

Eastern Railway

No.E.787/0/Pen/Pt-XXV.

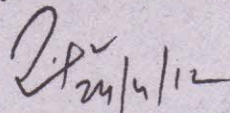
Kolkata, dated 24.04.2012.

ALL CONCERNED

Sub:- Implementation of Government's decision on the recommendations of the 6th Central Pay Commission- Revision of pension of Pre -2006 Pensioners/Family pensioners etc:- Refixation of pension as per Hon'ble CAT, Principal Bench, New Delhi's order dated 01.11.2011.

A clarification with reference to the point raised by this railway regarding implementation of CAT/New Delhi's order dated 01.11.2011 vide this railway's letter of even number dated 19.03.2012 has been given by Board vide Railway Board's letter No.2011/F(E)III/1(1)/14 dated 18.04.2012 on the basis of DOP&PW's OM dated 30.12.2011 and Ministry of Finance's OM dated 27.01.2012. It appears from the clarificatory order of the Board that CAT/New Delhi in its order dated 01.11.2011 given in OA No.655/2010 has held that pre-2006 retirees cannot be extended the same pensionary benefits on the basis of the recommendations of the 6th CPC as the Government has issued two different schemes for pre-2006 and post-2006 retirees. Since DOP&PW, the nodal department of the Government on pensionary matters has not issued any instruction for implementation of the judgment. As such Ministry of Railways being an Administrative Ministry on the pensionary matters is not empowered to take a decision in the matter on its own. However, Board's letters along with copies of DOP&PW's OM & Ministry of Finance OM ibid are circulated for information and necessary action.

DA: As above.


(Md. Tarique)

Asstt. Personnel Officer/H

For Chief Personnel Officer

INDEX No.1058:- Clarification regarding implementation of Hon'ble CAT, Principal Bench, New Delhi's order dated 01.11.2011 in the matter of refixation of pension in respect of pre-2006 pensioners.

Copy of Board's letter No.2011/F(E)III/1(1)/14 dated 18.04.2012 addressed to G.M(P)/E.Rly/Kol. along with DOP&PW's O.M. No.38/37/11-P&PW (A) dated 30.12.2011 and Ministry of Finance's O.M.C-No.2/EV/2011 dt.27.01.2012 are circulated herewith.

Sub:- Implementation of Government's decision on the recommendations of the 6th Central Pay Commission- Revision of pension of Pre-2006 Pensioners/Family pensioners etc.- Refixation of pension as per Hon'ble CAT, Principal Bench, New Delhi's order dated 01.11.2011.

Contd....2/-

GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

No.2011/F(E)III/1(1)/14

New Delhi, 18.04.2012.

The General Manager (P),
Eastern Railway,
Kolkata.

**Sub:- Implementation of Government's decision on the recommendations of
the 6th Central Pay Commission- Revision of pension of Pre-2006
Pensioners/Family pensioners etc.- Refixation of pension as per
Hon'ble CAT, Principal Bench, New Delhi's order dated 01.11.2011.**

Please refer to your Railway's letter No.E.787/0/Pen/Pt-XXV dated 19.03.2012 on the subject.

2. In this regard it is stated that DOP&PW vide their O.M. dated 30.12.2011(Copy enclosed) and Ministry of Finance vide their O.M. dated 27.01.2012(Copy enclosed) have stated that CAT/New Delhi in its order dated 01.11.2011 given in O.A. No.655/2010 has held that pre-2006 retirees cannot be extended the same pensionary benefits on the basis of the recommendations of the 6th CPC as the Government has issued two different schemes for pre-2006 and post-2006 retirees. Department of Pension & Pensioners' Welfare (DOP&PW), the nodal department of the Government on pensionary matters has not issued any instructions for implementation of the CAT/Delhi's order dated 01.11.2011. As such, Ministry of Railways being an Administrative Ministry on the pensionary matters is not empowered to take a decision in the matter on its own.

DA: Two.

Sd/-
(T.P.Sharma)
Dy. Director Finance (Estt.)III
Railway Board

Most Immediate/CAT case

No. 38/ 37 /11-P&PW(A)
Government of India
Ministry of Personnel, P.G. and Pensions
Department of Pension and Pensioners' Welfare

Lok Nayak Bhawan, Khan Market, New Delhi-110 003

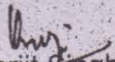
Dated 30th December, 2011

OFFICE MEMORANDUM

Sub: OA NO. 993/2011 filed in CAT, Chandigarh Bench by Sat Pal & others vs. UOI and others

The undersigned is directed to refer to Railway Board's OM No. 2011/F(E)III/1(1)11 dated 26.12.2011 on the above subject and to say that in the above mentioned OA, the Applicants (who are pre-2006 pensioners) have prayed for complete parity with post 1.1.2006 retirees. The matter regarding complete parity between pre and post 1.1.2006 pensioners was also the subject matter of the OA No.3079/2009 and 655/2010 in the Principal Bench of CAT. In its judgement dated 1.11.2011 in the above mentioned OAs, Hon'ble CAT has held that pre-1.1.2006 and post-2006 retirees cannot be extended the same pensionary benefits on the basis of the recommendations of the VI CPC as the Government have issued two different Schemes for pre-2006 and post-2006 retirees. The fact regarding this judgement and the observations of CAT in the judgement need to be brought out in the Counter reply.

2. Subject to the above, the draft reply is in order and the same may be filed in the Central Administrative Tribunal. A copy of the reply filed may be sent to this Department.


(Harjit Singh)

Under Secretary to the Government of India
Tele. No.24644634

Ministry of Railways
Railway Board
(Ms Sukhender Kaur, Joint Director Finance (Estt.),
Rail Bhawan, New Delhi-110001

Contd...4

On file pl
-1-12-57
F(E) III
Mr. Ramesh
5/1/12

(11)

C- No. 2 /EV/2011
Government of India
Ministry of Finance
Department of Expenditure

New Delhi, the 27 January, 2012

OFFICE MEMORANDUM

Subject: O.A. No. 993/2011 filed before CAT, Chandigarh Bench by Sat Pal & 67 others pre 2006 retirees requesting for full parity in pension with post-2006 retirees.

The undersigned is directed to refer to Ministry of Railways OM No. 2011/F(E)III/1(1) 11 dated 13th January, 2012 vide which the draft counter reply was forwarded for vetting by the Department of Expenditure.

2. In this regard it is intimated that the issue of complete parity between pre and post 2006 pensioners was also the subject matter of O.A. No. 3079/2009 and 655/2010 in the CAT, Principal Bench, New Delhi. In its judgement dated 1/11/2011, the Hon'ble Tribunal has held that pre 2006 and post 2006 retirees cannot be extended the same pensionary benefits on the basis of the recommendations of the 6th CPC as the Government has issued two different schemes for pre 2006 and post 2006 retirees. M/o Railways is, therefore, advised to bring out the observations made by the Hon'ble Principal Bench in its judgement dated 1/11/2011 in the Counter reply to be filed in the instant case.

3. Ministry of Railways is also advised to incorporate appropriately the following observations of Department of Expenditure in the Counter reply:

(a) The 5th CPC had enunciated the concept of 'Modified Parity' which has also been adopted by the 6th CPC for revision/consolidation of pre-2006 pensioners. At the same time, with a view to de-layering the Government, the 6th CPC also introduced, for the first time, the concept of pay bands and grade pay. A number of pre-revised scales of pay, which were in operation pre 6th CPC, have, accordingly, been merged into running pay bands. The present disparities that are being referred to by the petitioners are mainly on account of this fact.

Supplement - already
sent to Rly.

② Put up early and file
30/1/12

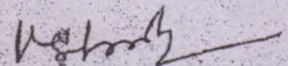
OTI/FEII

30/1

(b) The Government has allowed a uniform fitment benefit of 40% of basic pension in all cases. Over and above this, if the pension, after consolidation falls short of 50% of the minimum of the pay in pay band + grade pay, stepping up is done. In this context, it is logical that when a number of pre revised pay scales are merged into a single pay band it may happen that those individuals who are in the higher pay scales do not get benefits in the same ratio and proportion as those who are in the lower pay scales.

(C) The Pay Commissions are expert bodies and their recommendations are to be accepted as part of an overall package. It, therefore, cannot be anybody's contention that recommendations which are manifestly to the advantage of pensioners shall be wholeheartedly accepted while those which may not yield the same degree of relative benefits are liable to challenged and struck down in Courts of Law. It may also be pointed out that in a catena of judgements, various Courts, including the Apex Court, have held that it is the prerogative of the executive authorities to fix cut-off dates and to determine issues of pay and pension fixation. The Executive takes these decisions based on a variety of considerations including financial, administrative and any other constraints. The Courts do not generally interfere in this regard unless the principles adopted are patently arbitrary or malafide. This is not the case in the present instance. It cannot also be any party's contention that the Executive is bound to take a decision in disregard of the overall financial and macro-economic framework.

4. This issues with the approval of JS(Pers.)



(Vivek Ashish)

Under Secretary to the Government of India

Shri T.P. Sharma,
Dy. Director Finance (Estt.) III,
Ministry of Railways,
Rail Bhavan, New Delhi