

RE-COMPUTATION OF PENSION FOR PRE-2006 PENSIONERS

Para 5.2 of DOP&PW OM dated 2.9.2008:

Linkage of full pension with 33 years of Qualifying Service shall be dispensed with. Once a Govt. servant has rendered the minimum qualifying service of 20 years, pension shall be paid at 50% of the emoluments or average emoluments received during the last 10 months, whichever is more beneficial to him.

Para 5.3 of DOP&PW OM dated 2.9.2008:

In cases where Govt. servant becomes entitled to pension on completion of 10 years of qualifying service in accordance with Rule 49(2) of CCS(Pension) Rules, 1972 pension in those cases shall also be paid at 50% of the emoluments or average emoluments, whichever is more beneficial to the Govt. servant.

Para 5.4 of DOP&PW OM dated 2.9.2008:

The provisions for calculation of pension in para 5.2 and para 5.3 above shall come into force with effect from the date of issue of this O.M. and shall be applicable to Govt. servant retiring on or after that date(2.9.2008).

The Govt. servants who have retired on or after 1.1.2006 but before the date of issue of this O.M. (2.9.2008), will continue to be governed by the Rules/orders which were in force immediately before coming into effect of these orders.

Para 2 of DOP&PW OM F.No. 38/37/08-P&PW(A) dated 11.12.2008:

It has been decided that the provision of payment of pension at 50% of the emoluments (pay last drawn) or 50% of average emoluments received during the last 10 months, whichever is beneficial to the retiring employee, shall be applicable to all Govt. servants retiring on or after 1.1.2006.

Para 2 of DOP&PW OM F.No. 38/37/38-P&PW(A) dated 10.12.2009:

It has been decided that linkage of full pension with 33 years of qualifying service shall be dispensed with, with effect from 1.1.2006.

The revised provisions for calculation of pension in para 5.2 and 5.3 of OM No.38/37/08-P&PW(A) dated 2.9.2008 shall come into force with effect from 1.1.2006 and shall be applicable to the Govt. servants retired/retiring after that date (1.1.2006). Para 5.4 will further stand modified to that extent.

As per the extant orders, only those Govt. servants retired/retiring after 1.1.2006 are entitled to get their pension calculated on the basis of revised methodology/formula spelt through the OM dated 11.12.2008 and 10.12.2009.

Under the circumstances, a genuine question may arise as to -

Whether a Govt. servant retired prior to 1.1.2006 can expect that his basic pension due on the date of retirement, will have to be recalculated

- (i) based on his last pay drawn or average emoluments for the past 10 months prior to the date of retirement whichever is beneficial and
- (ii) based on the minimum qualifying service of 20 years for full pension or otherwise pro-rata, strictly on par with those who retired/retiring after 1.1.2006?

The Reply could be 'YES' - as long as the liberalised/amended decision is not a wholly new concept, a new retirement benefit, the Govt. servants who retired prior to 1.1.2006 will definitely expect for such recomputation of pension based on the amended/liberalised decision.

The line of principle involved with reference to a cut-off date to divide the homogenous class of pensioners, is elaborately discussed in the Judgment **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 the very

significant excerpts (related to the issue of liberalised/amended decision for pre-2006 pensioners) are submitted hereunder as a justification for the aforesaid reply with regard to pre-2006 pensioners.

“The Constitution Bench in the case of D.S. Nakara (supra) had to consider the question of a cut-off date found in the pension scheme, which was uniformly applicable to all the Central Govt. employees at the time of retirement and who were entitled to pension.

The question was –

‘Whether amount of pension which was computed for them in the light of available formula could have been further extended on the basis of a subsequent more beneficial formula, and Whether it could be denied only on the ground that they had retired prior to the date on which such enhanced computation of pension was made available to the pensioners’

In the light of the aforesaid fact situation, it was observed that all employees governed by the pension scheme and had become eligible to earn pension at the time of retirement, formed one class.

It was held that such a cut off date for granting additional . benefits to only some of the pensioners in the same class of employees could not be countenanced on the touchstone of Article 14 of the Constitution of India.

In para 8 of the report, it was noted that the ‘Primary contention is that the pensioners of the Central Government form a class for the purpose of pensionary benefits, and, there could not be miniclassification within the class designated as pensioners’.....

A question was posed in para 9 of the report that can this class of pensioners further be divisible for the purpose of ‘ENTITLEMENT’ AND ‘PAYMENT’ of pension into those who retired by certain date and those who retired after that date”.

***“In the case of All India Reserve Bank Retired Officers’ Association & Ors. Vs. Union of India & Anr., 1992 Supp. (1) SCC 664, Hon. Justice Shri A.M. Ahmadi highlighted the observations in Nakra’s case found at Page 333 para 46 to the following effect:
.....the pension will have to be recomputed in the light of the formula enacted in the liberalised pension scheme and effective from the date the revised pension scheme comes into force. And BEWARE that it is not a new scheme, it is only a revision of an existing benefit.”***

“In the case of India Ex-Service League and others Vs UOI & Ors. 1991(2) SCC 104, a later Constitution Bench, speaking through Hon. Justice Shri Verma made the following pertinent observations in para 12 of the Report:

“The liberalised pension scheme in the context of which the decision was rendered in Nakara provided for computation of pension according to a more liberal formula under which "average emoluments" were determined with reference to the last ten months’ salary instead of 36 months’ salary provided earlier yielding a higher average, coupled with a slab system and raising the ceiling limit for pension. This Court held that where the mode of computation of pension is liberalised from a specified date, its benefit must be given not nearly to retirees subsequent to the date but also to earlier existing retirees irrespective of their date of retirement even though the earlier retirees would not be entitled to any arrears prior to the specified date on the basis of the revised computation made according to the liberalised formula. For the purpose of such a scheme all existing retirees irrespective of the date of their retirement, were held to constitute one class, any further division within that class being impermissible. According to that decision, the pension of all earlier retirees was to be recomputed as on the specified date in accordance with the liberalised formula of computation on the basis of the average emoluments of each retiree payable on his date of retirement. For this purpose there was no revision of the emoluments of

the earlier retirees under the scheme. It was clearly stated that if the pensioners form a class, their computation cannot be by different formula affording unequal treatment solely on the ground that some retired earlier and some retired later'. This according to us is the decision in Nakara and no more"

In the case State of Punjab Vs Justice S.S. Dawan (Retd. Chief Justice) & Ors. 1997(4) SCC 569, it was held that:

Conceptually, pension is a reward for past service. It is determined on the basis of length of service and last pay drawn. Length of service is determinative of eligibility and the quantum of pension. The Formula adopted for determining last average emoluments drawn has an impact on the quantum of pension. D.S.Nakara case involved the change of formula for determining average emoluments and it was treated as liberalisation or upward revision of the existing pension scheme. On parity of reasoning it can be said that any modification with respect to the other determinative factor, namely, qualifying service made with a view to make it more beneficial in terms of quantum of pension can also be regarded as liberalisation or upward revision of the existing pension scheme.

If an employee is already covered by an existing scheme and the main determinative factor for computation of his pension, at the time of his retirement, undergoes any modification with respect to the other determinative factor, namely, qualifying service **then such a modification can be treated as elongation of the already accrued retiral benefit".**

Ultimately, the following legal position that got projected in the Judgment of V.Kasturi case will make it clear as to where exactly, the pre-2006 pensioners stand with reference to the elongation of the already accrued retiral benefit, that has a basic correlation with emoluments and qualifying service.

*"If the person retiring is eligible for pension at the time of his retirement and if he survives till the time by subsequent amendment of the relevant pension scheme, he would become eligible to get enhanced pension or would become eligible to get more pension as per the new formula of computation of pension subsequently brought into force, he would be entitled to get the benefit of the amended pension provision from the date of such order as he would be a member of the very same class of pensioners when the additional benefit is being conferred on all of them. In such a situation the additional benefit available to the same class of pensioners **cannot be denied** to him on the ground that he had retired prior to the date on which the aforesaid additional benefit was conferred on all the members of the same class of pensioners who had survived by the time the scheme granting additional benefit to these pensioners came into force. The line of decisions tracing their roots to the ratio of nakara's case (supra) would cover this category of cases"*

One single case, viz. D.S. Nakra(supra) has paved way for taking a very judicious stand in various other cases and it is the strength of the analysis in depth as an outcome of the Verdict. The Petitioner and the Judgment are always live in the Pensioners Community for ever.