



Indian Banks' Association

HR & INDUSTRIAL RELATIONS

No.HR&IR/2018-19/G2/4786

April 3, 2018

Chief Executives of Member Banks which
are parties to the 7th Bipartite Settlement

Dear Sir,

Anomaly in computation of Pension Civil Appeal No. 5525 of 2012, Filed in the Hon`ble Supreme Court of India by Bank of Baroda & Ors with other Civil Appeals

On 9-10-1993, a Bi-partite Settlement was signed at Industry level between Indian Banks' Association (representing member Banks) and Workmen Unions (representing Workmen) under the provisions of Industrial Dispute Act, 1947 for introduction of Pension as a second retiral benefit in lieu of "Banks contribution to Provident fund." On similar lines a Joint Note dated 29-10-1993 between Indian Banks' Association (representing member Banks) and Officers Associations (representing Officers) was signed.

2. The respective member Banks in exercise of their power under Section 19 of Banking Companies (Acquisition & transfer of Undertakings) Act, 1970/1980 pursuant to above referred Bi-partite Settlement/Joint Note, framed and notified in the Gazette of India "Bank Employees Pension Regulations, 1995."

3. Another Joint Note/Bi-partite Settlement was signed between respective parties as mentioned herein above on 14-12-1999 and 27-3-2000 respectively relating to Wage revision. As per the provisions of said Joint Note /Bi-partite Settlement, 1684 points of Consumer Price Index (CPI) were merged with existing basic pay of Officers/employees and revised basic pay was worked out accordingly. However, as per agreed terms & conditions, pay for the purpose of pension was worked out after merging 1616 points of CPI as against 1684 points. These provisions were made effective w.e.f. 1-4-1998. As such, pay for the purpose of pension was less than the actual Pay the Employee/Officer concerned was getting on or after 1-4-1998. This anomaly was removed vide Joint Note/Bi-partite Settlement signed on 2-6-2005. However, monetary benefits were given w.e.f 1-5-2005.

4. Due to this anomaly, the employees/Officers who retired after 1-4-1998, including those who retired under Special Voluntary Retirement Scheme, 2000 filed various Writ Petitions before different Hon`ble High Courts, praying that they be held entitled to Payment of Pension on the basis of actual average pay drawn by them during last 10 months as per the provisions of Bank Employees Pension Regulations, 1995.

5. When the matter came up before Hon`ble High Court of Karnataka and Madras, the Hon`ble Courts decided the matter against Banks and ultimately concerned Banks approached Hon`ble Supreme Court by filing Civil Appeals viz., CA No 5525/2012, 6254/2012, 5611/2012, 3026-3253/2013, 3257-3262/2013, 11205-11340/2014, 11342-11435/2014, 9533-9646/2014, 8557/2014, 4711-4800/2014 and 1880/2018, 1881-1888/2018, 1890/2018, 1892-1912/2018, 1918/2018, 1919-2087 and 2088-2092/2018.

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6. The Hon'ble Supreme Court vide its order dated 13/2/2018 (copy enclosed) have dismissed these appeals filed by the Banks and inter-alia has held that:-

*“ 17....the provisions contained in Regulation 35 also make an incumbent entitled for opting the pension on the basis of average emoluments. The average emoluments have to be calculated on the basis of the preceding ten months. Adding Explanation (c) to Regulation 2(s), as done, could have created no fictional basis in view of clear and unambiguous provisions in other provisions of the Regulations. Besides, the definition of the average emoluments in Regulation 2(d) itself makes it clear that it is **average pay drawn** “during the last ten months” of his service by an employee. It cannot mean pay drawn by the employee even before several years. Mentionably there is no amendment made in the aforesaid provision of Regulation 2(d) and the expression during the preceding last ten months before date of retirement is clearly culled out in Regulation 38(1) and 38(2). Thus, in our considered opinion, the view taken by the then Chief Justice Vikramajit Sen as he then was, at Karnataka High Court and by the High Court of Madras are appropriate and the view taken by the Delhi High Court cannot be said to be sustainable for the various other reasons too mentioned hereinafter.*

29. Thus, in our opinion, the Regulations which were in force till 2003, would apply with full force and as a matter of fact, the amendments made in it by addition of Explanation (c) in Regulation 2(s) did not have the effect of amending the Regulations relating to pension, as contained in Regulation 38 read with Regulations 2(d) and 35 of the Regulations of 1995. Even otherwise, if it had the effect of amending the pay and perks ‘average emoluments’, as specified in Regulation 2(d), it could not have operated retrospectively and taken away accrued rights. Otherwise also, it would have been arbitrary exercise of power. Besides, there was no binding statutory force of the so called Joint Note of the Officers’ Association, as admittedly, to Officers’ Association even the provisions of Industrial Disputes Act were not applicable and joint note had no statutory support, and it was not open to forgo the benefits available under the Regulations to those officers who have retired from 1.4.1998 till December 1999 and thereafter, and to deprive them of the benefits of the Regulations. Thus, by the Joint Note that has been relied upon, no estoppel said to have been created. There is no estoppel as against the enforcement of statutory provisions. The Joint Note had no force of law and could not have been against the spirit of the statutory Regulations and the basic service conditions, as envisaged under the Regulations framed under the Act of 1970. They could not have been tinkered with in an arbitrary manner, as has been laid down by this Court in Central Inland Water Transport Corporation Limited & Anr. vs. Brojo Nath Ganguly & Anr., (1986) 3 SCC 156 & Delhi Transport Corporation vs. D.T.C. Mazdoor Congress, (1991) Supp.1 SCC 600.

33. The only purpose of the addition of Explanation (c) to Regulation 2(s), was to take away the actual computation of the pension on the basis of the salary, which was drawn in the preceding ten months. Thus, we have no hesitation to strike it down being arbitrary and repugnant to other provisions/Regulations namely 2(d), 38(1)(2) and 35. The Explanation (c) to Regulation 2(s) is hereby struck down, as it could not have been enacted retrospectively to take away accrued rights. Even otherwise also it is held to be arbitrary and irrational. More so, in view of the fact that only by way of a temporary measure, that discrimination was created and the Explanation was deleted with effect from 1.5.2005.”

34. Thus, we set aside the judgment rendered by the High Court of Delhi and affirm that of High Courts of Karnataka at Bangalore and the High Court of Madras. The appeals filed by the Banks are

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dismissed and the appeal filed by the Association is allowed. Resultantly, let the amount which was due and payable be paid with 9% interest, be calculated and paid within four months from today.

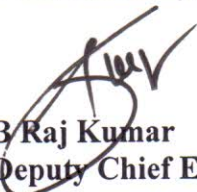
35. All pending applications stand disposed of."

7. The matter was put up to the Managing Committee of IBA in its meeting held on 28.3.2018. The committee resolved that the judgement of the Hon'ble Supreme Court may be forwarded to all member banks which are party to above mentioned Joint Note / Bipartite Settlement for their necessary action. As such, a copy of the judgement of Hon'ble Supreme Court is enclosed.

8. As directed by Managing Committee we have taken a Legal Opinion to know the impact of the judgement on various Banks which is given below:

- (a) All Nationalized Banks who have Pension Regulations, 1995 will have to give effect to the judgement and pay the differential arrears in the amount of Pension which was due and payable with 9% interest within 4 months from the date of judgement i.e. 13.02.2018.
- (b) Banks incorporated under special statutes will also have to give effect to the judgement if they have implemented provisions of the above mentioned Joint Note / 7th Bipartite Settlement.
- (c) Private Banks which are not amenable to the Writ jurisdiction of the Hon'ble High Courts/Supreme Court, though can take the plea that captioned judgement is not applicable to them, should also give effect and comply with the captioned judgement if they have implemented provisions of the above mentioned Joint Note/7th Bipartite Settlement. The view expressed in this point is based on the possibility that if the employees of the Private Banks approach the Civil Court on the basis of said Hon'ble Supreme Court judgement, they would procure a favourable verdict.

Yours faithfully,


B/Raj Kumar
Deputy Chief Executive

Encl.