

LEGAL BRIEF: AFT – 21
WORKING OUT OF ARREARS OF PENSION BASED ON
MAXIMUM OF FITMENT TABLE OF SAI 1/S/2008 FOR THE
PERIOD FROM JUL 2009 TO JUL 2014

Prayer:

1. To quash PCDA(Pensions) Allahabad circular 568 dated 13 October 2016 and Govt of India, Ministry of Defence letter No: 1(2)/2016 – D(Pen/Policy) dated 30 Sep 2016 being arbitrary, bereft of facts and deprived of correct quantum of arrears of low paid defence pensioners of the ranks of Sepoy to Subedar Major.
2. To issue another circular by which arrears of Pension from Jul 2009 to Jun 2014 is worked out based on Maximum of Fitment Table: SAI 1/S/2008 instead of Minimum of Fitment Table when pensions were paid at the Maximum of Fitment Table from July 2009 to June 2014.
3. To issue orders to Govt of India to expeditiously work out correct quantum of arrears based on Notional pay on Maximum of Fitment Table for all pre – 2006 pensioners of the ranks of Sepoys to Subedar Major for the period from July 2009 to June 2014 and pay arrears within three months with interest of 9% failing which penal interest of 15% on undisbursed amount be affected.

Background

4. **Issue of Circular 430 dated 10 March 2012.** The Defence pensioners of pre – 2006 vintage were getting much lesser pensions compared to their counter parts in post – 2006 period for the same length of service, same rank and same trade group

X or Y. The difference in pension was so wide some Ex-Servicemen Associations resorted to democratic means of agitations after their pleas to the Govt of India failed to bridge the gap in pensions between current pensioners and past pensioners. Seeing the adverse effects on morale of serving soldiers who are soon going to be Ex-Servicemen, the Govt of India constituted a committee to examine the grievances of the Ex-Servicemen with respect to vast difference in the pensions being drawn by present and past pensioners. The committee examined pensions of post – 2006 pensioners with those of Pre – 2006 pensioners of the ranks of Sepoys to Subedar Majors. The Committee did recommend that there is an urgent need to bridge the gap between pensions of past and present pensioners. The Government of India approved the recommendations of the Committee of Secretaries and issued Ministry of Defence, Department of Ex-Servicemen Welfare Letter No: PC 10 (1)/2009-D (Pen/Policy) dated 08 March 2010 and PCDA (Pension) Allahabad Circular No 430 dated 10 March 2012 fixing pension of pre – 2006 pensioners taking their notional pay at Maximum of Fitment Table contained in SAI 1/S/2008. Accordingly, the Pension Disbursing Agencies (PDAs) such as Banks, Defence Pension Disbursing Offices and Treasury Offices were advised to work out arrears which accrue on account of enhancement of pension by working out Notional pay at Maximum of Fitment Table as mentioned above. Pursuant to instructions of ibid letter of Government of India dated 08 March 2010, PCDA (Pensions) Allahabad made 135 tables enhancing pensions from 01 July 2009 to 23 Sep 2012. On receipt of Circular 430 PDAs commenced disbursement of arrears in pensions for the period June 2009 to 23 Sep 2012.

Issue of Circular 501 dated 17 January 2013.

5. The agitation of the Ex-Servicemen having not been satisfied with marginal increase in pension continued their peaceful agitation and this affected image of the Government of India. The Government of India constituted another committee of Secretaries to look into grievance of Ex-Servicemen. The Committee improved upon the pensions given till 23 Sep 2012 by increasing the rank weightages of Sepoys to Havildar by 2 years, reducing the period to get maximum pension from 33 years to 32 years and fixing pension after determining the highest of the notional pay in the Revised pay structure (6th CPC) corresponding to the maximum of pay scales of 5th CPC across three services, 50% of classification allowance (rates effective from 01 September 2008) shall also be added to the Notional Pay of the Ranks of Army wherever applicable.

6. The Government of India approved the recommendation of Committee of Secretaries and issued their letter of Ministry of Defence, Department of Ex-Servicemen Welfare Letter No: PC 1(13)/2012/D(Pen/Policy) dated 17 January 2013. Pursuant of the Government ibid letter dated 17 January 2013, PCDA (Pensions) Allahabad also issued Circular No: 501 dated 17 January 2013 effecting the new pension. 25 tables were made for ranks from Sepoys to Sub Majs fixing their pension at Notional pay amongst three services (Army, Navy and IAF) as per Revised pay structure in 6th CPC corresponding to the pay structure in 5th CPC. This resulted in enhanced pensions benefitting Sepoys to Hony Capts. But the rule of 33

years did was still valid. Therefore, a pre - 2006 Sepoy was still getting lesser pension than his counterpart in post – 2006 period.

Abolition of 33 Years Rule to Get Minimum Guaranteed Pension

7. The 6th Central Pay Commission (CPC) delinked 33 years to earn minimum guaranteed pension for post – 2006 pensioners. This resulted in increasing gap in pensions between Pre and Post 2006 pensioners. The Government of India gave this benefit to Post – 2006 pensioners and denied the same to pre – 2006 pensioners. Cases were filed in various CATs and Hon'ble High Court of Delhi and Kerala for providing same benefit of delinking of 33 years to earn minimum guaranteed pension to Pre – 2006 pensioners i.e., abolition of 33 years to earn minimum guaranteed pension. The hon'ble Supreme Court in order dated 17.3.2015 in SLP (C) No. 36148/2013 dismissed the appeal of Government of India.

8. Ministry of Personnel, Pensions and Public Grievance vide their letter No: 38/37/08/P & PW (A) dated 06 April 2016 issued orders to delink requirement of 33 years to earn minimum guaranteed pension. The orders for Central Government Civilian pensioners were to fix the pension at Minimum of Fitment table at 50% of Last Pay Drawn Pay even if the service is less than 33 years and no pro rata reduction in pension is to be affected.

9. **Issue of Circular 568 dated 13 October 2016.** The Ministry of Defence applied this rule without giving a detailed thought or by mischief without considering the fact that pension of Sepoys to Sub Majs were in fact were fixed on Notional Pay of their rank at **Maximum of Fitment Table of SAI 1/S/2008**. The Ministry of Defence very well knew that w.e.f. 01 July 2009 to 30 June 2014 the pension of all pre – 2006 Sepoys to Sub Majs were fixed at Maximum of Fitment Table to bridge the gap between Pre – 2006 & Post – 2006 pensioners. They should

have made Circular 568 giving effect to the contents of Circulars 430 and 501 which fixed the pension at 50% of Notional Pay as per Maximum of Fitment Table of SAI 1/S/2008. The thoughtless action of Ministry of Defence caused huge loss in arrears to pre – 2006 pensioners when Circular 568 came into being. The Ministry of Defence has no powers to overrule the sanctioned accorded by the President of India in Circular Nos 430 and 501 by fixing pension at 50% of Notional Pay of their rank at Maximum of Fitment Table.

Loss Suffered.

10. This has caused huge loss to Sepoys to Sub Majs who were getting less pension due to rule of 33 years. Once the rule of 33 years has been removed to earn Minimum Guaranteed Pension, the Ministry of Defence should have worked out arrears by taking the Pension at Maximum of Fitment Table of SAI 1/S/2008. The minimum guaranteed pension of Sepoy of Y Group at Minimum of the Fitment Table of SAI 1/S/2008 is $0.50 \times (\text{Pay in Pay Band of Rs } 6250 + \text{Grade Pay of } 2000 + \text{MSP of Rs } 2000) = \text{Rs } 0.50 \times 10250 = \text{Rs } 5,125$. On the other hand, the pension at Maximum of Fitment Table to Sepoy of Y Group is $\text{Rs } 0.50 \times (8000 + 2000 + 2000) = \text{Rs } 6,000$. The loss in arrears is $\text{Rs } 6000 - 5125 = \text{Rs } 875$ per month + Dearness Relief. The loss for Naiks to Hony Cpts is much more. This amounted to less payout of arrears depending upon the ranks from Rs 1,25,475 to Rs 3,73,557. Detailed calculations are enclosed.

11. Ministry of Personnel, Pensions and Public Grievances gave a general order for removal of 33 years to earn minimum guaranteed pension for all pre – 2006 pensioners. Every Ministry is to apply this rule taking into consideration how their pensions have been arrived at so far. As we are aware the Government of India gave benefit of fixation of pension from July 2009 to June 2014 by fixing pension at **Maximum of Fitment Table** of SAI 1/S/2008 only to Sepoys to Sub Majs. This benefit was not extended to Commissioned Officers of the three services viz Army, Navy and IAF as pensions of officers compared to JCOs and OR is higher. Therefore Ministry of Defence, Department of Ex-Servicemen Welfare grossly erred in issuing their Letter No: 1(2)/2016 – D(Pen/Pol) dt 30 September 2016 by just copying contents of Ministry

of Personnel, Pensions & Public Grievances letter No: 38/37/08/P & PW (A) dated 06 April 2016 without giving thought to the method of payment of pensions from Jul 2009 which is 50% of Notional Pay at Maximum of Fitment Table.

Loss Suffered By Pre – 2006 Defence Pensioners JCOs/OR.

12. The Ministry of Defence after obtaining sanction of President of India in Circulars 430 and 501 fixed pension of Pre – 2006 Defence Pensioners at 50% of Notional Pay at Maximum of Fitment Table of SAI 1/S/2008 i.e. For Sepoy Notional Pay at Maximum of Fitment Table is Rs 12000 pm. Arrears were also paid to all pre – 2006 Pensioners based on the formula of fixation of pension at Maximum of Fitment Table.

13. Natural consequence of the policy of fixing pension to pre – 2006 Defence Pensioners should have been working out arrears at Maximum of Fitment Table. By blindly copying the contents of Min of Personnel, Pensions and Public Grievances the loss caused to the Pre – 2006 JCOs and OR goes as high as Rs 3,73,557.

14. **A Sample Calculaton of Loss Suffered by Sepoy Group Y from July 2009 to June 2014.**

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|---|---------------|
| (a) Pension at Maximum of Fitment Table | = Rs 6,000 |
| (b) Pension at Minimum of Fitment Table | = Rs 5,125 |
| (c) Loss Suffered per month | = Rs 875 +DR |
| (d) Loss Suffered per month from Jul 2009 | = Rs 1,24,475 |

to June 2014 with varying percentages of Dearness Relief

15. Detailed calculations are attached for all ranks from Sepoy Y Group, Sepoy X Group to Sub Maj at Appendix.

Conclusion

16. The Hon'ble AFT is respectfully requested to set right the anomaly in payment of arrears resulted in issue of Circular 568 by quashing it being arbitrary, bereft of not following existing policy of fixing pension to Sepoys to Sub Maj's at Maximum of Fitment Table. When the

pensions from July 2009 to June 2014 were paid by fixing Notional Pay at Maximum of Fitment Table of SAI 1/S/2008, the logical way of working out arrears arising out of removal of 3 years to earn minimum guaranteed pension is to take pension at Maximum of Fitment Table from Jul 2009 to June 2014. The hon'ble AFT is requested to direct Government of India to work out arrears to all beneficiaries including Family pensioners (who lost their husbands) by Notional Pay at Maximum of Fitment Table of SAI 1/S/2008 and pay balance of arrears within a period of three months with interest of 9% for loss suffered since 2016 failing which penal interest of 15% be levied on undisbursed arrears.

Documents Enclosed

1. SAI 1/S/2008
2. Circular 430 of PCDA (Pensions) Allahabad dated 10 March 2012 and Govt of India, Ministry of Defence, Department of Ex-Servicemen Welfare Letter No: : PC 10 (1)/2009-D (Pen/Policy) dated 08 March 2010.
3. Circular 501 of PCDA (Pensions) Allahabad dated 17 January 2013 and Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare Letter No: PC 1(13)/2012/D(Pen/Policy) dated 17 January 2013.
4. Ministry of Personnel, Pensions and Public Grievance vide their letter No: 38/37/08/P & PW (A) dated 06 April 2016.
5. Circular 568 dated 13 October 2016 and Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare Letter No: 1(2)/2016 – D (Pen/Pol) dt 30 September 2016