



ALL INDIA BHARAT SANCHAR NIGAM LIMITED RETIRED EXECUTIVES' ASSOCIATION

Central Headquaters

Registered under Societies Registration Act XXI of 1860 vide Govt. of NCT Delhi No. S/RS/SW/1161/2014

[Registered under Pensioners Portal vide DoP&PW letter No. 4(4)/2021-P&PW(H)7311 dated 04.01.2024]

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No. AIBSNLREA/CHO/2024/81

Dated 8th November 2024

To

Hon'ble Chief Justice of India,
Supreme Court of India,
Jaiag Mark,
New Delhi 110001.

Subject: A PETITION TO THE HONOURABLE CHIEF JUSTICE OF INDIA TO RENDER JUSTICE TO THE PENSIONERS COVERED UNDER CCS (PENSION) RULES 2021 BY ORDERING RESTORATION OF COMMUTATION OF PENSION AFTER 12 YEARS INSTEAD OF THE PRESENT PRACTICE OF 15 YEARS, SINCE THE COMMUTED AMOUNT IS RECOVERED BY THE GOVERNMENT IN 10.8 YEARS ALONG WITH INTEREST.

Honourable Sir,

Most respectfully, on behalf of All India Bharat Sanchar Nigam Limited Retired Executives' Association, registered under Societies Registration Act, 1860 and registered by the Department of Pension & Pensioners' Welfare under Pensioners Portal, with its Headquarters at Flat No.6, Second Floor, 10/41, Sowrashtanagar 7th Cross Street, Choolaimedu, Chennai, Tamilnadu - 600094, I, R.R.Balasubramanian, aged 71 years, S/o Late Shri R.Rajarithnam, General Secretary of the said association and residing at the above mentioned address, submit this petition for your kind consideration and order.

2 We had submitted a Memorandum to the VII Central Pay Commission pleading for restoration of commuted value of pension earlier to 15 years but the request was not accepted by the VII CPC. Later, we have been taking up the matter with DoP&T and even with the Hon'ble Prime Minister of India but to no avail.

3. We have exhausted all options other than seeking legal remedy. In view of our past personal experience, we are aware of the difficulties of retired employees in approaching courts. As the winter of life approaches, the physical, financial and mental demands of the

traditional legal system pose insurmountable challenges to senior citizens like us. The exorbitant costs associated with litigation, coupled with the prolonged duration of court cases, often spanning several years, make it nearly impossible for senior citizens of our age to pursue justice through conventional legal channels. This is why we decided to bring to your esteemed notice a matter of significant concern for all pensioners relating to restoration of commuted portion of pension after a reduced number of years rather than the present 15 years, for consideration in a manner as deemed fit.

4. We hereby submit a petition with all the relevant information related to the matter of restoration of commuted portion of pension earlier to 15 years for consideration in a manner as you may deem fit, with a prayer to direct Union of India to restore the commuted portion of the pension after 12 years from the date of commutation instead of the current period of 15 years.

With highest regards,

Yours sincerely,



8/11/24

(R.R. Balasubramanian)
General Secretary

Encl: As stated

Dated at Chennai the 8th November 2024

To

**The Hon'ble Chief Justice of India,
Supreme Court of India,
Tilak Marg,
New Delhi - 110001**

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4.0 We hereby submit all the relevant information related to the matter of restoration of commuted portion of pension earlier to 15 years for your kind consideration:

4.1 Presently the restoration of commuted portion of pension is allowed after 15 years from the date of commutation. This was decided by the Hon'ble Supreme Court of India in WP No.3958-61 of 1983 Common Cause Society & Ors vs UOI in 1986. Following this decision, the DoP&PW issued an Office Memorandum on 05.03.1987, allowing restoration of commutation after 15 years. Prior to that the reduction in monthly pension on account of commutation was a lifetime commitment and a pensioner was entitled to draw only the reduced pension during his entire life.

4.2 Later in the year 1997, the Fifth Central Pay Commission recommended restoration of commutation after 12 years instead of 15 years. While arriving at this decision, the V CPC had also taken note of the fact that several State Governments, such as Kerala, Madhya Pradesh, Orissa and Punjab were already allowing restoration after 12 years. However, the recommendation did not find favour with the Central Government. The sixth CPC did not make any recommendation on the matter, though it had referred to the Supreme Court judgment of December 1986.

5.0 The Second National Judicial Pay Commission headed by retired Justice P. V. Reddy of Supreme Court appointed by Hon'ble Supreme Court of India in the year 2021 has examined in detail on the subject of commutation of pension had observed:

"Viewed from any angle, the Commission is of the prima facie view that the time of restoration of commuted value of pension is too long and a fresh look has to be taken in view of the long passage of time. It is axiomatic that the Government should not stand to gain or lose in the transaction which is basically in the nature of welfare measures. The period of restoration of commuted pension shall be such that the Government shall be able to recover the amount released in lumpsum with reasonable interest and the period of restoration determined shall not be such as to result in profit to the Government. The fact that the pensioner gets advantage in the form of lumpsum amount shall not be stretched too far." [Para 10 of Chapter III of SNJPC report]

5.1 From the Government point of view, interest on the lumpsum made available to the pensioner is a factor to be taken into account. The risk factor is another relevant aspect, since if the pensioner dies before complete recovery of the commuted amount, the Government will not be able to recover the commuted amount in full. However, it is to be noted that when the pensioner dies, the liability to pay pension ceases and the family pension payable thereafter is much less. [Para 9 of Chapter III of SNJPC report]

5.2 Also, the fact that the longevity of life has substantially improved since 1987, with on average a male living up to 77.4 years and female up to 78.9 years, has to be taken into consideration. The SNJPC had also worked out a detailed calculation as to the commutation amount, interest thereon and recovery period and found that with an interest rate of 8% per annum, the commuted amount stands recovered in 131 months i.e. less than 11 years. In any case it would not go beyond 12 years even after providing for some unforeseen contingencies and prima facie no disadvantage is going to be caused to the Government as well as to the Pensioners.

5.4 There has been a gradual and steep fall in the interest rates.

5.5 The SNJPC further stated that "In any case, as we observed earlier, there is a need to have a fresh look as regards the period or recovery of the commuted value of pension notwithstanding what the Hon'ble Supreme Court observed more than three decades ago and the conclusion of VI CPC recorded 12 years back. It is not known whether any exercise was undertaken to have a relook at restoration by VII CPC because there is no mention of Commutation factor and restoration in VII CPC report. Unless the relevant particulars are forthcoming and the basis is disclosed in detail by the Government, the Commission is not in a position to make a definite recommendation in this regard." [Para 17 of Chapter III of SNJPC report]

5.6 The Commission further added that "Though the Commission is not equipped with full data to reach a definite conclusion, based on the study of Commission and informal consultations held with experts, the Commission's prima facie view is that restoration should take place after 12 years, if not earlier. The Government of India's stand based on the observations of the Hon'ble Supreme Court in the year 1986 needs to be further examined by the Hon'ble Court at this point of time." [Para 18 of Chapter III of SNJPC report]

5.7 The SNJPC had concluded that:

i. Restoration period of 12 years suggested by V CPC appears to be more than adequate. In fact, as per the workings given by the Commission Supra, it is seen that the lump sum paid in lieu of commutation stands recovered with an interest rate of 8% p.a. within 11 years. Even after giving due allowance to unforeseen contingencies, prima facie, it is reasonable to conclude that the restoration ought to take place on the expiry of 12 years and not beyond that.

ii. Prima facie it appears that the judgment of Hon'ble Supreme Court rendered in the year 1986 [(1987) 1 SCC 142] has lost its relevance in the present-day context and cannot be taken as binding precedent for all time to come. There are certain general observations which were primarily meant to give a quietus to the issue of commutation at that point of time, keeping in view the offer made by the Central Government for the first time to confer the benefit of commutation and restoration of full pension after a certain period.

iii. The issue regarding the restoration period needs to be examined denova after issue of notice to Government of India (Department of Pension and Pensioners' Welfare) and on consideration of the material placed before the Hon'ble Court.

6.0 In the recent months, several Courts in India have issued interim orders to stop further recovery of commuted portion in respect of the applicants/petitioners till further orders, while issuing notice to the respondents.

6.1 Punjab and Haryana High Court on 09.02.2024, while issuing notice to the respondent – State Government of Punjab and others in CWP 2490 of 2024 passed an interim order staying further recovery (in respect of the petitioner) and the stay continues. High Court of Kerala on 08.08.2024 and CAT Chandigarh on 29.08.2024 have also stayed further recovery in identical prayers, as an interim measure. In another application vide OA

413 of 2024 before CAT Jaipur on restoration of commutation, the court has disposed of the OA directing the respondents to decide the representations of the applicants and pass a speaking order. Recently, on 09.09.2024, the Jammu & Kashmir High Court in WP (C) 2199/2044, while issuing notice to Union of India & Others, has passed an interim order directing the respondent banks not to recover commuted value of the pension of the petitioners/pensioner, if they have completed 10 years after retirement. There is yet another stay reported, wherein the High Court of Uttar Pradesh has on 26.09.2024 passed an interim order that "no further recovery shall be executed from the petitioners, who are doctors retired from various posts from the Department of Industry".

6.2 With the cessation of recovery of the commuted portion of the pension for the applicants/petitioners in the aforementioned cases, numerous individual pensioners have already filed or are preparing to file cases seeking similar relief. However, the vast majority of pensioners refrain from pursuing such actions due to their age, the associated costs, and the lengthy duration required to obtain justice, choosing to wait for something positive to happen.

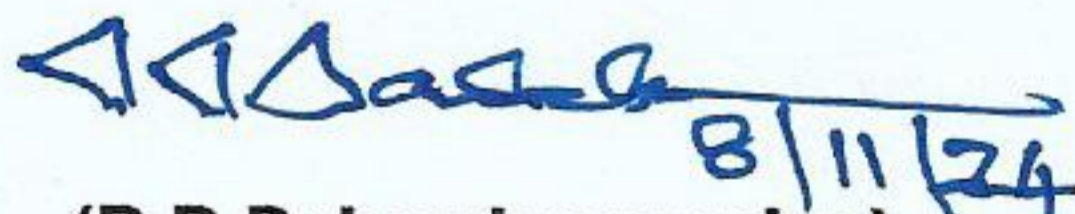
PRAYER

In view of the facts and circumstances stated above, it is most respectfully prayed that this Hon'ble Court may be pleased to:

1. Direct the Union of India to restore the commuted portion of the pension after 12 years from the date of commutation instead of the current period of 15 years.
2. And pass such other order(s) as this Hon'ble Court may deem fit and proper in the interest of justice.

With highest regards,

Yours faithfully,


8/11/24
(R.R. Balasubramanian)
General Secretary
AIBSNLREA CHQ