



ALL INDIA BANK PENSIONERS' & RETIREES' CONFEDERATION

(A.I.B.P.A.R.C.)

C/O BANK OF INDIA OFFICERS' ASSOCIATION

(EASTERN INDIA BRANCHES)

BANK OF INDIA, KOLKATA MAIN BRANCH

23A, NETAJI SUBHAS ROAD, KOLKATA – 700 001

Mobile : 9830403145, E-mail : aibparc@gmail.com



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(For circulation among all the members of the Managing Committee as well as the Governing Council of AIBPARC, Special Invitees, State Secretaries and Advisors of AIBPARC.)

Dear Comrades,

**Sub : Issue of 100% DA neutralization to pre-01.11.2002 retirees –
CBPRO issues a rejoinder to the contention of IBA
and sends a representation to ALC(C)**

We reproduce hereunder the text of the above letter sent by CBPRO on 11.03.17 to ALC(C) for information of members.

With best wishes,

GENERAL SECRETARY

QUOTE :

Dated: 11.03.2017

To
Ms Kalpana Sisodia,
Assistant Labour Commissioner (Central)-III
Shram Raksha Bhawan,
Shiv Shrusti Marg,
Eastern Express Highway,
Sion (E), Mumbai-400 022

Respected Madam,

Sub: CBPRO COMPLAINT REGARDING 100% DA NEUTRALISATION TO PRE-2002 RETIREES - OUR REJOINDER TO INDIAN BANKS' ASSOCIATION LETTER DATED 15.02.2017 TO YOUR GOOD-SELF.

1. We refer to the proceedings dated 28.02.2017 in Your Good-self Office. During the proceedings we submitted a set of documents in support of our contention that non-extension of 100% DA neutralisation to Pre-2002 Retirees is illegal, arbitrary and discriminatory and also in violation of the 8th Bipartite Settlement concluded on 2nd June, 2005. We also presented copies of the Joint Note signed between the Officers Associations and the IBA and the Settlement signed between the Workmen unions and IBA. Both in the Joint Note as well as in the Settlement it is abundantly clear that "on and from 1st Feb. 2005 Dearness Allowance shall be payable on every rise or fall of 4 points over 2288 points in the quarterly average of the All India Average Working Class Consumer Index (General) base 1960=100 at 0.18% of Pay". The sum and substance of this clause is that from 1st Feb. 2005 a clear departure has been made from the Tapered DA Formula to Uniform 100% DA Relief Formula to all and neither the Joint Note nor the Settlement had put any restricted clause that the amendment in DA Formula would not be available to Pre-2002 Retirees. Until then the Dearness Relief was paid to both Serving Employees and Retired Employees at the same tapered rate and in the same way amendment to the Dearness Relief formula also is applicable to all, both Serving and Retired Employees. Not extending to Pre-2002 Retirees is a clear deviation from the provisions of the Joint Note and the Settlement in respect of Dearness Relief.
2. The IBA cannot take shelter under the Hon'ble Supreme Court judgment stating that appeals made by some individual Retirees were dismissed on 01.02.2017. In fact, the IBA was till now taking a stand that matters that are sub-judice pose a problem to negotiate a settlement and still agreed to consider them as per the Record Note signed at the conclusion of 10th Bipartite Settlement and as a consequence even collected data from all Banks. Though we do not want to comment on the Hon'ble Supreme Court order at this juncture, it is not appropriate on the part of IBA to drop the issue of 100% DA relief as the petitions were filed by some individual Retirees of different Banks. The resources of such individuals are limited. But the Bank Managements have huge resources to fight a long legal battle to frustrate the individual petitioners. However no Apex body of the Retirees had approached the Courts on the issue of 100% DA relief for the simple reason that Apex Retirees Organizations have been engaging themselves in asking and persuading IBA to implement the provisions of the Settlements and Regulations fully and properly. Even now it is our contention that with the Hon'ble Supreme Court order the way is cleared for an amicable and acceptable resolution as per the Provisions of Settlements and Regulations.

3& 4. IBA's submission in their letter citing Union Bank of India v/s S.R.Dhingra and others and State of Punjab and others v/s Amar Nath Goel and others are irrelevant and out of context for the following reasons:

D.S.Nakara's judgment was delivered by 5 Judge Constitution Bench and it was never over ruled by any Bench. Otherwise too, no two Judge Bench could over rule it. There are only some interpretations flowing from the ratio of Nakara's judgment - One is that there can be a cut-off date to become eligible to join a scheme and financial implication can be a reason to fix such cut off dates. **State of Punjab v/s. Amar Nath Goel** case is about this only. – E.g. our own Pension Scheme that extended pension only to those who retired on or after 1/1/1986. For eligibility to become a member of a scheme (in other words to start a scheme) there can be cut off dates based on date of retirement due to financial implications. But once you become a member of Pension Scheme you become a member of a homogenous group in which there can be no discrimination.

Union Bank of India v/s S.R.Dhingra cites an earlier Hon'ble Supreme Court judgment of Railway Drivers allowance. It is about praying for an allowance that was introduced and reckoned for Pension subsequent to the petitioners' retirement. D.S.Nakara is about change in any existing formula of Pension Benefits that is an improvement over the old formula. Nakara is about change in formula of computing pensionary benefits. Neither DA on Basic Pension nor 100% DA on Basic Pension is new to Bank Pensioners. Every Bank Pensioner was getting 100% DA but only up to a part of the Basic Pension and the DA tapers down from 100% for the balance portion of Basic Pension. This was changed in 2005 under 8th Bipartite Settlement whereby those who retired before 31/10/2002 and after 31/10/2002 both should have got the benefit of Uniform 100% DA for the full Basic Pension and not for a part of the Basic Pension. This is only an improvement in the formula of DA relief on Pension and hence Nakara Judgment is applicable.

Oriental Bank Retired Officers Association v/s Union of India and others in respect of minutes of the meeting is also not relevant. There is a settlement on DA which Hon'ble Kolkata High Court held as binding. Pension Regulations do not supersede the minutes or settlement because the minutes and settlement agreed categorically that all the matters agreed would be provided in Pension Regulations. If the same is not provided in Regulations then the settlement prevails. Unfortunately the Oriental Bank Retired Officers Association petitioners did not cite **Regulation 35** that provides for Pension Updation and the Appendix I that implemented Pension Updation for one batch of Retirees who belonged to 4th Bipartite Settlement period.

Further DA case is argued not only on the basis of Nakara but also on the basis of Pension Settlement that provided for payment of DA as obtaining in RBI/Serving officers. Having extended this agreed formula till 2005 IBA cannot unilaterally discontinue it when RBI has extended 100% DA to all Retirees irrespective of their date of retirement. This is what Hon'ble Kolkata High Court has held and Hon'ble Supreme Court has not overturned the order of Hon'ble Kolkata High Court.

Further there is no ratio for the retirement date as cut off for denying this improved benefit and cost also cannot be a consideration because all future Retirees from 2002 onwards would be getting 100% DA and this is a substantial majority while only a small minority would not get the benefit of 100% DA relief. When Banks are willing to extend a benefit to a majority but not to a small minority, cost cannot be shown as a reason. In any case it is not costly at all. This is a vanishing tribe and the Banks may have to bear the burden for this small section for a few more years, that too on a fast reducing scale due to their very advanced age. There shall be absolutely no difficulties as the Corpus available in the Pension Fund of all the Banks put together is very huge.

5. During the proceedings on 28.02.2017 we have made a pointed reference to clause 6 of Pension Settlement of 1993 and also the Small Committee meeting minutes, the copies of which were submitted to you during the proceedings. Clause 6 of the Pension Settlement is binding as the same is concluded under the Industrial Dispute Act between the Workmen Unions and the IBA and the Minutes of the Small Committee were also reduced to Regulations in 1995. As per Pension Regulation 37 in respect of Dearness Relief, the same was given on the Tapered DA Relief Formula to both Serving and Retired RBI and Bank Employees and from the 8th Bipartite Settlement consequent to the change of DA formula to 100% DA, RBI also started paying 100% DA relief to both Serving Employees and Retired Employees without any cutoff date. In spite of this the same is not extended to Pre-2002 Retirees in other Banks though the Joint Note and the Settlement of 2005 did not preclude/exclude any section of Serving Bank Employees or Retired Bank Employees from getting the benefit of the amended DA formula. It is unfortunate that the IBA made its own uncalled for interpretations against the provisions of the Settlement and Regulations arbitrarily and illegally denying the benefit of improved DA formula without any authority and against the provisions of 2005 settlement.

6. When same DA formula is adapted to all serving employees irrespective of their date of joining there cannot be different DA formula for Retirees based on their date of retirement. When Pension is a deferred wage there cannot be different and discriminatory wage formula for Pensioners.

In the light of the above we earnestly request Your Good-self to kindly issue necessary orders and give relief to Pre-2002 Retirees.

Thanking you

Yours sincerely,



A.Ramesh Babu



K.V.Acharya

Joint Conveners CBPRO