12.2005.

In other words, the pension of pre- 2006 pensioners was fixed without following the principle of fixing notional pay in the new pay scale thereby violating the law established through SC judgement in D.S. Nakara & Others vs Union Of India on 17 December, 1982 Equivalent citations: 1983 AIR 130, 1983 SCR (2) 165 reconfirmed vide CIVIL APPEAL NO. 10857 OF 2016.

All Manipur Pensioners Association Appellant by its Secretary Versus The State of Manipur and others, Respondents. Date of judgement 11.07.2019. Whereas, the principle of fixing notional pay / pay was followed for post-2006 pensioners and this discrimination led to anomaly of less pension for pre-2006 pensioners / family pensioners.

Paradoxically though, the revised PPO issued post-7th CPC indicates the notional pay of pre-2006 pensioners which entitles more pension than what had been paid. This discrimination inflicted on pre-2006 pensioners / family pensioners is held legally not tenable and hence requires to be rectified and their claim for arrears of the short payment settled in the light of the following.

2. Implementation of the recommendations of VI CPC has the dubious distinction of attracting several litigations due to inherent flaws in the recommendations as such, as also the inappropriate interpretation given to some of the recommendations, e.g., apex court had to intervene twice for paying arrears of pension / family pension to pre-2006 pensioners w.e.f. 1.1.2006, the date fixed for giving effect to VI CPC Scales.

Furthermore, the formula adopted by the VI CPC, which is different from the policy of parity between pensioners retired in different time frame is nothing but an aberration from the declared policy of successive CPCs right from III CPC onward, including VII CPC. Even the VI CPC's report (vide para 5.1.47) states that "in order to maintain the existing modified parity between present and future retirees it will be necessary to allow the same fitment benefit as is being recommended for the existing Government employees."

Yet, finally it ended up in lower rate of pension to pre-2006 pensioners/family pensioners as against post-2006 pensioners. (Fitment benefit for post 2006 was through Grade Pay which in many cases happen to be higher than 40%).

3.1. It is not that the policy of parity between pensioners has been advocated by the successive CPCs; even the judicial pronouncements upheld that view and observed that disparity between pensioners is violative of Article 14 of the Constitution of India.

In its judgment in the case of Union of India vs SPS Vains (Retd) & Others (2008) 2 SCC (LS 838) the Supreme Court held that the disparity created within the same class i.e., two officers both retired as Maj. Gen., one prior to 1.1.1996 and other after that date but getting different amounts of pension was arbitrary and that the same also offends Article 14 of the Constitution of India.

3.2. In a recent case (CA10857 of 2016 in Manipur Pensioners Association vs State of Manipur) the Supreme Court has held that ALL THE PENSIONERS, IRRESPECTIVE OF THEIR DATE OF RETIREMENT, VIZ., PRE-1996 RETIREES SHALL BE ENTITLED TO REVISION IN PENSION AT PAR WITH THOSE PENSIONERS WHO RETIRED POST-1996.

This decision has been given on an appeal by the Manipur Pensioners Association against the decision of the Division Bench of the H.C. setting aside the verdict of the single judge bench that allowed parity between the pre-1996 and post-1996 pensioners as demanded by the said Association.

The judgment of the single judge bench is in accordance with the judgment of a Constitution Bench of 5 judges in D.S.Nakara case, in which para 46 says that "revised pay scales are introduced from a certain date. All existing employees are brought on to the revised scale of pay by adopting a theory of fitments and increments for past service.

In other words, benefit of revised scale is not limited to those who are in service or who enter service subsequent to the date fixed for introducing revised scales, but the benefit is extended to all those who were in service prior to that date. This is just and fair". This verdict is not diluted by the Supreme Court in its subsequent judgements so far.

3.3 During the trial in the Supreme Court the respondent (Manipur State) claimed that the decision of the apex court in D.S. Nakara case is one of limited application and there is no scope for enlarging the ambit of their decision to cover all schemes including identical amount of pension irrespective of the date of retirement and in support of its stand quoted the decisions / observations of the apex court in similar cases such as (1) Indian Ex-Services League vs U.O.1, (2) Kallakurichi Tk. Retd.

Officials Association vs Tamil Nadu State and some more cases. However, the apex court rejected all those issues as 'none of the judgments relied upon by the respondent (Manipur State) has any bearing to the controversy on hand'. On the other hand, the court extensively quoted its own observations/decisions given in the matter of D.S. Nakara & others vs Union of India and even verbatim reproduced paras 42 and 65 of the judgment in the said case and concluded that the controversy/issue in the appeal filed by Manipur Pensioners Association is squarely covered by the decision of the apex court.

4. Moreover, there is similarity between the two cases – one adjudicated by the apex court in the Manipur Pensioners Association vs State of Manipur referred to above and the ground attributed by the Govt. of India for rejecting the demand of pre-2006 pensioners for parity with post-2006 pensioners. The State of Manipur's ground for rejecting the claim for parity between pre and post 1996 pensioners was constraint of financial resource with the State while it was 'recommendation of VI CPC' that recommended different criteria for pre and post 2006 pensioners.

5. Rejecting the claim for parity in pension between pre and post-2006 pensioners was attributed to the Govt. decision based on the recommendation of CPC. In this regard it is worthwhile to recall that recommendations of CPCs are recommendatory and not binding on the Govt. but can be rejected, modified or accepted in toto, while the decision of the Govt. is not always appropriate whereas the verdict/ruling in the matter adjudicated by the courts of law is considered final and holds the ground, as narrated in the preceding paras.

6. Pensioners are a homogenous class and dividing them into pre and post particular cutoff date violates the norms laid by the Hon'ble Supreme Court. Hence, we request the DOP&PW to issue suitable modified instructions keeping in view the verdict of the apex court so that the long pending demand of pre-2006 pensioners/family pensioners is settled without losing further time.

Thanking you

Yours truly,

Sd/-

S C Maheshwari

Secy Genl Bharat Pensioners Samaj

*Copy to Ms.Seema Gupta, Director (PW) GOI M/O Personnel PG & Pensions- DOP &PW New Delhi.*