

SYNDICATE BANK PENSIONERS & RETIREES ASSOCIATION (REGD.)

(Affiliated to AIBPARC)

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Cir No. 9/2020

(Please circulate to all members/retirees)

Date: 18/5/2020

Dear Comrades,

COMMUTATION ARREARS IN DA ANOMALY CASE AIBPARC SEEKS PROPER IMPLEMENTATION OF SC ORDER AND CLARIFIES ON COMMENCEMENT OF RECOVERY

Many of the banks are yet to implement the Supreme Court order in the matter of DA merger anomaly. Some banks have paid arrears on difference of Basic Pension and DA but are yet to pay consequential difference of commutation. (Our Bank has paid arrears as well as commutation difference) Further in the case of payment of commutation arrears the recovery of commuted portion has been made with retrospective effect. This is wrong and needs to be corrected. AIBPARC has now written to IBA clarifying on all the technicalities involved and sought implementation of the Supreme Court order duly and expeditiously. Text of Letter 37/20 of AIBPARC dated: 18.05.2020 is appended hereunder for information of all.

With greetings

Yours comradely,

C Gangadhar Yadav

GENERAL SECRETARY

**SBPRA - ZINDABAD
AIBPARC - ZINDABAD
CBPRO - ZINDABAD**

Text of Letter 37/20 of AIBPARC dated: 18.05.2020 Quote//

To

Shri Sunil Mehta,

Chief Executive,

Indian Bank's Association

Mumbai

Dear Sir,

Sub: Pension arrears on pension revision on merger of DA at 1684 points

Ref: i) Supreme Court Judgement dated 13/2/2018 in Civil Appeal No.5525 of 2012
(Bank of Baroda Vs. Mr. G.Palani & Ors)

ii) Supreme Court Order dated 28/8/19 in Contempt Petition (C)Nos. 209- 311/ 2019
filed by Mr. H G Srinivas Prasad, etc, against Chairman, SBI

iii) Your Letter No. HR & IR/2018-19/G2/4786 dated 3/4/2018

iv) Your Letter No. HR & IR/2019-20/SKK/G2 dated 4/6/2019

addressed to UCO Bank, United India Bank of India and Andhra Bank

In spite of the unambiguous communication vide the captioned letters from your office to implement the Supreme court judgement in the captioned Civil Appeal No.5525 of 2012, there is partial and/or faulty implementation of the judgement by many banks. Even after the Supreme Court's order in the captioned contempt petition against SBI, many banks are delaying or denying the entitlement ordered by the Supreme Court. Banks can form a legal view on any matter and litigate but once the court decided the matter, that too the highest court, banks are expected to comply and not invite contempt of the court.

In Contempt Petition (C) No. 928 of 2016 In (Transfer Case (C) No.95 of 2015) and Contempt Petition (C) No.59 of 2017 In (Transfer Case (C) No.95 of 2015) of GIRISH MITTAL Vs. PARVATI V. SUNDARAM & ANR, the Supreme Court held on 26/4/2019, **"9. We do not agree with that a contempt petition is maintainable only at the behest of a party to the judgment. The directions issued by this Court are general in nature and any violation of such directions would enable an aggrieved party to file a contempt petition."**

You will appreciate that no bank shall, therefore, risk the embarrassment of a contempt petition being filed against its CEO/MD by any anxious aggrieved retiree.

1) Pension revision arrears to those retired between 1/11/2002 and 30/04/2005

Many banks are refusing to extend the benefit of the Supreme Court judgement to the above retirees under the mistaken notion that the judgement covers only those who retired between 1/4/98 and 31/10/2002. The very basis of payment of pension on notional basic pay by merger of DA at 1616 points instead of actual basic pay on merger of DA at 1684 points from 1/4/1998 was due to insertion of Explanation (c) to Reg 2(s) of Bank Employees Pension Regulations, 1995.

The above cited Supreme Court judgement struck down Explanation (c) to Reg. 2(s) as being arbitrary and repugnant to other provisions/Regulations namely 2(d), 38(1)(2). Hence arrears have been paid to all those who retired between 1/4/1998 and 31/10/2002. All those who retired between 1/11/2002 and 30/4/2005 have been similarly affected by this **Explanation (c) to Reg. 2(s)** and as similarly placed retirees, they should also get the benefit of the above judgement of the Supreme Court.

You will therefore appreciate that the retirees between 1/11/2002 and 30/4/2005 are also entitled to receive pension arrears and commutation arrears on actual basic pay without having to file contempt petitions as aggrieved retirees. Pre May, 2005 retirees being mostly 70 years and above is itself a good enough reason for immediate disbursement of their entitlement. Kindly do the needful.

2) Payment of differential commutation arrears

Consequent upon above pension revision, the commutation already made and paid had to be recomputed for the revised basic pension and arrears have to be paid. Many banks are yet to pay commutation difference arrears and even the few banks who paid have not followed a uniform principle.

Hon'ble Supreme Court's judgement in the captioned Civil Appeal No. 5525 of 2012 stated, "34.

Thus, we set aside the judgment rendered by the High Court of Delhi and affirm that of High Courts of Karnataka at Bangalore and the High Court of Madras. The

appeals filed by the Banks are dismissed and the appeal filed by the Association is allowed. Resultantly, let the amount which was due and payable be paid with 9% interest, be calculated and paid within four months from today.

Referring to Karnataka High Court judgement, the Supreme Court in Contempt Petition (C) Nos. 209- 311/ 2019 stated, “ 6. **There is clear and categorical direction that after the retirement of the petitioners they ought to have been paid the correct value of the pension. Precisely, direction has been made to make the revised correct value of commuted pension that would relate back to the date of the retirement....in view of the clear and categorical order passed by the High Court which has been affirmed by this Court..... It is assured to us**

that the payment would be made within four weeks. Let the payment be made, as assured, within four weeks and compliance be reported within six weeks. In case the compliance is not reported by the respondents, they shall be liable for further proceedings under the contempt of Court by this Court.”

It is therefore clear that the revised correct value of pension has to be paid and that commutation shall relate back to the date of the retirement. Of course, when a portion of pension is commuted, the same has to be recovered from monthly pension over a period of 15 years. The moot question is the determination of the date of commencement of monthly recovery from the retirees. Banks that have so far paid commutation difference arrears have reckoned monthly recovery to commence from the month after retirement, in which case the whole amount to be recovered is past due and payable from the retirees to the banks. Hence these banks have recovered the same in one lump sum from out of the commutation difference arrears and some of them recovered it at 9% interest. Commencement of recovery has been wrongly reckoned by these banks in violation of the Supreme Court order and Bank Employees Pension Regulations, 1995 read in conjunction with Central Civil Services (Commutation of Pension) Rules, 1981. It can be seen from the Regulations that commutation value relates to the date of retirement while recovery commences only after the actual payment of commutation to a retiree. **In other words, the recovery is not past due and payable but becomes due and payable in future over the next 15 years following the actual payment of commutation of a retiree.** Further the court ordered payment of interest to the retirees and not recovery of any amount from retirees with interest

In the present instance, Commutation difference arrears though computed in relation to the date of retirement are paid /to be paid only now and are therefore governed by the current proviso clause to Reg. 41(6) of Bank Employees Pension Regulations, 1995 that states, **“Where, however, payment of commuted value of pension could not be made within the first month after the date of retirement or within the first month after the date when the commutation becomes absolute as the case may be, the difference between the normal monthly pension and the commuted pension shall be paid for the period between the date on which commutation becomes absolute and the date preceding the date on which commuted value of pension is deemed to have been paid.”**

The above proviso clause requires that in case of delay in paying commuted value of pension , the difference between the normal pension and commuted pension (i.e. the monthly pension payable on account of deducting commuted portion) shall be paid from the date of retirement till the date of actual payment of commuted value of pension.

If, however, a doubt exists despite the above proviso clause, then reference has to be made to Central Civil Services (Commutation of Pension) Rules, 1981.in terms of Reg.56 of Bank Employees Pension Regulations,1995.

The proviso clause to **Rule 6** therein states that the reduction in the amount of pension **becomes operative only after actual receipt of commuted value of pension.** The Proviso clause to Rule 6 is reproduced here under:

(a) in the case of an applicant who is drawing his pension from a treasury or Accounts Officer, the reduction in the amount of pension on account of commutation shall be **operative from the date of receipt of the commuted value of pension** or at the end of three months after issue of authority by the Accounts Officer for the payment of commuted value of pension, whichever is earlier, and

(b) in the case of an applicant who is drawing pension from a branch of a nationalized bank, the reduction in the amount of pension on account of commutation shall be **operative from the date on which the commuted of pension is credited** by the bank to the applicant's account to which pension is being credited.

The Proviso clause to **Rule 10 A** states, **"when the commutation amount was paid on more than one occasion on account of upward revision of pension, the respective commuted amount of pension shall be restored on completion of fifteen years from the respective date(s)."**

Bank Employees Pension Regulations, 1995 require monthly recovery of commuted value of pension **to commence only subsequent to the date of actual receipt of Commutation amount and not** when commutation became absolute. So, the 15 year monthly recovery of commutation amount is not past due to attract interest. As monthly recovery becomes due and payable only after receipt of commutation value and not earlier, there can be no recovery of any interest on the amount to be recovered.

In fact, State Bank of India too, in consequence of above contempt petition, followed the principle of commencing commutation recovery only after the date of payment of commutation.

In view of the above, kindly convey instructions to all member banks to pay commutation arrears with interest and commence monthly recovery of commuted value only after receipt of commutation value by those who retired between 01/04/1998 and 30/4/2005.

With regards,
Yours Sincerely,

Sd/-
K.V.Acharya
PRESIDENT

Sd/-
S.Sarkar
General Secretary //Unquote