



**ALL INDIA BANK PENSIONERS' & RETIREES'
CONFEDERATION**

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

**C/O BANK OF INDIA OFFICERS' ASSOCIATION
(EASTERN INDIA BRANCHES)**

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Date:16.10.2019

**(For circulation among members of the governing council of AIBPARC,
State Secretaries, Special Invitees and Advisors.)**

Dear Comrade,

**Sub: Payment of arrears on account of removal of anomaly in computation of
basic pension and payment of consequential commutation arrears**

We have today sent a detailed representation on above subject to the Chief Executive Officer, Indian Banks Association, Mumbai. A copy of the said letter is being reproduced here under for information of members.

With best wishes

Suprita Sarkar
General Secretary

Quote:

AIBPARC/ commutation arrears/email/2019

Date: 16.10.2019

The Chief Executive Officer,
Indian Banks Association,
Mumbai

Respected Sir,

Sub: Payment of arrears on account of removal of anomaly in computation of basic pension and payment of consequential commutation arrears

We invite your attention to your letter **No. HR&IR/2018-19/G2/4786** dated 3/4/2018 communicating to the member banks the Managing Committee's decision of 28/03/2018 and the legal opinion obtained as per its directive in respect of below mentioned judgement of the Supreme Court on pension anomaly that arose out of Joint Note/Bi-partite Settlement signed on 14-12-1999 and 27-3-2000 relating to Wage revision.

As per the provisions of said Joint Note / Bi-partite Settlement, 1684 points of Consumer Price Index (CPI) were merged with existing basic pay of Officers/employees and revised basic pay was worked out accordingly. However, as per agreed terms & conditions, pay for the purpose of pension was worked out after merging 1616 points of CPI as against 1684 points. These provisions were made effective w.e.f. 1-4-1998. As such, pay for the purpose of pension was less than the actual Pay the Employee/Officers concerned was getting on or after 1-4-1998. Aggrieved members approached different high courts and the appeals ultimately came before the Supreme Court. In the meanwhile, this anomaly was removed vide Joint Note/Bi-partite Settlement signed on 2-6-2005. However, monetary benefits were given w.e.f. 1-5-2005.

Supreme Court gave its judgment in favour of the pensioners in Pension Civil Appeal No. 5525 of 2012, filed by Bank of Baroda & Ors with other Civil Appeals in the matter of removing the anomaly in pension computation where **average emoluments** were altered to a notional quantum (arrived by merging the DA at 1616 points as against the actual quantum on merger of DA at 1684 points) through insertion of Explanation (c) in Reg. 2(s) of Bank Employees Pension Regulations, 1995 when neither the definition of '**average emoluments**' in Reg.2(d) or nor the condition of *average emoluments being the basis of pension computation* in terms of Reg.35(2) and Reg. 38 was amended. Supreme court held, "Explanation (c) to Reg.2(s) did not have the effect of amending the Regulations relating to pension, as contained in Regulation 38 read with Regulations 2(d) and 35 of the Regulations of 1995. The only purpose of the addition of Explanation (c) to Regulation 2(s), was to take away the actual computation of the pension on the basis of the salary, which was drawn in the preceding ten months. Thus, we have to hesitation to strike it down being arbitrary and repugnant to other provisions/Regulations namely 2(d), 38(1)(2) and 35. **The Explanation (c) to Regulation 2(s) is hereby struck down, as it could not have been enacted retrospectively to take away accrued rights. Even otherwise also it is held to be arbitrary and irrational. More so, in view of the fact that only by way of a temporary measure, that discrimination was created and the Explanation was deleted with effect from 1.5.2005."**

Though an order of a court is directed only to the parties concerned, a judgement settling a principle extends to all similarly placed persons and the government or any authorized body is expected to notify the judgement for its application to similarly placed persons. It is settled law and also the directive of National Litigation Policy that similarly affected public or employees shall not be compelled to get individually the legal relief resting on a principle which has already been decided by the court. In this instance, the Supreme Court brought finality to the issue by **striking down** Explanation C to Reg.2(s) which was the basis for banks denying pension on the basis of actual average emoluments. When the Supreme Court has **struck down** Explanation C to Reg 2(s), the Bank Employees Pension Regulations, 1995 does not have Explanation C at all in Reg. 2(s) and any bank or body holding a different view and acting as if Explanation C still exists for certain class of employees is nothing but contempt of the Supreme Court. The Managing Committee of the IBA in its meeting of 28/03/2018 rightly understood the implication of this judgement and decided to communicate its decision and direction to member banks. Hence you conveyed vide your letter **No.HR&IR/2018-19/G2/4786** dated 3/4/2018 the **Managing Committee's** decision and their **specific direction in para 8 as under:**

(a) **All Nationalized Banks** who have Pension Regulations 1995 will have to **give effect to the judgement and pay the differential arrears in the amount of pension** which was due and payable with 9% interest within 4 months from the date of judgement i.e. 13/02/2018.

(b) Banks incorporated under special statutes will also have to **give effect to the judgement** if they have implemented provisions of the Joint Note/7th Bipartite Settlement.

(c) Private Banks, ..., should also **give effect and comply with the captioned judgement**, if they have implemented the Joint Note/ 7th Bipartite Settlement(because) if their employees approach the Civil Court on the basis of said Hon'ble Supreme Court judgement, they would procure a favourable verdict.

In spite of the above direction with no ambiguity, most member banks are yet to pay arrears of pension on actual average emoluments to those who retired between 1/11/2002 and 30/04/2005 as the banks strangely hold that the order of the Supreme Court is only for those who retired between 1/4/98 and 31/10/2002. Your communication clearly directs the member banks to give effect to the judgement and not merely the order. The judgement striking down Explanation C to Reg. 2(s) is applicable to all affected pensioners. Asking the pensioners who retired before May,2005 who are therefore more than 74 years old to get legal remedy in spite of your categorical instruction is painful and unfortunate.

Further pension payable include payment of arrears on account of pension commutation to all the pensioners who retired between 1/4/98 and 30/4/2005. This was already clarified by you to United Bank of India and a few other banks. The confusion regarding interest adjustment mooted by some banks defies logic. The efforts of our affiliates with respective member banks have not yielded any fruit.

We seek your intervention to direct specifically all banks to pay pension arrears including commuting arrears to all the eligible pensioners.

Yours Faithfully



Suprita Sarkar
General Secretary