



# RAILWAYS SENIOR CITIZENS WELFARE SOCIETY

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

Head Office: 32, Phase- 6, Mohali Chandigarh -160055

Website <http://www.rscws.com> Email: [rscws1991@gmail.com](mailto:rscws1991@gmail.com)

Identified & Recognised by DOP&PW GOI under Pensioners Portal

No. RSCWS/ CHD/Memo/2016-5

Dated: 29-4-2016

Secretary, Govt. of India,  
Ministry of Personnel, AR, PG & Pension,  
Patel Bhawan, New Delhi-110001

Dear Sir,

**Subject: Revision of Pension of Pre 2006 Pensioners – Reg: Admissibility of benefit of upgradation of Posts subsequent to retirement**

**Reference:- i) Resolution of GOI No. 38/37/08-P&PW (A) dated 29-8-08 & OM Dated 1-9-08,  
ii) DOP&PW O.M. F.No. 38/37/08-P&PW (A) dated 3-10-08, 14-10-08 & 11-2-09  
iii) DOP&PW O.M. F.No. 38/37/08-P&PW (A) dated 30-7-2015  
iv) Our Memorandum No. RSCWS/ CHD/Memo/2016-2 Dated 24-2-2016 to Hon'ble Prime Minister (Copy attached)**

1. We humbly reiterate our submissions made in our Memorandum of even No. Dated 24-2-2016, to Hon'ble Prime Minister with a copy to your honour Reg. Minimum pension for Pre-2006 Pensioners who retired from posts where pay scales have been merged / upgraded.

2. We once again seek your benign intervention in the matter, to ameliorate the suffering of a large number of Pre-2006 Pensioners and grant them the benefit of up-graded posts keeping in view the submissions made in our Memorandum dated 24-2-2016 and the additional submissions made hereunder:

3. The dates from which the various posts were upgraded or merged with higher grades, i.e. w.e.f. 1-1-1996 and 1-1-2006 etc., were quite arbitrary as far as the reasons for up-gradation were concerned. These cut-off dates could not be used as the reason for depriving the pensioners the benefit of upgrading or merger even at its minimum level of the corresponding scales from which the Pensioners had retired – as mentioned in detail in our Memorandum dated 24-2-2016 and as held by CAT Chandigarh in their judgements in the cases cited in Para 5 below which were upheld by the Hon'ble High Court Chandigarh and by the Hon'ble Supreme Court in SLP (CC) No. 22402/2015 decided on 05-01-2016.

4. The issue was discussed as Agenda item No.4 in the Meeting of JCM Staff Side with you on 10-3-2016, wherein you had very kindly agreed to reconsider the matter as indicated in the following records of the meeting:

“Grant of modified parity to all those who retired prior to 1.1.2006, with reference to the upgraded post. The Staff Side stated that the Department of Pension has taken a very narrow view of the matter and the cases are dragged to the courts of law. The very spirit of the recommendation of the 5th CPC to bring about at least modified parity if not full parity has not been appreciated by the Govt. The issue was discussed at length. The official side pointed out the decisions of the Court in favour of the position taken by the Government in the case of K.S. Krishnaswamy in (CA No.) 3174/2006, which has been upheld by the Honourable Gujarat High Court.

In reply the Staff Side pointed out that the said decisions quoted by the official side had come about due to the phrase employed while issuing the original order viz. corresponding replacement scale.

After some discussions, the Chairman agreed to look into the matter afresh and revisit the order of the Department of Pension in the matter.”

5. a) Hon. Supreme Court of India had dismissed the SLP (CC) No. 22402/2015 of Union of India/Ministry of Railways on 05-01-2016 against the common order dated 29-1-2015 of Hon'ble High Court, Chandigarh in CWP No. 8563 of 2014 (UOI & Ors. VS. Darshan Lal Bali & Ors.), 2005 of 2014 (UOI Vs Tilak Raj & Ors.) and 25072 of 2014 (Banarsi Das & Anr).

b) In the above said Judgment the Courts had directed the Railways to give the benefit of up-gradation of posts for the Revision of Pension to the Pre-1996 Pensioners and Pre-2006 Pensioners.

c) Ministry of Railway/ Railway Board had since then decided to implement the said judgment of Hon'ble High Court Chandigarh and had issued the orders vide their letter No. PC-III/2013/CTC-1/4 dated 1-2-2016) for the applicants only and directed the General Manager Northern Railway to take the necessary action in this regard immediately and confirm it at the earliest.

d) Confining the said benefit of up-gradation only to the applicants is discriminatory. Disallowing the benefit to the other Pre-2006 Pensioners - whose posts had been upgraded subsequent to retirement - is against the settled law of natural justice and it violates Articles 14, 16 and 39 of the Constitution of India.

e) Hon'ble Punjab & Haryana High Court, Chandigarh, has held as unit der in their order dated 29-1-2015 in CWP No. 8563 of 2014 (UOI & Ors. VS. Darshan Lal Bali & Ors.) – which has been upheld by the Hon. Supreme Court of India on 05-01-2016, while dismissing the SLP (CC) No. 22402/2015 of Union of India against the same:

*“The petitioner(s) are a welfare State. They cannot and ought not to expect the respondent-retirees to roam in the corridors of Courts. The conscious decision taken by the petitioner(s) to extend benefit of their 2003 Circular to a batch of pre-1996 retirees amounts to shift in their policy, therefore, also the respondents being similarly placed retirees, are entitled to the benefit of revised Policy decision, even if such decision has emanated out of the command issued by this Court in Agia Ram and others' case. The denial of benefit of revised higher pension etc. to the respondents when it stands granted to other similarly placed retirees, certainly does violence to Articles 14 and 16 of the Constitution.”*

6. a) Hon'ble Supreme Court of India in the case of D.S. Nakara V/S Union of India & Ors. [1983] 1 SSC 305, had held that pensioners form a class as a whole and cannot be micro-classified by an arbitrary, unprincipled and unreasonable eligibility criteria for grant of revised pension.

b) Even though the apex Court had in some subsequent judgment held differently, but the latest decisions of the Hon'ble Supreme Court of India, as mentioned hereafter, had upheld the law laid down in D. S. Nakara's case, and as such are applicable in all cases thereafter – including the issue under reference - as per settled law.

7. Hon'ble Supreme Court of India had held as under in case of Union of India Anr. VS SPS Bains (Retd.) & ors. [(2008) 2 SCC (h 838)]:

*“30 ..... the submissions advanced on behalf of the Union of India cannot be accepted in view of the decision in D.S. Nakara's case (supra). The object sought to be achieved was not to create a class within a class, but to ensure that the benefits of pension were made available to all persons of the same class equally. To hold otherwise would cause violence to the provisions of Article 14 of the Constitution. It could not also have been the intention of the authorities to equate the pension payable to officers of two different ranks by resorting to the step up principle envisaged in the Fundamental Rules in a manner where the other officers belonging to the same cadre would be receiving a higher pension.*

*“31. We, accordingly, dismiss the appeal ..... “*

*(CA NO.5566 OF 2008 SLP (CIVIL) NO. 12357 of 2006 decided on 9-9-2008)*

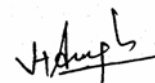
8. The issue of upgraded posts, dealt with in case of K.S. Krishnaswamy in CA No. 3174/2006, was different and could not applied for denial of benefit of upgraded posts to the Pre-2006 Pensioners in view of the subsequent judgment of the Supreme Court in SLP (CC) No. 22402/2015 cited in Para 5 above, wherein, the Court had directed the Railways to give the benefit of up-gradation of posts for the Revision of Pension to the Pre-1996 Pensioners and Pre-2006 Pensioners.

9. The benefit of up-gradation of Posts for Revision of Pension of Pre-2006 Pensioners could not be denied as the accepted recommendations of the Sixth Pay Commission as approved by the Cabinet vide Government of India Gazette Notification dated 29-8-2008, did not disallow the said benefit.

10. It is , therefore, requested as under:

- i) Pre-2006 Pensioners be given the benefit of upgradation of Posts subsequent to retirement and the revised consolidated pension of pre-2006 pensioners be not lower than 50% of the minimum of the upgraded pay in the Pay Band and the grade pay of the post corresponding to that of the post from which the pensioners had retired; And
- ii) Para 5 of DOP&PW O.M. F.No. 38/37/08-P&PW (A) dated 11-2-09 – (disallowing the benefit of upgradation of Posts subsequent to retirement) - may please be deleted.

*Yours faithfully,*



**(Harchandan Singh)**  
**Secretary General, RSCWS**

*Encl: Copy of Memorandum dated 24-2-2016*

*Copy for information & favourable consideration to:*

Mrs. Vandna Sharma, Joint Secretary, Pension & Pensioners Welfare,  
3rd Floor Lok Nayak Bhawan, Khan Market, New Delhi - 110003. Email: [vandana.sa@nic.in](mailto:vandana.sa@nic.in)



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No. RSCWS/ CHD/Memo/2016-2

Dated: 24-2-2016

Shri Narendra Modi,  
Hon. Prime Minister of India &  
Minister of Personnel, PG & Pensions,  
South Block, New Delhi.

Dear Sir,

Subject: Revision of Pension of Pre 2006 Pensioners – Reg: minimum pension for Pre-2006 Pensioners who retired from posts where pay scales have been merged / upgraded

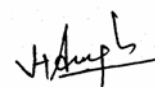
Ref:- i) Resolution of GOI No. 38/37/08-P&PW (A) dated 29-8-08 & OM Dated 1-9-08,  
ii) DOP&PW O.M. F.No. 38/37/08-P&PW (A) dated 3-10-08, 14-10-08 & 11-2-09  
iii) DOP&PW O.M. F.No. 38/37/08-P&PW (A) dated 30-7-2015

We seek your benign intervention in the followingS matter of serious injustice with a section of Pre-2006 Central Government Pensioners:

1. Sixth Pay Commission recommended for “Modified Parity” between Pre-2006 & post-2006 Pensioners. Its Recommendations were accepted by the Cabinet vide Resolution dated 29-8-08 cited above, which inter-alia provided that *“The fixation (of Pension) ..... will be subject to the provision 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 pre-revised pay scale from which the pensioner had retired.”* DOP&PW issued the orders thereon vide OM dated 1-9-08.
2. Later on, DOP&PW made changes in the above said orders (*vide Para 5 of OM dated 11-2-09 cited above*) & inter-alia laid down the condition that *“benefit of up-gradation of posts subsequent to their retirement would not be admissible to the pre-2006 pensioners in this regard.”*
3. The above said condition changed the very nature and content of the decision of the Cabinet notified vide Gazette Notification dated 29-8-2008 as the said Resolution did not provide for it.
4. DOP&PW’s OM dated 11-2-09 has since been quashed by the CAT New Delhi vide OA 655/2010 directed for fixation of Pension as per Resolution dated 29-8-2008.
5. All SLPs of the Government in this regard, against the judgements of the CAT and High Courts, had been conclusively been rejected by the Apex Court vide its judgement dated 17-3-15.
  - a) DOP&PW vide OM dated 28-1-2013 ordered for Revision of Pension of Pre-2006 Pensioners to 50% of minimum of the Pay in the Pay Band plus Grade Pay of the Corresponding to Pre-revised scale w.e.f. 24-9-2012 whereas the decision of the Cabinet on 24-9-2012.
  - b) This order was modified and implemented w.e.f. 1-1-2006 vide DOP&PW OM dated 30-7-15 - as per Orders of the Supreme Court on 17-3-2015.
6. The order dated 30-7-15 only partially implemented the orders of the Courts and the orders are yet to be issued in respect of revision of Pension as per pay scales of merged/upgraded posts.

7. DOP&PW OM No. 38/77-A/09- P&PW(A) Pt. of 5.3.2015 (para 2) says “Hon’ CAT/PB in orders dt. 1.11.2011 directed that the past pensioners may be granted w.e.f. 1.1.2006 C to revise pension of pre-2006 Civilian Pensioners with ref. to Fitment Table for the Post, as adopted for pay fixation of serving employees as on 1.1.2006.”
8. Delhi High Court in W.P.(C) 8012/2013 had held that “policy decision of the Government in the OM dated September 01, 2008 to fix pension for all category of pensioners did not classify post of pre January 01, 2006 retirees and all were entitled to pension as per a common formula”
9. All the above said judgements have been conclusively upheld by the Supreme Court.
10. It is, therefore, requested that Pre-2006 Pensioners be given the benefit of upgraded Pay Band and Grade Pay of the post from which they retired so that, minimum pension be not lower than 50% of the pay in the revised pay band plus the grade pay corresponding to the of the post from which the pensioner retired

Yours faithfully,



Secretary General, RSCWS

**Copy for information & favourable consideration to:**

1. Shri Jatinder Singh, Hon. MOS, GOI, Ministry of Personnel, PG & Pensions, Patel Bhawan, New Delhi
2. Secretary Personnel AG PG & Pension, Patel Bhawan, New Delhi – 110001