

# STATE BANK RETIRES' ASSOCIATION

Federation of Erstwhile  
Associate Bank Retirees' Organisations



Ref: JN&BPS/SI/406

Date: 23rd February, 2021

The Deputy Managing Director  
& Chief Development Officer,  
State Bank of India,  
Mumbai

Respected Sir,

## **Payment of arrears of Pension – 11th Bipartite Settlement/8th Joint Note dated 11.11.2020 – Reduction of Commutation from the date of payment, instead of date of retirement.**

We invite your kind reference to your Circular letter No.HR/IR/RP/2020-21/1999 of the 22nd instant. Further, some of those who retired on or after 01.11.2017 have received the following Message :

“Pensioners who don't want to commute pension on a/c of XI BPS kindly forward consent letter to PPG before 15.03.2021 through Pension drawing Branch. Team PPG”

In this regard, we request you to kindly refer to Bank's Circular No. CDO/P&HRD-PPFG/5/2017 – 18 dated 13.04.2017. This Circular is issued after the merger of remaining five erstwhile Associate Banks. This is also subsequent to bringing provisions in Pension Regulations with regard to recovery of commutation amount from the dates subsequent to the dates of credit of commutation amounts, when the commutation amount is paid in more than one occasion to the notice of executives including the then Deputy General Manager (PPFG) during the meeting we had with Senior Executives from Corporate Center at Gurugram on the 22<sup>nd</sup> March, 2017. It is informed in this Circular that :

*5. Commutation amount applied with pension will be automatically paid by HRMS on pension payment dates, however, commutation sanctioned by the appropriate authority separately will be updated by Local Head Office, PPG Department and will be paid along with current month's pension. **Recovery on account of commutation will be made for 15 years from the month of payment of commutation amount** (Emphasis supplied)*

We request you to kindly recover/reduce commutation amount of differential Basic Pension from the date subsequent to the date of payment of differential Commutation amount in terms of above instructions of the Bank.

Further, we invite your kind reference to the Circular letter from Indian Banks Association vide HR&IR/KU/2015-16/G2/1506 dated 17.10.2015, addressed to HR Heads of Public/Private Sector Banks which are parties to Pension Settlement dated 29.10.1993. A copy of this Circular letter is also enclosed for your information. In the said letter, Indian Banks Association has extracted from the Judgment of Hon'ble High Court of Punjab & Haryana in



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LPA No.789/2012 & other connected matters, with regard to applicability of provisions of Central Civil Services (Commutation of Pension), 1981 to Bank Pensioners in terms of Regulation 56 of Bank Employees' Pension Regulations, 1995. The relevant portion is extracted hereunder:

**24.** A perusal of Clause 12 of the settlement makes it abundantly clear that it only provides for further negotiations as regards "*applicability, qualifying service, amounts of pension, payment of pension, commutation of pension, family pension, updating and other general conditions etc.*" and cannot be read to provide for updation of pension. Similarly, Regulation 56 deals with a situation where a doubt arises in the matter of application of the pension scheme and mandates to clear that doubt by referring to the "*corresponding provisions of Central Civil Services Rules 1972 or Central Civil Services (Commutation of Pension) Rules, 1981 applicable for Central Government employees with such exceptions and modifications as the Bank, with the previous sanction of the Central Government, may from time to time determine.*" No such doubt is shown to exist as could necessitate a reference to corresponding provisions of Central Civil Services Rules 1972 or Central Civil Services (Commutation of Pension) Rules, 1981 applicable for Central Government employees. . . . (Emphasis Supplied)

We are also extracting from Rule 10 A of the Central Civil Services (Commutation of Pension) Rules, 1981 for your immediate reference:

## **10 A. Restoration of Commuted Pension –**

"The commuted amount of pension shall be restored on completion of fifteen years from the date the reduction of pension on account of commutation becomes operative in accordance with rule 6:

*Provided that 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)"*

We are also enclosing copies of the Judgment of Hon'ble Supreme Court in **R. Gandhi v. Union of India** (1999) 8 SCC 106 and Judgment of Hon'ble High Court of Delhi in **M. R. Tundwal Vs. Union of India & Ors** (2015 SCC Online Del 10089), for your immediate reference.

This issue of reduction/recovery of Commutation is also being agitated, both in Contempt Petition (Dairy No.13216 of 2020) before Hon'ble Supreme Court and in Writ Petition No.11067 of 2020 before Hon'ble High Court of Karnataka by All India Retired Bank Employees' Association. State Bank Retirees' Association is the Respondent No.14 in the Writ Petition. Notice by Hon'ble High Court of Karnataka has indeed been delivered and Hon'ble Court has restrained Respondent Banks, including our Bank (Respondent No.11) from any amount from out of commutation that was paid to petitioners. We also understand that reduction/recovery from differential commutation payable in view of revision in Salary on account of 11th Bipartite Settlement is also being agitated before the Hon'ble High Court of Karnataka.

We request you to kindly order reduction/recovery of Commutation amount payable consequent to implementation of Bipartite Settlement/Joint Note dated 11.11.2020, only from



# State Bank Retirees' Association

the pension payable during the month/succeeding month of payment, but not from the date of retirement. The Bank has already sanctioned commutation of one third of 'Pay', at the time of retirement. Enhanced amount of 'Pay' on account of salary revision is a part of the 'Pay'. The Bank is also aware of the legal position, as the Bank is paying pension of Central/State/Defence/Railways, etc through CCPC and officials working are well versed in this aspect. Please revisit obtention of option for opting out of commuting, only after the decision in this regard is taken.

Therefore, we request you to kindly order reduction/recovery of Commutation amount payable consequent to implementation of Bipartite Settlement/Joint Note dated 11.11.2020, only from the pension payable during the month/succeeding month of payment in view of irrefutable legal position. We do hope that our Bank will uphold rule of law. Kindly do the needful.

Please acknowledge receipt.

Thanking you,

With regards,

(Prasad C N)  
General Secretary

## *e-Circular*

P&HRD.

Sl. No. : 60/2017 - 18

Circular No. : CDO/P&HRD-PPFG/5/2017 - 18

Thursday, April 13, 2017.

23 Chaitra 1939 (S).

### **All Offices/Branches of State Bank of India**

Madam / Dear Sir,

#### **SHIFTING OF PAYMENT AND PROCESSING OF PENSION FROM CENTRALISED STAFF PENSION PROCESSING CELL(CSPPC) TO HRMS**

We refer to e-Circular No. CDO/P&HRD-PPFG/22/2012-13 dated 25<sup>th</sup> July, 2012 and e-Circular No. CDO/P&HRD-PPFG/69/2015-16 dated 9<sup>th</sup> November, 2015.

2. Pension and family pension of employees of State Bank of India, Imperial Bank of India, Erstwhile State Bank of Saurashtra and Erstwhile State Bank of Indore are being processed and paid through CSPPC, Kolkata. It has now been decided to shift the processing and payment of pension to HRMS Department from April, 2017.
3. From the financial year 2017-18, Pension/ Family Pension will be paid on 27<sup>th</sup> of every month by HRMS Department. A Pension Slip will be e-mailed to the pensioner every month in his / her registered email address.
4. The Pension/ Family Pension proposals generated through HRMS will automatically be processed for payment in HRMS on approval at Corporate Centre. The proposals done outside HRMS due to non-availability of details in HRMS & data modification like arrears/recovery will be entered by PPG Departments, Local Head Office and need not be sent to CSPPC, Kolkata.
5. Commutation amount applied with pension will be automatically paid by HRMS on pension payment dates, however, commutation sanctioned by the appropriate authority separately will be updated by Local Head Office, PPG Department and will be paid along with current month's pension. Recovery on account of commutation will be made for 15 years from the month of payment of commutation amount.
6. New link for pensioner's data entry such as PAN & AADHAAR, Death Reporting, and Life Certificate has been provided under the link

Employee Benefits/Pension, PF & Gratuity (For Maker) and under the link Manager Approvals/ Pension, PF & Gratuity (For Checker) in HRMS portal.

7. Manual for Pensioner's Portal has been linked with Pensioner's Self Service. Manual for Maker-Checker has been linked with Employee Benefits/ Pension, PF & Gratuity. Manual for PPG, LHO will be provided by HRMS department.
8. The Branch has to enter the details of the PAN/ AADHAAR/ life certificate/ Death Certificate submitted by the pensioner / family pensioner by logon to HRMS Portal through maker ID (Maker can be any employee of the branch except checker), and the approver has to approve the respective request by logon through checker ID (Checker will be 4in1/3in1/2in1 approver and Branch Manager).
9. On receipt of report of death of the Pensioner/ Family Pensioner, the pension paying branch has to record the "date of death" in the HRMS portal and authorize the same. This will temporarily suspend the pension payment. Death certificate along with other documents, if any, are to be sent to PPG Department, Local Head Office for further action such as conversion to family pension, permanently stopping pension payment etc. In cases where death of the pensioner is reported late, recovery of excess pension paid will remain the responsibility of the pension paying branch/ PPG Department at LHO. Payment of arrears and recovery, if any, from pension will be updated by PPG department, Local Head Office.
10. The Pensioner can update non-financial data such as Mobile No. / E-mail ID / Communication details through HRMS Portal and need not be advised to Branches or PPG department, Local Head Office.
11. Pension slip/ PAN/ AADHAAR can be viewed and investment details can be filled/ updated by Pensioners through HRMS portal. Branches can also view pension slip on behalf of pensioner through HRMS Portal. LHO PPG can also view / print pension slip.
12. Conversion of Pension into family pension, updating family details, revision of pension for non-revised cases, and any other data correction in pensioner's profile which cannot be done at branch level will be updated by LHO PPG in HRMS.
13. Form-16 will be made available to the pension paying branches at the end of the financial year. Pension paying branches will print the Form 16 and provide a duly signed copy to the pensioner. The pension paying branches will be responsible for verifying the proof of investments made by the pensioner for tax purposes.
14. Income tax on pension paid will be recovered & remitted to the branches in terms of the Income Tax Act.

15. For Pensioner's, HRMS Portal user ID will be the PF Index number and default password will be hrms@123 which needs to be changed at first logon.

Please arrange accordingly and bring the contents of this circular to the notice of all concerned.

Yours faithfully,

(Prashant Kumar)

**Deputy Managing Director and  
Corporate Development Officer**



## Indian Banks' Association

### HR & INDUSTRIAL RELATIONS

Cir No.HR&IR/KU/2015-16/G2/1506  
October 17, 2015

### HR Heads of Public Sector/Private Sector Banks which are parties to Pension Settlement dated 29.10.1993

Dear Sir/Madam,

### LPA No.789/2012 & LPA 71, 80, 109, 110 & 338/2013 before the High Court of Judicature for the states of Punjab & Haryana, at Chandigarh on "Updation of Pension" – Judgement dated 9.9.2015

The above referred Letters Patent Appeal (LPAs) were filed by P C Jain, M C Singla & Other, L R Singla, the Oriental Bank Retired Officers Association, the Punjab & Sind Bank Retired Employees Welfare Association and the Punjab & Sind Bank Retired Officers Association before the High Court Judicature for the States of Punjab & Haryana at Chandigarh.

The appellants put forth in the LPAs that there has been no updation of their pension in the manner contemplated at the time when pension scheme was introduced in the year 1995 pursuant to a settlement reached between the bank employees and the Management (through IBA) on 29.10.1993.

Extracts of the Judgement is reproduced below:

"...24) A Perusal of Clause 12 of the Settlement makes it abundantly clear that it only provides for further negotiations as regards "applicability, qualifying service, amounts of pension, payment of pension, commutation of pension, family pension, updating and other general conditions etc." and cannot be read to provide for updation of pension. Similarly, Regulation 56 deals with a situation where a doubt arises in the matter of application of the pension scheme and mandates to clear that doubt by referring to the "*corresponding provisions of Central Civil Services Rules 1972 or Central Civil Service (commutation of pension) Rules, 1981 applicable for Central Government employees with such exceptions and modifications as the Bank, with the previous sanction of the Central Government, may from time to time determine*". No such doubt is shown to exist as could necessitate a reference to corresponding provisions of CCS Rules 1972 or CCS (Commutation of Pension) Rules, 1981 applicable for Central Government employees. Thus Regulation 56 cannot be treated to confer certain benefits upon the appellants, which the RBI's

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Regulations or the CCS Pension Regulations provided for . Further, Clause 17 of the settlement provides that if there is difference of opinion with regard to interpretation of any of the provisions of the settlement , the matter can be taken up at the level of IBA and All Indian Bank Employees Association for discussion and settlement. Presumably this clause impelled the learned Single Judge to observe that it would be open for the applicants to make demand for parity if they are so advised and use their bargaining skills through their associations.

25) Ad finem, a word about minutes of meeting dated 26.3.1994 of the Small Committee on Pension whereby it is said to have been accepted that formula for updating pension should be on the lines of same given in Reserve Bank's Pension Scheme. Discussions held and agreements reached in this meeting, in our view, are nothing more than parleys preliminary to the final decision which came in the form of pension scheme of 1995. Therefore, the minutes cannot vest the appellants with a right to claim parity with employees of Reserve Bank of India. It may be hastily added here that it is the specific stand of the respondents in the written statement that even Reserve Bank of India has withdrawn the order of updation of pension and the matter is pending adjudication before Bombay High Court. This assertion has not been disputed by the appellants by filing a replication to the written statement.

26) Thus, viewed from all angles, appeals are found to carry no substance and are, therefore, dismissed."

A copy of the Judgement is enclosed for your perusal and record.

Yours faithfully,



**K UNNIKRISHNAN**  
**DEPUTY CHIEF EXECUTIVE**

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SUPREME COURT CASES

(1999) 8 SCC

**(1999) 8 Supreme Court Cases 106**

(BEFORE K. VENKATASWAMI AND SYED SHAH MOHAMMED QUADRI, JJ.)

R. GANDHI

.. Appellant;

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*Versus*

UNION OF INDIA AND ANOTHER

.. Respondents.

Civil Appeal No. 4667 of 1999<sup>†</sup>, decided on August 23, 1999

**A. Service Law — Pension — Commutation — Restoration of commuted portion after 15 years — Period of 15 years, held, has to be computed from the date of commutation and not from the date of retirement — Supreme Court's decision in *Common Cause case*, (1987) 1 SCC 142 directing to restore full pension from the date of retirement, held, did not intend to mean to the contrary — Further held, words in a judgment cannot be interpreted as words in a statute — Hence, Government of India, Department of Pension and Pensioners' Welfare Memorandum No. 34/2/86-P&PW(G) dated 22-8-1990, held, was not contrary to the said decision — Central Civil Services (Commutation of Pension) Rules, 1981 — Judgment — Interpretation of — Interpretation of judgments**

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**B. Constitution of India — Arts. 32, 14 and 13 — Relief — Against arbitrary action of State — Held, Supreme Court strikes down such acts**

Memorandum No. 34/2/86-P&PW(G) dated 22-8-1990 issued by the Department of Pension and Pensioners' Welfare revised the earlier Memorandum No. 34/2/86-P&PW dated 5-3-1987 and provided for restoration of the commuted part of pension 15 years from the date of commutation and not from the date of retirement. The appellant challenged the memorandum dated 22-8-1990 on the ground that the same was contrary to the Supreme Court's decision in *Common Cause case* which had directed that payment of reduced pension on account of commutation of a part of the pension of a government employee should be only for a period of 15 years "from the date of retirement". Rejecting this contention and dismissing the appeal, the Supreme Court

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*Held :*

The Supreme Court strikes at arbitrary action of the State and accordingly it did in *Common Cause* by interdicting the arbitrary action of the Government in paying the reduced pension as a result of commutation of 1/3rd pension for the rest of the life of the pensioners and issued an equitable direction to restore the full pension after 15 years "from the date of the retirement" to the pensioners who had commuted 1/3rd of the pension. It is a well-settled principle that the words in the judgment of the Court cannot be interpreted as the words in a statute. By the said direction the Supreme Court never intended to confer any unfair or undue advantage on the pensioners. The decision in *Common Cause* has rightly been understood in all subsequent judgments of the Supreme Court as 15 years from the date of commutation. This neither prejudices the rights of any of the parties nor confers any undue or unfair advantage upon any party.

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(Para 13)

*Common Cause v. Union of India*, (1987) 1 SCC 142 : (1987) 2 ATC 100; *Welfare Assn. of Absorbed Central Govt. Employees in Public Enterprises v. Union of India*, (1996) 2 SCC 187 : 1996 SCC (L&S) 444 : (1996) 33 ATC 188 : AIR 1996 SC 1201, explained

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<sup>†</sup> From the Judgment and Order dated 22-1-1998 of the Madras High Court in WP No. 12381 of 1996

R. GANDHI v. UNION OF INDIA (*Quadri, J.*)

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- Welfare Assn. of Absorbed Central Govt. Employees in Public Enterprises v. Union of India*, (1991) 2 SCC 265 : 1991 SCC (L&S) 693 : (1991) 16 ATC 546 (I); *Bharat Petroleum Corpn. Ltd. Ex-Employees Assn. v. Chairman & Managing Director Bharat Petroleum Corpn. Ltd.*, 1993 Supp (4) SCC 37 : 1994 SCC (L&S) 20 : (1994) 26 ATC 83 : (1993) 3 Scale 424, followed

Therefore, it has to be held that the impugned Memorandum does not incorporate any condition contrary to the Supreme Court's decision in *Common Cause*. (Para 14)

Appeal dismissed

H-M/CFTZ/21519/CL

- Advocates who appeared in this case :  
R. Venkataraman, Senior Advocate (V. Prabhakar, Ms Pallavi Choudhary and Ms Radha Rangaswamy, Advocates, with him) for the Appellant;  
A.S. Nambiar, Senior Advocate (Y.P. Mahajan and P. Parameswaran, Advocates, with him) for the Respondents.

**Chronological list of cases cited**

**on page(s)**

1. (1996) 2 SCC 187 : 1996 SCC (L&S) 444 : (1996) 33 ATC 188 : AIR 1996 SC 1201, *Welfare Assn. of Absorbed Central Govt. Employees in Public Enterprises v. Union of India* 109g
2. 1993 Supp (4) SCC 37 : 1994 SCC (L&S) 20 : (1994) 26 ATC 83 : (1993) 3 Scale 424, *Bharat Petroleum Corpn. Ltd. Ex-Employees Assn. v. Chairman & Managing Director Bharat Petroleum Corpn. Ltd.* 109f
3. (1991) 2 SCC 265 : 1991 SCC (L&S) 693 : (1991) 16 ATC 546 (I), *Welfare Assn. of Absorbed Central Govt. Employees in Public Enterprises v. Union of India* 109c, 109e, 109e-f
4. (1987) 1 SCC 142 : (1987) 2 ATC 100, *Common Cause v. Union of India* 107e, 108a, 108e-f, 109b-c, 109c-d, 109e, 109e-f, 109f-g, 109g-h, 110a-b, 110c-d, 110d-e

The Judgment of the Court was delivered by

- SYED SHAH MOHAMMED QUADRI, J.— Leave is granted.
2. This appeal, an offshoot of the judgment of this Court in *Common Cause v. Union of India*<sup>1</sup> arises from the judgment and order of a Division Bench of the Madras High Court in Writ Petition No. 12381 of 1996 dated 22-1-1998.
3. The appellant, who is a Senior Advocate and a member of the Madras High Court Bar, filed Writ Petition No. 12381 of 1996, a public interest litigation, in the High Court of Madras challenging Memorandum No. 34/2/86-P&PW(G) dated 22-8-1990 issued by the Department of Pension and Pensioners' Welfare and also the letter dated 26-9-1990, applying the abovesaid memorandum to the Department of Justice, and seeking declaration that it does not apply to the Judges of the High Courts and the Supreme Court of India.
4. The substance of the appellant's case before the High Court was that the Supreme Court had issued direction that payment of reduced pension on account of commutation of a part of the pension of a government employee should be only for a period of 15 years "from the date of retirement", but the Union of India issued the impugned memorandum changing it to "from the date of commutation of pension". The Union of India, in its counter-affidavit,

<sup>1</sup> (1987) 1 SCC 142 : (1987) 2 ATC 100

stated that the Supreme Court clarified the direction given in *Common Cause*<sup>1</sup> in its subsequent judgment that the period of 15 years be reckoned from the date of commutation and not from the date of retirement. Pursuant to the subsequent judgment of this Court, the Government of India revised its earlier Memorandum No. 34/2/86-P&PW dated 5-3-1987 and brought into force the impugned memorandum. a

5. A Division Bench of the Madras High Court, taking note of the various judgments of this Court, dismissed the writ petition by order dated 22-1-1998. It is against that judgment, this appeal is preferred. b

6. Mr R. Venkataraman, learned Senior Counsel for the appellant strenuously contended that once the Government of India accepted in principle that the commuted pension would be recovered for a period of 15 years from the date of retirement and the same had culminated in a direction of this Court, they could not have unilaterally changed the same to reckon the period of 15 years from the date of commutation of pension. The learned counsel has submitted that under the Pension Rules, a pensioner can commute a part of his pension only within one year of the date of retirement, therefore, the stand of the Government that those who applied for and got their pension commuted just on the verge of the completion of 15 years would be able to claim their full pension after a few months of deduction was without any basis. c  
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7. Mr A.S. Nambiar, learned Senior Counsel appearing for the respondents has argued that the period of 15 years is fixed on the basis that the commuted pension would normally be recovered within the said period; when the commutation of pension and the date of retirement synchronise, no difficulty would arise but if the pension is commuted long after the date of retirement, the period of 15 years will be cut short when counted from the date of retirement and in the result the pensioners will get an undue and unintended benefit of the order of the Supreme Court. e

8. In the case of *Common Cause*<sup>1</sup> it was represented before this Court in a writ petition under Article 32 of the Constitution that on commutation of pension the amount paid to the pensioner in lump sum by the Government would be recovered from his pension within a period of 12 years, there was, therefore, no justification for the Government to pay reduced pension for the rest of the life of the pensioner. This Court desired that the Government might give a new look to the application of the Central Civil Service (Commutation of Pension) Rules, 1981. The Government took a decision in the matter and communicated the same through the learned Attorney General, which is in the following terms: f  
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“(i) Recovery from pension payable every month towards commuted value of pension will stop on the completion of 15 years from the date of retirement on superannuation or on the pensioner completing the age of 70 years, whichever is later.

(ii) The formulation will apply to all civilian pensioners in whose case the age of retirement on superannuation is 58 years and the personnel of Armed Forces in whose case the retirement age varies in h

accordance with the colour service prescribed for the rank (attaining the age of 37/38 years or more).

a (iii) The Government have taken this decision as an act of goodwill to pensioners and to extend to them some measure of relief in the evening of their lives. It is sincerely believed that there will be no further demand on this issue and that the pensioners will accept the decision of the Government without dissent or reservation.

(iv) The decision will take effect prospectively (from 1-4-1986)."

b 9. In hoc the first point, this Court considered it unnecessary to refer to the age of commuting pensioner for restoration of full pension to him but on taking note of the facts that the lump sum amount would fetch benefit like interest and there is also an element of risk factor, directed by its judgment dated 9-12-1986<sup>1</sup> that "on the expiry of 15 years from the period of retirement" full pension should be restored. In terms of the said judgment, c the Government issued memorandum dated 5-3-1987.

10. In *Welfare Assn. of Absorbed Central Govt. Employees in Public Enterprises v. Union of India*<sup>2</sup> the question canvassed before this Court was whether Central Government employees, who had taken the benefit of the judgment in *Common Cause*<sup>1</sup> and subsequently got absorbed in Public Enterprises, were entitled to the benefit of that judgment again on retirement d from Public Enterprises. While negating their claim, it was observed (SCC pp. 265-66, para 1),

"this Court for the reasons indicated in the judgment came to hold that on the expiry of 15 years from the date of commutation the entire pension revived".

e From this observation it can be noticed that the judgment in *Common Cause*<sup>1</sup> was neither modified nor clarified. What all can be inferred is that this Court in *Welfare Assn. case*<sup>2</sup> understood the words "on the expiry of 15 years from the period of retirement" in *Common Cause*<sup>1</sup> as "15 years from the date of commutation ...". The judgment in *Welfare Assn. case*<sup>2</sup> was rendered on 12-4-1990. It is only pursuant to that judgment, the counter-affidavit recites, the Government revised its earlier office memorandum dated 5-3-1987 and f brought into force the impugned office memorandum dated 22-8-1990.

11. In *Bharat Petroleum Corpn. Ltd. Ex-Employees Assn. v. Chairman & Managing Director Bharat Petroleum Corpn. Ltd.*<sup>3</sup> this Court extended the benefit of the judgment in *Common Cause*<sup>1</sup> to the clerical employees of Bharat Petroleum. There also the words "period of 15 years from the period of retirement" were understood as "15 years from the date of commutation".

g 12. In *Welfare Assn. of Absorbed Central Govt. Employees in Public Enterprises v. Union of India*<sup>4</sup> the relief sought by the pensioners in their petition under Article 32 of the Constitution was: restoration of 1/3rd portion of the fully commuted pension as per the decision of this Court in *Common*

h 2 (1991) 2 SCC 265 : 1991 SCC (L&S) 693 : (1991) 16 ATC 546 (I)

3 1993 Supp (4) SCC 37 : 1994 SCC (L&S) 20 : (1994) 26 ATC 83 : (1993) 3 Scale 424

4 (1996) 2 SCC 187 : 1996 SCC (L&S) 444 : (1996) 33 ATC 188 : AIR 1996 SC 1201

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SUPREME COURT CASES

(1999) 8 SCC

*Cause*<sup>1</sup>. A three-Judge Bench, of which one of us (Venkataswami, J.) was a Member, reiterated the principles applied in the aforementioned cases. Indeed, the date from which 15 years' pension was to be reckoned was not in issue there. a

13. This Court strikes at arbitrary action of the State and accordingly it did in *Common Cause*<sup>1</sup> by interdicting the arbitrary action of the Government in paying the reduced pension as a result of commutation of 1/3rd pension for the rest of the life of the pensioners and issued an equitable direction to restore the full pension after 15 years "from the period of the retirement" to the pensioners who had commuted 1/3rd of the pension. The period of 15 years has been arrived at after taking into consideration various factors mentioned above. It is a well-settled principle that the words in the judgment of the Court cannot be interpreted as the words in a statute. By the said direction this Court never intended to confer any unfair or undue advantage on the pensioners. It only ensured fairness in the treatment of pensioners at the hands of the Government in respect of deduction of pension consequent upon the commutation of the portion of the pension. The decision in *Common Cause*<sup>1</sup> has been understood in all subsequent judgments of this Court as 15 years from the date of commutation and we are in respectful agreement with the same. This neither prejudices the rights of any of the parties nor confers any undue or unfair advantage upon any party. b  
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14. From the above discussion, it follows that the impugned memorandum does not incorporate any condition contrary to the judgment of this Court in *Common Cause*<sup>1</sup>. The High Court was, therefore, right in dismissing the writ petition. We find no illegality in the order of the High Court. The appeal fails and it is accordingly dismissed. No costs. e

(1999) 8 Supreme Court Cases 110

(BEFORE DR A.S. ANAND, C.J. AND M. JAGANNADHA RAO  
AND N. SANTOSH HEGDE, JJ.)

R.P. KAPUR

.. Appellant; f

*Versus*

UNION OF INDIA AND OTHERS

.. Respondents.

Civil Appeal No. 4323 of 1999<sup>†</sup>, decided on August 9, 1999

**A. Service Law — Pension — Computation of — Criteria — Average emoluments drawn during the 10 months preceding retirement — Where compulsory retirement effected during suspension, the subsistence allowance drawn during the 10 months preceding such retirement, held on facts, to be taken as the "emoluments" for computation and not that preceding the suspension — Appellant compulsorily retired by way of penalty while he continued under suspension for more than 10 years — The President while imposing the penalty also ordering that subsistence** g

<sup>†</sup> From the Judgment and Order dated 11-10-1996 of the Central Administrative Tribunal, Chandigarh in OA No. 423/HR/1994 h

W.P. (C) 13812/2006

M.R. Tundwal v. Union of India

2015 SCC OnLine Del 10089

(BEFORE KAILASH GAMBHIR AND I.S. MEHTA, JJ.)

M.R. Tundwal ..... Petitioner

Dr. K.S. Chauhan, Mr. Ajit Kumar Ekka, Mr. Ravi Prakash, Mr. Murari Lal & Ms. Gyan Mitra, Advocates

v.

Union of India & Ors. .... Respondents

Mr. M.K. Bhardwaj, Advocate

W.P. (C) 13812/2006

Decided on May 12, 2015

## JUDGMENT

Kailash Gambhir, J.

1. The petitioner has preferred the present writ petition under Articles 226/227 of the Constitution of India against the impugned judgment and order dated 31.03.2006 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (*herein after referred as learned Tribunal*) in O.A. No. 1845 of 2005.

2. The brief facts stated in the present petition are that the petitioner was initially appointed as L.D.C w.e.f. 16.09.1965 with the Central Government Pay & Accounts Officer, Department of Supply, New Delhi. The petitioner has worked in various Central Government Departments/Offices during 16.09.1965 to 12.02.1987 including the lien period of two years i.e. from his parent department-Central Government to the Haryana State Public Sector Undertaking.

3. The petitioner was appointed as Incharge Training Officer, Ministry of Textile, Office of the Development Commissioner (Handicraft), Central Government, New Delhi from 25.01.1980, on which post, he had worked till he was relieved on 12.02.1985 vide office order no. 1(4-12)/85-Textile, issued by the said department i.e. Ministry of Textile. Thereafter, the petitioner was selected as District Manager in the Haryana Harijan Kalyan Nigam Ltd., (now Haryana Schedule Caste Finance and Development Corporation Ltd.) Chandigarh, through Direct Recruitment selection process and was permanently absorbed in the same w.e.f. 13.02.1987.

4. It is an admitted fact that the petitioner has served the respondent No. 1 for a total period of more than twenty one years which entitles him to full pensionary benefits under the Central Civil Services (Pension) Rules, 1972. The petitioner had preferred an O.A. No. 1726 of 1990 seeking the grant of pro-rata retirement benefits which were not released in his favour after his retirement in the year 1987.

5. The petitioner had preferred another O.A. No. 1845 of 2005 for restoration of his 1/3<sup>rd</sup> portion of Commuted Pension w.e.f. 13.02.2002 and full Dearness Allowance as provided under the Rules with all consequential benefits. The learned Tribunal disposed of the aforementioned application of the petitioner vide order dated

31.03.2006 with direction to the respondents to make payment of petitioner's pensionary benefits for the period from 13.02.1987 to 18.03.1995. Aggrieved by the said order dated 31.03.2006 the petitioner has preferred the present Writ Petition.

6. Dr. K.S. Chauhan, learned counsel for the petitioner submitted that the petitioner who had superannuated on 13.02.1987 was entitled to seek commutation of the pension counting the period of 15 years from the date of his retirement and not from the date when the pension was actually released to him after his necessary medical examination. The learned counsel also submits that the petitioner had filed an OA No. 1726/1990 wherein the petitioner sought the grant of pro-rata retirement benefits which were not released in his favour after his retirement in the year 1987.

7. The learned counsel further submitted that during the pendency of the aforesaid OA, a decision was taken by the respondents to grant the pro-rata retirement benefits to the petitioner and in the light of the said decision taken by the respondents, the same was disposed of by the learned Tribunal vide order dated 22.11.1994. The learned counsel also submitted that in the aforesaid order dated 22.11.1994 passed by the learned Tribunal, it was also observed that in any case if the applicant/petitioner is dissatisfied by the grant of pro-rata retirement benefits or if the same was not according to rules or according to the decision conveyed by the Department of Pension and Pensioners' Welfare, it shall be open to the applicant/petitioner to assail his grievance according to law subject to the law of limitation.

8. The learned counsel for the petitioner further submitted that the second OA No. 1845/2005 was preferred by the petitioner for issuance of necessary direction to the respondents to restore 1/3<sup>rd</sup> portion of his commuted pension w.e.f. 13.02.2002 alongwith the grant of full Dearness Allowance (*in short 'DA'*) as per the applicable rules with all the consequential benefits. The petitioner had also sought release of his prorata retirement benefits for the period 13.02.1987 to 18.03.1995.

9. The learned counsel further submitted that under the applicable rules, the pensioners are allowed an option of converting a portion of the pension into a lump sum amount and to have the commuted portion of the same restored on the expiry of 15 years from the date of retirement but the respondents instead of calculating the period of 15 years from his retirement had calculated the period of 15 years from the grant of payment of the said pension, which in the case of the petitioner was made in the year 1995. The learned counsel also submitted that the Office Memorandum dated 08.03.2006 which was issued by the respondents during the pendency of the said OA filed by the petitioner was based on a wrong premise stating that the entitlement of the petitioner for restoration of commutation of his pension could only be after the expiry of 15 years i.e. from 18.03.1995, the date of actual payment.

10. Concerning the issue for grant of DA, the learned counsel for the petitioner placed reliance on the judgment of the Apex Court in the case of *P. V. Sundara Rajan v. Union Of India* (2000) 4 SCC 469.

11. The petition is vehemently opposed by Mr. M.K. Bhardwaj, the learned counsel for the respondents. The learned counsel argued that the petitioner himself opted for 100% commutation of his pension on 23.08.1993, which was allowed and accordingly, the petitioner was paid 100% commutation of pension from 18.03.1995 onwards. The learned counsel further submitted that the period of 15 years thus has to be counted as per the applicable rules from the date when 100% commutation was paid and not from the date of retirement of the petitioner.

12. The learned counsel thus submitted that the learned Tribunal has rightly placed reliance on the Office Memorandum No. 4/26/2004-P & PW (D) (Voll. V) dated 08.03.2006, which is based on the OM No. 34/2/86-P & P.W.(G) dated 5<sup>th</sup> March, 1987 which clearly envisages that unless the commutation is simultaneous with the date of retirement, the period of 15 years shall be reckoned from the date of payment of pension. On the DA, the learned counsel submitted that in the case of re-employment of the petitioner, the employee is ineligible for DA, pension or family pension in terms of Rule 55A of the Central Civil Services (Classification, Conduct & Appeals) Rules, 1965.

13. We have heard the submissions made by learned counsel for the parties and have given our thoughtful consideration to the arguments advanced by them. We have also perused the material on record.

14. The petitioner, on being selected to Public Sector Undertaking, i.e., Office of the Development Commissioner (Handicraft), Ministry of Textile, Government of India, New Delhi, was working on the post of Incharge Training Officer, and retired from service w.e.f. February 13, 1987. The petitioner had filed an O.A. No. 1845/2005 before the learned Central Administrative Tribunal, Principal Bench, New Delhi seeking following reliefs: -

*"a) Pass an appropriate order, direction or writ in the nature of mandamus or any other appropriate writ, directing the respondents to restore the  $\frac{1}{3}$  portion of Commuted Pension w.e.f. 13.2.2002 and full Dearness Allowance as provided under the Rules with all consequential benefits.*

*b) Pass an appropriate order, direction or writ in the nature of mandamus or any other appropriate writ, directing the respondents to pay the balance of commutation factor between 13.25 to 15.40 to the humble applicant with all consequential benefits and with interest at the rate of 24% per annum from the date of pro-rata retiral benefits i.e. 13.2.1987, till the day of realization and provide all consequential benefits.*

*c) Pass an appropriate order, direction or writ in the nature of mandamus or any other appropriate writ directing the respondents to grant interest at the rate of 24% per annum on the delayed payment of pensionary benefits/arrears of pensions with all consequential benefits.*

*d) Pass such other further order or orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of this case and in the interest of justice."*

15. The grievance raised by the petitioner before the learned Tribunal and before this Court is that he is entitled to restoration of one-third commuted pension on completion of 15 years from the date of his retirement and not from the date when 100% of commutation of pension was done. If this period is reckoned from the date of his retirement, then this period was completed on 13.02.2010. Another grievance which was raised by the petitioner was apropos his entitlement of dearness allowance on restoration of his full pension. The petitioner also claimed that his pension ought to have been calculated taking into account commutation factor of 15.40 which was available in the year 1987 when he retired from service, instead of 13.25, applicable on the date when he was medically examined.

16. During the pendency of the said Original Application i.e. OA No. 1845 of 2005, the respondents had passed an Office Memorandum dated 08.03.2006 wherein they had clarified that the petitioner will be entitled to restoration of commutation of pension

only after the expiry of 15 years from 18.03.1995 which was the actual date of payment of pension, after commutation. The Office Memorandum further clarified that the petitioner would be entitled to full pensionary benefits for the period from 13.02.1987 to 18.03.1995 as the same, either in the form of pension or commutation of pension from the date of retirement was one of the benefits to which the petitioner was entitled.

17. Agreeing with the stand taken by the respondents, the learned Tribunal also found that the entitlement of the petitioner for restoration of his one-third pension is to be counted from the date of commutation of his pension and not from the date of his retirement. In its reasoning the learned Tribunal derived strength from the Office Memorandum dated 22.08.1990 issued by the Govt. of India, Department of Pension & Pensioners' Welfare wherein, the clarification was made by the Government that 15 years for restoration of pension is to be reckoned from the date of retirement itself only in those cases where the commutation of pension was/is 'simultaneous with retirement'.

18. In the background of the aforesaid reasoning, the learned Tribunal found no justification to agree with the case set up by the petitioner seeking restoration of commutation of pension on expiry of 15 years from the date of his retirement. As regards the other relief concerning his entitlement to full dearness allowance, the learned Tribunal held that the dearness allowance as per instructions will not be admissible to an employee on his re-employment on absorption in PSU/autonomous body. The only relief to which the petitioner was held entitled to by the learned Tribunal was that the respondent should make payment of the pensionary benefits for the period from 13.02.1987 to 18.03.1995 and for implementation of the same, a period of 45 days time was granted to the respondent. Feeling aggrieved by the said decision of the learned Tribunal, the petitioner preferred the present Writ Petition.

19. The petitioner after he was permanently absorbed in the said PSU, had retired from service on February 13, 1987, and had opted for lump sum amount on account of pro-rata pension in lieu of monthly pension on 23.08.1993. As per Rule 6(ii) G.D. (i) of CCS (Commutation of Pension) Rules, 1981, the commutation of pension becomes absolute in the case of absorption on the date on which the medical authorities sign the medical report in prescribed proforma. The commuted value of pension is calculated taking into consideration the date of medical examination and the age on the next birth day after the date of his medical examination. In this case the petitioner had appeared before the Medical Board on 21.10.1994 and his next birth day had fallen on 09.09.1995.

20. Taking into consideration the applicable commutation factor of 13.25, the petitioner was paid a sum of Rs. 1,03,986/- on account of prorata pension in lieu of monthly pension and he became entitled to restoration of one-third portion of pension on 17.3.2010. With regard to this issue of reckoning of 15 years period either from the date of retirement or from the date of payment of commutation of pension, various clarifications were sought by the employees from Ministries/Departments and such points were clarified by the Government which form a part of the Appendix 1 of CCS (Commutation of Pension) Rules, 1981, the same are reproduced as under: -

*(4) Decisions/Clarifications regarding commutation of pension up to 40% and, reduction in pension and its restoration. - A number of communications have been received from various Ministries/Department/Pay & Accounts Offices seeking clarification regarding payment of commuted value of pension up to 40% in terms of this Department's OM No. 45/86-97-P. & P.W. (A) - Part I, dated 27.10.1997 [Decision*

(4) below Rule 5]. The points raised are clarified below:

	Points	Decision/Clarification
1.	Whether a post 1-1-1996 retiree has to apply afresh for commutation of his pension up to 40%?	Yes
2.	Whether 40% commutation should be allowed after medical examination, if applied after one year of retirement and what will be the commutation factor for revised commutation?	In case the retired Government servant has availed of the benefit of commutation of pension not exceeding 1/3 <sup>rd</sup> of his pension within one year of retirement, he may be allowed the benefit of commutation of pension up to 40% with reference to age next birthday, as on date, without medical examination. In case the retired Government servant had not availed of the commutation up to 1/3 <sup>rd</sup> within one year of retirement, he may be allowed commutation up to 40% with reference to age next birthday, as on date, after medical examination. The pensioners who have already undergone medical examination in the latter case need not be medically examined against for this purpose.
3.	Date from which reduction in pension will take effect?	Reduction in pension on account of additional commutation of pension will be in two stages as per the provisions contained in Rule 6 of CCS (Commutation of Pension) Rules, 1981.
4.	What will be the date of restoration of additional commutation of pension?	The commuted portion of pension shall be restored after 15 years from the respective dates of commutation as provided in Government of India Decision No. 1 under Rule 10 of CCS (Commutation of Pension) Rules, 1981. Necessary endorsement should be made in the PPO.
5.	Whether pensioners retired on or after 1-1-1996 and had retained pre-revised scales will also be eligible for 40% of commutation of pension?	Yes
6.	Whether the family can be given the benefit of 40% commutation if a pensioner dies before exercising his Option.	No.

2. This issues with the concurrence of Ministry of Finance, Department of Expenditure vide their U.O. No. 351/EV/98, dated 29.6.1998.

[G.I., Dept. of Pension & P.W., O.M. No. 45/7/95-P & PW, (G) dated the 4<sup>th</sup> September, 1998.]”

21. This petitioner had never applied for commutation of his pension immediately after his retirement from the said PSU as no documentary evidence to this effect has been placed on record by the petitioner. The respondents in their communication dated 8<sup>th</sup> July, 2005 had called upon the petitioner to provide documentary proof in support of filing any application for commutation of his pension and the reasons, if any communicated by the respondents for not agreeing to such a request made by the petitioner. In response to this, the petitioner only wrote that he has already made available whatever documents were in his possession. Certainly the documents which were made available by the petitioner did not contain any application for commutation of pension. In this background, there is no difficulty in believing the stand taken by the respondents that petitioner had opted for 100% commutation of pension only on 23.08.1993 and accordingly he was paid the pension after commutation on 18.03.1995. The period of 15 years as per applicable Rules has to be counted not from the date of his retirement but from the date when he was paid the pension on commutation after his medical examination and also taking into account his date of birth after his medical examination.

22. Reliance may be placed on the judgment of the Apex Court in the case of *Bharat Petroleum Corporation Ltd. Ex-employees Association v. Chairman & Managing Director Bharat Petroleum Corporation Ltd., Bombay*, AIR 1994 SC 1304, wherein, the Hon'ble Supreme Court while placing reliance on the judgment in *Common Cause v. Union of India*, AIR 1987 SC 210, held:

*“In Common Cause v. Union of India (supra), this Court has observed that 15 years is a reasonable period after which the commuted portion of the pension could be restored. In arriving at this conclusion, this Court adopted the principle of years of purchase’ and observed that and addition of two years to the period necessary for the recovery on the basis of years of purchase justifies the adoption of the 15 year rule and that appeared to be equitable. We find no reason why the same principle should not apply to the petitioners who were originally employed with Burmah Shell and subsequently became the employees of the respondent-Corporation which is an undertaking of the Government of India and “State” within the meaning of Article 12 of the Constitution (See: Som Prakash Rekhi v. Union of India. The equitable principle underlying the rule for restoration of the commuted portion of the pension after the expiry of the 15 years from the date of retirement which is applicable to the Central Government can equally be applied to the employees of the respondent-Corporation.”*

23. Thereafter, the Apex Court in its subsequent decision rendered in the case of *R. Gandhi v. Union of India*, (1999) 8 SCC 106 made the observation that the words “15 years from the date of retirement” in *Common Cause-* (Supra) were construed as “15 years from the date of commutation of pension” by the Supreme Court in the case titled as *Welfare Association of Absorbed Central Government Employees in Public Enterprises v. Union of India*, (1991) 2 SCC 265. The relevant portion of judgment rendered in *R. Gandhi's* case (Supra) is reproduced herein under:

*“...From this observation it can be noticed that the judgment in Common Cause (supra) was neither modified nor clarified. What all can be inferred is that this Court in*

Welfare Association's case (*supra*) understood the words "on the expiry of 15 years from the period of retirement" in *Common Cause (supra)* as "15 years from the date of commutation...". The judgment in *Welfare Association case (supra)* was rendered on April 12, 1990. It is only pursuant to that judgment, the counter affidavit recites, the Government revised its earlier Office Memorandum dated March 5, 1987 and brought into force the impugned Office Memorandum dated August 22, 1990.

11. In *Bharat Petroleum Corporation Ltd. Ex-Employees Association v. Chairman & Managing Director Bharat Petroleum Corporation Ltd., Bombay [1993 (3) Scale 424]*, this Court extended the benefit of the judgment in *Common Cause (supra)* to the clerical employees of *Bharat Petroleum*. There also the words "period of 15 years from the period of retirement" were understood as "15 years from the date of commutation".

24. Hence, in *R. Gandhi v. Union of India, (Supra)*, the Hon'ble Supreme Court observed that the restoration of the commutation of pension after 15 years has to be counted from the date of the commutation and not from the date of the retirement.

25. In the light of these admitted and indisputable facts, we are not persuaded to take any view contrary to the view taken by the learned Tribunal and we also find that the period of 15 years in the case of the petitioner has to be reckoned from the date of payment of the pension on commutation and not from the date of his retirement.

26. With regard to the entitlement of dearness allowance to the petitioner on full pension no contention has been raised by learned counsel representing the petitioner to rebut the reasoning given by the learned Tribunal that as per the applicable instructions, the dearness allowance was inadmissible on re-employment on absorption in PSU/Autonomous Body.

27. For the entitlement of the petitioner for the grant of payment of pensionary benefits from the period of 13.02.1987 to 18.03.1995, the learned Tribunal had directed the respondents to complete the process within a period of 45 days from the date of receipt of the order dated 31.03.2006 and further directed the respondents to pay the pensionary benefits of the petitioner for the aforesaid period within a period of two months from the date of the said order dated 31.03.2006.

28. We, however, direct that the said benefits shall be paid by the respondents to the petitioner alongwith interest @ 12% per annum on account of unjust and inordinate delay at their end.

29. With aforesaid directions, the present writ petition filed by the petitioner is disposed of with no order as to cost.