GOVERNMENT OF INDIA (BHARAT SARKAR)  
MINISTRY OF RAILWAYS (RAIL MANTRALAYA)  
(RAILWAY BOARD)

No. F(E)Il/2005/PN1/23  

New Delhi, Dated: 23.02.2010.

The GMs/FA&CAOs,  
All Indian Railways/Production Units.  
(As per mailing list)

Subject: Implementation of the law against excess recovery from pension – non-deduction of the non-deductibles-representations of employees who had drawn lumpsum payment on absorption in PSU/Autonomous Bodies – clarification regarding.

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A copy of Department of Pension and Pensioners' Welfare (DOP&PW)'s O.M. No. 4/4/2008-P&PW(D) dated 27th January, 2010 on the above subject is enclosed for information and guidance.

2. A concordance of DOP&PW's instructions referred to in the enclosed O.M. and Railway Board's corresponding instructions is given below.

<table>
<thead>
<tr>
<th>S.No.</th>
<th>DOP&amp;PW's instructions</th>
<th>Railway Board's corresponding instructions</th>
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<tbody>
<tr>
<td>1.</td>
<td>O.M. No. 34/2/86-P&amp;PW dated 5.3.1987</td>
<td>Letter No. F(E)Il/87/PN1/7 dated 26.3.1987</td>
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</tbody>
</table>

3. Please acknowledge receipt.

(SUNIL BHARDWAJ)  
Deputy Director Finance(Estt.)III,  
Railway Board.

DA: One.
3. The government had thereafter issued instructions implementing above direction of the Hon'ble Court vide GM dated 09.01.96 (OAL dated 9.01.96) has been issued strictly in compliance of the direction of the Hon'ble Supreme Court in operative para of judgement which has been referred in para 3 thereof before explaining modalities of implementation in para 8 of the above said GM.

6. The decision of the Court has resulted in following:

- The restorable pension of the Government servants who had drawn lump sum payment in respect of pre-reform pension, 1/3rd as well as 3/4th and absorption in a PSU/Autonomous body has been retained to the computed portion only i.e. 1/3rd of pension.
- The 2/3rd pension for which terminal benefits were drawn is not to be restored.
- The benefits viz. D.R., D.P. etc. are taken in full while calculating restorable 1/3rd pension.

4. Further attention is drawn to following para in Hon'ble Supreme Court's judgement dated 26.4.2000 in Appeal No. 4 in W.P. (C) No. 11855/95 : WIMC (C.)
The parity claimed by Lt.Col. Mahatra and other applicants who had committed 100% pension in our view, is entirely misplaced. The contention that what is commuted or given up is an amount and not the right to receive pension or right to receive post-commutation pension and attendant benefits including dearness relief on the gross entitled pension on the dates they were granted to other Government pensioners, is only fanciful. The decision in the case of State of Tamil Nadu and Ors. v. V. V. S. Subramaniam and Ors. (2004) Suppl. 5 SCC 264) on which reliance was placed by Mr. Akbaruddin Ahmed, Senior Advocate, has no applicability to the point in issue. Those who committed 100% pension continue to remain non-pensioners till their pension is restored. In Welfare Association Case (supra), persons who committed the full pension and who will not be given any monthly pension by deeming monthly pension to have been reduced to nil has been treated as a separate category. Those who commute 100% pension are not entitled to the benefit of dearness relief on full pension or other benefits as claimed herein. We also do not find any discrimination in so far as this case is concerned.

5. All Ministries/Departments are advised that the representation, if any, received on this subject, may be dealt with accordingly.

6. Hindi version will follow.

To

All Ministries/Departments as per mailing list.

Copy to: U.B. NIC for posting it up on Web Site.

T. coal Section for Hindi version.