

Pension Updation and other Superannuation issues - Forum's meeting with Dr. K.C. Chakraborty, D.G.

The new Deputy Governor of the Bank Dr. K.C. Chakraborty met the representatives of the United Forum at Mumbai on 30 June 2009. He was accompanied by E.D. Shri V.S. Das, CGM, HRDD and other officers. Among other issues concerning serving staff, withdrawal of updation of pension occupied major part of the discussions. D.G. stated, inter alia, that the matter regarding restoration of pension updation for the affected beneficiaries as well as systemic updation of pension in a regular manner is a 'multi dimensional' issue having legal and other implications. The legal aspect is pending before the Bombay High Court through a petition by some affected retired employees. Besides, he felt that RBI, being the regulatory authority of the financial sector, cannot overlook the fall-out of its actions elsewhere.

The representatives briefed him about the background of the pension scheme in RBI, analogous to Central Government pension scheme in lieu of contributory provident fund and the assurances held out to the RBI staff in this regard. Since these are not being honoured and because of Bank's going back on its commitment under pressure from the Government, employees have felt deeply anguished and disturbed which found reflection in the programme of mass casual leave by all sections of the staff on 21st October 2008 and 20th February 2009; in itself an unprecedented act. Empathizing with the employees' expectations, DG stated that amicable solution of the disputed issue would require some time and that, in consultation with the Governor, would take appropriate steps. He assured that there was no change in the Bank's commitment to seek an amicable resolution of the issue and requested the employees and the trade unions to exercise patience for some more time. DG stated that family pension, higher commutation, etc. were issues incidental to the main issue, viz. pension updation, which if resolved amicably, would facilitate their resolution too.

The meeting of the Forum held thereafter decided that in view of present approach of the Bank to seek an amicable resolution, the manifest sincerity of the Deputy Governor and his assurance that he himself and the Governor would look into the matter to safeguard the interests of the employees, the United Forum will keep a close watch and would take all necessary measures to protect the genuine interests of the employees and officers. The Forum has appealed to all sections of employees and officers to remain in readiness for intensive agitation.

HITGUJ 15-8-09

Letter dated 27 July 09 addressed to the Governor by Shri R.P. Donde, Working President is reproduced below :

Pension Updation Writ Petition No 710 of 2009 in Bombay High Court - Personal Hearing for Speaking Order

Please refer to our letter dated 10 June 2009 (copy enclosed) stating, inter alia, that in spite of our reservations about the Court Order regarding Speaking Order by the Government in the above matter, as directed by the Court in its order, the Association, along with the petitioners had made a detailed representation to the Government and would be appearing before the Government authorities for personal hearing.

2. The hearing was held before Shri K.V. Eapen, Joint Secretary, Department of Financial Services, MoF, Government of India, on 29 June 2009. We now enclose a copy of our internal impressionistic note on the hearing for your information. In spite of not having any hope of getting a favourable result, the least we expected was that the Joint Secretary would be impartial and neutral during the course of the proceedings and would give patient hearing as a Presiding Officer to the points put forward by our advocate and the petitioners. It will be observed from the note that the hearing, on the part of the Government, was only to comply with the High Court directive. The impatience and unhidden prejudices against Reserve Bank were conspicuously visible during the hearing. We were taken aback to see that the Presiding Officer handed over the reins of the proceedings to one Shri M.K. Malhotra, a retired Under Secretary, reappointed (ostensibly) to oppose our case. It was 'Our side' vs 'Your side' debate.

3. What is of more concern to us is the determined effort of these officers to undermine the authority of the Reserve Bank in general and its Governor in particular, which was very much in evidence even in off the cuff remarks of the Presiding Officer addressed to former Governor of the Bank, who was once Finance Secretary and at present member of the Rajya Sabha. The effort is clearly to undermine the autonomy of the Bank even in administrative matters.

4. The Government officers clearly told us that they would not approve provisioning in the Superannuation Fund beyond 10 per cent. of employees' pay. While on the issue of availability of sufficient Superannuation Fund to pay updated pension, Shri Malhotra raised a question whether the Fund is exclusively built on 10% Bank's contribution to P.F. of the employees. The question itself smacked of ignorance on the part of the questioner as regards the components of Superannuation Fund in any organization. One has to bear in mind that 'pension' that is paid by an employer is not *gratis*. The Fund has also to include provision for addition to pension of the retirees over the years either on account of revision of the base for pension (updation in our case) or addition by way of increased Dearness Relief due to increase in the Cost of Living Index. We are of the firm opinion that Government approval is not necessary for the above additions, which are duly approved by the Central Board of Directors and certified by the statutory auditors appointed by the Government of India under section 50 of the Reserve Bank of India Act, 1934 and are as per the provisions of the Reserve Bank of India Employees' Gratuity and Superannuation Regulations, 1975 approved by the Government in 1975.

5. We may recall that the autonomy of the Bank was a thoroughly discussed and decided issue even at the time of nationalization of this institution. When the nationalization of the Reserve Bank was accepted in principle by the Government, it was made clear that the autonomous nature of the institution would not be jeopardized. The then Finance Minister himself on the floor of the Legislative Assembly on 18 February 1947 had asserted,

... we must see that whatever constitution is framed for that bank, although it will be public ownership, it will not play the part of a subservient agent of the Government, whatever it may be at that time.'

In this context, we would like also to quote from the memorandum dated 29 January 1973 from the Banking Department (now, Department of Financial Services) to Lok Sabha Secretariat:

(i) A certain degree of autonomy has been given to a Central Bank for reasons which are commonly known; a detailed scrutiny of expenditure, particularly on staff and premises, may not, it is submitted, be very useful.

(ii) The Central Bank of the country has been given a special position and it guides, controls and stimulates bank development by a process of advice and persuasion, without relying on any statutory power and this has worked well in this country too. Even a limited examination of its expenditure might perhaps unwittingly undermine, at least to some extent, the prestige and authority of the Central Bank.'

It appears, the Government has now conveniently ignored its own commitments stated above.

6. The Department has taken a position that the withdrawal of updation has been ordered by the Hon'ble Finance Minister. We have on our records along with other relevant papers, a copy of the note dated 14 July 2005 put up to the Hon'ble Minister by the Department obtained by us under Right to Information Act, 2005 (copy enclosed). It is observed therefrom that the argument regarding violation of RBI Pension Regulations, 1990, is based on the note dated 5 November 2004 recorded by Shri R.K.

Srivastava, Asstt. Legal Advisor, Ministry of Law and Justice, Department of Legal Affairs, Government of India (copy enclosed). As regards the violation of the Regulations, the note refers only to Regulation 2(2) and there is absolutely no mention of Regulation 5 which gives unbridled powers to Reserve Bank to improve the Pension Scheme without the interference of the Government or any other Regulation/statutory provision. Regulation 5 also sums up the entire pension scheme of the Government and its applicability to Reserve Bank pensioners in its entirety. The Hon'ble Minister was required to be briefed properly before his orders were obtained. As against this, the relevant records of the Reserve Bank, copies of which were also obtained by us under the RTI Act, 2005, clearly show that the matter was examined by the Bank from all angles and even independent legal opinions of two prominent Senior Supreme Court advocates were taken.

7. Sir, it is only you, the Governor of the Reserve Bank, who can take up the matter with the Hon'ble Finance Minister and make him aware of the facts.

We, the retirees, look to you as our guardian for justice.

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Each and every point mentioned above has been conclusively clarified in the note quoting various Supreme Court judgments, the relevance of Regulation 5 of the RBI Pension Regulations, the resolutions twice adopted by the Central Board of the Bank justifying the updation to pre-November 1997 pensioners, Government's own admission regarding the application of the Regulation 5 in the case filed in Lucknow Bench of Allahabad High Court by the retirees of NABARD, obligations of the Industrial Disputes Act, Bank's commitments from time to time to the employees and recognized Associations and the adequacy of funds to bear the cost of updation.

Retirees, desirous of having a copy of the relative circular, may contact us for the same.

Forum's note to Dy. Governor

We had reported in the last issue about the meeting, Forum of Reserve Bank Officers and Employees had with Dr K.C. Chakraborty, the new Deputy Governor, on 30 June 2009, mainly on the pension issue. The Forum, vide its letter dated 22 July 2009, has since forwarded a detailed note to DG in this regard. It is not possible to reproduce the entire note, which has been widely circulated among the staff. Some of the points raised by the Dy. Governor during the

Legal Opinions on Pension Updation

- R.P. Donde

Our Association has with it, received under RTI Act, 2005, the legal opinions obtained by the Reserve Bank from two eminent jurists, Sarvashri Dipankar P. Gupta and Harish Salve, on the question whether the action of the Bank in upward revision of pension of pre-November 1997 pensioners with effect from 1 November 2002, vide its Administrative Circular dated 1 September 2003 without amendment to R.B.I. Pension Regulations, 1990, is justified in law or not.

In this write up, we propose to give in brief, the opinions of both these legal luminaries on the question, which are vitally important not only to pre-November 1997 retirees, but to the entire RBI fraternity.

Shri Dipankar Gupta in his learned opinion has made certain postulations, which may be summarized as under:

1. Under section 7 of the Reserve Bank of India Act, 1934, the general superintendence and directions of the affairs and business of the Bank is entrusted to the Central Board of Directors which may exercise all the powers and do all acts and things which may be exercised and done by the Bank.
2. Section 58 of the Act empowers the Central Board, with previous sanction of the Central Government, to provide for all matters for which provision is necessary or convenient for the purpose of giving effect to the provisions of the Act.
3. While Central Civil Services (Pension) Rules are statutory in character, having been enacted in exercise of the powers conferred by the proviso to Articles 309 and 148(5) of the Constitution, the RBI (Staff) Regulations, as held by the Supreme Court in the case of V.T. Khanzode vs RBI, are non-statutory in character framed under section 7(2) of RBI Act and they can be amended without going through the procedure under section 58 of the Act.
4. The Central Government accepted the recommendations of the V CPC and updated the pension of its pre-1986 pensioners by notional fixation of their pay as on 1-1-1986 by adopting the same formula as for the serving employees by office memoranda in 1998.
5. The Central Board of the Reserve Bank, on 23 July 2003 updated the pension of its pre-November 1997 pensioners by way of revising the pay drawn by them in the revised scale of pay as on 1-11-1997 on a notional basis.
6. The Law Ministry, Central Government, is of the view that to follow the procedure of enhancement of pension and pattern of the Central Government by the Bank for its employees is not legally correct. The employees of the Bank, a statutory body, cannot be equated with the employees of the Central Government in respect of the pension. (The entire case of the Government is based on a half-baked note dated 5 November 2004 of the Legal Officer of the Ministry of Finance.)
7. Regulation 5 of the RBI Pension Regulation states as under: "5. In the matter of application of these Regulations, regard may be had to the corresponding provisions of the Civil Service Regulations or the Liberalised Pension Rules or the Civil Pension (Commutation) Rules or the Family Pension Scheme for the Central Government employees, as the case may be, of the Government of India in so far as they can be adapted in the service in the Bank, but subject to such

exceptions and modifications as the Bank may, from time to time, determine."

Based on these facts, Shri Dipankar Gupta has given his opinion as under:

The CCS (Pension) Regulations are statutory in character (see D.S. Nakara vs Union of India (1983)). However, the Central Government in giving effect to the recommendations of the V CPC with regard to revising pension of pre-1986 retirees, appears to have done so by administrative directions without purporting to touch the statutory character of CCS (Pension) Rules, 1972.

The power to fix pay also includes the power to fix notional pay. There are numerous instances where pay scales have been fixed notionally or with retrospective effect. This, in the opinion of the Senior Advocate, is a perfectly permissible procedure being an integral part of our civic jurisprudence. The Central Government has itself done it despite the fact that as per the statutory rules, Central Government pensions are linked to emoluments which a Government servant "was receiving" immediately before his retirement (vide Rules 33,34 and 49 of the CCS (Pension) Rules, 1972).

The case of the Reserve Bank of India, in the considered opinion of Shri Gupta, is stronger because the pay of the Bank's employees is governed by the RBI (Staff) Regulations, 1948, which, as noticed above, are administrative and non-statutory in character, The Bank could, therefore, grant notional pay to its employees or retirees by its administrative decision without reference to any statutory provision. Once the notional pay is granted, it becomes part of the pay and according to RBI (Pension) Regulations, 1990, pension can be computed on the basis thereof. Shri Gupta has also observed that the definition of pay in the RBI Pension Regulations, 1990 is an inclusive definition and is not exhausted by the categories mentioned in Regulation 2(9) (viz. substantive pay, officiating pay, special pay, personal pay, special personal pay and any other emoluments which may be classified as pay by the Central Board of the Bank.). Therefore, if administratively, the Bank decides to treat notional pay as pay, the definition of pay in the RBI Pension Regulations, 1990; in Shri Gupta's view, fully entitles it to do so. Shri Gupta has added that generally speaking, he sees no difference on principle, between the case of Central Government retirees and the Bank's retirees. The pension of the Central Government retirees is also determined according to the statutory provisions. That did not preclude the Central Government from giving effect to the V CPC recommendations on an administrative basis. The position of the Reserve Bank may be better in as much as fixation of pay (which will include notional pay) in the case of Bank is purely an administrative procedure.

What the Bank has done is to bring about parity between the Central Government's former employees and Bank's former employees. Shri Gupta observes, this is a desirable step, particularly, in view of the fact that Regulation 5 of the RBI Pension Regulations, 1990, specifically envisages parity with Central Government employees.

In view of the above discussions, Shri Gupta concludes, he is of the view, that the action of the Reserve Bank of updation of pension for pre-November 1997 retirees, without amendment to RBI Pension Regulations, 1990, is justified in law.

(to be concluded)

"INFORMATION" അക്കൗണ്ട് "QUERRY" ആയിട്ടും: കിട്ടിത്തരൂ എന്ന് 29ന് ധന വകുപ്പിലെ ഉദ്യോഗസ്ഥൻ ഡൽഹിയിൽ നടത്തിയ ചർച്ചയിൽ അറിയിച്ചിട്ടുണ്ട്. ശ്രീ. സത്യജിത്ത് നെട്ടിയിൽ നേതാവ് ശ്രീ. ഇല്ലാമനേ നിബന്ധിച്ച് ഒരു PARTING GIFT ആയി നേടിയതാണ് അദ്ദേഹത്തിനും ഇതുതന്നെ വേണ്ടി ഒരു കലിപ്പണവും ഒരു ജൂലിയൻ സെന്റർ പണത്തിന് താലിറിപ്പോർട്ട് ചെയ്തിരുന്നതും രാജ്യത്തെ സെന്റർ ബാങ്കിന്റെ പ്രവർത്തനത്തെ അറിയിച്ചും ജൂലിയൻ സെന്റർ പണത്തിലേക്കും ഉടൽപദി വെച്ചിട്ടു ഒരു ഉദിനപുടിയും ബാങ്കിന്റെ സെന്റർ ബാങ്ക് നെതിരെയും ചെട്ടിവാരി ഹിറിയെ ഒരു ഉദ്യോഗസ്ഥന്റെ പ്രസ്താവത്തിൽ കേൾക്കാനും വാസ്തവ്യമെല്ലാമറിയാൻ തിരുവനന്തപുരത്തു നിന്നും ശ്രീ. പി. അരുൺ. അരുൺ. നായർ RTI ACT അനുസരിച്ച് സെന്റർ പണത്തിൽ ചെട്ടിപ്പട്ടു എൻചർലി. ഷൻ അച്ചിപ്പൻ ഒരു താഴെ ക്യാമ്പു വിവരം അദ്ദേഹം ചെട്ടിപ്പട്ടു കിട്ടിയെടുത്തി.

"I therefore request you to make available to me all information whether documentary or otherwise, the Govt Dept concerned has on the basis of which the official(s) made the observation referred to --- above. മറ്റൊരു ഉദാഹരണം -

"This is with reference to your letter dated 24/7/09 on the above cited subject and to state that the information sought by you is a query and not an information which is covered under the definition of information under Sec 2(f) of the RTI Act 2005"

മുൻപു മുൻപും റദ്ദ് ചെയ്തുകൊണ്ടിരിക്കുന്ന തീരുമാനം
 RTI Act 2005 (II EDN 2006) കാരണം INFORMATION എന്ന പദത്തിന്റെ
 അർത്ഥം എഴുതുകയാണ് -

"2(Lf) information means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, log books, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed or accessed by a public authority under any other law for the time being in force"

"enquiry" എന്ന അർത്ഥം വിഷയിക്കുന്നി പര്യന്തം അറിയാനായെന്നു
 "An inquiry", INQUIRE = "TO ASK A QUESTION" തിന്മയുടെ "QUESTION"
 അർത്ഥം "INFORMATION" അർത്ഥം, ചോദ്യം ചെയ്ത അറിവ് അല്ല. കൃത്യമായിട്ടു

പ്രസ്തുതപദം - മെമ്പർമാർക്കു നൽകുന്ന (UNDER SECT) കമ്മീഷൻ
 തീരുമാനങ്ങൾ - വിവേകം ഉപയോഗിച്ച് ഉറപ്പാക്കണം. വിശദമായി നോക്കി
 പരിശോധിച്ചപ്പോൾ സെക്രട്ടറിക്ക് മുമ്പാകെ ഉള്ള അപേക്ഷകൾ
 തിരിച്ചറിയാൻ ശ്രീ R. K. GAUR, UNDER SECT, എഡിറ്റർ നൽകുന്ന
 സർക്കാർ ഭവനത്തു ചുറ്റും ഉള്ള റോഡും റെയ്ൺ. ശ്രീ P. R. R. NAYAR ന്നവർക്ക്
 കൂടുതലായും വിവരങ്ങൾ നൽകണമെന്നു അഭ്യർത്ഥിക്കുന്നു. തിരുവനന്തപുരം
 ഓഫീസിലും തിരുവനന്തപുരം ജില്ലാ മാനവ വികസന വകുപ്പിലും തിരുവനന്തപുരം
 ജില്ലാ മാനവ വികസന വകുപ്പിലും തിരുവനന്തപുരം ജില്ലാ മാനവ വികസന വകുപ്പിലും
 മറ്റും മെമ്പർമാർക്ക് വിവരങ്ങൾ നൽകുന്നതിനായി അഭ്യർത്ഥിക്കുന്നു.

അപേക്ഷകൾക്ക് - അപേക്ഷകൾക്ക് വിവരങ്ങൾ നൽകുന്നതിനായി അഭ്യർത്ഥിക്കുന്നു.
 RBREA കൊച്ചി Members' Directory എന്ന പേരിൽ മെമ്പർമാരുടെ
 പട്ടികയിൽ തിരുത്തലുകൾ - (30/1) ലായ എൻട്രികൾ തിരുത്തണമെന്നും RBREA KOCHI
 അംഗീകരിക്കാൻ അഭ്യർത്ഥിക്കുന്നു - DIRECTORY മൂലം പെൻഷനർമാർക്കു നൽകുന്ന
 തിരുത്തലുകൾ തിരുത്തുന്നതിനായി അഭ്യർത്ഥിക്കുന്നു. പെൻഷൻ റൈറ്റിംഗ് ലെറ്റർ
 Correction Slip ലഭിക്കാൻ പെൻഷനർമാർക്കു നൽകുന്നതിനായി അഭ്യർത്ഥിക്കുന്നു.

സംഭാവനകൾ: ശ്രീ K. V. ANS, T. P. N. KUTTY, B. VILASINI AMMA മുതലായവർ
 3000 രൂപ, പ്രൊഫ. അംബികാദേവി ശ്രീ K. V. രാമചന്ദ്രൻ 1500 രൂപ, ശ്രീ പി.
 വി. ചന്ദ്രൻ 100 രൂപ + മൂന്ന് സ്വപ്രകാരം 5223 = 6373 Less ഇവയുടെ
 ചിലവ് 768 രൂപ = നിക്ഷേപിച്ചത് 5605 രൂപ.

CORRIGENDUM: 31.7.09 ന് നടന്ന ട്രാഫിംഗ് യൂണിറ്റ് അറ്റൻഡൻസിൽ
 S/Secy M.O. സെബാസ്റ്റ്യൻ, അംബികാദേവി, C.O. മുകുന്ദൻ എന്നിവർ
 വരുന്ന് പങ്കെടുത്തു എന്നും - പെൻഷൻ കമ്മിഷൻ അറ്റൻഡൻസിൽ പങ്കെടുത്തു
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 പെൻഷൻ വിശേഷ പദ്ധതിയിൽ വേദിച്ചിരുന്നു -

മുൻപു മുൻപും റദ്ദ് ചെയ്തുകൊണ്ടിരിക്കുന്ന തീരുമാനം - 17 1/2 ശതമാനം
 വധന എന്നും ഡോണേഷൻ സെക്ഷൻ നൽകുന്ന പെൻഷൻ - 17 1/2 ശതമാനം
 New Pension Scheme നടപ്പാക്കണം, OUTSOURCING, SPECIAL PAY, Consolidation
 എന്നീ കാര്യങ്ങളെക്കുറിച്ച് തീരുമാനമെടുക്കണമെന്നും പെൻഷൻ
 IPA കൊടുക്കുന്ന പദ്ധതികൾ ഉൾപ്പെടെ പദ്ധതികൾ - 1300 എന്നും ഡബ്ബിൾ
 മീംബർ കൂട്ടിക്കൊണ്ടു പോകണമെന്നും - ഡബ്ബിൾ മീംബർ റൗണ്ടിംഗ്
 LIC ന്റെ 16% അറ്റൻഡൻസ് ഓഫ് - ചെയ്തുകൊണ്ടിരിക്കുന്നു -

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