

Eastern Railway

No. E.787/0/PEN/Pt.XXVIII.

Kolkata, dated 28.07.2017.

ALL CONCERNED

Sub:-Restoration of full pension of absorbee persioners in view of the order dated 01.09.2016 of Hon'ble Supreme Court in Civil Appeal No.6048/2010 and Civil Appeal No.6371/2010.

Copy of Railway Board's letter no. F(E)III/2005/PN1/23 dated 13.07.2017 (RBE No.69/2017) along with DOP&PW's O.M. 4/34/2002-P&PW(D) Vol.II dated 23.06.2017 on the above subject is sent herewith for information, guidance and necessary action. DOP&PW's OMs no.28016/5/85-Estt.(C) dated 31.01.1986 and no.4(12)/85-P&PW dated 31.03.1987 docketed vide Railway Board's letter dated 16.04.1986 and 25.06.1987 respectively are enclosed. Board's other letters as mentioned therein had been circulated vide CPO's S.L.No.72/93, 94/95, 97/96, 116/2008, 144/2013 and 106/2016.

DA: as above.



(S.K.Chattopadhyay)
Sr. Personnel Officer (HQ& PC)
For Chief Personnel Officer

INDEX NO. 1058: Restoration of full pension in respect of Permanent absorbees will be made as per order of Apex Court dt. 01.09.2016.

Copy of Railway Board's letter no. F(E)III/2005/PN1/23 dated 13.07.2017 (RBE No.69/2017) along with DOP&PW's O.M. 4/34/2002-P&PW(D) Vol.II dated 23.06.2017 addressed to GMs/CAO/s and others is circulated herewith.

Sub: - Restoration of full pension of absorbee persioners in view of the order dated 01.09.2016 of Hon'ble Supreme Court in Civil Appeal No.6048/2010and Civil Appeal No.6371/2010.

Railway Board's letter no. F(E)III/2005/PN1/23 dated 13.07.2017 (RBE No.69/2017) along with DOP&PW's O.M. 4/34/2002-P&PW(D) Vol.II dated 23.06.2017 & no.28016/5/85-Estt.(C) dated 31.01.1986 and no.4(12)/85-P&PW dated 31.03.1987 are enclosed.

Contd....2/-

**GOVERNMENT OF INDIA (BHARAT SARKAR)
MINISTRY OF RAILWAYS (RAIL MANTRALAYA)
(RAILWAY BOARD)**

No. F(E)III/2005/PN1/23

New Delhi, Dated :13.07.2017

The GMs/FA&CAOs,
All Zonal Railways/Production Units,
(As per mailing list)

Subject: Restoration of full pension of absorbee pensioners in view of the order dated 01.09.2016 of Hon'ble Supreme Court in Civil Appeal No. 6048/2010 and Civil Appeal No. 6371/2010.

A copy of Department of Pension and Pensioners' Welfare (DOP&PW)'s O.M. No. 4/34/2002-P&PW(D) Vol.II dated 23rd June, 2017 on the above subject is enclosed for information and compliance. These instructions shall apply mutatis mutandis on the Railways also. The erstwhile Rule 37-A of the Central Civil Services (Pension) Rules, 1972, which corresponds to Rule 54 of the Railway Services (Pension) Rules, 1993, stands omitted vide Board's notification No. F(E)III/2003/PN1/25 dated 20.01.2005.

2. A concordance of DOP&PW's instructions and Railway Board's corresponding instructions is given below:

S.No.	O.M. No. & date of DOP&PW/DOP&T/MoF's orders	Railway Board's corresponding instructions.
1.	O.M. No. 28016/5/85-Estt.(C) dated 31.01.1986	Letter No. F(E)III/86/PN1/5 dated 16.04.1986.
2.	O.M. No. 4(12)/85-P&PW dated 31.03.1987.	Letter No. F(E)III/84/PN1/4 dated 25.06.1987.
3.	O.M. No. 4/43/88-P&PW(D) dated 16.10.1989.	Letter No. F(E)III/92/PN1/25 dated 16.03.1993.
4.	O.M. No. 4/42/91-P&PW(D) dated 31.03.1995.	Letter No. F(E)III/95/PN1/9 dated 10.07.1995.
5.	O.M. No. 4/3/86-P&PW(D) dated 30.09.1996.	Letter No. F(E)III/96/PN1/9 dated 25.10.1996.
6.	O.M. No. 4/38/2008-P&PW(D) dated 15.09.2008.	Letter No. F(E)III/2005/PN1/23 dated 22.09.2008.
7.	O.M. No. 4/30/2010-P&PW(D) dated 11.07.2013.	Letter No. F(E)III/2005/PN1/23 dated 31.07.2013.
8.	O.M. No. 4/38/2008-P&PW(D) dated 04.08.2016.	Letter No. F(E)III/2005/PN1/23 dated 10.08.2016.

3. Please acknowledge receipt.

G. Priya Sudarsani
(G. Priya Sudarsani)
Joint Director, Finance (Estt.),
Railway Board.

D.A.: One.

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F.No. 4/34/2002-P&PW(D).Vol.II
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Pension & Pensioners Welfare
3rd Floor, Lok Nayak Bhavan,
Khan Market, New Delhi
Dated the 23rd June, 2017

OFFICE MEMORANDUM

Subject: Restoration of full pension of absorbee pensioners in view of the order dated 01.09.2016 of Hon'ble Supreme Court in Civil Appeal No. 6048/2010 and Civil Appeal No. 6371/2010.

The undersigned is directed to say that in accordance with the instructions which existed before 31.03.1995, a Government servant, on absorption in a Public Sector Undertaking or an Autonomous Body, had the option to draw pro-rata gratuity and a lump sum amount in lieu of pension. The option regarding payment of lump sum amount in lieu of monthly pension on absorption in a PSU or autonomous body was available in terms of the instructions issued vide Department of Expenditure's O.M. No. 26(18)-E.V(B)/75 dated 08.04.1976, Department of Personnel & Training's O.M. No. 28016/5/85-Estt.(C) dated 31.01.1986 and Department of Pension & Pensioners' Welfare' O.M. No. 4(12)/85-P&PW dated 31.03.1987. This option was also available to Government employees on absorption in PSUs/autonomous bodies of the State Governments and Joint Sector undertakings in terms of this Department's O.M. No. 4/43/88-P&PW(D) dated 16.10.1989. The terms and conditions for absorption of Government employees consequent on conversion of a Government Department into a PSU or autonomous body issued vide this Department's O.M. No. 4/18/87-P&PW(D) dated 5.7.1989 also provided for a similar option of lump sum payment in lieu of monthly pension.

2. In accordance with Rule 37-A of the Central Civil Services (Pension) Rules, 1972, incorporated vide Department of Expenditure's Notification No. 44(1)-E.V./71 dated 09.04.1973, on exercise of the above option, an employee was entitled to a lump sum amount not exceeding the commuted value of one-third of the pension and terminal benefit equal to twice the aforesaid lump-sum amount, subject to the condition that the Government servant surrendered his right of drawing two-thirds of his pension.

3. The option to draw a lump sum amount in lieu of pension was withdrawn vide this Department's O.M. No. 4/42/91-P&PW(D) dated 31st March, 1995. Accordingly, the erstwhile Rule 37-A was omitted from the CCS(Pension) Rules, 1972 vide Notification No. 4/42/91-P&PW(D) dated 25.06.1997.

4. In implementation of the Order dated 15.12.1995 of Hon'ble Supreme Court in WP(C) No. 11855/85, instructions were issued vide this Department's O.M. No. 4/3/86-P&PW(D) dated 30.09.1996 for restoration of one-third commuted portion of pension of Government servants who had drawn lump sum payment on absorption in

a PSU/autonomous body. Further instructions were issued, from time to time, for computation and revision of the one-third restored pension of such absorbee pensioners and for payment of the attendant benefits like dearness relief, etc. to such absorbee pensioners. Orders for revision of the one-third restored pension w.e.f. 01.01.2006 of such absorbee pensioners were issued vide this Department's O.M. No. 4/38/2008- P&PW(D) dated 15/09/2008, O.M. No. 4/30/2010-P&PW(D) dated 11/07/2013. and O.M. No. 4/38/2008-P&PW(D) dated 04/08/2016. These absorbee pensioners were, however, entitled to dearness relief and age-related additional pension based on the notional full pension.

5. Hon'ble High Court of Judicature of Madras, in its judgement dated 02-08-2007 in Writ Petition no. 22207/2002 filed by one Sh. K. Ganesan, an officer in the office of Controller General of Accounts, held that surrendering of the right for drawal of 2/3rd of Pension after its commutation, as provided under Rule 37-A (b), was repugnant to Section 12 of the Pensions Act, 1871 and that the petitioner was lawfully entitled for the restoration of his pension after the expiry of the period of commutation of 2/3rd pension. Hon'ble High Court, accordingly, directed restoration of 2/3rd pension and payment of arrears accordingly.

6. An SLP(Civil) No. 4054/2008 (converted into Civil Appeal No. 6048/2010) was filed by the Union of India challenging the aforesaid order dated 02-08-2007 of Hon'ble High Court of Judicature of Madras. In its order dated 1.9.2016, Hon'ble Supreme Court found no justification to interfere with the order dated 02.08.2007 of Hon'ble High Court directing restoration of 2/3rd pension in respect of the respondent (Shri K. Ganesan), after the expiry of the requisite period of commutation. The Civil Appeal No. 6048/2010 was accordingly dismissed by Hon'ble Supreme Court. In the said judgement dated 1.9.2016, similar direction was passed by Hon'ble Supreme Court in the Civil Appeal No. 6371/2010 for restoration of 2/3rd pension in respect of the petitioners, Shri K.L. Dhall, an absorbed employee of Ministry of Civil Aviation and member pensioners of Welfare Association of Central Government Officers, CAD Absorbed in PSU.

7. Review Petitions No. 465/2017 and No. 472/2017 were filed by Union of India in the Supreme Court against the aforesaid order dated 1.9.2016. Instructions were separately issued to the office of Controller General of Accounts and the Ministry of Civil Aviation vide OM No.4/34/2002-P&PW(D).Vol.II dated 21-12-2016 and OM No. 4/34/2002-P&PW(D).Vol.II dated 21-12-2016 respectively, for implementation of the orders of Hon'ble Supreme Court in respect of the petitioner/respondent pensioners in the aforesaid Civil Appeals, subject to the final outcome of the Review Petitions. The aforesaid Review Petitions No. 465/2017 and No. 472/2017 have been dismissed by Hon'ble Supreme Court on 22.03.2017.

8. The matter has been examined in consultation with the Department of Legal Affairs and the Ministry of Finance (Department of Expenditure). It has been decided to extend the benefit of order dated 02-08-2007 of the Hon'ble Madras High Court and the Order dated 01-09-2016 of the Hon'ble Supreme Court to all similarly placed absorbee pensioners. Accordingly, all such absorbee petitioners who had taken 100%

lump-sum amount in lieu of pension on absorption in PSUs/Autonomous Bodies in accordance with the then existing Rule 37-A and in whose case 1/3 pension had been restored after 15 years, may be allowed restoration of full pension after expiry of commutation period of 15 years from the date of payment of 100% lump-sum amount.

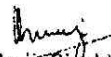
9. The absorbed pensioners whose full pension is restored in terms of the above instructions would also be entitled to revision of their pension in accordance with the instructions issued from time to time in implementation of the recommendations of the Pay Commissions, including the 7th Central Pay Commission.

10. In their application to the persons belonging to the Indian Audit and Accounts Department, these orders issue in consultation with the Comptroller and Auditor General of India.

11. Ministry of Agriculture etc. are requested to bring the contents of these Orders to the notice of Controller of Accounts/Pay & Accounts Officers and Attached & subordinate Offices under them on a top priority basis and for taking necessary action for implementation of the above instructions. All pension disbursing offices are also advised to prominently display these orders on their notice boards for the benefit of pensioners.

12. This issues with the approval of Ministry of Finance (Department of Expenditure) vide their ID Note No.1(11)/EV/2017 dated 26-05-2017 and dated 13-6-2017.

13. Hindi version will follow.


(Harjit Singh)
Director

Tel. No. 24624752

To

All Ministries/ Departments of Government of India (As per standard mailing list)

Copy to :

- (1) Comptroller and Auditor General of India, Pocket-9, Deen Dayal Upadhyaya Marg, New Delhi-110 124.
- (2) Controller General of Accounts, Mahalekha Niyantrak Bhawan, GPO Complex, Block E, Aviation Colony, INA Colony, New Delhi-110003.
- (3) Chief Controller (Pension), Central Pension Accounting Office, Trikot-II, Bhikaji Cama Place, New Delhi - 110 066.
- (4) CMDs of All Pension Disbursing Banks.
- (5) NIC, DoP&PW for uploading on the Website.

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No.28016/5/85-Estt.(C)
Government of India
Ministry of Personnel,
Public Grievances & Pensions
[Department of Personnel & Training]

New Delhi, the 31st January, 1986

OFFICE MEMORANDUM

Sub:-Appointment of Central Government servants in the Central Public Enterprises on immediate absorption basis - terms and conditions of.

The undersigned is directed to say that instructions were issued vide the Ministry of Finance (Bureau of Public Enterprises) OM No.5(25)/83-B.P.E.(PESB), dated 6.3.1985 to the effect that save in the exceptional cases mentioned therein, deputation of Central Government servants to the Central Public Enterprises would not be allowed and the officers could join the enterprises only on immediate absorption basis. The modalities of appointment of Government servants in the enterprises after the issue of these instructions as also the question of granting terminal benefits to the Government servants going over to the enterprises on immediate absorption basis has been under consideration of the Central Government and it has been decided that the appointment of Government servants in the Central Public Enterprises will be on the following terms and conditions:-

1) Release of the Government servants for appointment in the enterprises:

A Government servant who has been selected for a post in a Central Public Enterprise may be released only after obtaining and accepting his resignation from the Government service.

2) Retention of lien/quasi-permanent status:

No lien/quasi-permanent status of the Government servant concerned will be retained in his parent cadre. All his connections with the Government will be severed on his release for appointment in an enterprise and he will not be allowed to revert to his parent cadre.

3) Pay fixation:

A Government servant selected for a post in a Central Public Enterprise will be free to negotiate his emoluments with the enterprise. On appointment to a post in a public sector enterprise on immediate absorption basis, a Government servant will be at par with other employees of the enterprise and will be governed by the rules of the enterprise in all respects.

4) Pensionary benefits:

i) Resignation from Government service with a view to secure employment in a Central public enterprise with proper permission will not entail forfeiture of the service for the purpose of retirement/terminal benefits. In such cases, the Government servant concerned shall be deemed to have retired from service from the date of such resignation and shall be eligible to receive all retirement/terminal benefits as admissible under the relevant rules applicable to him in his parent organisation.

ii) The officer eligible for pension should exercise an option within 6 months of the date of his resignation for either of the following two alternatives:-

- a) Pro-rata monthly pension and death-cum-retirement gratuity as admissible under the relevant rules.
- b) Pro-rata gratuity and a lumpsum amount in lieu of pension worked out with reference to the commutation tables applicable on the date of resignation.

NOTE: Where no option is exercised within the prescribed time limit, the officer will be governed by alternative (a) above. Option once exercised shall be treated as final.

iii) Any further liberalisation of pension rules decided upon by Government after the date of resignation of a Central Government servant to join the public enterprise will not be extended to him.

iv) A Government servant who opts for pro-rata monthly pension on his resignation from Government service will not be entitled to relief on pension during his service in the public enterprise.

5) Leave:

A Government servant taking up an appointment in a Central public enterprise will be entitled to encashment of earned leave to his credit at the time of acceptance of his resignation from Government service, subject to a limit of 180 days. Half pay leave will stand forfeited.

6) Family pension:

If there is no family pension scheme in a public enterprise, or if the officer does not become eligible to join family pension scheme in the enterprise, the family pension as admissible under the Central Government will be allowed to him.

2. For the purpose of these instructions immediate absorption means acceptance of resignation of an officer from Government service to enable him to take up an appointment in a Central public enterprise, for which he had applied with proper permission.

3. Since the terminal benefits mentioned above are admissible only to those officers who leave Government service to secure employment in the enterprise, with proper permission, a case of grant of these benefits may be processed only after ascertaining from the enterprise concerned that the officer has actually joined them.

4. The stipulation of 'immediate absorption' will apply to all appointments of Central Government servants in the Central public enterprises, irrespective of the level of appointment, the mode of recruitment, and whether an appointment is in public interest or otherwise, but subject to the exceptions made in the OM dated 6.3.1965 referred to above.

5. For the purpose of these orders, a Central public enterprise is an undertaking wholly or substantially owned by the Government of India, and which is accepted as such by the Bureau of Public Enterprises.

6. The terminal benefits etc. enumerated in para 1 above will be admissible to all Central Government servants, who secure appointments in Central public enterprises with proper permission. A Government servant selected for appointment in an enterprise on the basis of an application submitted by him before joining the Government service will be deemed to have applied with proper permission for the purpose of these orders.

7. All existing instructions on the subject will stand amended/ superseded to the extent indicated in the preceding paragraphs. Formal amendments in the statutory rules, where considered necessary, will be carried out in due course.

8. All cases of grant of pensionary benefits etc. to Government servants, who are appointed in the Central public sector enterprises on immediate absorption basis, shall be decided by the administrative Ministries/Cadre Controlling Authorities/Authorities competent to accept resignation of a Government servant in accordance with provisions of this OM. All other cases not covered under the provisions of this OM or which require relaxation of any provision should continue to be referred to the Bureau of Public Enterprises with necessary service particulars. Cases of doubtful nature also should continue to be referred to the Bureau of Public Enterprises.

9. The Ministry of Home Affairs, etc. may please bring these orders to the notice of all concerned including the public enterprises under their administrative control.

10. So far as the officers serving in the Indian Audit and Accounts Department are concerned, these orders are being issued after consulting the Comptroller & Auditor General of India.

11. These orders take effect from 6.3.1985.

12. This issues with the concurrence of the Ministry of Finance (Department of Expenditure) and the Department of Public Enterprises.

13. Hindi version will follow.

Sd/-
(A.Jayaraman)
Director

To

1. All Ministries/Departments/Offices of the Government of India as per the standard list.
2. Office of the C&AG, New Delhi.
3. All attached and subordinate offices of the (i) Ministry of Personnel, Public Grievances & Pension, and (ii) Ministry of Home Affairs.
4. All Offices and Sections of the (i) Ministry of Personnel Public Grievances & Pensions, and(ii) Ministry of Home Affairs.

No.4(12)/85-P&PW
Government of India
Ministry of Personnel, P.G. & Pensions
(Department of Pension and Pensioners' Welfare)

New Delhi, dated, the 31st March 1987

OFFICE MEMORANDUM

Subject: **Parity in the matter of payment of pro-rata retirement benefits to the Government servants permanently absorbed in the Central Public Sector Undertakings and Central Autonomous Bodies.**

The undersigned is directed to say that at present the terms and conditions of permanent absorption of Central Government employees in the Central Autonomous Bodies are regulated by the instructions contained in the Ministry of Finance (Department of Expenditure) O.M. No.26(18)-EV(B)/75 dated the 8th April, 1976, as amended from time to time. The terms and condition of those Government servants who are absorbed in the Central Public Undertakings are regulated by the instructions issued vide Department of Personnel and Training O.M.No.28016/5/85-Estt.(C) dated the 31st January, 1986. Since there were certain disparities in the terms and conditions of absorption in the two organisations, the question of bringing about parity has been under the consideration of Government. The President is now pleased to decide as follows: -

- (i) The terms and conditions of absorption of Central Government employees in the Central Autonomous Bodies will be, as applicable to those permanently absorbed in the public sector undertakings. In both the cases the instructions laid down in the Department of Personnel and Training O.M. No.28016/5/85-Estt.(C) dated the 31st January, 1986, referred to above, will apply;
- (ii) Those absorbed in the autonomous bodies having pension scheme shall have an option to receive pro-rata retirement benefits or continue to have the benefit of combined service under the Government and in the autonomous body subject to the conditions laid down in the Department of Personnel and AR's OM No.28/10/84-PU dated the 29th August, 1984 and 12th September, 1985. Such option should be exercised within six months from the date of permanent absorption. In case no option is exercised within stipulated period, he will be eligible for pension based on combined service.
- (iii) Encashment of earned leave shall be admissible upto the maximum limit of 240 days. Half pay leave will stand forfeited.
- (iv) In respect of officers who are already on deputation to autonomous bodies, the existing terms and conditions of their deputation will operate and no extension of deputation beyond the period specified in their deputation orders should be allowed. In case a Government employee does not return to his parent Department during or after the sanctioned deputation period, he will be deemed to have been permanently absorbed in the autonomous body on the date of expiry of deputation period.

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All existing instructions on the subject will stand amended/superseded to the extent indicated in the preceding paragraphs. Formal amendments in the statutory rules, where considered necessary, will be, carried out in due course.

3. All cases of grant of pensionary benefits etc., to Government servants who are appointed in the Central Autonomous Bodies on immediate absorption basis shall be decided by the Administrative Ministries/Cadre Controlling Authorities/Authorities competent to accept resignation of a Government servant in accordance with provisions of this O.M. If any question arises regarding the interpretation of these instructions or requiring relaxation or if there is any doubt, the question should be referred to the Department of Pension and Pensioners' Welfare.
4. These orders will, however, not be applicable in the cases of those Government servants whose Departments have been converted into a Central Autonomous Body or a Central Public Sector Undertaking. Their cases are covered by different set of orders on the subject.
5. For the purpose of these orders, a Central Autonomous Body is generally a non-profit making organisation, which is financed wholly or substantially from cess or Central Government grants. "Substantially" means that more than 50% of the expenditure of the autonomous body is met through cess or Central Government grants. As autonomous body may be a society registered under the Societies Registration Act, 1860 or a statutory body or a Central university having its own governing council whose memorandum of association/bye-laws etc., contain provision for complying with Government directives for carrying out its business in achieving the objectives for which the organisation is established.
6. The Ministry of Home Affairs etc., may please bring these orders to the notice of all concerned including the autonomous bodies under their administrative control.
7. These orders will take effect from the date of issue.
8. In so far as persons serving in the Indian Audit and Accounts Departments are concerned, these orders issue with the concurrence of the Comptroller and Auditor General of India.

Sd/-
(HAZARA SINGH)
Under Secretary to the Government of India