



# RAILWAY SENIOR CITIZENS WELFARE SOCIETY

H.O 32, Phase- 6, Mohali, Chandigarh -160055

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Website: [www.rscws.com](http://www.rscws.com) Journal: "Pensioners' Rail Sampark"

AFFILIATED TO BHARAT PENSIONERS'SAMAJ (BPS)

IDENTIFIED BY DOP&PW GOVT. OF INDIA - UNDER PENSIONERS' PORTAL

MEMBER, SCOVA (STANDING COMMITTEE FOR VOLUNTARY AGENCIES) (GOI)

DEDICATED TO THE  
CAUSE OF PENSIONERS  
SINCE 1991

No. RSCWS/HO/CHD/MOS PGP/2019-15

Dated: 16- 8-2019

Shri Jatindra Singh,  
Hon'ble MOS Personnel, PG & Pension,  
Government of India,  
North Block,  
New Delhi-110001

Dear Sir,

Sub: Revised (Minimum) Pension of Pre-2006 Pensioners as per scale of pay of the post from which the incumbent retired – Appeal against denial of benefit of upgrading of Posts.

Ref: i) DOP&PW OM No.38/37/08-P&PW(A) dated 1.9.2008 & 11-2-2009

ii) Our Memorandum No. RSCWS/HO/CHD/MOS PGP/2019-7 Dated: 31-1-2019 (Copy attached)

1. We once again draw your kind attention to our Memorandum dated 31-1-2019 regarding Revised Minimum Pension of Pre-2006 Pensioners as per scale of pay of the post at which the incumbent retired – Request for Application of judgements of various Courts for Revision of Pension of similarly placed Pre-2006 Pensioners. A copy of the Memorandum is attached herewith for ready reference and we humbly reiterate the submissions made therein as well the judgements of the various courts cited therein.

2. Revision of Pension of all Pre-2006 Pensioners was based on the Resolution of Union Cabinet and orders thereon were issued vide DOP&PW OM No.38/37/08-P&PW(A) dated 1.9.2008. This was unilaterally changed by an executive order vide Para 5 of DOP&PW OM dated 11-2-2009 unjustly denying the benefit of upgrading of Posts to pre-2006 Pensioners even though no such condition was provided for in the Resolution of the Union Cabinet dated 29<sup>th</sup> August, 2008.

3. Benefit of up-grading of Posts was allowed to those in service with effect from 01-01-2006 and to those who retired after 01-01-2006. But this was unjustly denied to the pre-2006 pensioners vide Para 5 of DOP&PW OM dated 11-2-2009 which did not have the approval of the Cabinet.

4. This, created discrimination between the Pre & Post-2006 Pensioners - in violation of settled law by the Apex Court in D. K. Nakara's case (1983 AIR 130, 1983 SCR (2) 165) as well as in Major Genl. SPS Vains Case vide SLP (Civil) No. 12357 of 2006.

5. This led to multiple litigations by the affected pensioners in various Court which gave verdicts against this discrimination. Some of these judgements of the CAT, High Courts & Apex Court were cited in our earlier Memorandums including the one enclosed herewith but the decision thereon is still awaited even though RSCWS is an Identified Association under Pensioners Portal.

6. Para 5 of DOP&PW OM No.38/37/08-P&PW(A) dated 11-2-2009 had been quashed by the High Court of New Delhi in WP(C) 3035/2016 dated 3-8-2016 in Ram Phal-vs-Union of India & Ors and CAT Bangalore in CP 237/2015 in OA 231/2013 (Parthasarthy-Vs-Union of India).

7. Additional Solicitor General Mr. Mohinder Singh on reference by the Ministry of Law & Justice in Ram Phal case cited above, had advised the MHA that "There is no ground to file an SLP against the same. Therefore, the filing of an SLP is not advised" (Ref: Para 4 of the MHA note I.D NO 45020/1/2017/LEGAL II Dated 30/01/17).

8. Benefit of some of the judgements on this issue was confined to a few of the Petitioners only thus depriving other similarly placed pensioners thereby creating another class between a homogenous class of Pensioners in violation of Article 14 of the Constitution.

9. High Court of Kerala in its judgment dated 16-12-2016 in WPC No. 34171/2016, WPC No. 22153/2016 and WPC No. 21477/2016 had held that “the computation of pension in the matter of implementation of the 6<sup>th</sup> pay commission report has to be at 50% of the pay scale with respect to the scale of pay applicable to the post in question and not to the corresponding scale of pay to the one at which the incumbent has retired.”

10. a) As per settled law, when any issue has been decided in principle in a case by a Tribunal or a High Court and upheld by the Supreme Court, that decision becomes final and absolute and GOI is bound to implement that decision, not only for the petitioners but to all similarly circumstanced employees/pensioners.

b) Courts have repeatedly held that the GOI should not force all the similarly placed, especially old aged pensioners to become compulsive litigants for getting similar benefits, or even to file contempt petitions against the GOI.

11. a) Hon’ble Supreme Court in a recent decision in Civil Appeal No. 10857 / 2016 on July 11, 2019 All Manipur Pensioners Association -Vs- State of Manipur, has held that all the pensioners, irrespective of their date of retirement, viz. pre1996 retirees shall be entitled to revision in pension at par with those pensioners who retired post 1996.

b) Apex Court in above case has held that “ ----- The artificial division stares into face and is unrelated to any principle and whatever principle, if there be any, has absolutely no nexus to the objects sought to be achieved by liberalising the pension scheme.

“In fact this arbitrary division has not only no nexus to the liberalised pension scheme but it is counterproductive and runs counter to the whole gamut of pension scheme. The equal treatment guaranteed in Article 14 is wholly violated in as much as the pension rules being statutory in character, since the specified date, the rules accord differential and discriminatory treatment to equals in the matter of commutation of pension”.

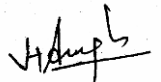
12. In view of the above cited ‘In-Rep’ decision of the Hon’ble Supreme Court on a similar matter, it would not be justified for the Government to continue with the litigation on this issue in the SLP(C)No.16321 of 2018 UOI-Vs-Rajindra and those tagged with it or pending in any of the Courts.

13. It is, therefore, requested that in view of above submissions:

- a) SLP(C) No.16321 of 2018 Union of India-Vs-Rajindra & others, cited above along with those clubbed with it or Pending in the Court, may please be withdrawn in view of the judgement of the Supreme Court in a similar case delivered on 11<sup>th</sup> July, 2019 in SLP(C) No. 10857 / 2016 cited above.
- b) DOP&PW OM No.38/37/08-P&PW(A) dated 11-2-2009 (Para 5) may please be withdrawn.
- c) Revised Minimum Pension w.e.f. please be granted at 50% of the pay in the 6<sup>th</sup> CPC Pay Band plus Grade Pay with respect to the Pay scale applicable to the Post from which the Pensioner had retired.

With kind regards,

Yours truly,



(Harchandan Singh),  
Secretary General, RSCWS.

*Copy for information & favourable consideration to:*

1. Sh. K. V. Eapen, Secretary, Personnel AR/ PG & Pension, Patel Bhawan, New Delhi – 110001
2. Sh. Sanjiv Narain Mathur, Joint Secretary, Department of Pensions & Pensioners’ Welfare, 3rd Floor, Lok Nayak Bhawan, Khan Market, New Delhi – 110003
3. Director, Department of Pensions & Pensioners’ Welfare, 3rd Floor, Lok Nayak Bhawan, Khan Market, New Delhi – 110003



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Dated: 31-1-2019

Shri Jatindra Singh,  
Hon'ble MOS Personnel, PG & Pension, GOI,  
North Block, New Delhi-110001

**Subject: Revised Minimum Pension of Pre-2006 Pensioners as per scale of pay of the post and not the corresponding scale of pay at which the incumbent retired – Request for Application of judgements of various Courts for Revision of Pension of similarly placed Pre-2006 Pensioners**

Sir,

1. We seek your benign intervention on behalf of thousands of Pre-2006 Central Government Pensioners who have been denied justice due to a wrong interpretation of the decision of the Government on the Report of 6<sup>th</sup> CPC, in spite of numerous judgments in favour of the affected Pensioners, but the benefit has been confined to the Petitioners in each case, leaving the rest of the similarly placed affected Pensioners in the lurch to either knock at the doors of the Courts of law or to continue to permanently suffer reoccurring financial loss.
2. Pension of only one scale have recently been provided a partial relief vide DOP&PW GOI OM No. 3833112-P&PW (A) Dated 4-1-2019 vide which the minimum Revised pension of Pre-2006 pensioners who retired from the 5<sup>th</sup> CPC scale of Rs.6500-10500 or its equivalent Pay scale in earlier CPCs has unjustly been fixed at Rs.8345 w.e.f. 1.1.2006, whereas the same should have been fixed as Rs.9230 as held by various courts as cited below.
3. Other categories of staff who were allotted higher replacement scales than the normal replacement scales have altogether been ignored for being provided any relief in respect of the minimum Pension in terms Para 4.2 of CCS (Revised Pay) Rules 2008 as interpreted by various courts as per judgments cited in Para 5 here under.
4. As per settled law of justice, policy decisions in these Court judgements may please be applied to all similarly placed affected Pensioners who retired from posts of categories as per replacement scales of the posts as per Schedule B of th CCS (Revised Pay) Rules 2008 and as amended thereafter instead of the normal replacement scales of Pay scales from which they had retired – as decided by all the Courts as indicated below.
5. Judgement of some of the Corts in related cases:
  - i) High Court of Kerala in its final judgment dated 16-12-2016 in WPC No. 34171/2016, WPC No. 22153/2016 and WPC No. 21477/2016 had held that that "Kerala High Court found that the computation of pension in the matter of implementation of the 6<sup>th</sup> pay commission report has to be at 50% of the pay scale with respect to the scale of pay applicable to the post in question and not to the corresponding scale of pay to the one at which the incumbent has retired.
  - ii) CAT Bangalore in OA.No.170/00730/2017 in its judgement dated 18-6-2018, had held as under:

**“11. The OM dtd.13.11.2009 had clearly stipulated that the posts which were in the pre-revised pay scale of Rs.6500-10500 as on 1.1.2006 and which were granted the normal replacement pay structure of grade pay of Rs.4200 will be granted grade pay of Rs.4600 corresponding to the pre-revised scale of Rs.7450-11500 with effect from 01.01.2006. This makes evidently clear that the applicants were to be considered against the pay scale of Rs.7450-11500 with grade pay of Rs.4600. The revised pay and pension has to be calculated on that basis and that comes to Rs.9230. The manner of computing the pension by the respondents is therefore completely wrong and bereft of any logic. ----- . The respondents are directed to grant revised pension of Rs.9230/- to the applicant w.e.f. 01.01.2006 along with consequential benefits within a period of one(1) month from the date of receipt of copy of this order.”**

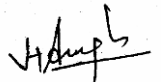
- iii) CAT Ernakulam in OA No. 180-00052-2017 decided on 12-9-2018 in K.G. Manoharan & others Vs UOI & others decided that applicants are entitled to a revised pension in terms of paragraph 4.2 of OM dated 1.9.2008 or 50% of the minimum pay in the pay band of Rs.9300-34800 with Grade Pay of Rs.4600 (in case of applicants 1 to 12) & Rs.4800 (in the case of applicants 13 & 14) or as per Annexure A4 fitment table, whichever is beneficial to the applicants.
- iv) CAT Ernakulam dated 23.10.18 has held in OA No. 180-01071-2017 “The OM dated 13.11.2009 had clearly stipulated that the posts which were in the pre-revised pay scale of Rs.6500-10500 as on 1.1.2006 and which were granted the normal replacement pay structure of grade pay of Rs.4200 will be granted grade pay of Rs.4600 corresponding to the pre-revised scale of Rs.7450-11500 with effect from 01.01.2006. This makes evidently clear that the applicants were to be considered against the pay scale of Rs.7450-11500 with grade pay of Rs.4600. SLP against the judgement was dismissed

14. It is, therefore, requested that:

- a) The policy decisions of the judgements of various Courts, may please be equitably applied to all the Petitioners as well as to all similarly placed Pensioners as required under Article 14, 16 of the Constitution.
- b) Computation of minimum revised pension for the purpose of implementation of 6<sup>th</sup> pay commission report be done at 50% of the pay in the Pay Band plus Grade Pay with respect to the scale of pay corresponding to replacement pay scale as applicable to the post of various Categories – (as enlisted in Schedule B of CCS (Revised Pay) Rules 2008) and as revised thereafter, and not to the scale of pay corresponding to the normal replacement scale at which the incumbent had retired.

With kind regards,

Yours truly,



(Harchandan Singh),  
Secretary General, RSCWS.

**Copy for information & favourable consideration to:**

1. Sh. K. V. Eapen, Secretary, Personnel AR/ PG & Pension, Patel Bhawan, New Delhi – 110001
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