



ALL INDIA BHARAT SANCHAR NIGAM LIMITED
RETIRED EXECUTIVES' ASSOCIATION
Central Headquarters

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No. AIBSNLREA/CHQ/2010/02

29.04.2010

To

Smt Rajni Razdan.
Secretary,
Deptt of Pension & Pensioners' Welfare,
Lok Nayak Bhawan,
New Delhi 110 003.

Sub: Payment of pension at 50% of the emolument or average emoluments received during the last ten months, whichever is more beneficial - Extension of the benefit to those retired prior to 01.01.2006.

Ref. : 1) DoP&PW OM No.F.No.38/37/08-P&PW(A) dated 2nd Sept. 2008
2) DoP&PW OM No. F.No.38/37/08-P&PW(A) dated 11th Dec 2008

Madam,

We would like to invite your kind attention to the above quoted OMs issued by Deptt of Pension & Pensioners' Welfare implementing some of the recommendations of the 6th Central Pay Commission in respect of the pensioners. Para 5.2 of the OM, quoted at (1) above, orders for liberalization of the formula for calculation of pension from "average of last 10 months emoluments" to "last emolument or average emoluments received during last ten months, whichever is more beneficial". This liberalized formula was, however, made applicable with effect from 1.1.2006 vide DoP&PW OM dated 11.12.2008 as quoted at (2) above. Thus, the pensioners who retired prior to 1.1.2006 were not extended the benefit under this liberalized formula. Therefore, the pensioners retired prior to 1.1.2006 have been deprived of the benefit of the latest liberalized formula for payment of pension.

2. In this context, we would like to draw your kind notice to the similar situation that occurred during liberalizing the formula for calculation of pension that existed in 1979. By a Memorandum dated May 25, 1979, the Government of India liberalized the formula existed at that time for computation of pension in respect of the employees governed by the Central Civil Services (Pension) Rules, 1972 and made it applicable to the employees retiring on or after March 31, 1979. Prior to issue of this OM for liberalization of the formula for computation of pension, average emoluments of the last 36 months' service of the employee provided the measure to pay pension. By the liberalized scheme introduced in 1979, it was modified to average emoluments of the last 10 months' service.

3. However, some of the past pensioners retired prior to the date of effect of the above liberalized formula, i.e. 31st March 1979, filed a case in Hon'ble Supreme Court of India. In the said case of D.S.Nakara & Others Vs Union of India, the Hon'ble Supreme Court in its Judgement delivered on 17.12.1982 held that all pensioners governed by the 1972 Rules and Army Pension Regulations shall be entitled to pension as computed under the liberalized pension scheme from the specified date, irrespective of the date of their retirement. In this case, the Hon'ble Supreme Court of India found that very part of the Govt. of India's Office Memorandum giving effect to the liberalization of pension with effect from the specified date viz., 31st March 1979 only to the employees retiring on or after that date and denying the benefit to the past pensioners as unconstitutional and also struck down the same. The Hon'ble Supreme Court also held that irrespective of the date of retirement, the liberalized pension scheme should be computed from the specified date i.e. 31.3.1979 for the past pensioners but the arrears of pension prior to the specified date is not admissible. The Government of India implemented the above judgment and benefit of liberalized formula for payment of pension was extended to the past pensioners also i.e. even to those who retired prior to 31.03.1979.

4. In the above background, when the Hon'ble Supreme Court has already laid down a principle regarding applicability of the liberalized formula for payment of pension, there is no reason why the same will not be applied in the present case to the past pensioners who retired prior to 1.1.2006. The present amendment to CCS (Pension) Rules 1972 issued vide OMs dated 2.9.2008 and 11.12.2008 is exactly similar to the one that was made in 1979 so far as their applicability to the past pensioners is concerned.

5. Since the present matter is similar to the one that existed in 1979 so far as their application to the past pensioners is concerned, following issue of OM dated 25.5.1979 and subsequent Order passed by the Hon'ble Supreme Court on 17.12.1982 in the case of D.S.Nakara & Others Vs Union of India allowing the benefit to the past pensioners, we request that the latest modification of pension rules, ordered vide DoP&PW OM dated 2nd September 2008 and 11th December 2008 for payment of pension on the last pay drawn or the average of

the last ten months' pay whichever is more beneficial to the retiring employees, be made applicable to all past pensioners irrespective of the date of their retirement.

With kind regards,

Yours sincerely,



(S Basu)
General Secretary

Copy to:

1. Smt Sushma Nath,
Secretary,
Deptt of Expenditure,
Govt of India, New Delhi.
2. Shri P K Malhotra,
Addl Secretary,
Deptt of Legal Affairs,
Govt of India, New Delhi.