



RAILWAYS SENIOR CITIZENS WELFARE SOCIETY UT, CHANDIGARH

(Estd. 1991, Regd. No. 1881 – Under Registration of Societies Act),

Website <http://www.rscws.com>

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PARTIAL-IMPLEMENTATION OF COURT JUDGMENTS ON MODIFIED PARITY OF PENSION **IS IT APATHY TOWARDS PENSIONERS, ADAMANCY OF THE GOVERNMENT OR BLATANT CONTEMPT OF COURT?**

BY HARCHAN SINGH, (VP BPS & SG RSCWS)

Government has shown not only its extreme apathy towards the Pensioners but a clear cut adamancy to deny justice to them to the extent of a blatant contempt of the Apex Court while deciding to restrict the application of the order dated 1-11-2011 of the Full Bench of CAT (Central Administrative Tribunal) Principal Bench, only to the Petitioners (of S 29 SAG Pensioners Association).

Government vide its Resolution adopted by the Union Cabinet on 29-8-2008, had accepted the recommendations of the Sixth CPC. The accepted recommendations of the CPC, inter-alia laid down that the “revised pension, in no case, shall be lower than’ 50% of the sum of the minimum of the pay in the pay band and the grade pay thereon corresponding to the prerevised pay scale from which the pensioner had retired.”

Department of Pension and Pensioners Welfare (DOP&PW) issued a so called clarification vide OM Dated 3-10-2008 which was effectively a modification in regard to para 4.2 of the OM dated 1.9.2008 which completely changed the meaning of the Commission’s recommendation as accepted by the Government as per Resolution. and as reproduced in OM dated 1.9.2008. While the Resolution dated 29.8.2008 was issued with Cabinet approval, the clarification/modification was issued by the Department without reference to the Cabinet. The effect of the said clarification/modification was to reduce the pension payable to pre-2006 pensioners and deny modified parity to pensioners as, recommended by 6th CPC and accepted by the Government. (FYI-PI note that OM of 1/9 is different from the Resolution. NPM)

“Pension is not a bounty -- a grace – or an Ex-gratia payment, but a payment for past services rendered” Supreme Court

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CAT had clearly set aside the so-called “Clarificatory” order of the DOP&PW dated 3-10-2008 and held it to be null and void as it was contrary to the Resolution dated 29-8-2008 of the Union Cabinet (which could not be changed except by the Cabinet itself).

The decision of the CAT in OA 655/2010 to re-fix the pension of all pre-2006 pensioners, was upheld by the Delhi High Court, then thrice by the Supreme Court – first by rejecting the SLP, then rejecting the Review Petition and finally by rejecting the Curative Petition filed by the Govt. - by five judges Bench of Apex Court.

However, after much pressure from all sides – including the BPS and JCM Staff side, Government issued an order dated 28-1-2013 for ‘stepping up pension’ in accordance with Resolution from an arbitrary date of 24-9-2012 – thus depriving all affected Pre 2006 Pensioners of the arrears from 1-1-2006 to 23-9-2012 – even though the said date (24-9-2012) had neither any justification nor any sanctity.

Meanwhile the Contempt of Court Case continued to hang in the CAT Delhi. During the hearing in CAT on 15-5-2014, the respondents informed that Curative Petition was dismissed on 30-4-2014, whereupon the Tribunal while disposing of the contempt petition, directed to implement the directions of the Tribunal. Government belatedly issued the order dated 26-8-2014 - for grant of arrears from 1-1-2006 but restricted the application of the same to the Petitioners alone – a stand which had never been taken by the Government at any stage prior to 15-5-2014.

Taking this decision at this stage reflects the motives of the Government to hoodwink and side track all the judgments of the various Courts in this case – merely to deprive the affected Pre 2006 Pensioners of the arrears due to them for over six and a half years from 1-1-2006 to 23-9-2012. The blatant injustice has been perpetrating over the years. But the latest orders of the DOP&PW – restricting the application of the CAT judgment to only the Petitioners - reflects not only the apathy but rather an adamancy to

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the hilt, besides being a contempt of the Apex Court.

- How could the same orders of the Government (issued vide DOP&PW OMs Dated 3-10-2008 and 28-1-2013) be applied differently to the Petitioners and the rest of the affected Pensioners? How could the said OM dated 3-10-2008 be *ultra vires* only for the Petitioners (as held by the CAT in OA 655/2010) and still be applied to the rest of the over 2 lakh affected Pensioners?

This is absolutely, discriminatory, *ultra vires* and illegal. This is totally in violation of Articles 14, 16 and 39 of the Constitution of India. There is no reason, no logic and no justification to continue with such discrimination between the Petitioners and other similarly placed Pre 2006 affected Pensioners.

As far as the three SLPs which are pending in the Supreme Court are concerned, these are just infructuous as the matter has already attained finality after the rejection of the curative Petition on the same issue. As such waiting or linking up the matter with those SLPs is neither justified nor purposeful either way,

The new regime at the centre should intervene at the Ministerial level in this important case of Pensioners and get the PB CAT judgment implemented in letter and spirit of OA 655/2010 for all affected Pensioners (instead of the Petitioners only in that case) – with immediate release of arrears to all the affected Petitioners from 1-1-2006 instead of 24-9-2012 - so as to meet the ends of justice and to remove the discrimination within the same homogeneous class of Pre 2006 Pensioners.

(Harchandan Singh)
Secretary General, RSCWS
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