

No. 19/116/2024-Pers.Pol. (Pay)(Pt)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training

North Block, New Delhi
Dated the 14th October, 2024.

OFFICE MEMORANDUM

Subject: Grant of notional increment on 1st July / 1st January to the employees who retired from Central Govt. service on 30th June / 31st December respectively for the purpose of calculating their pensionary benefits - regarding.

The undersigned is directed to say that in terms of Rule 10 of the Central Civil Services (Revise Pay) Rules, 2006, notified by D/o Expenditure vide Notification No. G.S.R. 622 (E) dated 29.08.2008, date of annual increment was made uniform viz. 1st July of every year with effect from 01.01.2006. It was subsequently decided vide Rule 10 (1) of the Central Civil Services (Revise Pay) Rules, 2016, notified by D/o Expenditure vide Notification No. G.S.R. 721 (E) dated 25.07.2016, that there shall be two dates for grant of increment namely 1st January and 1st July of every year.

2. Hon'ble High Court of Madras in its Order dated 15.09.2017 in W.P. No.15732 of 2017 - P. Ayyamperumal Vs Union of India & Ors. allowed grant of notional increment to the petitioner on the day following the date of his retirement from service for the purpose of calculation of pensionary benefits. Judgement in the case of Shri P. Ayyamperumal was implemented *in personam*. Following this, D/o Personnel and Training (DoPT) received a number of representations from the employees who superannuated on 30th June/ 31st December claiming similar benefit. Large number of Court cases have also been filed before Hon'ble Administrative Tribunals, High Courts and Supreme Court on the subject matter.

3. The issue was examined in consultation with the nodal authorities concerned and with due regard to the relevant provisions in the Fundamental Rules (FRs) which regulate grant of increment to the Central Government employees. It is pertinent to note that FR 9(21)(a) defines 'pay' as the amount sanctioned to a Government servant for a post held by him substantively or in an officiating capacity or to which he is entitled by reason of his position in a cadre. FR 17 provides that subject to any exceptions specifically made in these Rules, an employee shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post and shall cease to draw them as soon as he ceases to discharge those duties. Further, FR 24 stipulates that an increment may be withheld from a Government servant if his conduct has not been good or his work has not been satisfactory. To summarise these Rule provisions, for availing the benefit of an increment on the date of its accrual, an employee should be in service, should have rendered satisfactory work and should have displayed good conduct during the period of qualifying service.

4. However, Hon'ble Supreme Court vide Order dated 11.04.2023 in Civil Appeal No.2471 of 2023 (@ SLP (C) No. 6185/2020) - Director (Admn. and HR), KPTCL Vs C.P.

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Mundinamani & Ors, upheld the Orders passed by the Division Bench of the Hon'ble High Court of Karnataka at Bengaluru in Writ Appeal No. 4193/2017 allowing grant of one annual increment, which the original writ petitioners earned on the last day of their service for rendering services during preceding one year from the date of retirement with good behaviour and efficiently, for the purpose of calculating the retiral benefits. However, Union of India was not among the Parties in the said case.

5. Subsequently, Hon'ble Supreme Court vide Order dated 19.05.2023 dismissed SLP(C) No.4722/2021(UoI Vs M. Siddaraj) filed by M/o Railways on the subject matter with the observation that the appeals filed therein are squarely covered by the Order dated 11.04.2023 in CA No. 2471 of 2023. M/o Railways filed a Miscellaneous Application (MA No. 2400/2024) before the Hon'ble Supreme Court seeking guidance/clarification regarding the modalities to be adopted while implementing its Order dated 19.05.2023. On 22.07.2024, while hearing the matter, Supreme Court ordered that the learned counsel for the Union of India shall examine as to whether Union of India needs to file an application in CA No.2471/2023 disposed of vide judgment dated 11.04.2023. After due legal consultations on the directions of the Apex Court, this Department filed a Petition (Dy. No. 36418/2024) before Supreme Court on 12.08.2024 seeking review of its Order dated 11.04.2023 which is pending before the Hon'ble Supreme Court.

6. Meanwhile, on 06.09.2024, while hearing MA No. 2400/2024 filed by M/o Railways along with several Intervention Applications tagged therewith, Hon'ble Supreme Court took note of the pending Petition (Dy. No. 36418/2024) filed by Union of India seeking review of its Order dated 11.04.2023 in CA No.2471/2023 in the matter. While observing that the issue raised in the applications requires consideration insofar as the date of applicability of the judgment dated 11.04.2023 in CA No. 2471/2023 to third parties is concerned, Hon'ble Court issued following directions, by way of an Interim Order, to prevent any further litigation and confusion:

- a. *The judgment dated 11.04.2023 will be given effect to in case of third parties from the date of the judgment, that is, the pension by taking into account one increment will be payable on and after 01.05.2023. Enhanced pension for the period prior to 30.04.2023 (erroneously mentioned as 31.04.2023 in the Order) will not be paid.*
- b. *For persons who have filed writ petitions and succeeded, the directions given in the said judgment will operate as res judicata, and accordingly, an enhanced pension by taking one increment would have to be paid.*
- c. *The direction in (b) will not apply, where the judgment has not attained finality, and cases where an appeal has been preferred, or if filed, is entertained by the appellate court.*
- d. *In case any retired employee has filed any application for intervention/impleadment in Civil Appeal No. 3933/2023 or any other writ petition and a beneficial order has been passed, the enhanced pension by including one increment will be payable from the month in which the application for intervention/impleadment was filed,*

This interim order will continue till further orders of this Court. However, no person who has already received an enhanced pension including arrears, will be affected by the directions in (a), (c) and (d).

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Relist in the week commencing 04.11.2024."

7. The matter has been examined in consultation with D/o Expenditure and D/o Legal Affairs. It is advised that in pursuance of the Order dated 06.09.2024 of the Hon'ble Supreme Court referred above, action may be taken to allow the increment on 1st July/ 1st January to the Central Government employees who retired/are retiring a day before it became due i.e. on 30th June/31st December and have rendered the requisite qualifying service as on the date of their superannuation with satisfactory work and good conduct for calculating the pension admissible to them. As specifically mentioned in the Orders of the Hon'ble Supreme Court, grant of the notional increment on 1st January/1st July shall be reckoned only for the purpose of calculating the pension admissible and not for the purpose of calculation of other pensionary benefits..

8. It may also be noted that these instructions are being issued in compliance of the Interim Orders dated 06.09.2024 of the Hon'ble Supreme Court in MA Dy. No.2400/2024 without prejudice to the legal stand of the Union of India in the matter and without prejudice to any change of law in this regard. Further, the action taken shall be subject to the final outcome of the Review Petition (Dy. No.36418/2024) pending before the Hon'ble Supreme Court which is expected to be heard by the Apex Court in the week commencing 04.11.2024.

9. This issues with the concurrence of D/o Expenditure vide their Dy. No. 08-09/2019-E.III.A(Vol.III)(3969602) dated 08.10.2024 and D/o Legal Affairs vide Computer Dy. No. E 128445 dated 30.09.2024.

10. Hindi Version will follow.

29/10/2024

(Mahesh Kumar)

Under Secretary to the Government of India

Tel. No.011-23094542

To

All Ministries/Departments of Government of India.

Copy also forwarded to:-

1. The Secretary General, Supreme Court of India.
2. The Controller General of Accounts/ Controller of Accounts, Ministry of Finance.
3. Union Public Service Commission/ Lok Sabha Sectt./ Rajya Sabha Sectt./ Cabinet Sectt./ Central Vigilance Commission/President's Sectt./ Vice-President's Sectt./ Prime Minister Office/ Niti Aayog.
4. Governments of all States and Union Territories
5. Department of Personnel and Training (AIS Division), JCA/ Admn. Section.
6. The Secretary, National Council of JCM (Staff Side), 13-C, Feroz shah Road, New Delhi.
7. All Members of Staff Side of the National Council of JCM/ Department Council.

8. Department of Expenditure, Ministry of Finance.

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(Mahesh Kumar)

Under Secretary to the Government of India