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## RAILWAY SENIOR CITIZENS WELFARE SOCIETY

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MEMBER, SCOVA (Standing Committee for Voluntary Agencies) (GOI)

Affiliated to Bharat Pensioners' Samaj (BPS)

No. RSCWS/HO/CHD/RB/2019-8

Dated: 12-2-2019

1. Member Staff, Railway Board, Rail Bhawan, New Delhi – 110001
2. Financial Commissioner, Railway Board, Rail Bhawan, New Delhi – 110001

Dear Sir,

Subject: Revision of Pension of Pre-1996 Pensioners w.e.f. 1-1-2006

Regarding: Revised Minimum Pension at 50% of the revised pay with respect to the scale of pay as applicable to the post from which the incumbent Pensioner had retired and not corresponding to the scale of pay at which the Pensioner had retired - Case of Pre-1996 Pensioners retired from posts in scale Rs.1400-2300 which were placed in replacement scale of Rs.5000-8000/PB-2 9300-34800 + GP 4200.

Reference: i) DOP&PW OM No. No.45/86/97-P&PW(A)(pt.) dated 11-5-2001.  
ii) DOP&PW O.M. F.No. 38/37/08-P&PW (A) dated 30-7-2015  
iii) Railway Board's OM No. F(E)III/2008/PN1/12 dated 08.09.2008, 11-2-2013, 31-7-2015 and 18.3.2010

1. Your kind intervention is sought against the injustice done vide Railway Board's letter dated 18.3.2010 (cited above) which reversed the decisions of the Government of India & DOP&PW OM cited above, on the implementation of Fifth & Sixth Pay Commissions.

2. Unfortunately, the said order dated 18.3.2010 which was an executive order, was made effective retrospectively from 1-1-2006, resulting in recovery of Pension of thousands of Pre-1996 Pensioners/Family Pensioners who retired in the Scale of Rs.1400-2300 even though their Minimum Revised Pension from 1-1-1996 and 1-1-2006 had been correctly fixed at "50% of the minimum pay of the post(s) held at the time of retirement as revised from time to time."

3. a) Railway Board vide their letter dated 18-3-2010 very unjustly directed that the Minimum revised Pension from 1-1-2006 should be fixed at 50% of minimum of normal Revised scale of pay corresponding to the pay scale from which the incumbent had retired instead of the Pay Scale of the Post from which the Pensioner had retired.

3. b) This was also illegal as it divided the homogeneous group of Pensioners and deprived the Pre-1996 retirees the benefit of minimum of Revised Pension of the corresponding Replacement Scale of Posts from which they retired as per Schedule of Revised Pay Scales of the Categories in Part B of RS(RP) Rules 2008.

4. The Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi in its common order dated 1.11.2011 in four petitions [OA No.655/2010, 306/2010, 50712010 and 3079/2009] directed that the past pensioners may be granted, w.e.f. 1.1.2006, a minimum pension with reference to the fitment table applicable for revision of pay of serving employees. Hon'ble High Court observed that the only issue which survived was, with reference to Paragraph 9 of OM dated 28.1.2013 which makes it applicable w.e.f. 24.9.2012 instead of 1.1.2006. Hon'ble High Court of Delhi dismissed the writ Petition No.1535/2012 along with three other Writ Petitions vide its order dated 29.4.2013. Special Leave Petitions (No.23055/2013 and No.36148-50/2013) filed against the said order dated 29/4/2013 of the Hon'ble Delhi High Court have also been dismissed by the Hon'ble Supreme Court. These judgements have been accepted by the Government and implemented vide DOPPW OM dated 30-7-2015.

5. a) Railway Board's instructions dated 18-3-2010 have created multiple classification with wide variation in quantum of minimum revised pension w.e.f. 1-1-2006 of similarly placed and homogeneous class of Pensioners who were in the posts in 5<sup>th</sup> Pay Commission in the pay scale of Rs. 1400-2300 or its equivalent in earlier CPCs – i.e. Pre-1996, Pre-2006 and Post 2006 Pensioners. This is a clear violation of Article 14 of the Constitution of India – as established effectively by the Apex Court in D.S. Nakara's Case and reiterated in Major General (Retd) SPS Vains' case cited below.

4. b) Judgment in K.S. Krishnasamy case in Appeal (Civil) No.3174 of 2006 decided on 23.11.2006, has lost its relevance since the Apex Court in the case of Major General (Retd) SPS Vains in SLP (CIVIL) NO. 12357 of 2006 decided on 9-9-2008, has re-established the finality of the judgment of the Constitutional Bench in D.S. Nakara vs UOI (1983) 1 SCC 305 (wherein creation of different classification of homogeneous group of Pensioners was held to be violative of Article 14 of the Constitution of India.

5. a) CAT Ernakulam in its judgement in OA 180/00200/2014 dated 16 July, 2015 had held that "Any modification of the Cabinet resolution by a subsequent administrative order is ultra vires. Accordingly, the O.As are allowed. The respondents are directed to issue revised Pension Payment Orders to the applicants in the O.As specifying that pension of pre-2006 retirees will be calculated on the basis of 50% of the minimum of the pay band plus grade pay corresponding to the pre-revised pay scale of the respective post held at the time of retirement, proportionate to the length of his service and fix higher of the two as pension with effect from 1.1.2006 and corresponding family pension and grant all consequential benefits including arrears."

5. b) CAT Ernakulam in its judgement dated 13-7-2012 in O.A. No 33/2012 had quash and set aside Annxs. A3 and I direct the 2nd respondent to refix the pensionary benefits of the applicant from 1.1.2006 as if he was drawing the pre-revised V CPC scale of pay Rs.5000-8000 and grant arrears thereof.

5. c) In its final judgment dated 16-12-2016, the Hon'ble High Court of Kerala, in WPC No. 34171/2016, WPC No. 22153/2016 and WPC No. 21477/2016, has 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 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."

5. d) Various other courts in their judgements on this issue, have also held that the Revised Minimum Pension has to be fixed at 50% of the pay with respect to the scale of pay applicable to the post in question and not to the corresponding scale of pay at which the incumbent has retired.

6. All these judgements have been implemented and the Petitioners have been given the benefit of the same as cited above. Denying the same to other similarly placed pensioners is discriminatory and violative of Article 14 of the Constitution.

7. It is, therefore, requested to please Grant/Restore the Revised Minimum Pension at 50% of the revised pay with respect to the scale of pay as applicable to the post from which the incumbent Pensioner had retired and not corresponding to the scale of pay at which the Pensioner had retired – and as such the Pre-1996 Pensioners retired from posts in scale Rs.1400-2300 which were placed in replacement scale of Rs.5000-8000/PB-2 Rs.9300-34800 + GP Rs.4200 thereby extending the benefit of the judgements cited above to all similarly placed pensioners as given to the Petitioners thereof.

Yours truly,



(Harchandan Singh),  
Secretary General, RSCWS.

**Copy for information & necessary action to:**

- **Secretary (Establishment) Railway Board, Rail Bhawan, New Delhi – 110001**