



Railways Senior Citizens Welfare Society

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

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

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No. RSCWS/ CHD/2014-10

Dated: 4-11-2014

Shri Jatinder Singh,
Hon'ble Minister of State, Govt. of India,
Ministry of Personnel, PG and Pensions,
North Block, New Delhi

By Email to: mos-pp@nic.in

Dear Sir,

Subject: i) Re-fixation of pension of all affected Pre-2006 Pensioners from 1-1-2006 as per accepted Recommendations of Sixth Pay Commission & as per CAT judgment in OA 655/2010 – upheld by Supreme Court of India.

ii) Appeal for withdrawal of 3 SLPs from SC in view of the rejection of SLP NO. 23055 of 2013, Review Petition 2492 of 2013 and Curative Petition 126 of 2014 reg. OA 655/2010 of CAT New Delhi on the same matter jointly dealt with them by CAT.

Reference:- i) RESOLUTION of Union Cabinet, GOI No. 38/37/08-P&PW (A) dated 29-8-2008 reg acceptance of recommendations of Sixth CPC;

ii) DOP&PW O.M. – F.No. 38/37/08-P&PW (A), dated 1st September, 2008 – Reg. revision of pension of pre-2006 pensioners and Family Pensioners.

iii) DOP&PW O.M. – F.No. 38/37/08-P&PW pt.1 dated 3.10.2008 - Clarifications (since set aside by the Courts)

iv) DoP&PW OM No. 38/37/08-P&PW pt.1 dated 26-8-2014 with Reg. Revision of Pension of pre-2006 Pensioners (*Only of Petitioners in OA 655/2010*)

We very humbly seek your benign intervention seeking relief from the undue suffering of a section of Pre-2006 Pensioners who have been denied their rightful revision of pension despite the verdict of the CAT PB New Delhi in OA 655/2010 – which had universal application for all affected Pensioners.

In this regard we very draw your kind attention to the following facts for your kind & favourable consideration:

1. Recommendations of Sixth CPC approved by Union Cabinet:

The recommendations in respect of past pensioners made in Para 5.1.47 of the 6th CPC Report were accepted by Union Cabinet and were notified vide Resolution No. 38/37/08-P&PW (A) dated 29-8-2008. According to this, the pension of pre-2006 pensioners is to be governed by the principle of Modified Parity as enunciated by 5th CPC and as recommended for continuing the same by 6th CPC without any change.

As per this principle, the pension shall not be less than 50% of the minimum of the revised pay of the post held by the pensioner at the time of retirement. For dispensing modified parity in the new system of Pay Bands and Grade Pay (where a

number of pre revised pay scales have been grouped in 4 pay bands) adopted by 6th CPC, it has been stipulated in Para 5.1.47 that

“The revised pension, in no case, shall be lower than fifty percent of the sum of the minimum of the pay in the pay band and grade pay thereon corresponding to the pre-revised pay scale from which the pensioner had retired.”

It has been emphatically and without any ambiguity laid down that both the minimum of the pay in the pay band and grade pay thereon have to simultaneously correspond to the pre-revised pay scale from which the pensioner had retired.

2. Accepted recommendations by Govt. notified in the Gazette were unauthorisedly modified to the detriment of Pre-2006 pensioners.

a) Unjust, brazen and unauthorized distortion were made by DOP&PW in the recommendations of 6th CPC, (after the same were accepted by the Government vide Resolution dated 29-8-2008), to the detriment of pre 1-1-2006 pensioners as can be seen from the following comparative table of relevant the wordings of the initial decision of the Government and subsequent implementation orders issued vide DOP&PW Memoranda dated 1-9-2008 and 3-10-2008:

<u>Recommendation of 6th CPC accepted by GOI as per Resolution dated 29-8-2008</u>	<u>DOP OM dated 1-9-2008 on implementation of 6th CPC recommendations</u>	<u>DOP OM dated 3-10-08 – clarification (modification)</u>
<p>The fixation of pension will be subject to the provision that the revised pension, in no case, shall be lower than <u>50% of the sum of the minimum of the pay in the Pay Band and the Grade Pay thereon corresponding to the pre-revised pay scale</u>, from which the pensioner had retired. (5.1.47)</p>	<p>4.2 The fixation of pension will be subject to the provision that the revised pension, in no case, shall be lower than fifty percent of the [sum of the] minimum of the pay in the pay band [and] plus the grade pay [thereon] corresponding to the pre-revised pay scale from which the pensioner retired. In case of HAG + and above, this will be fifty percent of the minimum of the revised pay scale had retired.</p>	<p>The Pension calculated at 50% of the minimum of pay in the Pay Band plus grade pay would be calculated <i>(i) at the minimum of the pay in the Pay Band (irrespective of the pre revised scale of pay) plus Grade Pay corresponding to the pre-revised pay scale.</i></p>

(Note: Words within brackets [] in the second column had been deleted in OM dated 3-10-2008 as per Col 3 and those shown in bold italics in Col 3 had been added without approval of the Cabinet).

b) Thus, instead of both the minimum of the pay in the pay band and the grade pay “corresponding to the pre-revised scale of pay” as intended under Resolution dated 29.8.2008, it was altered to minimum pay in the pay band “irrespective of the pre-revised scale of pay” under the so called clarification dated 3-10-2008. This resulted in fixation of pension at a much lower level.

3. CAT PB held DOP&PW OM dated 3-10-2008 as illegal & null & void:

Full Bench of Central Administrative Tribunal (CAT) Principal Bench New Delhi, in their judgment dated 1-11-2011 in OA 655/2010 with 3 other OAs, set aside the order of the DOP&PW dated 3-10-2008 and quashed it 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). Respondents were directed to re-fix the pension of all pre-2006 retirees w.e.f. 1.1.2006, based on the resolution dated 29.08.2008.

4. Decision of CAT PB upheld by High Court & Supreme Court

a) The decision of the CAT in OA 655/2010 along with three other Applications to re-fix the pension of all pre-2006 pensioners was upheld by the Delhi High Court.

UOI, however, chose to initially file an SLP in one case only namely OA 655/2010 (although other three OAs were also governed by the same order of CAT and later upheld in the same order by Delhi High Court) which was dismissed. Instead of implementing CAT order, UOI filed review petition and Curative petition which too were dismissed by the Supreme Court.

b) Even after the Dismissal of the SLP by the Apex Court, Government still did not withdraw the illegal order dated 3-10-2008 which was quashed by CAT.

c) However, after much pressure from all sides Government issued an order dated 28-1-2013 giving the benefit of 'stepping up of 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 relevance or sanctity.

5. More SLPs filed on the same issue & against same Common judgment:

Three other SLPs (Civil) No.36148-50/2013 were filed in the meanwhile, by the Government in the Supreme Court against the common CAT order dated 1-11-2011 and up held by Delhi High Court which have neither been withdrawn so far even after the rejection of the Review and Curative Petitions by the Supreme Court against the said common judgment, nor have the same been heard so far even though one year has passed. Meanwhile, the said three SLPs have, somehow, been got clubbed with more than 40 other unrelated Cases - thereby further receding the possibility of an early disposal of the SLPs concerning the old Pensioners who are already on the fag end of their lives.

6. **CAT PB directed Govt to implement its judgement:** During the hearing in CAT on 15-5-2014 in the contempt petition against non implementation of its orders in OA 655/2010, the Tribunal, while disposing of the contempt petition, directed the Government to implement the directions of the Tribunal in OA 655/2010.

7. Partial & discriminatory implementation of CAT's Orders for Petitioners only:

a) DOP&PW issued the order dated 26-8-2014 (*cited above*) for grant of arrears from 1-1-2006 but restricted the same to the Petitioners alone – a stand which had never been taken by the Government at any stage prior to 15-5-2014.

b) **Most pertinent point is, that the same order (OM Dated 3-10-2008) which was treated to be illegal of OA 655/2010 by the CAT is not being applied to the Petitioners thereof but are still being applied to the rest of the affected Pensioners even after the verdict of the Supreme Court on the Curative Petition on the same issue. This is totally unjust and against the law of natural justice.**

8. NON-IMPLEMENTATION OF ORDERS OF THE TRIBUNAL IN RESPECT OF OTHER PRE-2006 PENSIONERS (NON-PETITIONERS) – IS ILLEGAL,

a) As mentioned above, order of the Tribunal for revising pension from 1-1-2006 were applicable to **ALL AFFECTED PENSIONERS** without any distinction. But the DOP&PW has issued the orders only for the Petitioner while denying the same to the other affected Pensioners This discrimination is totally unjust, illegal and in violation of Articles 14, 16 and 39 of the Constitution.

b) The reason for the above said restrictive orders advanced by DOP&PW in SCOVA meetings is that the case is sub- judice as the 3 SLPs are pending in the Supreme Court. This is absolutely not valid because of the following reasons;

i) These 3 SLPs though filed separately in the Supreme Court are a part of the common order delivered by PB CAT in OA 655/2010 along with other 3 OAs (relating to the said 3 SLPs) and were later on part of the common order/ judgement of DHC in 4 WPs up holding the verdict of CAT.

ii) Verdict in respect of OA 655/2010 has reached FINALITY with the dismissal of CURATIVE PETITION. Therefore, these 3 SLPs covered under the same common order as that of OA 655/2010 of CAT and DHC, are rendered in fructuous.

9. PROLONGED SUFFERING OF PRE-2006 PENSIONERS

Because of the injustice inflicted upon the old pensioners by issuing orders in contravention to the accepted recommendations (as mentioned in Para 2 above) forcing a section of pensioners to undergo an arduous and painful process of litigation over a period of nearly 5 years, justice has been restored to only a few pensioners whereas a large number of similarly placed pensioners are still suffering as they have to wait for the outcome of 3 SLPs. These pensioners are in the age group of 70 and above and will be deprived of justice in their lifetime if they are forced to wait for the outcome of 3 SLPs – which are either way frivolous in view of the dismissal of even the Curative Petition on the same matter.

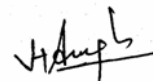
10. APPEAL FOR REDRESSAL OF SUFFERINGS OF AFFECTED PENSIONERS:
the affected pensioners be given justice as under:

i) it is requested that the 3 SLPs (Civil) No.36148-50/2013 pending in Supreme Court may please be withdrawn - as the same are in fructuous after rejection of the Curative Petition by the Supreme Court on the same matter as in OA 655/2010.

ii) Pension of affected Pre 2006 Pensioners may please be re-fixed from 1-1-2006 as per orders of CAT in OA 655/2010 and as has been done for a few petitioners only vide DOP orders dated 26-8-2014 while unjustly ignoring the rest.

With regards,

Yours faithfully,



(Harchandan Singh)
Secretary General, RSCWS

Encls: As referred to above

Copy for information & favourable action to:

➤ Shri Ashok Kalra, Director, DOP by Email